

Ban on the advertising of electronic cigarettes and accessories



Health

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

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 advertising ban.

Why does the law ban the advertising 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 advertising of e-cigarettes, they won't influence children's perceptions about the availability and accessibility of these products.

What does an advertising ban mean?

From 1 December 2015, a number of restrictions on advertising apply to e-cigarettes and accessories.

Advertising and promotion

A person is not able to display an e-cigarette or e-cigarette accessory advertisement so that it can be seen or heard from a public place. An e-cigarette advertisement means writing or any still or moving picture, sign, symbol or other visual image or audible message that gives publicity to or is intended to promote the purchase of an e-cigarette product or e-cigarette accessory. This means that you cannot display a poster which advertises an e-cigarette or e-cigarette accessory product in any public place, including a sign such as 'E-cigarettes available/for sale here'.

This excludes radio or television broadcast.

E-cigarette company trademarks and product names on e-cigarette products and packaging are excluded from the restriction on e-cigarette advertisements.

A person is not able to give out free samples of e-cigarettes and accessories.

Sponsorship

A person is not able to promote or publicise an e-cigarette or e-cigarette accessory product or a trademark or brand name of an e-cigarette or e-cigarette accessory product through sponsorship, which includes a scholarship, prize, gift or other benefit, and any financial arrangement for the direction, promotion or publicity of e-cigarette products through sporting, arts, youth, educational or other like activities. This would include other activities such as bars or nightclub events.

The display of a brand or logo of a product at an event in relation to any type of remuneration may be considered sponsorship depending on the individual circumstances.

Shopper Loyalty Programs

Retailers need to ensure that e-cigarettes and accessories are excluded from shopper loyalty programs. This means that under the Act, the following programs are not permitted:

- ▶ any program under which a gift or other benefit could be obtained by the purchaser of e-cigarettes and accessories (regardless of whether the program extends to the purchase of other products); or
- ▶ any program under which a purchaser of goods or products may be entitled to a gift of e-cigarettes and accessories (regardless of whether the purchaser may choose to accept another type of gift instead).

This would include a customer credit program for example if customers buy a set amount of products and receive credits in return to use towards further purchases.

Confectionary or products that resemble toys

A person is not able to sell any confectionery or other food or any toy, amusement or other product that resembles an e-cigarette or accessory.

Vending Machines

E-cigarette and e-cigarette accessories vending machine owners and lessees need to ensure that:

- ▶ e-cigarette and accessories in a vending machine cannot be seen by members of the public (see fact sheet on display bans); and
- ▶ there is no information about or representations of e-cigarette and accessories or packages displayed on the vending machine (except permissible information).

What types of products are covered by the advertising ban?

“E-cigarettes” and “e-cigarette accessories” are all captured by the new law.

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.

What is permissible in a retailer’s shop sign?

Retailers are able to display their company or business name in a manner which publicises the existence of their retail business. However, they are not able to use their company or business name in a manner which constitutes an e-cigarette or accessory advertisement.

The following Guidelines have been developed to assist retailers in considering whether the display at retail of a business name breaches the advertising legislation.

Retailers may be in breach of the e-cigarette and accessory advertising legislation where they display trading names at shop premises as follows:

- a) The displayed name is not the name of a registered company or a business name under the *Business Names Act 2002* or any successor Act.
- b) There is another business name simultaneously displayed at the premises which directly or indirectly refers to the sale, purchase or use of an e-cigarette product.
- c) The displayed name, in part or in whole, encourages the purchase or use of an e-cigarette product.
- d) The displayed name contains any moving picture, sign, symbol, audible or visual message (although the sign may be illuminated).
- e) The displayed name contains references to “child”, “young person” or any other singular or plural term synonymous with “child” or “young person”.
- f) The name is displayed:
 - i. more than once at or next to the public entrance to the premises, on for instance a window, wall, veranda; or, where the premises contain more than one shopfront, more than once at or next to one public entrance per shopfront.
 - ii. more than once on each surface of a sign board, such as a hanging sign or sandwich board, being not more than a total of two surfaces, placed in the immediate vicinity of the public entrance to the premises; or, where the premises contain more than one shopfront, more than once at or next to one public entrance per shopfront.

g) At more than two public entrances to the premises.

h) The displayed name contains characters greater than 50cm in height.

It is not permissible to have any sort of advertisement, so a sign such as 'e-cigarettes and accessories available for sale here' would not be allowed.

How will NSW Health enforce the law?

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.

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.