

CLAUSE NOTES

Public Health Amendment (Healthy Tasmania) Bill 2017

PART 1 - Preliminary

- Clause 1 Provides the short title.
- Clause 2 Provides that the Bill commences on a day to be proclaimed in regulations.

PART 2 – Amendments to the *Public Health Act 1997*

- Clause 3 Provides that the Act amended is the *Public Health Act 1997* (the Act).
- Clause 4 Amends section 3 (interpretation) by adding and amending definitions. Changes include:
- Personal vaporiser product*
- This new term describes what a personal vaporiser product is. It captures the device itself as well as things for use with the device, such as liquids and cartridges.
 - Regulations made under the Act can extend the definition by prescribing other things as personal vaporiser products. This ensures there are no loopholes if their design or technology changes over time.
- Exempt device*
- This new term describes devices that are not personal vaporiser products, such as devices regulated under the *Misuse of Drugs Act 2001*, devices to deliver oxygen, and devices on the TGA register.
- Smoke*
- This term has been amended to include the smoking of, and smoke from, a personal vaporiser product and any other non-tobacco product. This ensures smoke-free areas under the Act can be enforced no matter the substance being smoked or the device used to smoke it.
- Non-tobacco cigarette*
- This term has been amended so the cigarette need not be produced by a commercial process. This removes a loophole for the use of such a product in smoke-free areas. The term also includes a reference to herb or other plant matter for added clarity.
- Smoking product*
- This is a new term that covers tobacco products and personal vaporiser

products.

- Most of the amendments to the Act involve replacing the term 'tobacco products' with 'smoking products', which extends the operation of the provision to include personal vaporiser products.

Smoking product licence

This is a new term that replaces 'tobacco seller's licence'. A person may hold a smoking product licence that authorises the sale of tobacco products or personal vaporiser products or both.

Clause 5	Amends a heading.
Clause 6	Incorporates personal vaporiser products into the operation of section 63 (ban on child smoking, using, possessing smoking product).
Clause 7	<p>Incorporates personal vaporiser products into the operation of section 64 (including ban on sale/supply to children).</p> <p>Increases the penalties for section 64 offences from 50 and 100 penalty units for a first and subsequent offence, to 120, 240, and 360 penalty units for a first, second, and subsequent offence.</p>
Clause 8	Incorporates personal vaporiser products into the operation of section 66 (seizure of smoking products by enforcement officers).
Clause 9	Incorporates personal vaporiser products into the operation of section 67 (warnings and information to a child).
Clause 10	Removes prisons from the list of areas that are not smoke-free.
Clause 11	Incorporates personal vaporiser products into the operation of section 69 (ban on using marketing devices or schemes for smoking products).
Clause 12	Incorporates personal vaporiser products into the operation of section 69A (display of notices). Includes a reference to multiple notices for added clarity. Introduces the requirement for retailers to give customers buying a smoking product certain information if guidelines issued under the Act require it.
Clause 13	Amends a heading.
Clause 14	Incorporates personal vaporiser products into the operation of section 71 (location and appearance of sales units).
Clause 15	Incorporates personal vaporiser products into the operation of section 72 (ban on display of smoking products by retailers).

- Clause 16 Incorporates personal vaporiser products into the operation of section 73 (packaging in accordance with guidelines).
- Clause 17 Incorporates personal vaporiser products into the operation of section 74 (ban on providing false information relating to legislation) and adds the term *retailer* so it is clear the section applies to all suppliers (as well as manufacturers).
- Clause 18 As above, amends section 74AA (ban on providing false information on the health effects of tobacco products) to include the term *retailer* for added clarity.
- Clause 19 Amends a heading.
- Clause 20 Incorporates personal vaporiser products into the operation of section 74A (ban on selling smoking products without a licence) and includes a drafting change not affecting the operation of the provision (using the term *authorised* to sell).
- Clause 21 Incorporates personal vaporiser products into the operation of section 74B (licence application process) and includes a requirement for the application to note whether it is for a licence to sell tobacco products or personal vaporiser products or both.
- Clause 22 Incorporates personal vaporiser products into the operation of section 74C (grant or refusal of licence).
- Clause (b) includes the existing matters the Director of Public Health can take into account when determining a licence application and introduces a fit and proper test.
- For that purpose, the Director may make enquiries with relevant agencies in other jurisdictions and, if the applicant consents, with police. If a person does not consent the Director may refuse to determine the licence application.
- The Director can take into account the results of those enquiries, criminal convictions, and other matters the Director considers relevant.
- Clause (e) adds to the circumstances in which the Director cannot grant an application - to include where the application relates to the sale of personal vaporiser products in specialist tobacconist premises. Under existing provisions of the Act, specialist tobacconists are dedicated stores that can sell only tobacco products, matches, and cigarette or pipe lighters.
- Clause 23 Incorporates personal vaporiser products into the operation of section 74D (issue of licence). It also adds a requirement for the Director to specify on the licence the type of smoking product authorised for sale (tobacco products, personal vaporiser products, or both).

Clause 24	Incorporates personal vaporiser products into the operation of section 74E (duration of licence).
Clause 25	Incorporates personal vaporiser products into the operation of section 74F (licence renewal process). Introduces a requirement for licensees to provide the Director of Public Health with any information they are required to collect under a licence condition. The information must be provided with the renewal application, otherwise the application may be refused. The intention is to include a standard condition for licences that requires information on sales volumes to be collected and kept (and thus provided to the Director when the licence is renewed).
Clause 26	Incorporates personal vaporiser products into the operation of section 74G (varying a licence).
Clause 27	Incorporates personal vaporiser products into the operation of section 74GA (other licence features).
Clause 28	Incorporates personal vaporiser products into the operation of section 74I (selling smoking products) and includes a drafting change not affecting the operation of the provision (using the term <i>authorised</i> to sell).
Clause 29	Incorporates personal vaporiser products into the operation of section 67 (warnings and information to a child).
Clause 30	Incorporates personal vaporiser products into the operation of section 74J (register of licences).
Clause 31	Incorporates personal vaporiser products into the operation of section 74L (ban on selling from premises not listed on the licence).
Clause 32	Incorporates personal vaporiser products into the operation of section 74M (ban on including in smoking products in shopper loyalty programs).
Clause 33	Section 154 currently provides for maximum penalties of a 100 penalty unit fine or 6 months imprisonment for failing to comply with a requirement of an authorised officer, nominated officer or police officer. Clause 33 amends section 154 so that a child is only subject to the maximum fine, rather than imprisonment.
Clause 34	Incorporates personal vaporiser products into the operation of section 160A (review of licence decisions).
Clause 35	Incorporates personal vaporiser products into the operation of section 194A (evidence relating to a smoking product).

PART 3 – *Work Health and Safety Regulations 2012 Amended*

- Clause 36** Provides the regulations amended are the *Work Health and Safety Regulations 2012*.
- Clause 37** Makes a consequential amendment to regulation 328(6)(b) to include personal vaporiser products in the exemptions from Part 7.1 (use, handling and storage at a workplace).

PART 4 – *Miscellaneous Amendments*

- Clause 38** Transitions existing tobacco seller's licences and applications to smoking product licences and applications (to sell tobacco products).
- Clause 39** A standard clause repealing the Amendment Act, as its substance is incorporated into the Principal Act on commencement.