

# E-Cigarette Regulation And Compliance In NSW

Hearing – 12/04/2024

## NSW Health Response to Questions on Notice

### QUESTION 1 – Page 40-41

**Dr HUGH McDERMOTT:** This is my last question. We have asked the industry to be here. We've asked the vaping industry to appear. They have refused on a number of occasions — and clearly the tobacco industry. What engagement have you had? You have just said that you have just written to the retail industry. Do they openly engage with you on these issues? Or is it, like for us, being stonewalled?

**KERRY CHANT:** I would have to take on notice what engagement the teams have done in speaking to the retailer associations. All I can confirm to the Committee is that I have written on at least a couple of occasions to retailers, highlighting the issue directly to them.

### ANSWER

Australia is a Party to the World Health Organization (WHO) Framework Convention on Tobacco Control (FCTC), which requires public officials to protect public health policies in relation to tobacco control 'from commercial and other vested interests of the tobacco industry'.

NSW Health engages with tobacco and e-cigarette retailer industry associations on potential tobacco legislative amendments such as the review of the Public Health (Tobacco) Regulation in 2022.

NSW Health proactively engages with tobacco and e-cigarette retailers, industry associations and selected retail franchise groups, to provide information and guidance on specific issues.

Dr Kerry Chant has written to retailers in relation to e-cigarettes on the following occasions:

- illegal sales of nicotine e-cigarettes (June 2022, July 2023 and August 2023)
- implementation of the national e-cigarette importation ban (February 2024)
- advice about an emerging product, nicotine pouches, and to confirm that the retail sale of nicotine pouches is illegal (February 2024).

Retailers and retailer associations occasionally contact NSW Health to seek clarification on tobacco and e-cigarette retailing responsibilities or to express concern or support for regulatory arrangements. On behalf of NSW Health, the NSW Health Tobacco Information Line provides information to retailers who call for assistance or advice for complying with tobacco and e-cigarette retailing legislation.

NSW Health Authorised Officers provide education and guidance to retailers on their responsibilities under the *Public Health (Tobacco) Act 2008*, *Poisons and Therapeutic Goods Act 1966* and relevant regulations when inspecting retailer premises.

### QUESTION 2 – Page 41

**Mr PHILIP DONATO:** I know we've heard from Dr Chant before in evidence in relation to this matter. I heard the Chair in his question; I think it was to Ms Broderick. I just want to clarify something from her correctly. Was it 12 enforcements or prosecutions? Is that the number that I heard that the Chair asked in relation to proceedings that have been commenced for matters involving vapes or illegal e-cigarettes?

**GEMMA BRODERICK:** That was the number referred to by the Chair, but I think the actual figure that I have is — I think it's 40 defendants for both nicotine and e-cigarettes for 2023. It's more than 12, but that 40 defendants includes convictions in relation to both cigarettes and nicotine vapes.

**Mr PHILIP DONATO:** So they're people who have appeared before the court and have been convicted, is that right?

**GEMMA BRODERICK:** Yes.

**The CHAIR:** Just to clarify that number — 45?

**GEMMA BRODERICK:** Forty defendants. It can differ how you count because, as I said, sometimes they're charged and convicted of both offences relating to nicotine and e-cigarettes. We can get you the formal figures on notice and we can get back to you on that.

**The CHAIR:** Yes, if you can take that on notice.

**Dr HUGH McDERMOTT:** Could you tell us what the penalty was as well when you come back to us?

**GEMMA BRODERICK:** Yes.

**Mr PHILIP DONATO:** Over what period of time are we talking about that those prosecutions — is that in a calendar year?

**GEMMA BRODERICK:** Yes, the calendar year for 2023.

**Mr PHILIP DONATO:** Do you know how many penalty infringement notices or PINs have been issued during that time?

**GEMMA BRODERICK:** I'll take that on notice as well and can get back to you on it. It'd be more than that, but I'll take that on notice.

## ANSWER

NSW Health has issued 234 penalty infringement notices from 1 January 2023 to 31 December 2023 for e-cigarette and tobacco offences under the *Public Health (Tobacco) Act 2008* and *Public Health (Tobacco) Regulation 2022*. There are no penalty infringement notice provisions under the *Poisons and Therapeutic Goods Act 1966* for the illegal supply of nicotine in e-cigarettes or e-liquids.

Details of prosecutions undertaken during 2023 are provided at TAB A.

## QUESTION 3 – Page 43

**Dr HUGH McDERMOTT:** When will you know how successful the campaign is? How are you doing that?

**TRACEY O'BRIEN:** There's a formal process to doing that. The last campaign, phase two of the campaign, ran through 2022 and 2023. That was what the "Do you know what you're vaping?" campaign was about. That was targeted towards 14- to 17-year-olds and looked to expose the truths around the harms of vaping and the contents of vapes, but also really looked towards empowering young people to quit vaping or not take up vaping as well — to address some of those social norms around vaping that we were seeing rapidly emerge for it to become a normalised behaviour. That campaign has been evaluated. The evaluation hasn't been published yet, but I can share and am happy to provide some evidence to the Committee afterwards.

## ANSWER

A summary of the 2022-23 'Do you know what you're vaping?' campaign evaluation is provided below:

### Campaign objectives

The 2022-23 'Do you know what you're vaping' behaviour change campaign was formally evaluated with the target audience to understand its reach and impact. The evaluation included an online survey with 960 NSW 14-17 year olds and assessment of media metrics.

The campaign was implemented in 4 bursts with assets evolving across bursts (2A, 2B, 2C, and 2D) to include branded campaign assets, influencer assets and native-style content. The survey was similarly conducted in 4 bursts (n=200 per burst with a total of n=800) following a baseline (n=160).

### **Target setting**

The campaign introduced a new, cutting-edge campaign approach. This first anti-vaping campaign run by the Cancer Institute NSW used media channels and strategies, such as native content for social media and social media influencers, to reach and engage this youth demographic.

The evaluation survey results were compared with targets that were set to guide the campaign monitoring and evaluation. Targets for campaign evaluations are normally established based on the results of previous campaigns addressing that health issue. This was not feasible given the new campaign approach, audience and strategy. These media strategies are more novel for health campaigns, and therefore there is scarce existing relevant evaluation data from previous campaigns.

As a result, targets for the 'Do you know what you're vaping' campaign were developed drawing upon the following data sources:

- Pre-testing results for 'Do you know what you're vaping' campaign – conducted in July 2022 with 508 young people in NSW aged 14-17 years old.
- Baseline data collection prior to the launch of the 'Do you know what you're vaping' campaign – conducted in June to July 2022 with 160 young people in NSW aged 14-17 years old.

### **Summary of results**

#### *Reach and recognition:*

The campaign exceeded the target for total impressions delivered across channels, delivering 121,144,650 impressions. Overall, the campaign achieved 30% prompted recognition for the full campaign, exceeding the target of 28%. Furthermore, it achieved 43% prompted recognition throughout the second half of the campaign.

#### *Diagnostics*

Most respondents reported the campaign was:

- Easy to understand (87%)
- Informative (80%)
- Believable (81%)
- Interesting (73%).

#### *Campaign objectives:*

84% of people who recognised the campaign agreed with the statement 'vaping is not safe' (close to the target of 85%)

Among people who vape who saw the campaign:

- 71% indicated they intended to either try to stop vaping or say no to a vape as a result of seeing the campaign (exceeding the target of 25%)
- 74% reported they either stopped or cut down on vaping, or said no to a vape as a result of seeing the ads (self-reported behaviour, no target set).

Among people who don't vape who saw the campaign, 90% indicated they intended to continue not to vape or to reject a vape when offered as a result of seeing the campaign (exceeding the target of 75%).

In terms of social norms, the evaluation found that 36% of people who recognised the campaign stated that their friends approve of young people vaping (meeting the target of <41%).