



Electronic cigarettes in Western Australia

What are electronic cigarettes?

Electronic cigarettes (e-cigarettes) are battery-powered devices which heat a cartridge containing liquid chemicals and flavouring into a mist which is inhaled through a mouthpiece, and then exhaled by the user as a visible vapour.

They have typically mimicked traditional tobacco cigarettes, cigars or pipes in appearance, but are increasingly available in other styles.

Cartridges may not contain nicotine.

Legal status

In Western Australia, provisions that relate to e-cigarettes are within the Tobacco Products Control Act 2006 and the Medicines and Poisons Act 2014.

Products that resemble tobacco products

In accordance with the Tobacco Products Control Act 2006, a person must not sell any food, toy or other product that is not a tobacco product but is designed to resemble a tobacco product or package.

Manufacturers of e-cigarettes are increasingly making products which diverge from the usual appearance of cigarettes.

In a Western Australian Supreme Court decision on 10 April 2014 e-cigarettes were found to resemble a tobacco product and the seller of these e-cigarettes was convicted of this offence.

The Seller subsequently made application to the Supreme Court to appeal the decision. The appeal was unanimously dismissed in a decision handed down by the Court of Appeal of the Supreme Court of Western Australia on 10 March 2016.

The Court decision highlights that products that resemble tobacco products, regardless of whether they contain nicotine or not, cannot be sold in WA and it is an offence under the Tobacco Products Control Act to sell these products.

Electronic cigarettes in public areas

E-cigarettes have recently been the cause of disputes in some public places due to the confusion they may cause if used in areas where smoking is not allowed.

Owners/managers may choose to implement a policy applying to their premises which prohibits the use of e-cigarettes wherever smoking is prohibited.

Possible wording for such a policy:

- Electronic cigarettes (e-cigarettes) and other personal vaporisers for delivery of nicotine or other substances are not permitted to be used in any area where smoking is restricted.

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