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**NSW Police Force**

# **NICOTINE VAPING PRODUCTS: SCHEDULING CHANGES**

## **STATE CRIME COMMAND**

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## **Summary**

- This guidance aims to provide members of the NSW Police Force with information on the 2021 scheduling changes to nicotine vaping products.
- From 1 October 2021, a prescription is required for the supply of nicotine vaping products (including nicotine pods and liquid nicotine).
- In NSW, all nicotine for human use is classified as a Schedule 4 (prescription only) medicine (other than in tobacco for smoking and in registered medicines for transdermal or oromucosal use, i.e., nicotine replacement therapy).
- There is no change to tobacco products or patches used to stop smoking, or e-cigarettes that do not contain vaporised nicotine.
- It remains illegal for other Australian retailers (such as tobacconists, 'vape' shops or convenience stores) to sell nicotine vaping products to consumers, even if the consumer has a valid doctor's prescription.
- Classification of nicotine as Schedule 4 medicines means that vaping products containing nicotine are prescription only but there is no related possession offence.

# Document Control Sheet

## Document Properties

Title	Nicotine Vaping Products: Scheduling Changes
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## Modification History

Version #	Version creation date	Author / Position	Summary of changes
1	12/2021	Crime Prevention Command	Original document
2	03/2024	Crime Prevention Command	Update of guidelines and formatting to reflect Corporate Procedures template
3	07/2024	Crime Prevention Command	Update public disclosure status from 'no' to 'yes'

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## Purpose

This guidance aims to provide members of the NSW Police Force with information on the recent scheduling changes to nicotine vaping products.

## Scope

This document is provided for the information and guidance of all NSW Police Force officers.

## Roles & responsibilities

Assistant Commissioner – State Crime Command	Document approval
Commander – Drug & Firearms Squad	Document sponsor
Commander – Drug & Firearms Squad	Document owner
Drugs, Alcohol & Mental Health Team – Crime Prevention Command	<ul style="list-style-type: none"><li>• Review these procedures prior to the scheduled review date and ensure content remains up to date</li><li>• Support sworn staff by answering queries relating to this guidance as they arise</li></ul>
All Sworn staff	Are encouraged to familiarise themselves with this guidance and follow it when dealing with matters involving nicotine vaping products

## Guidance

### Overview

From 1 October 2021, a prescription is required for the supply of nicotine vaping products (including nicotine pods and liquid nicotine).

**In NSW, all nicotine for human use is classified as a Schedule 4 (prescription only) medicine** (other than in tobacco for smoking and in registered medicines for transdermal or oromucosal use, i.e., nicotine replacement therapy).

There is no change to tobacco products or patches used to stop smoking, or e-cigarettes that do not contain vaporised nicotine.

This means that for consumers to obtain e-liquids and e-cigarettes containing nicotine, they will need to consult with a medical practitioner to obtain a prescription. If prescribed, consumers can obtain their nicotine vaping product either dispensed from an Australian pharmacy (only for persons aged 18 years and over) or import it from overseas websites using the [Personal Importation Scheme](#).

**It remains illegal for other Australian retailers (such as tobacconists, 'vape' shops or convenience stores) to sell nicotine vaping products to consumers, even if the consumer has a valid doctor's prescription.**

## Possession

Classification of nicotine as Schedule 4 medicines means that vaping products containing nicotine are prescription only but there is **no related possession offence**.

This is because the possession offence under s.16(1) of the *Poisons and Therapeutic Goods Act 1985* (PTGA) only applies to a specific group of Schedule 4 pharmaceuticals called 'prescribed restricted substances'<sup>1</sup> and this list does not include nicotine. As such, the possession offence does not apply.

## Seizure

If the circumstances permit a s.21 LEPPRA search and you find a vaping product containing nicotine, such as e-cigarette liquid containing nicotine, you may seize it pursuant to s.21(2)(a) if you suspect on reasonable grounds that the substance is stolen or unlawfully obtained. **The lack of a prescription alone is not sufficient to justify the seizure on this ground.**

## Supply

The supply offence under s.10(3)(b) of the PTGA applies to all Schedule 4 substances (defined as restricted substances in the PTGA) and includes vaping products that contain nicotine.

If the factual scenario presents, police should consider if the definition of 'supply' in s.4 of the PTGA has been made out and an offence pursuant to s.10(3) could be considered. Police should also be aware that the s.10(3) does not apply to a person who has the care of or is assisting in the care of another person who has been prescribed the restricted substance. As always police should seek advice if unsure.

NSW Health inspectors routinely monitor and enforce compliance with the *Poisons and Therapeutic Goods Act 1966* and the *Public Health (Tobacco) Act 2008*, including undertaking spot checks at retailers.

NSW Health inspectors monitor compliance with the legislation and can issue warnings, fines or initiate prosecutions against retailers that break the law and may be able to provide assistance and advice.

## Recording in COPS

Officers are reminded that DTI added E-CIGARETTE/ VAPES as listed options in COPS under: **TOBACCO PRODUCT/ACCESSORY**.

## Selling Tobacco to Kids

Division 1 of Part 4 of the *Public Health (Tobacco) Act 2008* deals with the protection of juveniles and creates an offence for a person to sell a tobacco product, a non-tobacco smoking product, an e-cigarette or an e-cigarette accessory to a person under 18 years (refer s.22 of the Act).

Police have the power to seize a tobacco product, a non-tobacco smoking product, or an e-cigarette in the possession of a person under the age of 18 years in a public place (s.26 of the Act). **No offence currently exists for the possession.**

Information on this can be found in a Law Note from the [September 2021 edition of Police Monthly on page 37](#).

## **Additional Information**

**Additional information on the changes is available from the NSW Ministry of Health website, including:**

- Letter to registered NSW tobacco and e-cigarette retailers regarding nicotine and other retailing requirements ([Secretary signoff \(nsw.gov.au\)](#)).
- Information document for NSW Pharmacists ([Secretary signoff \(nsw.gov.au\)](#)) and [Vapes: information for pharmacists | Therapeutic Goods Administration \(TGA\)](#).

The NSW Health website has also been updated on information for retailers ([Information for retailers selling e-cigarettes - Tobacco and smoking \(nsw.gov.au\)](#)) and information has also been updated on the Pharmaceutical Services section of the NSW Health website ([Pharmaceutical services \(nsw.gov.au\)](#)).

## **Endnote References**

1. *Poisons and Therapeutics Goods Regulation 2008* (NSW) Appendix D