



E-cigarettes, vaping and the law



Evidence ratings:



This resource has undergone expert review. See our Help/Q&A section for more details.

Year:

Targeted Drugs: Electronic Cigarettes/Vaping

Tags: e-cigarettes, vaping

Time Allocated: Partial lesson (under 45mins)

Origin: Australian

Cost:

Free

Key messages

- It is illegal to sell e-cigarettes to people under 18 years of age
- Illegal e-cigarettes sold by retailers typically contain nicotine, even if the packaging says they don't
- Legal nicotine e-cigarettes can only be obtained with a prescription through a pharmacy
- In most states and territories, it is illegal to use e-cigarettes in smoke-free areas

What are e-cigarettes?

E-cigarettes or electronic cigarettes (also known as vapes) are battery powered devices that heat liquids, known as e-liquids, creating an aerosol (or vapour). This aerosol is breathed in, carrying the chemicals to the user's lungs, and is then exhaled as a fine vapour.

While some e-cigarettes are 'flavour-only', the e-liquid inside e-cigarettes most often contains nicotine, which is the same highly addictive drug that is in cigarettes and other tobacco products. E-cigarettes can also contain or produce over 200 chemicals like propylene glycol, glycerol, ethylene glycol, formaldehyde, and acetaldehyde – some of which are toxic and known to cause cancer.

For more general information on e-cigarettes, see our Drugs A-Z factsheet on electronic cigarettes and vaping.

E-cigarettes and the law

The laws around e-cigarettes can be confusing. Generally, e-cigarettes are included in state and territory tobacco control acts and regulated in similar ways to traditional cigarettes. These state-based regulations are mostly consistent across Australia, with a few key differences, notably for Western Australia. In addition to state and territory regulations, there are also some overarching rules at the national level which apply throughout the country, with important differences between nicotine-containing e-cigarettes and flavour-only e-cigarettes.

See below for more information about the laws regarding the sale, use, and marketing of e-cigarettes across Australia. We note that the laws around e-cigarettes are expected to change in the coming months, and more information on the changes is available [here](#). This information is a general summary and should not be taken as comprehensive legal advice.

Laws for people under 18

Like traditional cigarettes, it is illegal to sell e-cigarettes or e-liquids (both flavour only e-cigarettes, and e-cigarettes containing nicotine) to a person under 18 years of age. This includes selling to friends or over social media.

Laws for people over 18

It is legal for adults to buy and use flavour only e-cigarettes and e-liquids, that do not contain nicotine, except in Western Australia.

Myth: anyone over 18 can buy e-cigarettes containing nicotine
Fact: nicotine e-cigarette products are prescription only and must be purchased from a pharmacy or online store with a valid prescription

In Australia, e-cigarette liquids containing nicotine are a prescription only medication, sold through a pharmacy or via an online store to adults over 18 years old with a valid prescription. E-cigarettes that are prescribed to support someone to quit smoking are known as therapeutic e-cigarettes. Retailers such as convenience stores, vape shops, and tobacconists, cannot legally sell nicotine e-cigarette products, even to an adult with a prescription. Penalties for illegally selling e-cigarettes containing nicotine may include fines and imprisonment.

It's important to note that e-cigarette labelling is not always correct, so you can't be sure what is in an e-cigarette and whether you are being exposed to harmful ingredients such as nicotine.

Myth: you can tell what you are vaping
Fact: when illegal e-cigarettes have been seized and tested, they often contain nicotine, even when the label states they are nicotine free. Other prohibited ingredients with known health risks have also been found

Laws around selling and importing e-cigarettes

Myth: it's okay to sell e-cigarettes to your friends or on social media
Fact: it is illegal to sell e-cigarettes to people under 18, and to sell e-cigarettes that contain nicotine, including selling to a friend or over social media

E-cigarettes and their accessories that are for sale cannot be publicly displayed or advertised anywhere inside or outside a retail shop (some exceptions apply to tobacconists and specialist e-cigarette shops). Shops also cannot promote or include these products in a shopper loyalty program.

Individuals cannot order e-cigarettes directly from overseas. This ban includes flavour-only e-cigarettes, and nicotine-containing e-cigarettes – even if you have a prescription.

Businesses need an import licence and permit to import e-cigarettes from overseas. With a valid licence and permit, e-cigarettes need to meet specific product requirements. There are limits on the concentration of nicotine, flavours, and ingredients. Businesses also cannot import disposable e-cigarettes.

Laws around the use of e-cigarettes and smoke-free areas

Myth: second-hand e-cigarette exposure isn't harmful
Fact: the vapour that e-cigarette users exhale isn't just water vapour - it contains harmful substances including nicotine

E-cigarettes are not harm free and expose bystanders to vapour which could be harmful to their health. In most parts of Australia, you can't vape where you can't smoke. These laws have been introduced to reduce second-hand exposure to e-cigarette vapour.

Smoke-free areas include:

- All indoor public places, including restaurants, shopping centres, and schools.
- Outdoor public places, including commercial eating and drinking areas, and public transport waiting areas.
- In a car with a child under 16 years of age in the vehicle.
 - In Victoria and Tasmania, it is prohibited to use e-cigarettes in a car with a child under 18 years of age in the vehicle.

Penalties for using e-cigarettes in smoke-free areas are set by States and Territories.

Please see below for State and Territory specific information about smoke-free areas and associated penalties:

- Australian Capital Territory
- New South Wales
- Northern Territory
- Queensland
- South Australia
- Tasmania
- Victoria
- Western Australia

Evidence Base

The information provided in this factsheet was correct in March 2024. However, laws around e-cigarettes may change.

From the 1st of April 2024, tobacco advertising bans will apply to e-cigarettes.

Proposed changes:

- Ending the manufacture and supply of ne-cigarettes within Australia. Non-therapeutic e-cigarettes include flavour-only e-cigarettes and nicotine-containing e-cigarettes intended for recreational use.
- Reduced nicotine concentrations.

For the most up-to-date and more specific information about e-cigarettes and the law in your state or territory, see the below links:

- Australian Capital Territory
- New South Wales
- Northern Territory
- Queensland
- South Australia
- Tasmania
- Victoria
- Western Australia

Evidence Base:

This factsheet outlines the laws for e-cigarette-related offences in Australia. This information is a general summary and should not be taken as comprehensive legal advice. If you have been charged with an offence you should contact a criminal lawyer for assistance.

This factsheet was developed in consultation with the PREMISE and Matilda Centre Youth Advisory Board (YAB) and underwent expert review by the Program Lead of Smoking, Vaping and Mental Health at the Matilda Centre for Research in Mental Health and Substance Use at the University of Sydney. A full list of sources which informed this factsheet can be seen below.

Sources

Ballbè, M., Martínez-Sánchez, J. M., Sureda, X., Fu, M., Pérez-Ortuño, R., Pascual, J. A., Saltó, E., & Fernández, E. (2014). Cigarettes vs. e-cigarettes: Passive exposure at home measured by means of airborne marker and biomarkers. *Environmental Research*, *135*, 76-80. <https://doi.org/https://doi.org/10.1016/j.envres.2014.09.005>

Banks E, Yazidjoglou A, Brown S, Nguyen M, Martin M, Beckwith K, Daluwatta A, Campbell S, Joshy G. Electronic cigarettes and health outcomes: systematic review of global evidence. Report for the Australian Department of Health. National Centre for Epidemiology and Population Health, Canberra: April 2022.

National Health and Medical Research Council. CEO Statement: Electronic Cigarettes. [Internet]. Canberra: National Health and Medical Research Council; June 2022. Available from: <https://www.nhmrc.gov.au/health-advice/all-topics/electronic-cigarettes>

Public Health (Tobacco) Act 2008(NSW). <https://www.legislation.nsw.gov.au/>

Public Health Act 1997(Tas). <https://legislation.tas.gov.au/>

Smoke-free Environment Act 2000(NSW). <https://www.legislation.nsw.gov.au/>

Smoke-Free Public Places Act 2003(ACT). <https://www.legislation.act.gov.au/>

Smoking in Cars with Children (Prohibition) Act 2011 (ACT). <http://www.legislation.act.gov.au/>

Therapeutic Goods Administration. Nicotine vaping product access. [Internet]. Canberra: Therapeutic Goods Administration TGA; June 2022. Available from: <https://www.tga.gov.au/products/medicines/prescription-medicines/nicotine-vaping-products-hub/nicotine-vaping-product-access>

Therapeutic Goods Administration. Testing of nicotine vaping products. [Internet]. Canberra: Department of Health and Aged Care; March 2022. Available from: <https://www.tga.gov.au/resources/publication/tga-laboratory-testing-reports/testing-nicotine-vaping-products>

Tobacco Act 1987(Vic). <https://www.legislation.vic.gov.au/>

Tobacco and Other Smoking Products Act 1927(ACT). <https://www.legislation.act.gov.au/>

Tobacco and Other Smoking Products Act 1998(Qld). <https://legislation.qld.gov.au/>

Tobacco Control Act 2002(NT). <https://legislation.nt.gov.au/>

Tobacco Products Control Act 2006(WA). <https://www.legislation.wa.gov.au/>

Tobacco Products Regulation Act 1997(SA). <https://legislation.sa.gov.au/>