



Australian Capital Territory

Smoke-Free Legislation Amendment Act 2016

A2016-20

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Australian Capital Territory

Smoke-Free Legislation Amendment Act 2016

A2016-20

An Act to amend legislation about smoking, and for other purposes

The Legislative Assembly for the Australian Capital Territory enacts as follows:

Part 1 Preliminary

1 Name of Act

This Act is the *Smoke-Free Legislation Amendment Act 2016*.

2 Commencement

This Act commences on a day fixed by the Minister by written notice.

Note 1 The naming and commencement provisions automatically commence on the notification day (see [Legislation Act](#), s 75 (1)).

Note 2 A single day or time may be fixed, or different days or times may be fixed, for the commencement of different provisions (see [Legislation Act](#), s 77 (1)).

Note 3 If a provision has not commenced within 6 months beginning on the notification day, it automatically commences on the first day after that period (see [Legislation Act](#), s 79).

3 Legislation amended

This Act amends the following legislation:

- *Smoke-Free Public Places Act 2003*
- *Smoking in Cars with Children (Prohibition) Act 2011*
- *Tobacco Act 1927*.

Note This Act also amends other legislation (see sch 1).

Part 2 Smoke-Free Public Places Act 2003

4 Dictionary Section 3, note 1

omit

Tobacco Act 1927

substitute

Tobacco and Other Smoking Products Act 1927

5 Meaning of *smoke* Section 5B (1)

substitute

- (1) For this Act, *smoke* means—
- (a) smoke from an ignited smoking product; or
 - (b) vapour from a personal vaporiser.

Note A personal vaporiser is a smoking product (see *Tobacco and Other Smoking Products Act 1927*, s 3A).

6 Section 5B (2) (a)

omit

puffs smoke

substitute

puffs, draws or inhales smoke

7 Section 5B (2) (b)

after

it is ignited

insert

or a personal vaporiser while it is activated

8 Section 5B (3)

omit everything before paragraph (a), substitute

- (3) However, a person does not *smoke* only because the person holds or has control over a smoking product or personal vaporiser if the person holds or has control over it for the purpose of extinguishing it, deactivating it, or removing it from—

9 Section 5B (4)

omit

**10 Meaning of *outdoor eating or drinking place*
Section 9A (1) (c) (ii), except examples**

substitute

- (ii) tables or chairs are provided for use by people consuming food or drink provided at the place.

11 Section 9A (1) (c) (ii), new examples 4 to 6

insert

- 4 an outdoor area at premises containing stand-up tables at which food or drink purchased at the premises may be consumed
- 5 an outdoor area containing milk crates to sit on at a cafe
- 6 a sports stadium containing chairs at which food or drink purchased at outlets at the sports stadium may be consumed

12 Section 9A (4), new definition of *licensed premises*

insert

licensed premises—see the [Liquor Act 2010](#), dictionary.

**13 Inspectors
Section 10 (1) (a)**

omit

[Tobacco Act 1927](#)

substitute

[Tobacco and Other Smoking Products Act 1927](#)

14 Dictionary, definition of *herbal product*

omit

15 Dictionary, new definition of *personal vaporiser*

insert

personal vaporiser—see the [Tobacco and Other Smoking Products Act 1927](#), section 3B.

16 Dictionary, definition of *smoking product*

substitute

smoking product—see the [Tobacco and Other Smoking Products Act 1927](#), section 3A.

17 Dictionary, definition of *tobacco product*

omit

Part 3 Smoking in Cars with Children (Prohibition) Act 2011

18 Section 6 heading

substitute

6 Meaning of *smoke*

19 Section 6 (1)

substitute

- (1) For this Act, *smoke* means—
- (a) smoke from an ignited smoking product; or
 - (b) vapour from a personal vaporiser.

Note A personal vaporiser is a smoking product (see [Tobacco and Other Smoking Products Act 1927](#), s 3A).

20 Section 6 (2) (b)

after

it is ignited

insert

or a personal vaporiser while it is activated

21 Section 6 (3)

omit

22 Dictionary, definition of *herbal product*

omit

23 Dictionary, new definition of *personal vaporiser*

insert

personal vaporiser—see the [Tobacco and Other Smoking Products Act 1927](#), section 3B.

24 Dictionary, definition of *smoking product*

substitute

smoking product—see the [Tobacco and Other Smoking Products Act 1927](#), section 3A.

25 Dictionary, definition of *tobacco product*

omit

Part 4 Tobacco Act 1927

26 Section 1

substitute

1 Name of Act

This Act is the *Tobacco and Other Smoking Products Act 1927*.

27 New sections 3A and 3B

insert

3A Meaning of *smoking product*

In this Act:

smoking product means any of the following:

- (a) a tobacco product;
- (b) a herbal product;
- (c) a personal vaporiser or a personal vaporiser related product.

3B Meaning of *personal vaporiser* and *personal vaporiser related product*

(1) In this Act:

personal vaporiser means—

- (a) a device that—
 - (i) is made for the purpose or apparent purpose of delivering a substance into a person's body when the person inhales through the device; and

- (ii) has 1 or more of the following:
- (A) a battery;
 - (B) an electric heating element;
 - (C) a cartridge or container to store a substance; or
- (b) a device prescribed by regulation.

personal vaporiser related product means—

- (a) a device or other product that—
- (i) is not capable of being used to deliver a substance into an individual's body without an adjustment, modification or addition; but
 - (ii) is apparently intended to be part of a personal vaporiser; or
- (b) a device or other product to which paragraph (a) does not apply that is apparently intended to be used in connection with a personal vaporiser; or
- (c) a device or other product prescribed by regulation.

Examples—personal vaporiser products

- an electric heating element, battery, cartridge, container or mouthpiece
- a product that combines an electric heating element and cartridge in a single unit

Note An example is part of the Act, is not exhaustive and may extend, but does not limit, the meaning of the provision in which it appears (see [Legislation Act](#), s 126 and s 132).

- (2) However, a ***personal vaporiser*** or a ***personal vaporiser related product*** does not include the following:
- (a) a device designed to be used to deliver oxygen into an individual's body;
 - (b) a drug pipe;

- (c) any of the following within the meaning of the *Therapeutic Goods Act 1989* (Cwlth) included in the Australian Register of Therapeutic Goods, other than a device prescribed as a personal vaporiser:
- (i) a therapeutic good;
 - (ii) a medical device;
 - (iii) a therapeutic device;
- (d) a device or other product prescribed by regulation.
- (3) In this section:

Australian Register of Therapeutic Goods means the register of therapeutic goods established under the *Therapeutic Goods Act 1989* (Cwlth), section 9A.

drug pipe—see the *Criminal Code*, section 621A (2).

28 Dictionary, new definitions

insert

personal vaporiser—see section 3B.

personal vaporiser related product—see section 3B.

29 Dictionary, definition of *smoking product*

substitute

smoking product—see section 3A.

Schedule 1 Consequential amendments

(see s 3)

Part 1.1 Children and Young People Act 2008

[1.1] Section 781 (3)

omit

Tobacco Act 1927

substitute

Tobacco and Other Smoking Products Act 1927

Part 1.2 Fair Trading (Australian Consumer Law) Act 1992

[1.2] Section 34 (2), definition of *consumer and trader legislation*, paragraph (g)

substitute

(g) the *Tobacco and Other Smoking Products Act 1927*.

Part 1.3 Magistrates Court (Tobacco Infringement Notices) Regulation 2010

[1.3] Section 1

substitute

1 Name of regulation

This regulation is the *Magistrates Court (Tobacco and Other Smoking Products Infringement Notices) Regulation 2010*.

[1.4] Sections 5 to 12

omit

[Tobacco Act](#)

substitute

[Tobacco and Other Smoking Products Act](#)

[1.5] Schedule 1 heading

substitute

Schedule 1 Tobacco and Other Smoking Products Act infringement notice offences and penalties

[1.6] Dictionary, definition of *authorised officer*

omit

[Tobacco Act](#)

substitute

[Tobacco and Other Smoking Products Act](#)

[1.7] Dictionary, definition of *Tobacco Act*

omit

[1.8] Dictionary, new definition of *Tobacco and Other Smoking Products Act*

insert

Tobacco and Other Smoking Products Act means the [Tobacco and Other Smoking Products Act 1927](#).

Endnotes

1 Presentation speech

Presentation speech made in the Legislative Assembly on 10 March 2016.

2 Notification

Notified under the [Legislation Act](#) on 13 April 2016.

3 Republications of amended laws

For the latest republication of amended laws, see www.legislation.act.gov.au.

I certify that the above is a true copy of the Smoke-Free Legislation Amendment Bill 2016, which was passed by the Legislative Assembly on 5 April 2016.

Clerk of the Legislative Assembly

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