

E-cigarette reforms

Supplement to the *Tobacco retailer guide* about reforms commencing 1 August 2017

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To receive this publication in an accessible format phone 1300 136 775 using the National Relay Service 13 36 77 if required, or email tobacco.policy@dhhs.vic.gov.au

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This guide is intended only as a general guide and introduction to the relevant provisions of the Tobacco Act 1987. The Department of Health and Human Services does not accept any liability for any expense, loss or damage suffered as a result of relying upon the information contained in this guide. Nothing in this guide should replace the seeking of legal advice where it is considered appropriate.

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How to use this supplement

This supplement to the *Tobacco retailer guide* provides information to help you and your staff comply with the laws about e-cigarette products commencing 1 August 2017. It tells you about your responsibilities when selling e-cigarette products in Victoria.

This supplement covers the main sale, display and advertising laws that apply to e-cigarette products. You should also read the *Tobacco retailer guide*.

For more information and to obtain a copy of the *Tobacco retailer guide*:

- call the Tobacco Information Line on 1300 136 775
- visit the [tobacco reforms website](http://www.health.vic.gov.au/tobaccoreforms) <www.health.vic.gov.au/tobaccoreforms>.

To view the exact wording in the law from 1 August 2017 visit the Victorian Government's [legislation website](http://www.legislation.vic.gov.au) <www.legislation.vic.gov.au> and search for *Tobacco Act 1987* and Tobacco Regulations 2017.

E-cigarette reforms in Victoria

Changes to the law

From **1 August 2017**, changes to the *Tobacco Act 1987* mean that the display, advertising and sale of e-cigarette products will be regulated in the same way as tobacco products.

The sale of e-cigarette products containing nicotine remains banned under Victorian drugs and poisons legislation.

Adults can continue to purchase non-nicotine e-cigarette products.

Products covered by the laws

The laws cover e-cigarette products, including e-cigarettes themselves and e-cigarette accessories such as refill cartridges and e-liquids.

Broadly, e-cigarettes (also known as electronic cigarettes) are devices that heat and vaporise a liquid that is then inhaled, simulating the act of smoking.

Devices that fit into the category of e-cigarettes include e-shisha, e-cigar, e-pipes, e-hookahs, hookah pens and vape-pipes.

Under the *Tobacco Act 1987*, an e-cigarette means:

- a device (other than a device that is prescribed to be not an e-cigarette for the purpose of the law) 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
- any other device prescribed by the regulations.

An e-cigarette accessory means:

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

Regulation of the sale, display, advertising and use of e-cigarettes

E-cigarettes are a relatively new product, and much remains unknown about the potential harms they may cause. The new laws are a precautionary approach, in line with other Australian states and territories.

The reforms will:

- protect children and young people from accessing and using e-cigarettes, and limit their exposure to marketing
- minimise the potential health risks associated with e-cigarettes.

What the new laws mean for retailers that sell e-cigarettes

The new laws mean that e-cigarette products are subject to the same display, advertising and sale restrictions as tobacco products. These are summarised below.

Prohibition of sale to minors

The sale of an e-cigarette product to a person under 18 years of age is illegal. The employee who sells the product is responsible and their manager may also be held responsible.

Managers are responsible for ensuring their staff sell e-cigarettes in accordance with the law. Managers can avoid a fine by training staff every six months and obtaining written confirmation from employees that they have received this training. The training must cover each of the following:

- that employees must not sell e-cigarette products to persons under 18
- that employees must ask for and see identification before selling an e-cigarette product to a person who might be under 18
- that if employees sell tobacco products to a person under 18, they are committing an offence and may be fined.

See the 'Staff Training checklist' and 'Training acknowledgment' form at the back of this guide.

Display, advertising and promotion restrictions

Display restrictions

E-cigarette products must not be visible to the public from anywhere inside or outside a retail shop.

You can temporarily open a storage unit if a customer asks for a specified e-cigarette product.

Advertising and promotion restrictions

Advertising or promotional materials relating to e-cigarette products must not be visible to the public from anywhere inside or outside their shop.

You may display one A4 copy of the sign in Figure 1 to let customers know you sell e-cigarette products.

Figure 1: A4 sign



Price boards

You may use **one** prescribed price board in your shop to advise customers of e-cigarette or tobacco products available for sale. The price board must be at point of sale.

The price board cannot contain information about both tobacco and e-cigarette products.

A price board must:

- be no bigger than 1.5 metres by 1.5 metres
- have letters and numbers no bigger than 2.1 centimetres high by 1.5 centimetres wide
- have letters and numbers printed in the same font, font size and font style
- be printed on one side only in either black and white or up to four colours, none of which is fluorescent
- not make information about one product more noticeable than another
- not make information more noticeable than other tickets or labels in your shop
- not highlight price information with artificial lighting greater than that used throughout your shop.

A price board about e-cigarette products can list:

- brand of e-cigarette products available for sale
- product flavours
- pack numbers
- product prices, but not discount price information or any other information indicating an e-cigarette product has been discounted
- volume of the liquid or other substance contained in a cartridge, capsule or other container for use in an e-cigarette
- ingredients of the liquid or other substance contained in a cartridge, capsule or other container for use in an e-cigarette
- wattage of the e-cigarette product.

Price tickets

Price tickets cannot be used to show customers the price or other information about e-cigarette products.

Competitions, rewards and shopper loyalty schemes

You must not offer or supply any free or discounted products or other benefits, with the purchase of, or to promote the sale of, an e-cigarette product.

Additionally, you must not include the purchase of e-cigarette products in shopper loyalty and rewards schemes.

Free samples and tasting

It is illegal to provide free samples or permit tasting of e-cigarette products to promote the sale or use of an e-cigarette product.

Additionally, the use of an e-cigarette product in enclosed workplaces such as a retail shop is also prohibited.

Other information about selling e-cigarette products in Victoria

Vending machines

The sale of e-cigarette products from a vending machine is prohibited.

Temporary outlets and mobile selling

E-cigarette products cannot be sold from:

- a temporary or mobile structure such as a:
 - display stand
 - booth
 - tent or marquee
 - van or truck
- a retail outlet that has been set up for a specific sporting, music or arts-related event
- a person (that is, a person carrying e-cigarette products on their body).

Penalties

The penalties for breaches of the e-cigarette laws are the same for tobacco product related offences.

For example, a person who sells a packet of cigarettes or an e-cigarette to a person under 18 years of age may incur a fine of four penalty units (equivalent to \$634 in 2017–18).¹

¹ Penalty units are indexed each year. One penalty unit in 2016–17 is \$158.57

Staff training checklist

Training should be completed every six months.

Once training has been completed, you should ask each member of staff to sign a 'Training acknowledgement' form like that on the next page.

Training must cover the following topics:

- Inform employees that it is illegal to sell e-cigarette products to a person under 18, under any circumstances, even if the e-cigarette products are for, or claimed to be for, a person over 18.
- Inform employees that they should sight an acceptable form of identification (photo ID) for a person before selling an e-cigarette product to the person.
- Inform employees of examples of acceptable forms of identification (photo ID):
 - a Victorian or interstate proof of age card
 - a Victorian or interstate driver's license
 - an Australian or foreign passport
 - a keypass
 - a Victorian learner's permit.
- Inform employees of the penalties for selling e-cigarettes to a person under 18.
- Warn employees if they sell e-cigarette products to a person under 18 in disregard of the instructions mentioned above, they are committing an offence against the Tobacco Act.

Training acknowledgement form

You should only sign this form once you understand the instructions in the staff training checklist and the warning set out below. If you have any questions about the instructions, ask your employer before signing this form. If you are unsure whether or not to sign this form, call the Tobacco Information Line on 1300 136 775.

Date

Name

I was instructed:

- not to sell e-cigarette products to a person under 18 in any circumstances, even if the e-cigarette products are for, or claimed to be for, a person over 18;
- to sight an acceptable form of identification (photo ID) for a person before selling e-cigarette products to the person; and
- I have been warned that, having received the above two instructions, if I disregard these instructions and sell e-cigarette products to a person under 18, I commit an offence under the *Tobacco Act 1987*.

Date

Signature

Manager/proprietor name and position

Date

Manager/proprietor signature