



Australian Government

Department of Health and Aged Care

# GUIDE TO **ADVERTISING AND SPONSORSHIP PROHIBITIONS**



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## DISCLAIMER

All manufacturers, packagers, suppliers and retailers (including importers and wholesalers) of tobacco products should ensure they understand all of the requirements in the *Public Health (Tobacco and Other Products) Act 2023*, the *Public Health (Tobacco and Other Products) Regulations 2024* and other applicable Commonwealth, state and territory law.

This guide does not itemise all of the requirements under the Commonwealth Public Health (Tobacco and Other Products) legislation or other applicable law. The requirements that are not itemised in this guide are not any less important or significant than those that are displayed.

The guide does not provide legal advice and is not to be relied upon as a source of legal advice. It is provided for general information and as such any person reading this guide should rely upon their own judgement and make their own inquiries seeking relevant professional advice. Reliance on this guide is no excuse to ignorance of any applicable law.

There are additional requirements under the Commonwealth Public Health (Tobacco and Other Products) legislation for tobacco products and packaging. Anyone who possesses, manufactures, packages, purchases, sells or supplies (including import, wholesale and retail), tobacco products or tobacco product accessories in Australia, must ensure they comply with these requirements. There are some limited exceptions for personal use or export out of Australia of tobacco products and tobacco accessories.

Nothing in this guide should be taken in any way to replace the provisions of the *Public Health (Tobacco and Other Products) Act 2023*, the *Public Health (Tobacco and Other Products) Regulations 2024* or other applicable Commonwealth, state or territory law.

The Department of Health and Aged Care (the department) does not certify compliance with any tobacco legislation. The department does not undertake a review or approval scheme for tobacco packaging and the associated health warnings, tobacco product safety, tobacco advertising, or any other tobacco legislation issues.

For complete requirements refer to the legislation available at <http://www.legislation.gov.au>.

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# Introduction

## Purpose of the guide

The Australian Government Department of Health and Aged Care (the **department**) has produced this guide to help the public understand the Commonwealth's *Public Health (Tobacco and Other Products) Act 2023* (the **Act**) and the *Public Health (Tobacco and Other Products) Regulations 2024* (the **Regulations**), specifically the requirements for advertising and sponsorship. This guide is not intended to comprehensively cover all requirements for advertising and promotion of regulated tobacco items and e-cigarette products.

This guide does not contain tobacco product requirements, or the requirements relating to health warnings, health promotion inserts or point-of-sale requirements.

While the Act and Regulations apply to advertising of e-cigarettes, the specific requirements applicable to these products are not contained within this guide.

The *Therapeutic Goods and Other Legislation (Vaping Reforms) Act 2024* (**Vaping Reforms Act**) commenced on 1 July 2024. The Vaping Reforms Act amended the *Therapeutic Goods Act 1989* (**Therapeutic Goods Act**) to establish a national approach to the importation, domestic manufacture, supply, commercial possession and advertisement of vaping goods (which includes e-cigarettes) in Australia. Among other things, it prohibits retailers such as tobacconists, vape shops and convenience stores from selling or advertising vaping goods.

The Therapeutic Goods Act prohibits advertising of vaping goods except where specifically authorised. These controls apply to all forms of advertising, including to consumers and persons within the wholesale supply chain, and includes online advertising, in-person advertising as well as other forms of advertising, such as the labelling of vaping goods. There are very significant penalties under the Therapeutic Goods Act for advertising vaping goods without authorisation in Australia.

Any advertisement for e-cigarettes must comply with both the Therapeutic Goods Act and the Commonwealth Public Health (Tobacco and Other Products) legislation (and any other applicable Commonwealth, state or territory law).

Guidance on the prohibitions for advertising and promotion of vaping goods in Australia under the Therapeutic Goods Act can be found on the [Therapeutic Goods Administration Vaping Hub](#) (TGA Vaping Hub).

Guides for the implementation of the Act include:

- [Guide to Tobacco Product Requirements](#)
- [Guide to Tobacco Packaging Requirements](#)
- [Guide to Health Warnings](#)
- [Guide to Health Promotion Inserts](#)
- [Guide to Online Point-of-Sale Advertising Requirements](#)

All of these resources will be available from <https://www.health.gov.au/>.

For any inquiries regarding the application of the Act and/or Regulations relating to e-cigarettes, please contact the department at [TobaccoCompliance@health.gov.au](mailto:TobaccoCompliance@health.gov.au) and otherwise refer to the [TGA Vaping Hub](#).

You are encouraged to download an up-to-date version of the Act and Regulations from the Federal Register of legislation website ([www.legislation.gov.au](http://www.legislation.gov.au)).

## Definitions

**'E-cigarette sponsorship'** means any form of contribution (whether financial or otherwise) to an event, activity or individual that promotes, or is likely to promote, the following (whether directly or indirectly):

- (a) vaping;
- (b) an e-cigarette product or the use of such a product.

**'E-cigarette product'** means an e-cigarette or an e-cigarette accessory.

**'E-cigarette'** means a device (whether or not containing nicotine or tobacco) that generates or releases, or is designed or intended to generate or release, by electronic means, an aerosol or vapour for inhalation by its user in a way that resembles, or produces an experience similar to, smoking.

**'E-cigarette accessory'** means any of the following:

- (a) a cartridge, capsule, pod or other vessel that contains, or that is designed or intended to contain, a liquid, gas, aerosol, vapour or other substance for use in an e-cigarette;
- (b) such a liquid, gas, aerosol, vapour or other substance (whether or not containing nicotine or tobacco);
- (c) a heating element designed or intended for use in an e-cigarette;
- (d) a battery specifically designed or intended for use in an e-cigarette.

**'Public Health (Tobacco and Other Products) legislation'** means the *Public Health (Tobacco and Other Products) Act 2023* and the *Public Health (Tobacco and Other Products) Regulations 2024*.

**'Tobacco sponsorship'** means any form of contribution (whether financial or otherwise) to an event, activity or person that promotes, or is likely to promote, the following (whether directly or indirectly):

- (a) smoking;
- (b) a regulated tobacco item or the use of such an item.

**'Regulated tobacco item'** means a tobacco product or a tobacco product accessory.

**'Tobacco product'** means the following designed or intended for human consumption or use:

- (a) processed tobacco in any form;
- (b) a product that contains tobacco as an ingredient.

**'Tobacco product accessory'** means any of the following:

- (a) a cigarette paper (including a pre-rolled cigarette paper) that is not part of a tobacco product;
- (b) a cigarette roller;
- (c) a filter tip for a cigar or cigarette that is not part of a tobacco product;
- (d) a wrapper for tobacco that is in the form of a sheet or tube made from or with tobacco;
- (e) a card, capsule, bead or other device that is designed or intended to alter the flavour, smell or intensity of a tobacco product (except such a device that is part of a tobacco product);
- (f) a pipe designed or intended for smoking pipe tobacco.

*The definitions used in the Public Health (Tobacco and Other Products) legislation can be viewed in section 8 of the Act, and section 5 of the Regulations. The above definitions are provided to assist in understanding this guide.*



# An outline of the advertising and sponsorship prohibitions for tobacco products

The Act prohibits the advertising and promotion of regulated tobacco items, with certain limited exceptions.

The Act also prohibits tobacco and e-cigarette sponsorships.

## Application of state and territory laws

Commonwealth, state and territory laws apply to tobacco advertising.

If there is any inconsistency between Commonwealth and state and territory laws relating to tobacco advertising, the Commonwealth law will apply to the extent of the inconsistency. Where the state or territory law is more restrictive than, but not inconsistent with, the Commonwealth law, then the state or territory law will continue to apply.

For further information about state and territory laws please contact the relevant [state or territory health department](#).

# The general prohibition on tobacco advertising

## Definition of a tobacco advertisement

Tobacco advertisements can take a number of forms, for example magazine and newspaper advertisements, point-of-sale promotions, or images or information published online. For this reason, tobacco advertisements are defined broadly in the Act.

Under the Act, a tobacco advertisement is any form of communication, recommendation or action that promotes:

- smoking
  - this would include, for example, images which depict smoking in shop displays, magazines, websites and on clothing
- a regulated tobacco item or the use of such an item
  - a regulated tobacco item is a tobacco product or tobacco product accessory. A tobacco product is tobacco itself and any product (other than an e-cigarette) that contains tobacco. Cigarette papers, cigarette rollers, filter tips and pipes are tobacco product accessories
  - products that are entered on the Australian Register of Therapeutic Goods maintained under the *Therapeutic Goods Act 1989* are not tobacco products
- the names of tobacco manufacturers, importers etc. that appear on tobacco products or their retail packaging.

## Exceptions to the general prohibition on tobacco advertising

The Act contains a number of exceptions to the general prohibition on tobacco advertising.

The following do **not** constitute a tobacco advertisement under the Act:

- marks that comply with the tobacco product requirements and appear on a regulated tobacco item or its retail packaging
- marks that appear on standard business documents, such as manufacturer or importer orders or invoices that include a company logo
- business signage that is limited to stating the name and contact details of the business, the nature of the business and its location
- a notice of availability of a regulated tobacco item, that does not use the brand name, or variant name of any particular kind of tobacco item, or contain anything that would enable a particular regulated tobacco item, or a range of such items to be identified
- communications relating to consumer matters, such as recalling an item or informing people about their consumer rights in relation to a regulated tobacco item
- communications about government or political matters
- the performance or exhibition of an artistic work in good faith
- a communication which is made for a genuine academic, educational or scientific purpose or any other genuine purpose in the public interest
- journalism that is in the public interest and where no person receives a benefit of any kind from the tobacco industry
- statements by authors that disclose the author's conflict of interest in relation to the work
- statements that acknowledge a contribution made to the author in connection with the preparation of the work.

## Definition of 'publish' a tobacco advertisement

The prohibitions in the Act relate to 'publishing' tobacco advertisements.

The Act provides that a person publishes a tobacco advertisement if they use any kind of communication to make material that is considered an advertisement available to or accessible by the public or a section of the public. This includes if the advertisement is included in a product that is available or sold to the public or a section of the public.

The meaning of 'publishing' is deliberately broad to capture all types of publications from traditional print media, such as newspapers, to electronic publications such as social media platforms. It is intended to include, among other things, material accessible in newspapers, magazines, television, podcasts, public radio broadcasts, content on streaming services, online advertising, social media platforms and products displaying tobacco logos etc.

## Targeted online advertising

Where targeted online tobacco advertising is published and made available because of, for example, the tracking of online activity of individuals, this will fall within the definition of publishing an advertisement.



## Private events or functions

Material made available at private functions or events that promote smoking will also be considered to be publishing an advertisement.

## ***Broadcasting Services Act 1992***

Restrictions have been added to the conditions on various licenses granted under the *Broadcasting Services Act 1992*, which will have the effect of licensees not being able to broadcast or transmit advertisements in contravention of the Act. While the Act contains a permitted publications exception for telecommunications and online service providers, a provider that broadcasts such an advertisement may instead be subject to other sanctions under the *Broadcasting Services Act 1992*.

## Permitted publications

The Act provides for a range of circumstances in which the publication of material that amounts to a tobacco advertisement, and would otherwise be prohibited, is permitted. These include circumstances where a person advertises products at their retail premises in a manner that complies with applicable state or territory law (or, in the absence of applicable state or territory law, any regulations made under the Act).

Online point-of-sale advertisements of tobacco products that comply with applicable state and territory law (or, in the absence of applicable state or territory law, the regulations made under the Act) are also permitted. For further information on this see the department's [Guide to Online Point-of-Sale Advertising Requirements](#).

There are other limited permitted publications including trade communications, periodicals printed overseas and in-flight advertisements (other than those which are published during domestic flights). Where a person publishes an advertisement of a tobacco product for the purposes of compliance activities or acting solely in their capacity as a telecommunication or online service provider, this will also be considered a permitted publication.

# Prohibition on tobacco and e-cigarette sponsorships

The Act contains a prohibition on entering into tobacco or e-cigarette sponsorships.

A tobacco or e-cigarette sponsorship means any form of contribution (whether financial or otherwise) to an event, activity or person that promotes, or is likely to promote, the following (whether directly or indirectly):

- smoking
- a regulated tobacco item or the use of such an item
- vaping
- an e-cigarette product or the use of such a product.

This involves making a contribution of any kind to another person, entering into an arrangement, agreement or understanding with another person or making a promise or giving an undertaking to another person for the purpose of a tobacco or e-cigarette sponsorship.

The prohibition on tobacco or e-cigarette sponsorship is a broad prohibition with wide application which is intended to apply in almost all situations. Most retailer incentive schemes, discounts and/or rebates would not be permitted under the Act.

In most cases, e-cigarette sponsorship will also constitute advertisement of a vaping good for the purposes of the Therapeutic Goods Act. Guidance on the restrictions on advertising and promotion of vapes in Australia can be found on the [TGA Vaping Hub](#).

## Exceptions to the prohibition on tobacco and e-cigarette sponsorships

The Act also contains limited exceptions to the prohibition on tobacco and e-cigarette sponsorships. Under the Act, the following will not amount to a tobacco or e-cigarette sponsorship:

- certain kinds of political donations and electoral expenditure
- statements made by authors to disclose the author's conflict of interest.

However, an exception under the Act applying to the relevant conduct does not mean that the conduct is lawful under the Therapeutic Goods Act. Any person involved in e-cigarette sponsorship or advertising must ensure their conduct is consistent with other applicable Commonwealth, state or territory law, including the Therapeutic Goods Act.

# Enforcing the Public Health (Tobacco and Other Products) legislation

The Government takes breaches of the Act seriously. The department is responsible for investigating reported breaches of the Public Health (Tobacco and Other Products) legislation. The department's [Tobacco Control Enforcement Policy](#) outlines the principles used to guide the department's decisions and actions in enforcing these laws.

Any person who contravenes the Public Health (Tobacco and Other Products) legislation advertising and sponsorship prohibitions may face significant criminal or civil penalties. A range of options are available to enforce the Public Health (Tobacco and Other Products) legislation, including issuing infringement notices, seeking enforceable undertakings or injunctions, or referring the matter to the Australian Federal Police who may, in turn, refer the matter to the Commonwealth Director of Public Prosecutions.

As at publication, the maximum penalty for contravening the advertising and sponsorship prohibitions is 2,000 penalty units (\$660,000) for individuals and 20,000 penalty units (\$6.6 million) for bodies corporate.<sup>1</sup>

If you wish to report a potential breach of the Public Health (Tobacco and Other Products) legislation, please contact the department. Reports of breaches can be submitted in writing through the [make a complaint](#) on the department's website or by emailing [TobaccoCompliance@health.gov.au](mailto:TobaccoCompliance@health.gov.au). Please include sufficient information to enable the department to investigate the alleged breach, including images or document copies demonstrating the allegation where possible.

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<sup>1</sup> Since 7 November 2024, the value of one penalty unit is \$330.00. This amount may be subject to increase in the future.

[www.health.gov.au](http://www.health.gov.au)