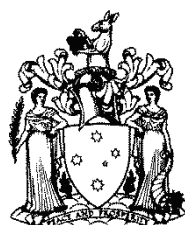


Authorised Version
Tobacco Amendment Act 2016
No. 55 of 2016

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Authorised Version



Victoria

Tobacco Amendment Act 2016[†]

No. 55 of 2016

[Assented to 18 October 2016]

The Parliament of Victoria enacts:

Part 1—Preliminary

1 Purpose

The main purpose of this Act is to amend the **Tobacco Act 1987**—

- (a) to prohibit smoking in outdoor dining areas;
and
- (b) to regulate the sale, promotion and use of e-cigarette products.

Tobacco Amendment Act 2016

No. 55 of 2016

Part 1—Preliminary

2 Commencement

The Act comes into operation on 1 August 2017.

3 Principal Act

In this Act, the **Tobacco Act 1987** is called the Principal Act.

Part 2—Outdoor drinking areas

4 Amendments relating to outdoor drinking areas

(1) In section 3 of the Principal Act, in the definition of *outdoor dining or drinking area*—

- (a) **omit "dining or"**;
- (b) for "food or drinks or both" **substitute "drinks"**.

(2) In the Principal Act—

- (a) in section 5A(2)(c) **omit "dining or"**;
- (b) in the heading to section 5C **omit "dining or"**;
- (c) in section 5C(1) **omit "dining or"**.

(3) After section 5C(1) of the Principal Act **insert**—

"(1A) A person must not smoke in an outdoor drinking area if—

- (a) any part of the outdoor drinking area is within 4 metres of an outdoor dining area, irrespective of whether or not the outdoor drinking area and the outdoor dining area are operated by the same occupier; and
- (b) the outdoor drinking area and the outdoor dining area are not separated by a wall that is at least 2.1 metres high.

Penalty: 5 penalty units.

(1B) It is a defence to a prosecution under subsection (1A) if the accused proves that the accused was not aware and could not reasonably be expected to have been aware, that the accused was contravening subsection (1A)."

- (4) In the Principal Act—
- (a) in section 5C(2) and (3), after "subsection (1)" **insert** "or (1A)";
 - (b) in the heading to section 5D **omit** "**dining or**";
 - (c) in section 5D(1) **omit** "dining or";
 - (d) in section 5D(1), for "section 5C" **substitute** "section 5C(1)".
- (5) At the end of section 5D of the Principal Act **insert**—
- "(3) If a person smokes in an outdoor drinking area in contravention of section 5C(1A), the occupier of the outdoor drinking area is guilty of an offence.
- Penalty: In the case of a natural person,
10 penalty units.
- In the case of a body corporate,
50 penalty units.
- (4) It is a defence to the prosecution under subsection (3) if the occupier of the outdoor drinking area proves that the occupier of the outdoor drinking area—
- (a) was not aware and could not reasonably be expected to have been aware, that the contravention of section 5C(1A) was occurring; or
 - (b) the contravention of section 5C(1A) occurred during a period of 3 months starting on the day that the outdoor dining area was first used as an outdoor dining area."

(6) In the Principal Act—

- (a) in the heading to section 5E **omit "dining or"**;
- (b) in section 5E(1) **omit "dining or"**;
- (c) in section 5E(1) for "section 5C" **substitute "section 5C(1) or (1A)"**;
- (d) in section 5E(2) of the Principal Act **omit "dining or"** (where twice occurring);
- (e) in section 5RB(3)(d) **omit "dining or"**;
- (f) in section 5RC(4) **omit "dining or"**;
- (g) in section 5RD(3)(d) **omit "dining or"**;
- (h) in section 5RE(5) **omit "dining or"**;
- (i) in section 5RF(2)(d) **omit "dining or"**;
- (j) in section 5RG(5) **omit "dining or"**;
- (k) in section 5RH(2)(d) **omit "dining or"**;
- (l) in section 5RI(5) **omit "dining or"**.

Part 3—Outdoor dining areas

5 Definitions

- (1) In section 3 of the Principal Act **insert** the following definitions—

"outdoor dining area has the meaning given in section 3F;

snack means—

- (a) a pre-packaged shelf-stable food that—
- (i) is sealed in the container or package in which the manufacturer intended the food to be sold by retail; and
 - (ii) does not require any intervention or attention by, or on behalf of, the provider before consumption; or
- (b) a piece of fruit which has not been cut for the purposes of consumption;".
- (2) In section 3 of the Principal Act, for the definition of *package substitute*—

"package (other than in relation to a snack) does not include a transparent wrapping, unless the wrapping has a tobacco or e-cigarette advertisement printed on it;".

6 Outdoor dining area

After section 3E of the Principal Act **insert**—

3F Outdoor dining area

- (1) For the purposes of this Act, an *outdoor dining area* is—
- (a) an outdoor area in a public place—
 - (i) that has an occupier; and

- (ii) that the occupier permits to be used for the consumption of food provided on a commercial basis, whether or not prepared by, or on behalf of, the occupier; and
 - (iii) to which neither paragraph (b) nor (c) applies; or
- (b) an outdoor area in a public place at which a food fair is held; or
- (c) an area that—
- (i) is part of an outdoor area in a public place at which an organised event (other than a food fair) is held; and
 - (ii) is within 10 metres of a place at the outdoor area at which food is provided on a commercial basis by, or with the permission of, the occupier of the outdoor area.
- (2) In this section—
- food* does not include drink or any snack;
- food fair* means an organised event at which the principal activities are the sale or supply of food for consumption at the event and the consumption of that food."

7 New sections 5EA, 5EB and 5EC inserted

After section 5E of the Principal Act **insert—**

"5EA Outdoor dining areas: offence by smoker

- (1) A person must not smoke in an outdoor dining area.

Penalty: 5 penalty units.

- (2) If an inspector believes on reasonable grounds that a person is contravening subsection (1), the inspector, on producing the inspector's identity card, may direct the person to cease the contravention.
- (3) A person who is contravening subsection (1) must not, without reasonable excuse, fail to comply with a direction by an inspector to cease the contravention.

Penalty: 5 penalty units.

5EB Outdoor dining areas: offence by occupier

- (1) If smoking occurs in an outdoor dining area, in contravention of section 5EA, the occupier of the area is guilty of an offence and liable to a penalty not exceeding 10 penalty units, in the case of a natural person, or 50 penalty units, in the case of a body corporate.
- (2) It is a defence to a prosecution under subsection (1) if the accused proves that the accused did not provide an ashtray, matches, a lighter or any other thing designed to facilitate smoking where the contravention occurred and that—
 - (a) the accused was not aware, and could not reasonably be expected to have been aware, that the contravention was occurring; or
 - (b) the accused—
 - (i) requested the person contravening to stop smoking; and
 - (ii) informed the person that the person was committing an offence.

5EC Outdoor dining areas: no smoking signs

- (1) The occupier of an outdoor dining area in which smoking is prohibited by section 5EA, is guilty of an offence, and liable to a penalty not exceeding 10 penalty units, in the case of a natural person, or 50 penalty units, in the case of a body corporate, if, without reasonable excuse, acceptable no smoking signs are not displayed in accordance with subsection (2).

Note

Section 3 defines an acceptable no smoking sign.

- (2) The signs must be displayed in a manner that ensures that a person is reasonably likely to see one or more of them either on entering the outdoor dining area or from within the outdoor dining area."

8 Amendment of Schedule

- (1) In the Schedule to the Principal Act, after item 3 **insert**—

"3A	An offence against section 5C(1A)	1 penalty unit	Not applicable".
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- (2) In the Schedule to the Principal Act, in column B of item 4, for "Not applicable" **substitute** "5 penalty units".

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Part 3—Outdoor dining areas

(3) In the Schedule to the Principal Act, after item 5 **insert**—

"5A	An offence against section 5EA(1)	1 penalty unit	Not applicable
5B	An offence against section 5EB(1)	2 penalty units	5 penalty units
5C	An offence against section 5EC(1)	2 penalty units	5 penalty units".

Part 4—E-cigarettes

9 Amendments relating to e-cigarettes

(1) In section 3 of the Principal Act **insert** the following definitions—

"e-cigarette means—

- (a) a device (other than a device that is prescribed to be not an e-cigarette for the purposes of this Act) that is designed to generate or release an aerosol or vapour (whether or not containing nicotine) by electronic means for inhalation by its user in a manner that replicates, or produces an experience similar to, the inhalation of smoke from an ignited tobacco product; or
- (b) any other device prescribed by the regulations;

e-cigarette accessory means—

- (a) a cartridge, capsule or other container designed to contain a liquid, aerosol, gas, vapour or other substance for use in an e-cigarette; or
- (b) a heating element designed for use in an e-cigarette; or
- (c) any other component of an e-cigarette prescribed by the regulations;

e-cigarette company means—

- (a) a public company (within the meaning of the Corporations Act) that is engaged in one or more of—
 - (i) manufacturing e-cigarette products;

(ii) wholesaling e-cigarette products;
or

(b) a proprietary company (within the meaning of the Corporations Act) that is a subsidiary or related body corporate (within the meaning of that Act) of a company referred to in paragraph (a);

e-cigarette product means an e-cigarette or e-cigarette accessory;

e-cigarette retailing business means the business of selling e-cigarettes by retail, either alone or in conjunction with any other merchandise, and includes any such business carried on as part of, or in conjunction with, any other business;

e-cigarette wholesaling business means the business of selling e-cigarette products for the purposes of resale, either alone or in conjunction with any other merchandise, and includes any such business carried on as part of, or in conjunction with, any other business;

smoke means—

- (a) smoke, hold or otherwise have control over, an ignited or heated tobacco product; or
- (b) use an e-cigarette to generate or release an aerosol or vapour;

specialist e-cigarette retailing premises means an e-cigarette retailing premises that is certified by the Secretary as a specialist e-cigarette retailing premises under section 15U."

- (2) In section 3 of the Principal Act—
- (a) in the definition of *carton*, after "tobacco product" (where twice occurring) **insert** "or e-cigarette product";
 - (b) in the definition of *display*, after "tobacco product" **insert** "or e-cigarette product";
 - (c) in the definition of *immediate package*—
 - (i) after "tobacco product" (where first occurring) **insert** "or e-cigarette product";
 - (ii) after paragraph (a) **insert**—
 - "(ab) in the case of an e-cigarette product, not including a package containing a further package or packages of the product; and";
 - (d) in the definition of *point of sale*, after "tobacco products" (where first occurring) **insert** "or e-cigarette products";
 - (e) in the definition of *product line*, after "tobacco product" (where twice occurring) **insert** "or e-cigarette product";
 - (f) in the definition of *retail outlet*, after "tobacco products" **insert** "or e-cigarette products";
 - (g) for the definition of *tobacco advertisement substitute*—
 - "*tobacco or e-cigarette advertisement* has the meaning given in section 3B;";
 - (h) in the definition of *tobacco product*, for "the main ingredient of which is" **substitute** "containing".

- (i) in the definition of *vending machine*, after "tobacco products" **insert** "or e-cigarette products";
 - (j) in the definition of *wholesale outlet*, after "tobacco products" **insert** "or e-cigarette products".
- (3) In the Principal Act—
- (a) in section 3A, after "business" **insert** "or e-cigarette retailing business";
 - (b) in the heading to section 3B, after "**Tobacco**" **insert** "or e-cigarette";
 - (c) in section 3B(1), for "*tobacco advertisement*" **substitute** "*tobacco or e-cigarette advertisement*";
 - (d) for section 3B(1)(b) **substitute**—
 - "(b) the purchase or use of a tobacco product or e-cigarette product or a range of tobacco products or range of e-cigarette products; or";
 - (e) in section 3B(1)(c), (d) and (e)(i), after "tobacco products" **insert** "or e-cigarette products";
 - (f) in section 3B(1)(f)—
 - (i) after "tobacco product" **insert** "or e-cigarette product";
 - (ii) after "tobacco products" **insert** "or e-cigarette products";
 - (g) in section 3B(3)—
 - (i) for "tobacco advertisement" **substitute** "tobacco or e-cigarette advertisement";
 - (ii) after "tobacco product" **insert** "or e-cigarette product";

- (h) in section 3B(4) and (5)—
 - (i) after "tobacco products" **insert** "or e-cigarette products";
 - (ii) for "tobacco advertisement" (where twice occurring) **substitute** "tobacco or e-cigarette advertisement";
 - (i) in section 3B(6), after "tobacco" **insert** "or e-cigarette";
 - (j) in section 3B(7), for "tobacco advertisement" (where twice occurring) **substitute** "tobacco or e-cigarette advertisement";
 - (k) in section 3B(7)(b) after "tobacco products" **insert** "or e-cigarette products".
- (4) In the heading to Part 2 of the Principal Act, after "**PRODUCTS**" **insert** "**AND E-CIGARETTE PRODUCTS**".
- (5) In the Principal Act—
- (a) in section 6(1)(a), (b) and (c) and (2)(a) and (b) of the Principal Act, after "tobacco" **insert** "or e-cigarette";
 - (b) in section 6(2AA), for "tobacco advertisement" **substitute** "tobacco or e-cigarette advertisement";
 - (c) in section 6(2AA), for "tobacconist" **substitute** "tobacconist, a specialist e-cigarette retailing premises";
 - (d) in section 6(2AA), after "tobacco retailing business" **insert** "or e-cigarette retailing business";
 - (e) in the note at the foot of section 6(2AA), after "*tobacco*" **insert** "*or e-cigarette*";

- (f) in section 6(2A), for "tobacco advertisement" **substitute** "tobacco or e-cigarette advertisement";
 - (g) in section 6(2A), after "tobacco product" **insert** "or e-cigarette product";
 - (h) in section 6(2A), after "tobacco wholesaling business" **insert** "or the e-cigarette retailing business or the e-cigarette wholesaling business".
- (6) After section 6(2A) of the Principal Act **insert**—
- "(2AB) A person carrying on an e-cigarette retailing business at a specialist e-cigarette retailing premises must not display a tobacco or e-cigarette advertisement of a product line of an e-cigarette product at a point of sale at that specialist e-cigarette retailing premises that is not in accordance with section 6B.
- Penalty: In the case of a natural person,
60 penalty units;
- In the case of a body corporate,
300 penalty units.
- (2AC) A person carrying on an e-cigarette retailing business at a specialist e-cigarette retailing premises must not display a tobacco or e-cigarette advertisement of a product line of a tobacco product.
- Penalty: In the case of a natural person,
60 penalty units;
- In the case of a body corporate,
300 penalty units.

(2AD) A person carrying on an e-cigarette retailing business at a specialist e-cigarette retailing premises must not display a tobacco product.

Penalty: In the case of a natural person,
60 penalty units;
In the case of a body corporate,
300 penalty units."

(7) In the Principal Act—

- (a) in section 6(2B), after "tobacco retailing business" **insert** "or e-cigarette retailing business";
- (b) in section 6(2B), for "tobacconist" **substitute** "tobacconist, a specialist e-cigarette retailing premises";
- (c) in section 6(2B), after "tobacco wholesaling business" **insert** "or e-cigarette wholesaling business";
- (d) in section 6(2B), after "tobacco products" **insert** "or e-cigarette products";
- (e) in section 6(2D), after "tobacco company"(where first occurring) **insert** "or e-cigarette company";
- (f) in section 6(2D), after "tobacco company" (where secondly occurring) **insert** "or e-cigarette company, as the case may be,";
- (g) in section 6(2D), for "(2A)" **substitute** "(2A), (2AB), (2AC), (2AD)";
- (h) in section 6(3)(a), (b) and (c), for "tobacco advertisement" **substitute** "tobacco or e-cigarette advertisement";
- (i) in section 6(3)(a)(iii), (ba) and (c), after "tobacco product" **insert** "or e-cigarette product";

- (j) in section 6(3)(ba), after "tobacco products" (where twice occurring) **insert** "or e-cigarette products";
- (k) in section 6(3)(ca), (cab) and (cb), after "tobacco products" **insert** "or e-cigarette products";
- (l) in section 6(3)(cab), for "tobacconist" **substitute** "tobacconist, a specialist e-cigarette retailing premises";
- (m) after section 6(3)(cb) **insert**—
 - "(cba) a tobacco or e-cigarette advertisement (other than a display of an e-cigarette product carried about on a person) at a point of sale inside a specialist e-cigarette retailing premises that is in accordance with section 6B; or
 - (cbb) one notice about e-cigarette products at one or more points of sale at a specialist e-cigarette retailing premises that complies with the prescribed requirements as to size, information contained in it and the manner in which the information is set out in it and the form in which the notice is displayed; or
 - (cbc) tickets or labels on, or adjacent to, immediate packages of e-cigarette products in a specialist e-cigarette retailing premises if the tickets or labels display retail prices and comply with the prescribed requirements as to size, information contained in them and the manner in which the information is set out or displayed; or";

- (n) after section 6(3)(d) **insert**—
- "(da) one notice at a retail outlet or a wholesale outlet to the effect that e-cigarette products are available for sale at the outlet, being a notice that does not exceed the prescribed maximum size and complies with the prescribed requirements as to information contained in it and the manner in which the information is set out or displayed; or";
- (o) **insert** the following heading to section 6A—
- "Point of sale advertisements—tobacco products"**;
- (p) in section 6A(1), (2), (3) and (7), for "tobacco advertisement" **substitute** "tobacco or e-cigarette advertisement";
- (q) in section 6A(1)(b)(i)(C), for "Trade Practices (Consumer Product Information Standards) (Tobacco) Regulations 2004 of the Commonwealth" **substitute** "Competition and Consumer (Tobacco) Information Standard 2011 of the Commonwealth".
- (8) In the Principal Act—
- (a) in section 7(1), after "a tobacco product" (where thrice occurring) **insert** "or e-cigarette product";
- (b) in section 7(1)(a)(i), (ii) and (iii), for "non-tobacco product" **substitute** "non-tobacco product, non-e-cigarette product";
- (c) in section 7(2), after "tobacco product" **insert** "or e-cigarette product";

- (d) in section 7(3), after "non-tobacco products" (where twice occurring) **insert** "or non-e-cigarette products";
- (e) in section 7(3), after "of tobacco products" (where twice occurring) **insert** "or e-cigarette products".
- (9) For section 7(4) of the Principal Act **substitute**—
- "(4) For the avoidance of doubt, subsection (1) applies to a tobacco company or an e-cigarette company that, or a person carrying on a tobacco wholesaling business or e-cigarette wholesaling business who, does anything referred to in paragraph (a) or (b) of that subsection in connection with the sale of a tobacco product or e-cigarette product or for the purposes of promoting the sale of a tobacco product or e-cigarette product, as the case may be.".
- (10) In the Principal Act—
- (a) in section 7(5), after "tobacco company" (where first occurring) **insert** "or e-cigarette company";
- (b) in section 7(5), after "tobacco company" (where secondly occurring) **insert** "or e-cigarette company, as the case may be,";
- (c) in section 8(1), after "tobacco product" (where first, thirdly and fourthly occurring) **insert** "or e-cigarette product";
- (d) after section 8(1)(b) **insert**—
- "(ba) the use of an e-cigarette product; or";
- (e) in section 8(2), after "tobacco product" (where twice occurring) **insert** "or e-cigarette product";

- (f) in section 8(3), after "tobacco company" (where first occurring) **insert** "or e-cigarette company";
- (g) in section 8(3), after "tobacco company" (where secondly occurring) **insert** "or e-cigarette company, as the case may be,";
- (h) in section 9(1), after "tobacco product" (wherever occurring) **insert** "or e-cigarette product";
- (i) in section 9(1)(a)(ii), for "trademark" (where twice occurring) **substitute** "trade mark";
- (j) in section 9(2)—
 - (i) after "tobacco product" **insert** "or e-cigarette product";
 - (ii) for "trademark" **substitute** "trade mark";
- (k) in section 9(3), after "tobacco product" **insert** "or e-cigarette product";
- (l) in section 9(5), after "tobacco company" (where first occurring) **insert** "or e-cigarette company";
- (m) in section 9(5), after "tobacco company" (where secondly occurring) **insert** "or e-cigarette company, as the case may be,";
- (n) in section 10(1), for "trademark" (where twice occurring) **substitute** "trade mark";
- (o) **insert** the following heading to section 12—
"Supplying tobacco products or e-cigarette products to person under 18 years";

- (p) in section 12(1) and (2), after "tobacco product" **insert** "or e-cigarette product";
- (q) in section 12(5), in the definition of *manager*, in paragraph (b), after "tobacco products" **insert** "or e-cigarette products";
- (r) in section 12(5), in the definition of *prevention measures*—
- (i) in paragraph (a)(i) and (b), after "tobacco products" (wherever occurring) **insert** "or e-cigarette products";
 - (ii) in paragraph (a)(ii), after "tobacco product" **insert** "or e-cigarette product".
- (11) After section 13(1) of the Principal Act **insert**—
- "(1A) A person must not sell any e-cigarette product from a vending machine.
- Penalty: In the case of a natural person,
60 penalty units.
- In the case of a body corporate,
300 penalty units."
- (12) In the Principal Act—
- (a) for the heading to section 13A of the Principal Act **substitute**—
"Mobile selling of tobacco products and e-cigarette products";
 - (b) in section 13A(1) and (2), after "tobacco product" **insert** "or e-cigarette product";

- (c) in section 13A(2A)—
- (i) after "tobacco company" (where first occurring) **insert** "or e-cigarette company";
 - (ii) after "tobacco company" (where secondly occurring) **insert** "or e-cigarette company, as the case may be,";
- (d) in section 13A(3), after "tobacco product"(where twice occurring) **insert** "or e-cigarette product".
- (13) In the Principal Act—
- (a) in section 15D(1), (2), (3) and (4), after "tobacco retailing business" (where twice occurring) **insert** "or e-cigarette retailing business";
 - (b) in section 15D(6), after "tobacco products" **insert** "or e-cigarette products";
 - (c) in section 15D(7), after "tobacco retailing business" **insert** "or e-cigarette retailing business";
 - (d) in section 15D(8), in the definition of *associate*, in paragraph (a), after "tobacco retailing business" **insert** "or e-cigarette retailing business";
 - (e) in section 15D(8), in the definition of *new premises*, after "tobacco retailing business" **insert** "or e-cigarette retailing business";
 - (f) for the heading to section 15I **substitute**—
"Covering vending machines, tobacco or e-cigarette advertisements etc.";
 - (g) in section 15I(1)(b), for "tobacco advertisement" **substitute** "tobacco or e-cigarette advertisement";

- (h) in section 15I(1)(c), after "tobacco products" **insert** "or e-cigarette products";
 - (i) in section 15I(2), in paragraph (b) of the definition of *covered*—
 - (i) for "tobacco advertisement" **substitute** "tobacco or e-cigarette advertisement";
 - (ii) after "tobacco products" **insert** "or e-cigarette products";
 - (j) for the heading to section 15J **substitute**—
"Prohibition on supplying tobacco or e-cigarettes at underage music/dance events";
 - (k) in section 15J, after "tobacco product" **insert** "or e-cigarette product";
 - (l) in the heading to Division 4 of Part 2, after **"tobacco products" insert "or e-cigarette products"**;
 - (m) in the heading to section 15L, after **"tobacco products" insert "or e-cigarette products"**;
 - (n) in section 15L(1) and (2), after "tobacco products" **insert** "or e-cigarette products";
 - (o) for the heading to section 15M **substitute**—
"Offence for tobacco company to sell tobacco products or for e-cigarette company to sell e-cigarette products from temporary outlet".
- (14) After section 15M(1) of the Principal Act **insert**—
- "(1A) An e-cigarette company is guilty of an offence against this subsection, and liable to a penalty not exceeding 5000 penalty units, if the e-cigarette company intentionally or recklessly contravenes section 15L(1) or (2)

or causes another person to contravene section 15L(1) or (2)."

(15) In the Principal Act—

- (a) in section 15M(2), after "subsection (1)" **insert** "or (1A)";
- (b) in section 15O(2)(a)(ii), after "tobacco product" **insert** "or e-cigarette product";
- (c) after section 15O(2)(a)(iii) **insert**—
"(iiia) is not an e-cigarette product but resembles an e-cigarette product; or";
- (d) in section 15S(2), after "tobacco company" (where first occurring) **insert** "or e-cigarette company";
- (e) in section 15S(2), after "tobacco company" (where secondly occurring) **insert** "or e-cigarette company, as the case may be,";
- (f) for the heading to Part 2A **substitute**—

"Part 2A Specialist tobacconists and specialist e-cigarette retailing premises";

- (g) in section 15SA, after "section 15T" **insert** "in relation to a specialist tobacconist premises";
- (h) in the heading to section 15T, after "**tobacconist**" **insert** "**or specialist e-cigarette retailing premises**".

(16) After section 15T(1) of the Principal Act **insert**—

"(1A) A person carrying on an e-cigarette retailing business at a premises may apply to the Secretary for certification that the premises are a specialist e-cigarette retailing premises."

(17) In section 15U(1) of the Principal Act, after "tobacconist" **insert** "or a specialist e-cigarette retailing premises, as the case may be".

(18) After section 15U(2) of the Principal Act **insert**—

"(2A) The Secretary may certify that premises are a specialist e-cigarette retailing premises if the Secretary is satisfied that—

- (a) an e-cigarette retailing business is carried on at the premises; and
- (b) the e-cigarette retailing business has been carried on at the premises on and from 1 September 2016; and
- (c) the e-cigarette retailing business predominately sells e-cigarette products; and
- (d) certification of the premises is consistent with the objects of this Act; and
- (e) certification of the premises is consistent with any strategic plan, policy statement, code or guideline relating to specialist e-cigarette retailing premises that has been adopted by the Minister; and
- (f) the premises are separated from other retail premises by a wall and that any doorway or entrance to or exit from the premises does not open directly into any other retail premises.

(19) In the Principal Act—

- (a) in section 15U(3), after "tobacconist" **insert** "or a specialist e-cigarette retailing premises, as the case may be,";
- (b) in section 15U(3)(b), after "subsection (2)" **insert** "or (2A), as the case may be";
- (c) in section 15U(6), after "tobacconist" **insert** "or a specialist e-cigarette retailing premises, as the case may be,".

(20) In the Principal Act—

- (a) in section 15W(1)(a) and (b), after "business" **insert** "or e-cigarette retailing business, as the case may be,";
- (b) in section 15X(1)(b), after "section 15U(2)" **insert** "or (2A), as the case may be,".

(21) In section 15ZB of the Principal Act, after "tobacconist" **insert** "or a specialist e-cigarette retailing premises, as the case may be,".

(22) In the Principal Act—

- (a) in section 36E(1A) and (2), for "tobacco advertisement" **substitute** "tobacco or e-cigarette advertisement";
- (b) in section 36L(2) of the Principal Act, for "Part 2," **substitute** "Part 2,";
- (c) in section 41(2), after "15M(1)" **insert** "or (1A)".

(23) After section 42A(1) of the Principal Act **insert**—

"(1AA) The Secretary may, in writing addressed to a person who manufactures e-cigarette products or sells e-cigarette products by wholesale, require the person to provide to the Secretary within a reasonable period,

being not less than one month after the requirement is made—

- (a) the names and addresses of persons carrying on an e-cigarette retailing business in Victoria to whom the person has supplied e-cigarette products in Victoria within the preceding 12 months; and
 - (b) the addresses of retail outlets in Victoria that the person knows—
 - (i) sell e-cigarette products manufactured by the person; or
 - (ii) sell e-cigarette products purchased at wholesale from the person, whether directly or indirectly."
- (24) In section 42A(1A) and (2) of the Principal Act, after "subsection (1)" **insert** "or (1AA)".
- (25) In section 42A(3)(c) of the Principal Act, after "tobacco retailers" **insert** "or e-cigarette retailers".

10 New section 6B inserted

After section 6A of the Principal Act **insert**—

"6B Point of sale advertisements—e-cigarette products

A tobacco or e-cigarette advertisement at one point of sale at a specialist tobacconist, a specialist e-cigarette retailing premises or an on-airport duty free shop or at any point of sale at a wholesale outlet may only advertise a product line of an e-cigarette product by the display of a single immediate package of the product line in the form in which the package is available for sale at that point of sale (including the display of an immediate package if only cartons are available for sale)."

11 Amendment of Schedule

(1) In the Schedule to the Principal Act, after item 13 **insert—**

"13A	An offence against section 6(2AB)	3 penalty units	30 penalty units
13B	An offence against section 6(2AC))	3 penalty units	30 penalty units
13C	An offence against section 6(2AD)	3 penalty units	30 penalty units".

(2) In the Schedule to the Principal Act, after item 18 **insert—**

"18A	An offence against section 13(1A)	3 penalty units	30 penalty units".
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Part 5—Repeal of amending Act

12 Repeal of amending Act

This Act is **repealed** on 1 August 2018.

Note

The repeal of this Act does not affect the continuing operation of the amendments made by it (see section 15(1) of the **Interpretation of Legislation Act 1984**).

Endnotes

1 General information

See www.legislation.vic.gov.au for Victorian Bills, Acts and current authorised versions of legislation and up-to-date legislative information.

[†] *Minister's second reading speech—*

Legislative Assembly: 25 May 2016

Legislative Council: 23 June 2016

The long title for the Bill for this Act was "A Bill for an Act to amend the **Tobacco Act 1987** to prohibit smoking in outdoor dining areas, to regulate the sale, promotion and use of e-cigarette products and for other purposes."