

## Electronic cigarettes in workplaces

Updated October 2016

This information sheet has been developed to assist workplaces to address electronic cigarette use either as part of a smokefree policy or a separate policy. If your organisation does not have a smokefree policy and is interested in developing one, a copy of Quit Victoria's *Going smokefree guide for workplaces* can be found at [www.quit.org.au](http://www.quit.org.au).

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*Please note: This information sheet does not constitute legal advice and should not be relied on as such. Consider whether you or your organisation should seek legal advice tailored to your specific circumstances.*

## What are electronic cigarettes?

Electronic cigarettes are products that are designed to deliver nicotine and/or other chemicals to the user via an aerosol vapour. They are designed to look like tobacco cigarettes and to be used in a way that replicates the feeling and act of smoking tobacco cigarettes. Electronic cigarettes do not contain tobacco and they can vary in terms of ingredients and designs. While many electronic cigarettes contain nicotine, non-nicotine electronic cigarettes are also available and many brands (both nicotine and non-nicotine) come with fruit, confectionary and other flavours(1-3).

## Are electronic cigarettes legal in Australia?

See Quit Victoria's information sheet on *the legal status of electronic cigarettes in Australia* for a full discussion. A summary is provided below.

- ***Electronic cigarettes containing nicotine are illegal***

Currently, the sale, use or possession of electronic cigarettes that contain nicotine is against the law in Victoria (and every state and territory in Australia)(4-11).

Many people think that it is legal to import electronic cigarettes containing nicotine (e.g., by ordering them online) for personal use only. This is not accurate. People might be able to import electronic cigarettes containing nicotine for personal use through the Therapeutic Goods Administration Personal Importation Scheme, which among other things requires the importer to have a medical prescription from a doctor(12). It could be that holding a medical prescription for the nicotine electronic cigarette would mean that its possession would no longer be prohibited under state and territory drugs and poisons laws - but it would be prudent for consumers to check with their relevant drugs and poisons department if this is the case. It is also unclear whether a doctor would ever issue a medical prescription for a product that has not been approved by the Therapeutic Goods Administration (TGA).

The TGA is responsible for approving all (non-tobacco) nicotine products intended for human use. This is because nicotine is classed as a dangerous poison and any products containing nicotine need to be evaluated for safety and efficacy before being made available to consumers. It is up to individual manufacturers to apply to have their products approved by the TGA and many nicotine replacement therapies (NRTs), such as patches, spray and gums, have been approved. To date, no electronic cigarette product has been approved by the TGA(13, 14).

- ***Non-nicotine electronic cigarettes are legal***

The sale of electronic cigarettes that do not contain nicotine is not against the law in Victoria. However, these products cannot be promoted with ‘therapeutic’ claims – for example, claims that they can assist people with quitting tobacco cigarettes - if they have not been approved by the TGA(15). Use of non-nicotine electronic cigarettes is also legal (except in smokefree places in Queensland, discussed below).

### **Is it against the law to use electronic cigarettes in workplaces?**

Electronic cigarettes are not currently covered by smoke-free laws in Victoria (although see further below regarding new laws scheduled to come into effect on 1 August 2017). However, use and possession of electronic cigarettes that contain nicotine is unlawful under drugs and poisons laws, because nicotine is classed as a dangerous poison (13, 14). Although the use of electronic cigarettes that do not contain nicotine is not against the law, workplaces can implement policies to ban electronic cigarette use in the same way that they can introduce smokefree policies on tobacco use.

To date, Queensland, New South Wales and the ACT are the only states and territory to bring electronic cigarettes under tobacco control laws.

- In Queensland, tobacco control laws prohibiting sales to minors, restricting advertising and display at retail outlets, and prohibiting use in smokefree areas now also apply to “personal vaporisers”, which includes electronic cigarettes. These restrictions apply to all electronic cigarettes, even those that may be approved by the TGA in the future. These laws came into effect on 1 January 2015(16).
- In NSW, it is an offence to sell electronic cigarettes and accessories to minors or for adults to purchase these products on behalf of minors (17) and police have powers to seize electronic cigarettes from minors(18). There are also restrictions on vending machines used for selling electronic cigarettes and related offences(19). These laws came into effect on 1 September 2015(20). NSW tobacco control laws on retail sale and display, advertising and promotion, and smoking in motor vehicles with juveniles (under 16) present will apply to electronic cigarettes from 1 December 2015 (20, 21).
- As of 1 August 2016, the sale of electronic cigarettes to minors and the use of electronic cigarettes in smokefree areas is prohibited in the ACT.(22) In addition, there are laws restricting the advertising and display of electronic cigarettes at retail outlets in the ACT. (23)

## Victoria's new laws regarding electronic cigarettes – 1 August 2017

On 13 October 2016, the Victorian Parliament passed the *Tobacco Amendment Bill 2016* (Vic). The Bill contained a number of new laws regarding the supply and use of electronic cigarettes in Victoria. The new laws include:

- (a) a ban on the use of electronic cigarettes in legislated smokefree areas (including workplaces);
- (b) a ban on the sale of electronic cigarettes to minors;
- (c) restrictions on the advertising and display of electronic cigarettes at retail outlets.(24)

These laws will apply to both nicotine and non-nicotine electronic cigarettes.

The new laws will come into effect on 1 August 2017.

For further information about the new laws, see the Victorian Department of Health website on Tobacco Reforms at: <https://www2.health.vic.gov.au/public-health/tobacco-reform>

## Reasons for addressing electronic cigarettes in the workplace

- ***Nicotine electronic cigarettes are against the law.***

Possession and use of electronic cigarettes that contain nicotine is against the law(13, 14). Even though use of non-nicotine electronic cigarettes is not against the law, those products look very similar to the illegal nicotine products, so it may be difficult to distinguish between the two.

- ***Electronic cigarettes are not harmless.***

A number of studies have demonstrated that electronic cigarettes are not harmless. Research suggests that electronic cigarettes contain substances which have been shown to have adverse health effects when inhaled, including effects on the immune system, respiratory system and cardiovascular system.(25-30). Further, research demonstrates that a number of electronic cigarettes are unlikely to meet basic consumer product safety standards, including around design features, packaging, accuracy and clarity of labelling and quality of instruction on use(31). There have been multiple reports of electronic cigarettes “blowing up” while on charge, causing serious injuries and property damage(32).

Electronic cigarettes that contain nicotine and that are poorly designed can be dangerous because nicotine is a poison that can be lethal in small doses. In the UK and US (where nicotine electronic cigarette use is lawful), poisons authorities have experienced dramatic rises in the number of calls reporting nicotine poisoning associated with electronic cigarettes(33-35). It has been reported that electronic cigarette related nicotine poisonings are occurring in Australia, including among toddlers(36).

- ***Supporting smokers who want to quit.***

Workers who are trying to quit tobacco might find it harder because observing the use of electronic cigarettes by others - which closely mimics tobacco cigarette smoking – could produce cravings(37, 38).

- ***Electronic cigarettes are unproven as quitting aids and there are other ways to support smokers to quit.***

There is a lack of evidence that electronic cigarettes are effective for helping people to quit tobacco smoking(13). In fact, a number of studies suggest that electronic cigarettes are ineffective as an aid to smoking cessation or reduction.(39, 40) People using electronic cigarettes as an aid to help them quit tobacco smoking can still use approved NRTs for this purpose, such as patches, gum, lozenges, mouth spray, inhalators or combined therapy (using two types of nicotine replacement products at the same time)(41).

- ***Protecting employees from secondhand exposure.***

Electronic cigarettes could have negative health impacts on people exposed to secondhand vapour. Numerous studies suggest that secondhand e-cigarette vapour contains pollutants at levels above background, and at concentrations that are associated with potential adverse health effects.(42-44)

For other issues relating to electronic cigarettes, see [Appendix 2](#).

## Options for banning electronic cigarettes in your workplace

Regardless of whether or not your organisation has an existing smokefree policy, there are a few policy options available for banning the use of electronic cigarettes in your workplace.

When developing your policy it is important to ensure good communication with staff, for example, by explaining the reasons for the policy, what's required of staff and the policy start date. The development of an electronic cigarette policy is also a good time to offer support to staff who may be looking to quit smoking tobacco cigarettes. Below is a selection of three policy approaches that may suit your workplace's needs:

**1. No existing policy is in place and your organisation wants to develop a smokefree policy that includes regular tobacco products and also electronic cigarettes.**

If your workplace does not currently have a smokefree policy and would like to develop one to ban the use of regular tobacco products as well as electronic cigarettes, refer to Quit's *Going Smokefree Guide for Workplaces*, which outlines steps for developing a policy. The sample wording used in [Appendix 1](#) of this document can be adapted to cover electronic cigarette use.

**2. Your organisation has an existing smokefree policy and wants to extend it to cover electronic cigarette use.**

Your organisation can extend its current smokefree policy to include electronic cigarette use. The sample wording used in [Appendix 1](#) of this document can be adapted for this purpose. Refer to Quit's *Going Smokefree Guide for Workplaces* for information on updating your smokefree policy in general, as some of these steps may be applied to banning electronic cigarettes in your workplace.

**3. Your organisation would like a stand-alone electronic cigarettes policy, regardless of whether or not it has a smokefree policy.**

If your organisation would like a separate electronic cigarettes policy, the sample wording provided in [Appendix 1](#) of this document can be adapted for this purpose. You can follow Quit's *Going Smokefree Guide for Workplaces* for information on undertaking the general steps required for implementing a policy that deals with electronic cigarette use.

## Providing support for staff

Staff who want to quit smoking tobacco cigarettes can be encouraged and supported by:

- The provision of a Quit pack (a free booklet containing information on how to quit, call the Quitline on 13 7848 to obtain these)
- Having NRT available for staff (the workplace may choose to fully or partially subsidise NRT products for staff)
- Calling the Quitline on 13 7848
- Visiting the Quit website [www.quit.org.au](http://www.quit.org.au)

# Appendix 1. Sample wording for a workplace policy on electronic cigarette use

## 1. Purpose of this policy

The purpose of the [*name of workplace*] electronic cigarettes policy is to:

- (a) **Protect staff and visitors** from the unknown health effects and other risks associated with electronic cigarettes. These include:
- potential short and long-term health risks arising from use and exposure to secondhand vapour;
  - the risk of nicotine poisoning; and
  - injuries and property damage that can result from the malfunctioning of electronic cigarettes.
- (b) **Support staff and visitors** who are trying to quit smoking tobacco. Because electronic cigarette use mimics the act of smoking tobacco, being around people who use electronic cigarettes might trigger cravings to smoke tobacco cigarettes for people who are trying to quit.
- (c) **Prohibit illegal products**, as it is unlawful to possess and use electronic cigarettes that contain nicotine in Victoria.

## 2. Start date

The policy is effective from [*start date of policy*].

## 3. Smoking tobacco and electronic cigarette use

[*Name of organisation*] prohibits the use of electronic cigarettes within its buildings, premises and vehicles. This applies to all staff and visitors to [*name of organisation*].

In addition to use, the following is also prohibited:

- Putting electronic cigarettes on charge
- Possession of any electronic cigarette or refill vial that contains nicotine (which is against the law in Victoria).

The phrase "electronic cigarette" includes a broad category of products including e-shisha, e-cigars, e-pipes, e-Hookas, hookah-pens, vape-pipes, e-cigs, and e-cigarettes that are designed to allow users to inhale nicotine and/or other chemicals. It covers both nicotine and nicotine-free products.

#### **4. Smoking breaks/ breaks to use electronic cigarettes**

Staff members are not permitted to use electronic cigarettes on [*name of workplace*] grounds. Use of electronic cigarettes is only allowed during designated breaks, outside of [*name of workplace*] grounds. Note however that possession of an electronic cigarette that contains nicotine is prohibited under law (and by this policy) so you will not be able to store such a product at work for use on breaks. Refer to 'compliance with the policy' for managing breaches of this policy.

#### **5. Supporting staff members who smoke/use electronic cigarettes**

To help electronic cigarette users who smoke and smokers who wish to modify or quit smoking tobacco products, [*name of workplace*] will provide support to help them adjust to the changes. This includes: [list supports provided. For example:]

- Promoting the Quitline 13 7848
- Making health information available
- Providing free/ subsidised nicotine replacement therapies (such as patches for 10 weeks)

#### **6. Compliance with the policy (for staff)**

*[a clear statement is required on what the consequences are if a staff member is non-compliant with the policy].*

#### **7. Compliance with the policy (for visitors)**

The following three-step non-compliance strategy will be followed if a visitor breaches the [*name of workplaces*]'s electronic cigarette policy:

- (a) Assume that the person is unaware of the policy.
- (b) A staff member or security staff will approach the person breaching the policy and politely ask them to refrain from electronic cigarette use and advise or remind them about the electronic cigarette policy.
- (c) If the behaviour continues, the person will be made aware that if they do not stop using the electronic cigarette, they will be required to leave the facility.

## Appendix 2. Other concerns about electronic cigarettes

- While it is widely acknowledged that electronic cigarettes are likely to be less dangerous than tobacco products, research indicates that electronic cigarettes are not harmless. The World Health Organization and other researchers are concerned about the safety of the chemical combinations used across the variety of products available. These chemical combinations have not been properly evaluated for either short-term or long-term safety; and manufacturers have not fully disclosed the chemicals used(1, 45). In addition, a number of studies suggest that electronic cigarettes contain substances which have been shown to have adverse health effects when inhaled, including effects on the immune system, respiratory system and cardiovascular system.(25-30)
- Products inhaled directly to the lung are normally only approved after extensive evaluation due to the serious issues that can potentially arise with this form of substance delivery(1). No electronic cigarettes currently available through retail in Australia have gone through formal TGA evaluation.
- A number of Australian public health bodies have expressed concern regarding the safety of electronic cigarettes.(46-48)
- A number of studies suggest that electronic cigarettes may be ineffective as an aid to smoking cessation or reduction.(39, 40) If the products are not effective as quitting aids, smokers using them to assist in quitting tobacco may not be successful and may maintain a tobacco addiction that might have been broken using other proven quitting methods(1).
- Because electronic cigarettes look a lot like tobacco cigarettes, electronic cigarette use could potentially confuse people into thinking that smoking tobacco cigarettes is permitted in places where it is not(49).
- There are concerns that use of electronic cigarettes in places where tobacco use is prohibited could delay a person's desire to quit because the nicotine-based products allow nicotine addiction to be maintained (49-53).

- There are concerns that electronic cigarettes could re-glamorise tobacco smoking generally and appeal to young people(54, 55). Research demonstrates that use of electronic cigarettes among young people is growing at significant rates in the US(56), also giving rise to concerns that electronic cigarettes could be a gateway to tobacco use(57-60).

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