

Selling e-cigarettes in South Australia - Retailer Fact Sheet

From 31 March 2019, the sale and supply of e-cigarettes and e-cigarette products, and places where e-cigarettes can be used in South Australia, are regulated under the *Tobacco and E-Cigarette Products Act 1997*.

The new laws are detailed in the [Tobacco Products Regulation \(E-Cigarettes and Review\) Amendment Act 2018](#) and the [Tobacco and E-Cigarette Products Regulations 2019](#). All e-cigarette retailers must comply with this new legislation.

Further information can be found on the SA Health website:
<http://www.sahealth.sa.gov.au/tobaccolaws>.

Laws for selling e-cigarette products

Under these laws, from **31 March 2019**, it is an offence to:

- sell or supply e-cigarette products to a person under the age of 18 years;
- sell e-cigarette products by retail without a *Retail Tobacco and E-Cigarette Merchant's Licence*;
- provide or offer to provide free samples, prizes, gifts or other benefits (including through sponsorship, competitions and rewards) in connection to the sale of e-cigarette products;
- sell e-cigarette products from temporary outlets, sales trays and vending machines; and
- use e-cigarettes in public places that are currently smoke-free under the law, including in a motor vehicle if a child under the age of 16 years is present.

To allow additional time for e-cigarette retailers to adapt their operations, from **1 October 2019**, it is an offence to:

- advertise and promote e-cigarette products,
- have e-cigarette products on display at the point of sale, and
- sell e-cigarette products by indirect orders (including internet sales).

Retail Tobacco and E-Cigarette Merchant's Licence

From **31 March 2019**, all businesses selling e-cigarette products must hold a *Retail Tobacco and E-Cigarette Merchant's Licence*, unless you already hold a *Retail Tobacco Merchant's Licence*.

Licence conditions are attached to a *Retail Tobacco and E-Cigarette Merchant's Licence*. These include a limit on the number of points of sale and a requirement to display the licence adjacent to the point of sale.

Preventing the sale of e-cigarette products to children

From **31 March 2019**, retailers have a legal responsibility to not sell or supply e-cigarette products to a child (any person under the age of 18 years).

- **Penalties for the sale or supply of e-cigarette products to children**

In the case of a responsible person who is the proprietor of a business, for a first offence the maximum penalty will be \$20,000; for a second or subsequent offence it will be \$40,000; or in any other case \$5,000. The expiation fee for this offence will be \$1,200.

- **Responsible Person**

A responsible person in relation to the sale or supply of e-cigarette products to a child, is the proprietor of the business or a person who sells or supplies the product on behalf of the proprietor. This means both employers and employees can be found to be responsible for committing an offence if they sell e-cigarette products to a child.

- **Photographic Identification**

From 31 March 2019, if a retailer suspects that a person seeking to obtain an e-cigarette may be a child (under 18 years), they can ask a person to produce evidence of their age. It is good practice to ask to seek identification of anyone who may be under 25 years of age. Identification should be in the form of a current photographic driver's licence, proof of age card, passport or keypass identification card.

- **Training**

All people selling e-cigarette products should be given adequate training on how to avoid selling them to children. This includes training any relatives or friends who might occasionally work in the business as well as paid employees. Proprietors should ensure that all staff know:

- What procedures to follow if a customer becomes difficult when asked to produce identification.
- The consequences if they are found to have sold e-cigarette products to a child. Staff should be regularly reminded about these procedures. Some employers find it helpful to develop a store policy and procedure.

- **Prescribed Signage**

From 31 March 2019 all e-cigarette product retailers are legally required to display a prescribed A4 sized 'Sale of Tobacco Products and E-Cigarette Products' sign (commonly referred to as a 'prescribed notice'). This sign is a reminder to customers and retailers that it is an offence to sell or supply tobacco or e-cigarette products to a person under 18 years of age and that proof of age may be sought before a purchase is made. The sign must be displayed in a manner and position that is likely to attract the attention of the customer and be near the point of sale.

Sponsorships

From 31 March 2019, a person is not permitted to promote or publicise an e-cigarette product or a trademark or brand name, or the name or interests of a manufacturer or distributor of an e-cigarette product under a contract, or arrangement, under which sponsorship is provided.

Competitions and reward schemes

From 31 March 2019, retailers are not permitted to, in connection with the sale of an e-cigarette product, or for the purpose of promoting the sale of an e-cigarette product, provide or offer to provide a number of points, or a similar device, by the accumulation of which a person may become entitled to, or qualify for, a prize, gift or other benefit.

The ban only applies to the accrual of reward points. Credit card reward points, gift cards and vouchers can still be used to purchase e-cigarette products.

Free Samples

From 31 March 2019, retailers are not permitted, for the purpose of inducing or promoting the sale of an e-cigarette product, offer or give to a member of the public a free sample of the product.

Selling from temporary outlets, sales trays or vending machines

From 31 March 2019, retailers are not permitted to sell e-cigarettes and e-cigarette products from temporary outlets such as a booth, stand, tent or other temporary or mobile structure or enclosure. Selling e-cigarettes and e-cigarette products by mobile trays or containers or by vending machines is also banned.

Using e-cigarettes in public places that are smoke-free

From 31 March 2019, e-cigarettes cannot be used in any area in which smoking is banned under the *Tobacco and E-Cigarette Products Act 1997*. This includes all places where smoking is already banned, including:

- enclosed public places, workplaces and shared areas;
- motor vehicles if a child under the age of 16 years is present;
- under covered public transport areas;
- within 10 metres of children's public playground equipment;
- outdoor dining areas and other outdoor areas that have been declared smoke-free.

Advertise e-cigarette products

The new laws prohibit retailers from taking any action that is designed to publicise or promote e-cigarette products, smoking (which will include the use of e-cigarettes), or the sale of e-cigarette products, whether by visual or auditory means. This law commences on **1 October 2019**.

Point of Sale Displays

The new laws prohibit the display of e-cigarettes and e-cigarette products in all retail outlets. Information about signage, price tickets and price boards is provided below. This law commences on **1 October 2019**.

Selling by indirect orders (including internet sales)

The new laws prohibit retailers selling e-cigarette products by indirect means, such as by mail, telephone, internet or any other electronic means. This law commences on **1 October 2019**.

Frequently Asked Questions

What is the definition of an e-cigarette?

Under the new laws, an *e-cigarette* is defined as:

- a device that is designed to generate or release an aerosol or vapour for inhalation by its user in a manner similar to the inhalation of smoke from an ignited tobacco product; or
- a device of a kind declared by the Minister by notice in the Gazette to be an e-cigarette.

What is the definition of an e-cigarette product?

Under the new laws, an *e-cigarette product* means:

- an e-cigarette; or
- any part comprising an e-cigarette; or
- a cartridge, capsule or other container designed to contain a liquid, aerosol, gas, vapour or other substance for use in an e-cigarette; or
- a heating element designed for use in an e-cigarette; or
- a battery designed for use in an e-cigarette; or
- a product of a kind prescribed by the regulations.

Can customers try e-cigarettes inside my shop?

From 31 March 2019, e-cigarettes cannot be used in any areas in which smoking is banned. This includes inside a retail shop.

How will customers know what e-cigarette products I have and how much they are?

- **Price tickets**
Price tickets are permitted and must be compliant with the [Tobacco and E-Cigarette Products Regulations 2019](#). These Regulations cover the size, colour and information that can be displayed on the price tickets. Advertising of discounted products using 'special' price tickets or other means is prohibited.
- **Price boards**
One prescribed price board is permitted and must be compliant with the Regulations. The Regulations cover the size, colour and information that can be displayed.

The use of **price lists** such as loose sheets of paper shown or handed to customers is not permitted.

How can I assist customers who are interested in purchasing an e-cigarette product?

Retailers can answer customer enquiries about the products available for sale to assist them in selecting their product, including allowing a customer to inspect products upon request.

How will customers know that my shop sells e-cigarette products?

Signs can be displayed inside and outside your premises to show that you sell e-cigarette products. The [Tobacco and E-Cigarette Products Regulations 2019](#) sets out the size, colour and words that can be displayed on the signs.

Disclaimer

This information is provided for guidance only and is not to be taken as an expression of the law. It should be read in conjunction with the *Tobacco Products Regulation (E-Cigarettes and Review) Amendment Act 2018* and the Tobacco and E-Cigarette Products Regulations 2019. The State of South Australia, its agents, instrumentalities, officers and employees, will not be responsible for any loss, however arising, from the use of, or reliance on, this information.

For more information

Tobacco laws and businesses (SA Health)

www.sahealth.sa.gov.au/tobaccolaws

Contact Health Protection Operations, SA Health:

Email: HealthProtectionOperations@sa.gov.au

Tel: 08 8226 7100



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