

Certified specialist e-cigarette retailing premises

Application for certification

Certified specialist e-cigarette retailing premises

From 1 August 2017, e-cigarettes cannot be displayed at the point of sale in Victorian retail premises.

In recognition of a very small number of businesses that specialise in the sale of e-cigarettes, a certification scheme has been established for specialist e-cigarette retailing premises that provides an exemption to the e-cigarette product display ban.

There are a number of requirements that businesses must meet to qualify for certification. According to the *Tobacco Act 1987* (Tobacco Act), the Secretary of the Department of Health and Human Services (the Department) may grant certification if 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.

Further criteria for certification are contained in the Ministerial guidelines. These requirements (outlined below) are based on a scheme which was previously used to certify specialist tobacconists.

The Secretary of the Department (or their delegate) assesses applications against these criteria when determining whether to approve an application. This application form must be completed to gain certification as a specialist e-cigarette retailing premises from the Department. This application should be completed by the applicant. The process of applying for certification may be conducted prior to 1 August 2017.

Once certified, specialist e-cigarette retailing premises are permitted to display a limited range of e-cigarette products in their retailing premises.

It is strongly recommended that you read the *Certified specialist e-cigarette retailing premises guide* to ensure you understand the specialist exemption and your legal responsibilities. If you are uncertain about anything contained in this application form, you should seek independent advice.

Certification as a specialist e-cigarette retailing premises is not guaranteed.

The Secretary of the Department or their delegate may refuse to certify a specialist e-cigarette retailing premises if it does not meet the necessary criteria. The Secretary or their delegate may also refuse to certify a specialist e-cigarette retailing premises if the applicant does not comply with any requirement of the *Tobacco Act 1987* (Tobacco Act) or the Tobacco Regulations 2017 (the Tobacco Regulations). These decisions are subject to internal review if requested by the applicant.

If additional information is required to assess your application, you will have the opportunity to provide this information. Provision of false or misleading information is an offence under the Tobacco Act.

Criteria for certification

A certified specialist e-cigarette retailing premises must:

- currently be carrying on an e-cigarette retailing business at the premises;
- have been carrying on an e-cigarette business at the premises on and from 1 September 2016;
- predominantly sell e-cigarette products, in the sense that the e-cigarette retailing business:
 - has derived 80 per cent or more gross turnover from the sale of e-cigarette products at the individual premises subject to the application in the 12 months immediately preceding the application (or since the commencement of trading if that is less than 12 months prior) and
 - once an application has been granted, continue to derive 80 per cent or more gross turnover from the sale of e-cigarette products in any 12 month period at the individual certified premises;
- be carried on at premises which is separated from other retail premises by a wall and any doorway, or entrance or exit from the premises does not open directly into any other retail premises;
- comply with the Tobacco Act, Commonwealth *Therapeutic Goods Act 1989*, Victorian *Drugs, Poisons and Controlled Substances Act 1981* and *Drugs, Poisons and Controlled Substances Regulations 2017*;
- not sell products or services for children or adolescents;
- not sell dairy products, bread and bakery products, breakfast cereals or food or beverages other than low-risk, shelf stable foods and beverages;
- clearly identifies itself as a specialist e-cigarette retailing premises through the use of external branding containing the words: e-cigarette and/or electronic cigarette and/or vape and/or vaping or similar words and symbols;
- not identify itself as a newsagent through external or internal branding and only sell local, state, and national/daily/weekly newspapers and e-cigarette related publications;
- only display a maximum of four metres squared (4m²) of e-cigarettes and e-cigarette accessory products;
- only display one of each 'product line' of each e-cigarette and e-cigarette accessory product;
- use price boards and price tickets as prescribed in the Tobacco Regulations ;
- display a maximum of one "We Sell E-cigarette Products Here" sign, as prescribed in the Tobacco Regulations; and
- once certified, display the certificate of certification as a specialist e-cigarette retailing premises at all times in the relevant premises.

Once certified, certificate holders must advise the Secretary or delegate, if they cease trading, relocate their business to another premises or fail to meet any of the other ongoing requirements of a certified specialist e-cigarette retailing premises.

Inspection by local council

To ensure that only e-cigarette retailing premises with a genuine claim to an exemption are granted certification, Authorised Officers from local councils will visit the premises to confirm the veracity of statements made in an application.

This inspection may be conducted prior to 1 August 2017, in order to allow for the lawful display of products post 1 August 2017.

In order to receive certification as a specialist e-cigarette retailing premises, you must be able to demonstrate to the Authorised Officer at the time of inspection that the e-cigarette retailing premises meets the following criteria:

- complies with the Tobacco Act, Commonwealth *Therapeutic Goods Act 1989*, Victorian *Drugs, Poisons and Controlled Substances Act 1981* and *Drugs, Poisons and Controlled Substances Regulations 2017*
- does not sell products or services for children or adolescents
- does not identify itself as a newsagent through external or internal branding and only sells local, state, and national/daily/weekly newspapers and e-cigarette related publications
- only displays a maximum of four metres square (4m²) of e-cigarettes and e-cigarette accessory products
- only displays one of each 'product line' of each e-cigarette and e-cigarette accessory product
- uses price boards and price tickets as prescribed in the Tobacco Regulations
- displays a maximum of one "We Sell E-cigarettes Products Here" sign, as prescribed in the Tobacco Regulations.

These Authorised Officers will not advise the final outcome of an application, this advice will be provided by the Department.

How to use this form

This form must be completed and submitted to the Secretary to apply for certification as a specialist e-cigarette retailing premises. The application is an editable pdf form and is intended to be completed electronically. The information entered into this form can be saved and then printed out for your signature.

The application form is divided into 10 Parts:

- Parts 1 - 2 require you to enter information about the business and the appropriate contact person.
- Parts 3 - 5 require you to answer questions and provide documentary evidence.
- Parts 6 - 8 require you to answer “Yes” or “No” to questions.
- Part 9 is a checklist to ensure you have answered all questions and provided necessary evidence.
- Part 10 is an Acknowledgement which must be signed by you and dated.

It is the applicant’s responsibility to:

- read through all information carefully
- answer all questions on this application form
- provide all required supporting documentation
- sign and date the Acknowledgement set out in Part 10.

Send your completed application form and supporting documentation to:

The Secretary
Department of Health and Human Services
c/o Tobacco Control Section
GPO Box 4057
Melbourne Victoria 3001

Part 1

E-cigarette retailing business structure

<input type="checkbox"/>	Corporation
--------------------------	-------------

If the business is operated by a corporation, please name the corporation as the proprietor. If your application is successful, the certificate will be issued in the name of the corporation.

<input type="checkbox"/>	Sole trader
<input type="checkbox"/>	Partnership
<input type="checkbox"/>	Trust

If the business is operated by a sole trader, partnership or trust, please list the name of a natural person who carries on the business. If your application is successful, the certification will be issued in the name of the natural person.

Details of e-cigarette retailing business

ABN	
Business name	
Proprietor	

Registered e-cigarette retailing business address

Address 1	
Address 2	
Suburb	
State	
Postcode	

E-cigarette retailing premises address

<input type="checkbox"/>	Same as registered business address
--------------------------	-------------------------------------

Address 1	
Address 2	
Suburb	
State	
Postcode	

Part 2

Please provide the details of the contact person for this application. The certificate will be issued in the name of the proprietor, not in the name of the contact person. The certificate will specify the e-cigarette retailing premises address.

Contact person details

Title	
Surname/Family name	
Given name	
Middle name	
Date of birth	/ /
Position e.g. Proprietor, Manager	
Daytime telephone number	
Mobile phone number	
Email address	

Mailing address for correspondence

Address 1	
Address 2	
Suburb	
State	
Postcode	

Part 3

To be eligible for certification, the e-cigarette retailing business, as operating in the individual premises, must have derived 80 per cent or more of gross turnover from e-cigarette products in the 12 months immediately preceding the application.

If the e-cigarette retailing business has been trading less than 12 months, the business as operating in the individual premises must have derived 80 per cent or more of gross turnover from the sale of e-cigarette products since the commencement of trading.

See the *Additional information* at the back of this form for guidance on how to determine the proportion of gross turnover that is derived from e-cigarette products.

Did the e-cigarette retailing premises derive 80 per cent or more of gross turnover from e-cigarette products?

<input type="checkbox"/>	Yes
<input type="checkbox"/>	No – The e-cigarette retailing premises is ineligible for certification.

What evidence will you provide to support you application?

<input type="checkbox"/>	A signed declaration signed by your Certified Practicing Accountant or Chartered Accountant confirming that the e-cigarette retailing business, as operating in the individual premises, derived 80 per cent or more of gross turnover from the sale of e-cigarette products in the preceding 12 months (or since the commencement of trading if the e-cigarette retailing business, as operating in the individual premises, has been trading for less than 12 months).
--------------------------	--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------

Part 4

To be eligible for certification, the e-cigarette retailing business must have been operating in its current premises on and from 1 September 2016.

Was the e-cigarette retailing business operating in its current premises on and from 1 September 2016?

<input type="checkbox"/>	Yes
<input type="checkbox"/>	No – The e-cigarette retailing premises is ineligible for certification.

You must attach evidence to demonstrate the e-cigarette retailing business was operating in its current premises on 1 September 2016, and has continued to operate in the same premises up to the time of application for certification.

This evidence can be either:

- a certified copy of the lease (or consecutive leases) for the e-cigarette retailing premises, which shows the tenancy commenced prior to 1 September 2016, and continues to the date of application, certified as a true copy (or true copies) by your Accountant or another person authorised to witness statutory declarations under the *Evidence Act 1958*; or
- a statutory declaration signed by you confirming that the e-cigarette retailing business was operating in its current premises on and from 1 September 2016 witnessed by your Accountant or another person authorised to witness statutory declarations under the *Evidence Act 1958*.

A Victorian Statutory Declaration form can be downloaded from the Department of Justice and Regulation website <<http://www.justice.vic.gov.au/home/justice+system/legal+assistance/statutory+declarations/>>

What evidence will you provide to support your application?

<input type="checkbox"/>	A copy of the lease (or consecutive leases) for the e-cigarette retailing premises, which shows the tenancy commenced prior to 1 September 2016, and continues to date of application, certified as a true copy (or true copies) by your Accountant or another person authorised to witness statutory declarations under the <i>Evidence Act 1958</i> .
<input type="checkbox"/>	A statutory declaration signed by you confirming that the e-cigarette retailing business was operating in its current premises on and from 1 September 2016 witnessed by your Accountant or another person authorised to witness statutory declarations under the <i>Evidence Act 1958</i> .

Part 5

To be eligible for certification, the e-cigarette retailing premises must be separated from other retail premises.

Is the e-cigarette retailing premises separated from other retail premises by walls?

<input type="checkbox"/>	Yes
<input type="checkbox"/>	No – The e-cigarette retailing premises is ineligible for certification.

Does the e-cigarette retailing premises open or exit directly into any other retail premises?

<input type="checkbox"/>	No
<input type="checkbox"/>	Yes – The e-cigarette retailing premises is ineligible for certification..

You must attach evidence to demonstrate the e-cigarette retailing premises is separated from other retail premises. This can be either:

- a copy of the original building plan for the e-cigarette retailing premises certified as a true copy by your Accountant or another person authorised to witness statutory declarations under the *Evidence Act 1958*, or
- a statutory declaration signed by you confirming that the e-cigarette retailing premises is separated from other retail premises by walls and does not open or exit directly into any other retail premises, witnessed by your Accountant or another person authorised to witness statutory declarations under the *Evidence Act 1958*.

A Victorian Statutory Declaration form can be downloaded from the Department of Justice and Regulation website <<http://www.justice.vic.gov.au/home/justice+system/legal+assistance/statutory+declarations/>>

Please note: You may need to speak with your local council to request a building plan. Do not submit hand drawn plans of the premises.

What evidence will you provide to support your application?

<input type="checkbox"/>	A copy of the original building plan for the e-cigarette retailing premises certified as a true copy by your Accountant or another person authorised to witness statutory declarations under the <i>Evidence Act 1958</i> .
<input type="checkbox"/>	A statutory declaration signed by you confirming that the e-cigarette retailing premises is separated from other retail premises by walls and does not open or exit directly into any other retail premises, witnessed by your Accountant or another person authorised to witness statutory declarations under the <i>Evidence Act 1958</i> .

Part 6

To be eligible for certification, the e-cigarette retailing premises must be clearly identified as an e-cigarette retailing premises.

Do the signs at the front of the e-cigarette retailing premises clearly show that it is an e-cigarette retailing premises? For example, with words such as: vaping, vape, electronic cigarettes?

<input type="checkbox"/>	No – The e-cigarette retailing premises is ineligible for certification
<input type="checkbox"/>	Yes

Does the e-cigarette retailing premises identify itself as a newsagent?

<input type="checkbox"/>	Yes - The e-cigarette retailing premises is ineligible for certification.
<input type="checkbox"/>	No

Does the e-cigarette retailing premises have any internal or external branding identifying it as a newsagent?

<input type="checkbox"/>	Yes - The e-cigarette retailing premises is ineligible for certification.
<input type="checkbox"/>	No.

Does the e-cigarette retailing premises sell print materials other than local, state and national, daily and weekly newspapers and e-cigarette related publications?

<input type="checkbox"/>	Yes - The e-cigarette retailing premises is ineligible for certification.
<input type="checkbox"/>	No

Part 7

To be eligible for certification, the e-cigarette retailing premises must not sell dairy products, bread and bakery products, breakfast cereals or foods or beverages other than low-risk, shelf-stable foods and beverages.

See the *Additional information* at the back of this form for examples of shelf-stable, low-risk foods and beverages.

In addition, the e-cigarette retailing premises must not sell products or services designed to be used by or marketed to children or adolescents.

See the *Additional information* at the back of this form for examples of products or services for children and adolescents.

Does the e-cigarette retailing premises sell any of the following foods or beverages?

- bread and other bakery products
- dairy products, including products not requiring refrigeration
- breakfast cereals

<input type="checkbox"/>	Yes - The e-cigarette retailing premises is ineligible for certification.
<input type="checkbox"/>	No

Does the e-cigarette retailing premises sell any food or beverages which are not “shelf-stable” and “low-risk”?

<input type="checkbox"/>	Yes - The e-cigarette retailing premises is ineligible for certification.
<input type="checkbox"/>	No

Does the e-cigarette retailing premises sell or display products or services designed for use by or marketed to children or adolescents?

<input type="checkbox"/>	Yes - The e-cigarette retailing premises is ineligible for certification.
<input type="checkbox"/>	No

Part 8

To be eligible for certification, the e-cigarette retailing premises must only display a maximum of four metres squared (4m²) of e-cigarettes products.

Within the e-cigarette product display, the e-cigarette retailing premises must only show one 'product line' of each e-cigarette product.

If the e-cigarette retailing premises has a price board or price tickets, these must comply with the Tobacco Regulations.

See the *Additional information* at the back of this form for information on e-cigarette product display area, product lines and price boards and price tickets.

Does the e-cigarette retailing premises display more than four metres squared (4m²) of e-cigarette products?

<input type="checkbox"/>	Yes - The e-cigarette retailing premises is ineligible for certification.
<input type="checkbox"/>	No

Does the e-cigarette retailing premises display more than one 'product line' of each e-cigarette product?

<input type="checkbox"/>	Yes - The e-cigarette retailing premises is ineligible for certification.
<input type="checkbox"/>	No

Does the e-cigarette retailing premises have a price board or price tickets that do not comply with the Tobacco Regulations?

<input type="checkbox"/>	Yes - The e-cigarette retailing premises is ineligible for certification.
<input type="checkbox"/>	No

Part 9

Submitting an incomplete application will delay the processing by the Department and may result in your application being refused.

It is the responsibility of the applicant to ensure that all relevant documentation is included and all relevant sections of this application are completed.

Have you:

<input type="checkbox"/>	Answered all the questions
<input type="checkbox"/>	Attached the evidence required in Part 3
<input type="checkbox"/>	Attached the evidence required in Part 4
<input type="checkbox"/>	Attached the evidence required in Part 5

Part 10

By agreeing to and by submitting this application, I certify that:

I am authorised to make this application on behalf of the e-cigarette retailing premises.

The content of this application is true and correct to the best of my knowledge.

The assessment of this application will be based on the information I have provided, the governing legislation and the application conditions and may be refused by the Secretary or delegate.

I acknowledge that it is an offence under Section 15ZA of the *Tobacco Act 1987* to give information to the Secretary or delegate under this Part that I know to be false or misleading in any material particular.

I consent to the Secretary or delegate obtaining information or documents from other persons or organisations that may be relevant to the assessment of this application.

I have read and understand my responsibilities and obligations as provided in the declaration above.

Signature of applicant
Name of applicant
Date

Additional Information

E-cigarette retailing business and e-cigarette retailing premises

An e-cigarette retailing business may constitute a larger entity with multiple locations, however for the purposes of this application, an e-cigarette retailing business is considered to be the part of the business that operates in each individual premises. **Each individual e-cigarette retailing premises is subject to an individual e-cigarette retailing premises certification process and must submit a separate application.**

Definition of e-cigarette products

Under the Tobacco Act an 'e-cigarette product' means an e-cigarette or e-cigarette accessory.

For more information on e-cigarette products, see the *certified specialist e-cigarette retailing premises guide* on the tobacco reforms website <www.health.vic.gov.au/tobaccoreforms>.

Working out gross turnover of e-cigarette products

The table below provides an example of how the gross turnover from e-cigarette products is determined:

Profit and loss account example		
Revenue	\$	\$
Sales of e-cigarettes (after any discounts offered and net of GST)	900,000	
Sales of e-cigarette accessories (after any discounts offered and net of GST)	100,000	
Sales of other products (e.g. drinks, food, branded merchandise, etc.)	105,000	
Interest income	10,000	
Total income		1,115,000
Expenses	\$	\$
Depreciation	150,000	
Cost of goods sold (all products)	330,000	
Salaries	300,000	
Selling costs (including advertising)	30,000	
General and administration costs	50,000	
Finance cost	5,000	
Total expenses		865,000
Operating profit		250,000

The turnover which needs to be included is highlighted in red. Do **not** include interest income as this does not qualify as turnover from products: 1,000,000 +100,000 +5,000 =1,105,000

To work out the percentage of 'gross turnover of e-cigarette products' as a percentage of 'turnover of all products': $1,000,000 \div 1,105,000 = 0.90 \times 100 = 90$.

So the gross turnover of e-cigarette products for this retail outlet is 90 per cent.

Low-risk, shelf-stable foods and beverages

The following are examples of foods and beverages which ARE shelf-stable, low-risk foods:

- chewing gum
- packaged nuts
- confectionery
- snack foods such as chips
- soft drinks.

The following are examples of foods and beverages which are NOT shelf-stable, low-risk foods:

- fruit, vegetables and salads
- raw or cooked meat, seafood and eggs
- milk and other dairy products
- pies, quiches, sausage rolls
- sandwiches
- pasta.

Products and services for children and adolescents

The following are examples of products or services designed for use or marketed to children or adolescents:

- children's books or magazines
- children's confectionery
- concession haircuts for people under 18
- children's toys or games (including electronic).

Display requirements

E-cigarette products must be displayed in a maximum area of four square metres (4m²). If the full range of products cannot be displayed in four square metres (4m²) the extra products must be blocked from view.

Under the Tobacco Act, a 'product line' is an e-cigarette or e-cigarette accessory product that differs from other products on the basis of brand name and flavour, but not other variants such as the size of the package or colour of the device.

Different colours or designs of the same e-cigarette device or different-sized packaging of the same product are not treated as different product lines.

An e-cigarette retailing premises may also use a price board and price tickets, but these must comply with the Tobacco Regulations.

For more information on display requirements, including examples of product lines, and compliant price boards and price tickets, see the *Certified specialist e-cigarette retailing premises guide* on the tobacco reforms website <www.health.vic.gov.au/tobaccoreforms>

Your privacy

The Department is bound by Victoria's privacy laws, including the *Privacy and Data Protection Act 2014*. The Tobacco Act provides that an application for certification as a specialist e-cigarette retailer will include information about sources of income. The Department can also require evidence of the statements relevant to your application.

We will use the personal information provided by you on this application form to assess your eligibility for certification as a specialist e-cigarette retailer and to monitor your compliance with the Tobacco Act. If you do not provide us with this information, we will not be able to assess your application.

You have the right under Freedom of Information legislation to apply for access to, and correction of, your personal information held by the Department. For more information about how to make a request, please visit the Victorian Government Freedom of Information website <<http://www.foi.vic.gov.au/>>

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

Authorised and published by the Victorian Government, 1 Treasury Place, Melbourne.

© State of Victoria, Department of Health and Human Services June 2017.

Available at the tobacco reforms website <www.health.vic.gov.au/tobaccoreforms>