

RETAILER FACTSHEET

Ban on display of tobacco, smoking and e-cigarette products in retail outlets

The *Public Health (Tobacco) Act 2008* prohibits the display of tobacco products, non-tobacco smoking products, smoking accessories, e-cigarettes and e-cigarette accessories. All retailers must comply.

When this factsheet refers to tobacco and e-cigarette products it means all tobacco products, non-tobacco smoking products, smoking accessories, e-cigarettes and e-cigarette accessories.

Why does the law ban the display of tobacco or e-cigarette products?

Research shows that tobacco displays can influence children's perceptions about the availability and accessibility of cigarettes in their community and can also make it harder for people to quit. The law bans the display of e-cigarette and accessories to protect children and young people from any potential risks that e-cigarettes may pose.

What does a display ban mean?

Retailers need to ensure that tobacco and e-cigarette products cannot be seen by the public from inside or outside the premises. This applies to vending machines in the same fashion as all other storage solutions.

The exceptions are where:

- ✓ a member of the public displays their own tobacco or e-cigarette products; or
- ✓ a tobacco or e-cigarette product is displayed to a customer at his or her direct request, including during the actual transaction/sale.

It is also acknowledged that retailers may need to periodically restock their storage units and that there may be some unavoidable, inadvertent display of tobacco and e-cigarette products during this time (See the Frequently Asked Questions section in this factsheet).

How can retailers be sure they comply with the display ban requirements?

There are a variety of ways in which premises retailing tobacco products, non-tobacco smoking products, smoking accessories, e-cigarettes and e-cigarette accessories may be configured. In all cases these products **must not be seen by members of the public from inside or outside the premises.**

Is general information about the display ban available?

Different types of retail outlets may require different storage configurations for their tobacco or e-cigarette products. Some retailers may need to change their storage units to ensure that products are kept out of sight. Any option that could allow people to see tobacco or e-cigarette products during business operating hours, including incidental exposure, is not allowed.

Some general tips for retailers are provided below:

- ✓ arrangements should minimise exposure of tobacco or e-cigarette products during a retail transaction - the use of a large public-facing storage device with a single opening is unlikely to comply;
- ✓ storage devices should not be left open for a period of time allowing tobacco or e-cigarette products to be displayed to members of the public;
- ✓ tobacco or e-cigarette products should not be shown to a customer to help in product selection, except when requested by the customer;
- ✓ retailers need to ensure that members of the public are not exposed to tobacco or e-cigarette products when multi-facing storage devices are used in retail premises;
- ✓ retailers need to ensure that members of the public are not exposed to tobacco or e-cigarette products when accepting inventory; and
- ✓ retailers should not allow any broken storage devices, which allow the display of tobacco or e-cigarette products to members of the public, to remain unrepaired.

For more information about some of these tips, please see the Frequently Asked Questions section in this factsheet.

How will customers know what brands and types of tobacco or e-cigarettes are available in a retail outlet?

Retailers may choose only one method to display basic information about tobacco and e-cigarette products, such as prices and names, through the use of:

- ✓ price tickets; or
- ✓ a single price board.

Retailers may use one or the other of the above methods but **NOT** both. Therefore the same method of displaying prices and names of product lines must be used for all product lines carried by the business.

The use of tobacco, smoking and e-cigarette product catalogues is not allowed. Information about how prices of tobacco or e-cigarette products may be displayed is contained in the *Public Health (Tobacco) Regulation 2016*.

Requirements for price tickets

If retailers choose to use price tickets, they must ensure that they:

- ✓ only use 2 colours - 1 for the ticket and 1 for the price and other information permitted to be on the ticket;
- ✓ are not coloured in fluorescent colours or in a more distinctive manner than price tickets used for other merchandise in the retail outlet;
- ✓ are not highlighted by any lighting;
- ✓ are no larger than 35 square centimetres in area;
- ✓ contain lettering not more than 2 centimetres in height and not more than 1.5 centimetres in width;
- ✓ use only one font for information displayed on it;

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- ✓ do not contain information other than the name of the product line, a bar code or other identifying codes, the price and a symbol indicating the country of origin;
- ✓ display the price and name of the product line only once for each product line carried by the retailer;
- ✓ are attached to the sales unit;
- ✓ have no other article or thing attached to them; and
- ✓ are not arranged with other price tickets so as to create an image or visual effect from the arrangement that would be incomplete if any one ticket were removed.

Requirements for a price board

If retailers choose to use a price board, they must ensure that they only use one and it must:

- ✓ not contain information other than the names of the product lines and prices;
- ✓ be no larger than 2,000 square centimetres in area;
- ✓ have a black background with white lettering or a white background with black lettering (but not both);
- ✓ contain lettering that is not more than 2 centimetres in height and not more than 1.5 centimetres in width;
- ✓ use only one font for information displayed on it;
- ✓ be placed directly adjacent to the sales unit;
- ✓ display the price and name of the product line only once for each product line carried by the retailer;
- ✓ have no other article or thing attached to it; and
- ✓ not be highlighted by any lighting.

FREQUENTLY ASKED QUESTIONS

Q: What types of products are covered by the display ban? What about matches and lighters?

A: “Tobacco products”, “non-tobacco smoking products”, “smoking accessories”, “e-cigarettes” and “e-cigarette accessories” are all required to be kept out of sight of customers and other people inside or outside the premises.

- ✓ tobacco product means tobacco, or a cigarette or cigar, or any other product containing tobacco and designed for human consumption or use.
- ✓ non-tobacco smoking product means any product (other than a tobacco product) that is intended to be smoked, and includes any product known or described as herbal cigarettes.
- ✓ smoking accessory includes cigarette papers, pipes, cigarette holders, hookahs, water pipes or any other smoking implement.
- ✓ Matches, lighters and ashtrays are not included in the definition of smoking accessory and there is no restriction on their display.
- ✓ E-cigarette means an electronic device for the inhalation of a vapour (whether or not containing nicotine) that is meant to produce an experience similar to smoking.
- ✓ An e-cigarette accessory includes any of the following:
 - 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
 - any other component of an e-cigarette (or class of e-cigarettes) of a kind prescribed by the regulations.

Q: What type of storage unit can I use to comply with the ban on the retail display of tobacco products and e-cigarette products?

A: Retailers may consider a range of different storage arrangements to meet their obligations under the law. See the [factsheet on Tobacco and e-cigarette storage options](#) for more information and some images of storage devices.

In storing tobacco products, retailers will choose an arrangement that suits their business needs, but must also ensure that the arrangements comply with the law.

Public-facing cupboards with opening doors generally mean that opening a cupboard in order to select a particular item would also involve displaying the tobacco products or e-cigarette products stored in the cupboard. This means that there is likely to be a substantial and repeated display of products throughout business hours. This would place retailers at a higher risk of prosecution.

Retailers choosing to use such an arrangement need to recognise the greater risk and take appropriate action to reduce it – for example by training staff, placing cupboards in a location which is not facing the public; using cupboards with a larger number of smaller doors; using self-closing cupboard doors; using curtains or other shrouding behind any cupboard doors; or looking at more cautious designs such as “flipper arrangements” which conceal almost all of the surface of the product package, but still allow access to the products for sales purposes.

Drawers and shelves may also be used, as long as the products are shielded from view by covering any transparent surfaces with a covering material. The issues to consider in relation to cupboards also apply to drawers and shelves, including placement of storage units.

Roller doors and security devices can be used to ensure products are kept safely. However, due to the greater risk of such devices being left open, it may be appropriate to use mechanisms other than roller doors and security devices to comply with the limitations on displaying products.

In the event NSW Health undertakes an inspection, the efforts made to comply with the law and the nature of the work undertaken in this regard will be considered in any compliance action undertaken.

Q: What about if a customer requests to view a tobacco or e-cigarette product?

A: The legislation allows retailers to display tobacco products, non-tobacco smoking products and smoking accessories to a customer at the customer's request. The same applies for e-cigarettes and e-cigarette accessories. The retailer should ensure that only those products requested by the customer are displayed to that customer, and products which are not purchased are returned to the storage unit before completing the transaction and moving to the next transaction.

Q: How can I easily locate brands, now that there are plain packaging laws in addition to display bans?

A: Some retailers use a diagram underneath the counter for staff use only that assists staff with locating the requested product (without having to physically open each door).

Q: How about when I give the product to the customer?

A: The legislation expressly allows for the display of a tobacco or e-cigarette product to a customer at his or her request and NSW Health interprets this to include for the duration of any relevant transaction with the customer. Once the transaction is complete there is no prohibition on the customer displaying his or her tobacco or e-cigarette product or products and no retailer liability if a customer does so.

Q: What happens when I have to restock my storage unit?

A: Retailers undertaking restocking of their storage units should ensure that exposure of tobacco products, non-tobacco smoking products, smoking accessories, e-cigarettes and e-cigarette accessories to customers is minimised. It is understood that some unavoidable exposure to products may occur during restocking, however retailers should take care to actively minimise the exposure of tobacco or e-cigarette products to the public, whether inside or outside the premises.

Q: What do I do if part of my storage unit breaks or the unit needs to be replaced?

A: From time to time storage units will need to be replaced or repaired. At these times, retailers should take care to ensure that exposure of products to customers is minimised – for example, repairs could be made during hours when the store is not open to customers, or products could be removed while repairs are made. Retailers should not allow any broken storage units, which allow the display of products to customers and other people, to remain unrepaired.

Q: How will NSW Health enforce the law?

A: 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 tobacco, smoking and e-cigarette products in retail outlets.

NSW Health uses a range of strategies to encourage and enhance compliance including advice, formal warning notices, penalty notices or prosecution. Prosecution is generally reserved for circumstances where there have been ongoing breaches, or a serious breach, of the legislation.

The Ministry of Health's Prosecution Policy and Guidelines (available on the NSW Health website) provide guidance on prosecutorial decisions, and clarify the nature of the issues which would be taken into account in making compliance monitoring and prosecution decisions.

Further information

For further information about tobacco control, please access the NSW Health website and Tobacco Retailer online training: www.health.nsw.gov.au/tobacco or call the Tobacco Information Line on **1800 357 412**.

The Tobacco Information Line can be accessed by non-English speaking persons via the Translating and Interpreting Service (TIS) on **13 14 50**.