

Guide to the Sale of Smoking Products in the ACT

Smoking and vaping hurts
your customers health. Do
you want that responsibility?



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This guide provides general information on the sale of smoking products in the ACT. It is a summary of the law and is not intended as a substitute for

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The law is as at 1 January 2020.

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Glossary

E-Liquid: flavored fluid used inside electronic cigarettes. Also commonly known as e-juice or vape juice.

Herbal product: a product prepared for smoking that contains a herb or other plant matter; but does not contain tobacco. E.g. cigarettes, cigars or tobacco-free shisha containing herbs or other plant matter.

Liquor-licensed premises: means a premises for which an on license, a general license or a club license is in force under the Liquor Act 2010.

Personal Vaporiser: a device that has a battery and/or an electric heating element and/or a cartridge or container and that is made for the purpose, or apparent purpose, of delivering a substance into a person's body when the person inhales through the device. Personal vaporisers include e-cigarettes, e-cigars, vape pens, hookah pens, e-hookas, waterpipes and bongos. Personal vaporisers do not include any devices listed in the Therapeutic Goods Act Australian Register of Therapeutic Goods, such as asthma inhalers.

Personal Vaporiser related products: includes any device that is not capable of being used to deliver a substance but is intended to be used as a part of a personal vaporiser, for example e-liquids, heating elements, batteries, cartridges or mouthpieces for personal vaporisers.

Point of sale: the place where smoking products are sold within a retail outlet or wholesale outlet. The Act provides for one (1) point of sale for a retail outlet and up to five (5) points of sale for liquor-licensed premises.

Price Ticket: a text only label, not larger than 15cm high and 15cm wide, using maximum size 12 'Times New Roman' typeface. The price ticket may include only the name of the product line, an identifying code e.g. a bar code, and the price of an item.

Shisha: molasses-based smoking product smoked in a hookah or waterpipe. May or may not contain tobacco.

Smoking Advertisement: is any writing, sound, picture, symbol, light or other object or that a reasonable person would consider publicises or promotes buying or using a smoking product or promotes a trademark or brand name of a smoking product.

Smoking Product: A tobacco product, a herbal product, a personal vaporiser or a personal vaporiser related product. E-cigarettes and Shisha are included as smoking products. Smoking products do not include pipes, matches, lighters or cigarette papers.

Tobacco Product: tobacco or something containing tobacco prepared for human consumption, this includes a cigarette, a cigar and shisha tobacco.

Do you want to sell smoking products?

Smoking is responsible for the deaths of up to two thirds of Australian smokers aged 45 years and older

Many retailers don't like selling smoking products and more and more are choosing not to do so. In addition to conflicts with personal values and significant concerns about the health impacts of smoking, sales of smoking products offer a low profit margin and increase security concerns for businesses.

Some retailers may believe that selling smoking products increases footfall of customers who also buy other items. This is not supported by evidence. Research shows that only two to five per cent of customers report tobacco purchase as their primary reason for entering a small retail store. With the ACT's low smoking rate of 9.5 percent, the percentage of transactions associated with a tobacco purchase are likely to be lower than 5 per cent.

Over 90 per cent of Canberrans don't smoke, and many smokers who are trying to quit find it harder to do so when tobacco is so easy to find. Generally, there is good support from the community for retailers who give up selling tobacco and retailers who do so have reported minimal changes in sales.

Contact Health Protection Service on 5124 9700 or HPS@act.gov.au if you would like more information.

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In order to sell smoking products in the ACT, a person must be licensed. The license period is from 1 September to 31 August each year. A license may be applied for from Access Canberra at any time during this period. The license issued by Access Canberra will either be a wholesale merchant's license or a retail tobacconist's license. Businesses that sell personal vaporisers (including e-cigarettes) are also required to hold a tobacco license.

Tobacco licensees have an obligation to comply with the Tobacco and *Other Smoking Products Act 1927* (the Act) in selling smoking products in the ACT. This guide has been prepared to assist tobacco licensees with understanding their obligations.

At a point of sale, smoking products must be stored out of customers' view. That is, smoking products should not be displayed. No representations or advertising of smoking products, e.g. pictures of smoking products in place of the packets at a point of sale, may be used. In placing smoking products out of sight, tobacco licensees may choose the approach that suits their operational needs.

Point of sale requirements

The Act provides for one (1) point of sale for a retail outlet and up to five (5) points of sale for liquor-licensed premises.

Under the Act, a liquor-licensed premises means a premises for which an on license, a general license or a club license is in force under the *Liquor Act 2010*. All other types of liquor license holders are required to have one point of sale. Licensees will need to advise the Commissioner for Fair Trading where the point of sale is in the business premises.

The place must be bounded by a counter that a customer can approach to purchase smoking products and payment is made to cash register(s) located at that counter. For retail outlets, this does not include registers that may be located adjacent to a point of sale, such as at express check-outs. Selling smoking products from cash registers on adjacent counters would constitute more than one point of sale.

Tobacco license display requirement

Retail Tobacco licensees are required, under the Act, to display a notice stating the license holder's name and license number (known as the 'license details notice'). The license details notice must be displayed at or in close proximity to the point of sale of tobacco products at the business premises and if there is more than one point of sale, one of the points of sale at the business premises. Failure to display the license details notice is an offence.

Wholesale Tobacco licensees are required, under the Act, to display a notice stating the license holder's name and license number (known as the 'license details notice'). The license details notice must be displayed in a prominent place at each premises at which the licensee carries on business as the holder of a tobacco wholesale license.

Display of smoking products at the point of sale

The Act requires that smoking products be kept out of public view, on the seller's side, not less than one metre from any part of the customer service area of the point of sale. The customer service area is on the customer side of a counter, with the one metre measured from the customer side of the counter.

It is recognised that some businesses have found it more convenient to place smoking products under the counter. Such arrangements are acceptable but should be carefully managed to ensure that smoking products cannot be seen by customers inside or outside the premises.

Various types of product storage units and arrangements may assist with keeping smoking products out of public view. Some examples are described below.

Example: stack dispensers

Packages at the front, top and sides of a stack dispenser covered with material that blocks the visibility of the packages. To assist retrieval of the packet, a liftable shield is placed above the first package. The covering material used must not contain a representation of a smoking product (e.g. brand name, etc.).

Example: drawers and shelves

Drawers within the point of sale may assist the retrieval of smoking products. If a drawer has a clear glass front allowing packets to be seen, this should be covered. If products are stocked on shelves, an appropriate cover should be used to shield the shelf.

Example: doors

Doors could be used to cover smoking products. There should also be coverage of the smoking products behind these doors to minimise visibility to customers when the doors are opened. Self-closing doors will assist in ensuring that doors are not left inadvertently open.

Stocking of smoking products

The stocking of smoking products at the point of sale needs to be managed to ensure smoking products are kept from customers' view. Stock should be

placed immediately in the dispensing unit when brought out from storage. It is expected that some visibility of smoking products will occur during restocking – you should not prolong the exposure of the products during this process.

Roller doors and other security cabinets can be used for the security of smoking products. It is suggested these not be used to cover up smoking products during business hours as they may be left open. If they are left open, this may result in non-compliance with the Act if the products inside are not obscured from public view.

Retrieval of smoking products during purchase

Retrieving smoking products makes it inevitable that smoking products become visible during a purchase transaction. In retrieving smoking products, licensees and their staff should ensure that smoking products are only briefly visible. This can be achieved if only the product requested is retrieved and no other product is made visible for that transaction. If various smoking products are requested, it should be ensured that covers are put back in place before moving on to the next product to be retrieved.

Products may also be visible during the course of a sale where a purchaser wishes to view a selection of cigars or e-cigarettes. While presenting a selection of products in a display, it is reasonable for a customer to ask to see the goods in order to make a purchase. During the selection process, the seller should limit any cigars or e-cigarettes on view to the types or price range that the customer has indicated that they prefer. Once the purchaser's selection is made, the products should be returned to their storage place immediately.

What information can be displayed at the point of sale?

As noted above, an A5 sign may be placed at the point of sale that indicates smoking products are sold to persons 18 years or older.

Price tickets may be displayed for product lines which are available, or usually available, for sale. These must not exceed 15cm² in size and must contain only text printed in 12 point, Times New Roman type (a bar code or similar identifying code may be included).

A price ticket must be located at least 1 metre from any part of the customer service area. Price tickets may be displayed below or next to the blocked-out smoking products. Price tickets may also be arranged sequentially if it is not possible to place the price ticket below or adjacent to smoking products.

A document indicating the price of smoking products cannot be given to a customer to read. If needed, a barcode sheet may be provided to

staff to assist the scanning of prices. To ensure it is not a price ticket within the meaning of the Act, only the barcode and product names should be on this sheet. The sheet should be kept under the counter.

You may scan the product to confirm the price for a customer. You may also tell customers what products are available, their price and answer any questions they may have. Care should be taken to ensure that nothing is said that would constitute the promotion of particular products or of smoking generally.

Advertising and promotion

Advertising or promoting a smoking product is restricted in the ACT. A smoking advertisement is any writing, sound, picture, symbol, light or other visible device, object or sign that a reasonable person would consider publicises or otherwise promotes the purchase or use of a smoking product or a trademark or brand name, or part of a trademark or brand name, of a smoking product. This includes:

- signs, poster, items and devices which advertise or promote smoking or smoking products;
- tobacco product or e-cigarette posters and packaging;
- customer reward schemes for the purchase of smoking products, for example shopper docket;
- competitions that promote smoking or promote a smoking product;
- films, videotapes, DVDs or other recordings that contain a smoking advertisement; and
- anything which advertises a smoking product or the interests of a manufacturer or distributor of a smoking product in connection with a sponsorship, gift, prize, scholarship or similar benefit.
- trade promotions or communications by wholesalers to tobacco retailers.

Care should be taken with signs outside retail or wholesale outlets about smoking products being available to ensure that they do not contain a smoking advertisement. The purchase or use of a smoking product cannot be promoted but a factual statement can be made. For example, milk, cigarettes, newspapers, available here; or, stockists of cigarettes, e-cigarettes, cigars, liquor, etc. The words should be of

equal size, that is, no one word should be larger text than the others. A licensed tobacconist (a person whose main business is selling tobacco) may state that they are a tobacconist.

Australian Government legislation prohibits, with some exceptions, anything that promotes smoking, including through print and broadcast media.

Information about the *Tobacco Advertising Prohibition Act 1992* can be found at www.health.gov.au.

Sale and Supply to Minors

You must not sell a smoking product to someone who is younger than 18 years of age. It is also an offence for a person to purchase a smoking product for the purpose of supplying it to a person under the age of 18. You may refuse a sale if you believe that the product is being purchased for use by a person under the age of 18. Only smoking products are prohibited for sale to minors. Smoking products do not include pipes, matches, lighters, or cigarette papers.

Sellers are responsible for asking to see proof of age to ensure that no one under the age of 18 purchases a smoking product. There is a defence to selling a smoking product to an underage person if you have asked for and have seen an acceptable form of proof of age which indicates that the person is 18 or older. Acceptable identification means: a passport, driver's license, proof of age card issued for alcohol purchases, or another document with the person's photograph and birth date, but not a student ID. A person who offers a fake or tampered document as a proof of age also commits an offence.

Access Canberra is authorised to conduct compliance testing under the Act. Volunteer young people may be used to test retailer compliance with the sales to minors provision at any time.

Vending machines

A vending machine is a machine or device from which smoking products can be obtained, including by an electronic funds transfer, insertion of money, a token or another object. The *Tobacco and Other Smoking Products Act* prohibits the use of a Vending machine for the sale of tobacco products in the ACT, even where the machine is not for use by members of the public.

Prohibitions under the Act

The Act also provides that it is prohibited to:

- manufacture or sell tobacco products that are not prepared for smoking;
- sell or import into the ACT foods or toys which resemble or promote, or whose packaging resembles or promotes, a smoking product or the use of a smoking product;
- sell, distribute or give away an item or entitlement in association with a smoking product;
- sell cigarettes in quantities of less than 20, or sell a package designed to hold less than 20 cigarettes or be able to be divided into portions which contain less than 20 cigarettes;
- sell a smoking product which the Minister for Health has declared to be a prohibited smoking product because it has a distinctive fruity, sweet or confectionary-like character and may be attractive to children.

Healthwarnings

Under Australian Government legislation, graphic health warnings are required on most tobacco products imported or manufactured for retail in Australia.

A system of warnings, explanatory messages and graphic images is in place to increase consumer knowledge of health effects relating to smoking, to encourage the cessation of smoking and to discourage uptake or relapse. For more information on features of health warnings please refer to the Product Safety Australia website at www.productsafety.gov.au.

Tobacco plain packaging

The *Australian Government's Tobacco Plain Packaging Act 2011*, requires all tobacco products sold in Australia to be sold in plain packaging. The law includes requirements for the physical features, colour and finish of retail packaging of tobacco products, details of prohibited marks on retail packaging and requirements for wrappers. The supply, purchase or manufacture of tobacco products that do not comply with the plain packaging laws are prohibited.

These laws do not exclude or limit the operation of the *ACT's Tobacco Act 1927*. For more information on tobacco plain packaging please refer to the Department of Health and Ageing's website at www.health.gov.au.



Electronic cigarettes

You must have a tobacco license to sell e-cigarettes or related products in the ACT.

E-cigarettes are categorised as personal vaporisers and are regulated as smoking products under the *Tobacco and Other Smoking products Act 1927*. They may also be known as vape pens, hookah pens, e-hookas, pods, tanks, Juul,

E-liquids, heating elements, batteries, cartridges and mouthpieces are regulated as personal vaporiser -related products.

There is growing evidence that electronic cigarettes (e-cigarettes) are harmful to health.

E-cigarettes have not been approved by the Therapeutic Goods Administration (TGA) for therapeutic use. The National Health and Medical Research Council (NHMRC) issued an updated statement in 2017 stating “there is currently insufficient evidence to support claims that e-cigarettes are safe...and insufficient evidence to conclude whether e-cigarettes can assist smokers to quit”.

Liquid nicotine is classed as a dangerous poison under the Poisons Standard. It is illegal to sell e-cigarettes or e-liquids that contain nicotine in Australia.

The NHMRC recommends that “health authorities and policy makers act to minimise harm to users and bystanders and to protect vulnerable groups such as young people, until evidence of safety, quality and efficacy can be produced”.

If you require more information on e-cigarettes, please contact the Health Protection Service or refer to the TGA website at www.tga.gov.au.

Shisha

You must have a tobacco license to sell shisha smoking products and waterpipe devices in the ACT.

The World Health Organization advise that shisha smoking is associated with multiple long-term adverse health outcomes, regardless of whether it contains tobacco or a herbal product.

Shisha cafés are not permitted in the ACT as it is an offence under the *Smoke-Free Public Places Act 2003* to use any smoking product in an enclosed public place or at an outdoor eating or drinking place.

Retailers selling shisha that contains tobacco must comply with the *Tobacco Plain Packaging Act and Regulations 2011* and the *Tobacco Advertising Prohibition Act 1992*.

Under the *Tobacco and Other Smoking Products Act 1927* shisha devices, waterpipes and bongs are classified as personal vaporisers and may not be displayed or advertised.

What if I don't comply with the law?

Access Canberra uses a risk-based approach to manage harm to the community.

There are criminal and licensing penalties for failing to comply with the Act. Access Canberra may issue infringement notices, commence actions in the ACT Civil and Administrative Tribunal, or refer matters to the Director of Public Prosecutions.

Access Canberra's enforcement responses are proportionate to the conduct and the resulting harm or potential harm.

