

Are electronic cigarettes legal in the ACT?

Electronic cigarettes (or e-cigarettes) are battery-operated devices that work by heating a liquid to create a mist (vapour) that is inhaled. An e-cigarette contains a cartridge or tank that is filled with e-liquid. The e-liquids used in an e-cigarette may or may not contain nicotine (see Information Sheet # 1).

This information sheet provides an overview of how the Commonwealth and ACT legislation at 1 August 2016 cover the use of e-cigarettes in public places, the sale of e-cigarettes and related products (e.g. batteries) and e-liquids.

Legislation that covers e-cigarettes

Commonwealth and ACT legislation cover different aspects of the sale, purchase, importation, use and advertising of e-cigarettes. Relevant Commonwealth legislation and regulations include the Commonwealth *Poisons Standard*¹ and the *Therapeutic Goods Act 1989*.²

In the ACT, the *Smoke-Free Legislation Amendment Bill 2016*³ amended the ACT tobacco legislation to regulate e-cigarettes (or 'personal vapourisers') in the same way as tobacco and herbal products. These are now referred to as 'smoking products' in the legislation, and changes were made to the:

- *Tobacco Act 1927*, that has been renamed, *Tobacco and Other Smoking Products Act 1927*;⁴
- *Smoke-Free Public Places Act 2003*;⁵ and
- *Smoking in Cars with Children (Prohibition) Act 2011*.⁶

For more information on why the ACT Government has regulated personal vaporisers, see www.health.act.gov.au/public_information/public-health/tobacco-and-smoke-free/electronic-cigarettes.

Are e-cigarettes that contain nicotine available in the ACT?

E-cigarettes and e-liquids that contain nicotine cannot legally be bought from retailers in Australia, but can be purchased for personal use under the *Medicines, Poisons and Therapeutic Goods Act 2008*.

Commercial availability of nicotine-containing e-cigarettes in the ACT

Nicotine-containing e-cigarettes or e-liquid cannot be legally sold commercially in Australia. In the Commonwealth *Poisons Standard*, nicotine is classed as a Schedule 7 dangerous poison, and cannot be possessed, used or sold without specific approval, authorisation or licence.¹

The Therapeutic Goods Administration (TGA) has approved nicotine only as an ingredient in tobacco and in therapeutic goods listed on the Australian Register of Therapeutic Goods. Nicotine replacement therapies (such as nicotine patches, gum, spray, lozenges and strips) are on the Register of Therapeutic Goods, but e-cigarettes are not. Nicotine-containing e-cigarettes cannot, therefore, be legally imported, exported, manufactured and supplied for *commercial* purposes in Australia.

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Buying nicotine-containing e-cigarettes and e-liquids for personal therapeutic use

Nicotine-containing e-cigarettes and e-liquid for use in an e-cigarette is legally available to people with a prescription from a medical practitioner for therapeutic use—that is, the e-cigarette is to be used to quit smoking or help with nicotine withdrawal.⁷

Within Australia nicotine-containing e-liquids are legally available to people with a medical prescription through compounding pharmacies (a specific pharmacy service where medications are made to suit the needs of the individual patient). Nicotine-containing e-liquids are not currently widely available through compounding pharmacies.⁸

Importation and use of nicotine-containing e-cigarettes and/or e-liquids can be done legally with a medical prescription from a General Practitioner.⁹ This is under the Therapeutic Goods Administration Personal Importation Scheme. There are some limitations (for example, only 3-months worth of supply can be imported at a time), so it is important to have a look at the TGA's website and to talk to your prescribing doctor if you want to do this.¹⁰

It is important to note that the composition of the e-cigarettes and/or e-liquids that are bought online from overseas cannot be guaranteed to be the same as indicated on the packaging, and their quality can also not be guaranteed. There may be other (potentially harmful) substances added and the amount of nicotine in the e-liquid may not be as indicated (see Information Sheet 2). The industry is not regulated and so the quality of the products cannot be guaranteed.

Are e-cigarettes that don't contain nicotine available in the ACT?

E-cigarettes and e-liquids *that don't contain nicotine* can be sold and bought in the ACT, but only through retailers who hold a tobacco licence.

E-cigarettes cannot be labelled or advertised to have a benefit to health or to help people to quit or cut down their smoking. This is because the Therapeutic Goods Administration (TGA) has not assessed or approved e-cigarettes as quit smoking devices.

It is important to note that, because the e-cigarette industry is not regulated, the quality of the devices and non-nicotine containing e-liquids cannot be guaranteed. For example, e-liquids that claim to be nicotine-free, may in fact contain nicotine.¹¹

There are a number of other restrictions in the ACT on the sale of e-cigarettes, e-liquids or any other components of e-cigarettes (e.g. the battery):

- E-cigarettes may not be sold to people under 18 years of age, and it is also illegal to buy e-cigarettes on behalf of someone else who is aged under 18 years of age
- E-cigarettes may not be sold from vending machines

Are there places where an e-cigarette cannot be used?

There are some places in the ACT where an e-cigarette cannot be used (regardless of whether they have nicotine in them or not).

As e-cigarettes are classified as 'smoking products' in ACT legislation, the limitations on where they can and cannot be used are the same as for tobacco products. Under the *Smoke-Free Public Places Act 2003* e-cigarettes cannot be used:

- In enclosed public spaces (e.g. shopping centres and cinemas)
- In outdoor eating or drinking places that are not designated outdoor smoking areas
- In vehicles if there is a child aged under 16 years present
- At underage functions
- At declared smoke-free public places or events

In addition, under *Australian Civil Aviation Safety Regulations*, e-cigarettes cannot be used on aircraft, and can only be carried in carry-on luggage or on the person of a passenger.¹²

What about e-cigarette legislation in NSW?

Commonwealth legislation covering the sale and purchase of e-cigarettes and e-liquids applies in all states and territories, including the ACT and NSW. The NSW *Public Health (Tobacco) Amendment (E-cigarettes) Act 2015* makes many of the provisions that apply to the sale and advertising of tobacco products also apply to e-cigarettes and e-liquids (e.g. they cannot be sold to children aged under 18 years of age).

However, e-cigarettes and accessories (e.g. e-liquid) are defined as being separate from tobacco products in NSW legislation. Under the *Smoke-free Environment Act 2000 (NSW)*, it is not against the law to use them in indoor and outdoor public places, where it is against the law to smoke tobacco-containing products (e.g. tobacco cigarettes).¹³

References

- 1 Therapeutic Goods Administration. 'The Poisons Standard (SUSMP)'. Accessed 23 June 2016. www.tga.gov.au/publication/poisons-standard-susmp
- 2 Therapeutic Goods Act 1989. Accessed 23 June 2016. www.legislation.gov.au/Series/C2004A03952
- 3 ACT Government. Smoke-Free Legislation Amendment Act 2016. Accessed 23 June 2016. www.legislation.act.gov.au/a/2016-20/default.asp
- 4 ACT Government. Tobacco Act 1927. Accessed 23 June 2016. www.legislation.act.gov.au/a/1927-14/
- 5 ACT Government. Smoke-Free Public Places Act 2003. Accessed 23 June 2016. www.legislation.act.gov.au/a/2003-51/
- 6 ACT Government. Smoking in Cars with Children (Prohibition) Act 2011. Accessed 23 June 2016. www.legislation.act.gov.au/a/2011-40/
- 7 Nicotine as a substance is classified as a dangerous poison under Schedule 7 of the Poisons Standard. When nicotine is used in a therapeutic product that can be obtained by prescription, the product is reclassified as a 'Schedule 4—Prescription only' medicine under the Poisons Standard.
- 8 For further information, see: www.colinmendelsohn.com.au
- 9 Further information about prescribing nicotine for e-cigarettes under the TGA Personal Importation Scheme is available in: Mendelsohn, C.P. and Gartner, C. (2015). 'Electronic cigarettes. What should you tell your patients?'. *Medicine Today*; 16(10):26–32.
- 10 Therapeutic Goods Administration. 'Personal Importation Scheme'. Accessed 23 June 2016. www.tga.gov.au/personal-importation-scheme
- 11 New South Wales Government. 'Are electronic cigarettes and e-liquids safe? Fact sheet'. Accessed 23 June 2016. www.health.nsw.gov.au/tobacco/Factsheets/e-cigs-are-they-safe.pdf
- 12 Civil Aviation Safety Authority, 'New restrictions on e-cigarettes in the air'. Accessed 23 June 2016 at www.casa.gov.au/standard-page/new-restrictions-e-cigarettes-air
- 13 New South Wales Government. 'Are electronic cigarettes legal in NSW? Fact sheet'. Accessed 23 June 2016. www.health.nsw.gov.au/tobacco/Factsheets/e-cigs-are-they-legal.pdf

Cutting through the haze E-cigarette information sheet series

This information sheet is the fourth in a series that has been produced to provide information to workers at ACT health and community services and their clients to make informed decisions on the use (or not) of e-cigarettes. The information sheets in this series are:

- #1 What are electronic cigarettes and how do they work?
- #2 What do we know about the health effects of electronic cigarettes?
- #3 Can electronic cigarettes help people to quit smoking?
- #4 Are electronic cigarettes legal in the ACT?

There is debate about the health harms and effectiveness of e-cigarettes. These information sheets do not promote or discourage the use of e-cigarettes, but aim to provide information based on the best available evidence so that members of the ACT community can make their own informed decisions.

All information given is of a general nature. Individuals seeking to use e-cigarettes should obtain medical and/or legal advice for their own situation.

The research evidence surrounding electronic cigarettes is evolving rapidly. Every attempt has been made to ensure the accuracy and currency of this information at the time of writing. ATODA and ACT Health are planning a revision in 2018.

