

TOBACCO AMENDMENT BILL 2016

(Amendments made by the Legislative Council)

1. Clause 4, line 18, omit "at the same premises" and insert ", irrespective of whether or not the outdoor drinking area and the outdoor dining area are operated by the same occupier".
2. Clause 4, lines 19 to 21, omit all words and expressions on these lines.
3. Clause 4, line 22, omit "(c)" and insert "(b)".
4. Clause 4, line 26, omit 'units.'" and insert "units."
5. Clause 4, after line 26 insert—

'(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).".'
6. Clause 4, page 4, after line 1 insert—

'() in section 5D(1), for "section 5C" **substitute** "section 5C(1)".'
7. Clause 4, page 4, before line 2 insert—

'() 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."

() In the Principal Act—'.
8. Clause 9, page 11, lines 13 to 21, omit all words and expressions on these lines and insert "other merchandise, and includes any such business carried on as part of, or in conjunction with, any other business;".

9. Clause 9, page 11, line 31, after "ignited" insert "or heated".
10. Clause 9, page 11, line 33, omit 'vapour;'. and insert "vapour;".
11. Clause 9, page 11, after line 33 insert—

'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.".'
12. Clause 9, page 12, line 18, omit "twice" and insert "first".
13. Clause 9, page 12, after line 29 insert—

'() in the definition of **tobacco product**, for "the main ingredient of which is" **substitute** "containing".
14. Clause 9, page 14, after line 20 insert—

'() in section 6(2AA), for "tobacconist" **substitute** "tobacconist, a specialist e-cigarette retailing premises";'.
15. Clause 9, page 14, line 34, omit 'business;'. and insert 'business'.'.
16. Clause 9, page 14, after line 34 insert—

'() 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.".'

17. Clause 9, page 15, before line 1 insert—

"() In the Principal Act—".

18. Clause 9, page 15, after line 3 insert—

'() in section 6(2B), for "tobacconist" **substitute** "tobacconist, a specialist e-cigarette retailing premises";'.

19. Clause 9, page 15, after line 15 insert—

'() in section 6(2D), for "(2A)" **substitute** "(2A), (2AB), (2AC), (2AD)";'.

20. Clause 9, page 15, after line 27 insert—

'() in section 6(3)(cab), for "tobacconist" **substitute** "tobacconist, a specialist e-cigarette retailing premises";

() 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";'.

21. Clause 9, page 18, line 28, omit "section 12(1), (2) and (3)" and insert "section 12(1) and (2)".

22. Clause 9, page 19, line 9, omit 'product';' and insert 'product'.'.

23. Clause 9, page 19, after line 9 insert—

() 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."

() In the Principal Act—'.

24. Clause 9, page 21, after line 21 insert—

() in section 15O(2)(a)(ii), after "tobacco product" **insert** "or e-cigarette product";.

25. Clause 9, page 21, after line 31 insert—

(e) for the heading to Part 2A **substitute**—

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

(f) in section 15SA, after "section 15T" **insert** "in relation to a specialist tobacconist premises";

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

() 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."

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

() 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.

() 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,".

() 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,".

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

26. Clause 9, page 22, before line 1 insert—

"() In the Principal Act—".

27. Clause 10, line 6, for "tobacconist" **substitute** "tobacconist, a specialist e-cigarette retailing premises".

28. Insert the following New Clause to follow clause 10—

'A Amendment of Schedule

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".'

29. Insert the following New Clause to follow clause 10—

'A Amendment of Schedule

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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Certified -

Clerk of the Legislative Council