

Ban on the display of electronic cigarettes and accessories in retail outlets and locations in which they can be sold



Health

From **1 December 2015**, the display of electronic cigarettes (e-cigarettes) and accessories is banned in New South Wales.

Section 9 of the *Public Health (Tobacco) Act 2008* bans the display of e-cigarettes and accessories. These new changes apply to retailers only, not wholesale vendors.

Products that are Therapeutic Goods Administration (TGA) approved as therapeutic goods are excluded from the display ban.

Why does the law ban the display of e-cigarettes and accessories?

This law has been introduced to protect children and young people from any potential risks that e-cigarettes may pose. By removing the display of e-cigarettes, they won't influence children's perceptions about the availability and accessibility of these products.

What does a display ban mean?

From 1 December 2015, retailers need to ensure that e-cigarettes and accessories cannot be seen by the public from inside or outside the premises. This applies to vending machines in the same fashion as all other storage solutions.

The exceptions are where:

- ▶ a member of the public displays their own e-cigarette and accessories; or
- ▶ an e-cigarette and/or accessory is displayed to a customer at his or her direct request, including during the actual transaction/sale.

It is acknowledged that retailers may need to periodically restock their e-cigarette and accessory units and that there may be some unavoidable, inadvertent display of e-cigarettes and accessories during this time (See the FAQs).

How can retailers be sure they comply with the display ban requirements?

All retailers need to ensure they are aware of their obligations regarding the ban on the display of

e-cigarettes and accessories in retail outlets.

There are a variety of ways in which premises retailing e-cigarettes and accessories may be configured. In all cases **e-cigarettes and accessories should not be seen by members of the public from inside or outside the premises.**

Retailers need to determine how best to comply with the display ban in their specific premises and operating environment. Retailers are encouraged to apply the following test when undertaking compliance self-assessment: **Can members of the public see any e-cigarettes and accessories from inside or outside my premises?**

Is general information about implementing the display ban available?

Different types of retail outlets may require different storage configurations for their e-cigarette and accessories. Some retailers may need to change their e-cigarettes and accessories units and placement of units to ensure that products are kept out of sight.

Some general tips for retailers are provided below:

- ▶ storage units should not be left open for a period of time allowing e-cigarettes and accessories to be displayed to members of the public (see the FAQ attachment regarding customer transactions);
- ▶ e-cigarettes and accessories should not be shown to a customer to help in product selection, except when requested by the customer;
- ▶ retailers need to ensure that members of the public are not exposed to e-cigarettes and accessories when multi-facing storage devices are used in retail premises. (See the FAQ attachment which provides additional context);
- ▶ retailers need to ensure that members of the public are not exposed to e-cigarettes and

accessories when accepting inventory (refer to the exceptions on page 1. (See the FAQ attachment which provides additional context); and

- ▶ retailers should not allow any broken storage devices, which allow the display of e-cigarettes and accessories to members of the public, to remain unrepaired.

How will customers know what brands and types of e-cigarettes and accessories are available in a retail outlet?

Retailers may choose only one method to display basic information about e-cigarettes and accessories, such as prices and names, through the use of:

- ▶ price tickets; or
- ▶ a single price board.

Restrictions relating to single point of sale

Retailers are restricted to selling e-cigarettes and accessories from a single point of sale in each retail outlet. This means that these products can only be sold from one cash register at a time in each retail outlet (although it does not mean that the same cash register must be used all the time).

Only one e-cigarette and accessories vending machine per licensed premises is allowed. E-cigarette and accessories vending machines do not constitute a “point of sale” under the *Public Health (Tobacco) Act 2008*. Therefore, licensed premises are still able to sell e-cigarettes and accessories from one vending machine and may also sell e-cigarette and accessories from one cash register.

Restrictions relating to temporary structures

A person is not able to carry an e-cigarette or accessory in any public place for the purpose of selling these products to people in that place.

E-cigarettes and accessories are not able to be sold from any booth, tent or other temporary enclosure (including a market stall or stand), whether or not part of the booth, tent or enclosure is permanent, or from any mobile structure, vehicle or vessel.

This would include:

booths and stalls at an event such as an expo or trade fair as these events are temporary.

This

would not include permanent carts or stalls that are located inside a shopping centre.

Frequently asked questions

Q: What type of storage unit can I use to comply with the ban on the retail display of e-cigarettes and accessories?

A: Retailers may consider a range of different storage arrangements to meet their obligations under the new law.

In storing e-cigarettes and accessories, retailers will choose an arrangement that suits their business needs, but must also ensure that the arrangements comply with the law.

Retail storage units which involve public-facing cupboards with opening doors generally mean that opening a cupboard in order to select a particular item would also involve a display of the e-cigarettes and accessories stored in the cupboard, which is not in the spirit of the legislation. Retailers should bear in mind that the use of public-facing cupboards with large opening doors means that there is likely to be substantial and repeated displays of products throughout business hours. A further concern with these arrangements is that such displays could potentially remain in view for longer periods of time through error or oversight in failing to close off the displayed products to view.

Retailers choosing to use such an arrangement need to recognise the greater risk of products remaining in public view and undertake appropriate action to mitigate against such exposure, such as by training staff; using cupboards with a number of smaller doors; using self-closing cupboard doors; using curtains or other shrouding behind any cupboard doors. Ideally retailers should place cupboards in locations where the cupboard doors do not face public areas.

Drawers and shelves may also be used, as long as the products are shielded from view.

The issues to consider in relation to cupboards also apply to drawers and shelves, including placement of drawers and shelves.

In the event NSW Health undertakes an inspection, the efforts made to comply with the law and the nature of the work undertaken in this regard will be considered in any compliance action undertaken.

Q: What about if a customer requests to view e-cigarettes and accessories?

A: The legislation allows retailers to display e-cigarettes and accessories to a customer at the customer's request. The retailer should ensure that only those products requested by the customer are displayed to that customer, and products which are not purchased are returned to the storage unit before completing the transaction and moving to the next transaction.

Q: How about when I give the product to the customer?

A: The legislation expressly allows for the display of e-cigarettes and accessories to a customer at his or her request and NSW Health interprets this to include for the duration of any relevant transaction with the customer. Once the transaction is complete there is no prohibition on the customer displaying his or her e-cigarettes and accessories and no retailer liability if a customer does so.

Q: What happens when I have to restock my e-cigarettes and accessories storage unit?

A: Retailers undertaking restocking of their storage units should ensure that exposure of e-cigarettes and accessories to customers is minimised. It is understood that some unavoidable exposure to products may occur during restocking, however retailers should take care to actively minimise the exposure of e-cigarettes and accessories to the public, whether from inside or outside the premises.

Q: What do I do if part of my storage unit breaks or the unit needs to be replaced?

A: From time to time storage units will need to be replaced or repaired. At these times, retailers should take care to ensure that exposure of products to customers is minimised – for example, repairs could be made during hours when the store is not open to customers, or products could be removed while repairs are made. Retailers should not allow any broken storage units, which allow the display of products to customers and other people, to remain unrepaired.

Q: What types of products are covered by the display ban?

A: "E-cigarettes" and "e-cigarette accessories" are all captured by the new law which requires these products to be kept out of sight of customers and other people inside or outside the premises.

The definition of each of these terms is as follows:

E-cigarette means:

- (a) a device (other than a device of a kind excluded by the regulations) 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 ignited non-tobacco smoking product, or
- (b) any other device of a kind prescribed by the regulations that is designed to be used by its user in a way that replicates, or produces an experience similar to, the use of a tobacco product or non-tobacco smoking product.

E-cigarette accessory means:

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

Q: How will NSW Health enforce the law?

A: NSW Health is responsible for the administration and enforcement of the *Public Health (Tobacco) Act 2008*. NSW Health inspectors are authorised to enforce the ban on the display of e-cigarettes and accessories in retail outlets.

NSW Health uses a range of strategies to encourage and enhance compliance including advice, formal warning notices, or prosecution. Prosecution is generally reserved for circumstances where there have been ongoing breaches, or a serious breach, of the legislation.

The Ministry of Health's Prosecution Policy and Guidelines (available on the NSW Health website) provide guidance on prosecutorial decisions, and clarify the nature of the issues which would be taken into account in making compliance monitoring and prosecution decisions.

For more information:

Please contact the Tobacco Information Line on 1800 357 412 or visit the NSW Health website: www.health.nsw.gov.au. The Tobacco Information Line can be accessed by non-English speaking people via the Translating and Interpreting Service (TIS) on 13 14 50.