

The Shopfront

YOUTH LEGAL CENTRE

Smoking and vaping – legal issues for young people

1 Introduction

This is a basic guide to the laws about smoking and vaping in New South Wales.

These laws apply to:

- cigarettes;
- other tobacco products (e.g. pipes, cigars, shisha);
- electronic cigarettes (vaping); and
- non-tobacco smoking products (substances other than tobacco that are designed to be smoked, e.g. herbal cigarettes, tobacco-free shisha).

Generally it is legal for a person of any age to smoke or vape, but there are laws restricting purchase and supply and where people can smoke.

Using *cannabis* (except medicinal cannabis with a prescription) is still *illegal* and is *not* covered in this fact sheet (see our fact sheet on *Drugs* for more details).

2 Laws applying to people under 18

2.1 Is it legal for under-18s to smoke or vape?

The short answer is “yes”.

It is *not* an offence for a person aged under 18 to buy, possess or smoke cigarettes or nicotine-free e-cigarettes.

The new vaping laws introduced in 2024 will not change this.

However, police can confiscate cigarettes or other smoking products from people under 18.

There are also laws against selling these products to, or buying them on behalf of, under-18s.

2.2 Selling and buying tobacco and/or e-cigarettes

It is illegal to sell tobacco, non-tobacco smoking products or e-cigarettes and e-cigarette accessories to a person under 18 years of age (*Public Health (Tobacco) Act 2008* section 22).

The maximum penalty is a fine of \$11,000 (for a first offence) or \$55,000 (for a second or subsequent offence).

“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” (*Public Health (Tobacco) Act 2008* section 4).

It is also illegal to purchase tobacco, smoking or vaping products on behalf of a person under 18 years of age (*Public Health (Tobacco) Act 2008* section 23). This carries a maximum fine of \$2,200.

It is legal to *give* cigarettes etc. to a person under 18, although we don’t recommend it.

2.3 Police power to confiscate cigarettes and other smoking products

A police officer may confiscate tobacco or non-tobacco smoking product from a person under 18 in a public place (*Public Health (Tobacco) Act 2008* section 26).

The maximum penalty is a fine of \$11,000 (for a first offence) or \$55,000 (for a second or subsequent offence).

3 Vaping

3.1 New laws in 2024

The Australian Federal Government has started introducing new laws to address the increased health risks posed by vaping and nicotine dependence.

The first stage introduced stricter rules on importing vapes from 1 January 2024, with further controls commencing in stages on 1 March, 2 July and 1 October 2024.

From 1 July 2024, the domestic manufacture, advertising, supply and commercial possession of non-therapeutic vapes will be criminalised. This means people can no longer legally obtain non-therapeutic vapes in Australia.

For more information see <https://www.tga.gov.au/products/unapproved-therapeutic-goods/vaping-hub/reforms-regulation-vapes>.

3.2 Non-therapeutic vapes

Non-therapeutic vapes are vapes (with or without nicotine) that are used recreationally and not as part of a program to quit smoking.

From 1 July 2024 it is no longer lawful for non-therapeutic vapes to be manufactured, supplied, or advertised in Australia.

3.3 Therapeutic vapes

Therapeutic vapes generally contain nicotine and are aimed at helping people quit smoking.

Nicotine for therapeutic use is currently a prescription-only medicine (except in products such as nicotine patches, gums, and mouth sprays).

It is currently in Schedule 4 of the Australian Poisons Standard (<https://www.legislation.gov.au/F2023L01294/asmade/text>) which means it is a “restricted substance” under NSW law (*Poisons and Therapeutic Goods Act 1996* section 3).

It is *not* an offence to *possess* therapeutic vapes without a prescription because, although nicotine is a restricted substance, it is not a “prescribed restricted substance” under NSW law.

However, it is an offence to *supply* certain restricted substances (which may include vapes containing nicotine, or nicotine-containing liquids for use in e-cigarettes) without a valid prescription or other lawful authority. Maximum penalties vary depending on the exact offence but can involve fines of up to \$2,200 and/or 2 years’ imprisonment. (*Poisons and Therapeutic Goods Act 1996* sections 9-11).

From 1 October 2024, vapes for a therapeutic purpose containing nicotine will be reclassified to Schedule 3 of the Poisons Standard. This means therapeutic nicotine will no longer be a “restricted substance” under NSW law.

From 1 July 2024 to 30 September 2024, it is possible to get therapeutic vapes on prescription if you are over 18 and if it is prescribed by a doctor as part of a smoking cessation plan.

From 1 October 2024 onwards, it will be lawful to buy therapeutic vapes from a pharmacy:

- over the counter, if you are aged 18 or over and are able to present ID showing your age. The pharmacist will need to be satisfied that it is clinically appropriate.
- on prescription, if you are under 18 and have been prescribed therapeutic vapes for smoking cessation treatment.

3.4 Importing vapes or e-cigarettes

Importing e-cigarettes containing nicotine

Until 1 March 2024, e-cigarettes containing nicotine (or nicotine-containing liquids for use in e-cigarettes) for therapeutic purposes could legally be imported under the Personal Importation Scheme (*Therapeutic Goods Act 1989* (Commonwealth) section 18; *Therapeutic Goods Regulations 1990* (Commonwealth) Schedule 5).

From 1 March 2024, individuals can no longer order vapes directly from overseas, even if they have a prescription. It is now illegal to import vapes even if they were ordered before 1 March 2024 and haven't yet arrived in Australia.

A limited exception will allow international travelers arriving in Australia to bring two vapes for their own treatment or to treat someone who is travelling with them and is under their care (*Customs (Prohibited Imports) Regulations 1956* (Cth) sub-regulation 5A(2)).

Importing will still be legal with an import licence/permit from the Office of Drug Control, but these would usually only be issued to commercial importers.

Importing nicotine-containing e-cigarettes without a valid permit is illegal and may attract harsh penalties, including a fine of up to \$222,000 (*Customs Act 1901* (Cth) section 233BABA E).

Ban on importing single-use disposable vapes from 1 January 2024

From 1 January 2024, it is illegal to import single-use disposable vapes, regardless of whether they contain nicotine or whether you have a prescription (*Therapeutic Goods Legislation Amendment (Vaping) Regulations 2023* (Cth); *Customs (Prohibited Imports) Regulations 1958*). This includes vapes that were ordered before 1 January 2024 which have not yet arrived in Australia.

An exception applies to international travellers arriving in Australia, who can bring two vapes and a small quantity of vape cartridges, capsules, pods and liquids, if it is for their own treatment or to treat someone who is travelling with them and is under their care (*Customs (Prohibited Imports) Regulations 1956* (Cth) sub-regulation 5A(2)).

4 Selling and supplying tobacco, vapes or e-cigarettes

4.1 Selling and supplying cigarettes, tobacco, etc

Generally, it is legal for you to *give out* or *share* cigarettes (and other smoking products such as e-cigarettes or shisha).

It is illegal to *sell* cigarettes to someone under 18 or to buy them on behalf of someone under 18 (see Part 2 of this fact sheet for more details).

It appears to be legal for an individual to sell cigarettes to another person aged over 18 (e.g. selling a few cigarettes to a friend), although we don't recommend this.

There are laws and regulations about wholesale and retail sale (for more information see <https://www.health.nsw.gov.au/tobacco/Pages/tobacco-retailing-laws.aspx>).

4.2 Selling and supplying vapes

From 1 July 2024 onwards, it is unlawful to sell non-therapeutic vapes in Australia.

Pharmacies can still sell therapeutic vapes in some circumstances (see part 3.3 above).

5 Smoke-free areas

Smoking and using e-cigarettes (vaping) is banned in all enclosed public places and certain outdoor public places (*Smoke-free Environment Act 2000* sections 6 and 6A; *Smoke-free Environment Regulation 2016*).

The use of e-cigarettes is “smoking” for the purposes of smoke-free areas and signage (*Smoke-free Environment Amendment Act 2000* section 4).

Enclosed public places include shopping centres, cinemas, libraries, trains and buses (*Smoke-free Environment Act 2000* Schedule 1).

Outdoor public places that are smoke-free areas include public swimming pools, spectator areas, public transport stops and platforms, within 4 metres of a pedestrian access point to a public building, and commercial outdoor dining areas (*Smoke-free Environment Act 2000* section 6A).

It is an offence to smoke or use e-cigarettes in a smoke-free area, unless you didn’t know it was a smoke-free area and there was no simple way of knowing it was a smoke-free area (*Smoke-free Environment Act 2000* section 7). There is a \$300 on-the-spot fine, or a maximum \$550 fine if convicted by a court.

It is also an offence to smoke or use e-cigarettes on public transport vehicles such as trains, buses, light rail and ferries, or in related public areas like train stations (*Passenger Transport (General) Regulation 2017* clause 51). There is a \$300 on-the-spot fine, or a maximum fine of \$550 if convicted by a court.

It is an offence to smoke or use e-cigarettes in a vehicle with a child under 16 in the vehicle (*Public Health (Tobacco) Act 2008* section 30). There is a \$250 on-the-spot fine, or a maximum \$1,100 fine if convicted by a court.

6 How offences are dealt with

6.1 Court

Any of the offences mentioned in this fact sheet can end up in court, most likely the Local Court (or the Children’s Court if you were under 18 at the time of the alleged offence).

This fact sheet sets out the *maximum* penalties, which are not often imposed. Apart from fines and imprisonment, courts have other sentencing options such as cautions (for children), “section 10” dismissals (for adults), good behaviour bonds and conditional release orders. For more information about sentencing options see our fact sheet on *Sentencing*.

6.2 On-the-spot fines

The police can issue on-the-spot fines (penalty notices) for most smoking-related offences.

You can choose to pay the fine or contest it in court. Taking it to court may be a good idea in some cases, but you could end up with a criminal record, so it’s best to get legal advice before you decide.

Doing nothing will not make the fine go away and may have serious consequences. See our fact sheet on *Fines* for more information.

6.3 Young Offenders Act

The *Young Offenders Act* allows some offences committed by people under 18 to be dealt with by a warning, caution, or Youth Justice Conference instead of going to court.

This would apply to most smoking-related offences.

See our fact sheet on *The Young Offenders Act* for more information.

7 More information

NSW Health: links to resources about tobacco and smoking in NSW. There are links to other resources/webpages with information about laws relating to smoking and tobacco, as well as resources for individuals who wish to quit, and resources for professionals who are helping others quit. <https://www.health.nsw.gov.au/tobacco/Pages/default.aspx>

Therapeutic Goods Administration (TGA): Information about how the TGA defines and regulates vapes in Australia. There are links to further webpages about how patients can access vapes and how the importation, supply and prescription of vapes is regulated. There are also details about support services that can help with quitting smoking. <https://www.tga.gov.au/products/unapproved-therapeutic-goods/vaping-hub>

The Shopfront Youth Legal Centre Updated July 2024

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The Shopfront Youth Legal Centre is a service provided by Herbert Smith Freehills in association with Mission Australia and The Salvation Army.

This document was last updated in July 2024 and to the best of our knowledge is an accurate summary of the law in New South Wales at that time.

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