

E-Cigarette Regulation And Compliance In NSW

Hearing – 12/04/2024

NSW Health Response to Supplementary Questions

QUESTION 1

How many new retailers have registered with NSW Health to supply e-cigarettes in the last 12 months?

ANSWER

In the 12 months from 1 January 2023 to 31 December 2023, NSW Health received notification from 901 retailers of their intent to sell e-cigarettes. This number includes existing retailers that have previously sold e-cigarettes but have changed parent companies.

QUESTION 2

Does NSW Health have preliminary insights on how the current phase of the 'Every vape is a hit to your health' campaign is performing?

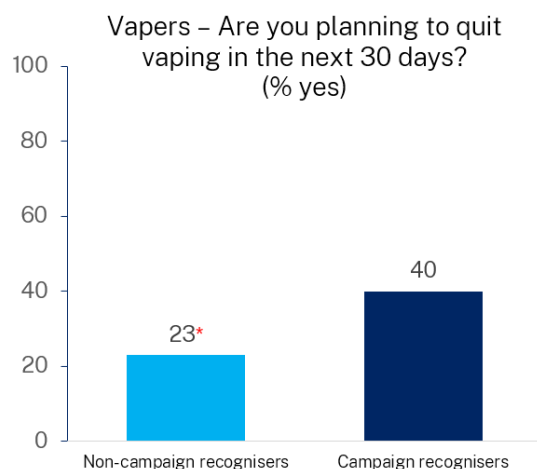
ANSWER

The 'Every Vape is a Hit to your Health' campaign is evaluated with both general population and Aboriginal young people aged 14-24 years. Preliminary results from the general population evaluation for the first 8 weeks indicate that the campaign is performing well. Strong recognition – 57% (n=728) which tells us that the campaign is reaching the target audience.

Strong campaign performance (n=234):

- Easy to understand – 92%
- Believable – 86%
- Informative – 82%.

Early evidence is that it is having an impact on people who vape (n=186). Those people who vape who recognise the campaign are more likely to indicate they plan to quit in the next 30 days (40%) than are those who do not recognise the campaign (23%) (see figure below).



Question: Q7. Are you planning to quit vaping in the next 30 days?
Base: Current vapers. Non-campaign recognisers (n=76) and campaign recognisers (n=110) total (n=186).
Current vapers considering to quit in the next 6 months. Non-campaign recognisers (n=43), campaign recognisers (n=72)

The campaign will end 30 June 2024 and the full campaign evaluation will be completed by 1 October 2024.

QUESTION 3

What was the estimated reach of the 'Do you know what you're vaping?' campaign? If possible, please provide data regarding social media engagement, website visits, number of resource downloads and any other relevant metric/s.

ANSWER

Phase 1 – 15 March to 13 May 2022

The paid media campaign ran from 15 March to 13 May 2022 on social media and out-of-home, and specifically targeted young people aged 14-17 years. Paid social media generated over 11.5 million impressions.

Organic social media was also undertaken. There was significant engagement through organic social media with over 10 million people reached and a 2.7% engagement rate across 46 posts on NSW Health social media platforms (15 March – 30 June 2022).

There was a large volume of traffic to the NSW Health vaping website from 15 March to 30 June 2022. Total page views were almost 120,000 during the reporting period (over 105,000 unique sessions). The average time spent on the website was 1.4 minutes, representing good engagement.

The campaign demonstrated a clear ability to drive positive behavioural change in relation to vaping amongst young people aged 14-17 years. Post-campaign evaluation found that of the 14-17 year olds who had seen the campaign, 69% reported having already taken some form of positive action regarding vaping.

Phase 2 – 2022/2023):

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. As a reach campaign, we didn't report on engagement and traffic.

QUESTION 4

What measures has NSW Health taken to raise public awareness of smoke free environment regulations and how these apply to vaping?

ANSWER

NSW Health is implementing the 'No Smoking means No Vaping' initiative to increase awareness in the community that vaping is banned in all smoke-free areas, and to support behaviour change.

NSW Health worked with a broad range of stakeholders including, Service NSW, Transport for NSW, Liquor and Gaming NSW, local councils, community services, health services, non-government agencies and other stakeholders to increase reach of messaging across the state.

The initiative included newsletter articles, electronic direct mailouts, public forum events, digital communications toolkits, distribution of physical resources, and resources made available for download or order via the NSW Health website.

QUESTION 5

How would a positive licensing scheme for tobacco retailers assist NSW Health to address non-compliance?

ANSWER

Positive tobacco licensing schemes require anyone selling smoking products to have a licence for retail or wholesale outlets where products are sold, with a fee set by government. They assist governments by having an accurate list of current retailers to support comprehensive and targeted compliance activities for tobacco retailing laws.

QUESTION 6

Would stronger penalties for illegal supply under the Public Health (Tobacco) Act 2008 be an adequate deterrent and assist NSW Health inspectors with enforcement in the short term?

ANSWER

The offences for the illegal supply of vaping products containing nicotine are primarily found in the *Poisons and Therapeutic Goods Act 1966*, with penalties for sales to minors and displaying products found in the *Public Health (Tobacco) Act 2008*.

A range of regulatory tools are required to assist enforcement of the Public Health (Tobacco) Act and the Poisons and Therapeutic Goods Act. The tools include:

- issuing cautions
- on the spot fines
- prosecutions
- education campaigns, and
- the ability to seizure illegal products.

The Ministry of Health keeps these tools under review.

The maximum penalty for illegal supply of vaping products containing nicotine in the Poisons and Therapeutic Goods Act is 15 penalty units (\$1650) and/or 6 months imprisonment and there is no ability to issue on the spot fines for breaches. The Ministry does consider that maximum monetary penalty under the Poisons and Therapeutic Goods Act does not adequately reflect the seriousness of the offence. However, the Ministry is working to commence the new Medicines, Poisons and Therapeutic Act 2022. Once commenced, this Act will increase the penalties for illegal supply of vaping products containing nicotine to 50 penalty units for individuals and 250 penalty units for corporations, with additional daily penalties for continuing offences of 25 penalty units for individuals and 125 penalty units for corporation. The new Medicines, Poisons and Therapeutic Act 2022 will also allow on the spot fines for breaches of the legislation.

The Ministry notes the Commonwealth has introduced the Therapeutic Goods and Other Legislation Amendment (Vaping Reforms) Bill 2024, which will introduce significant penalties for the illegal supply of e-cigarettes. If this Commonwealth Bill passes, the Ministry will consider the options for enforcement and implementation in NSW.

QUESTION 7

With respect to reports from members of the public:

- a. How many reports has NSW Health received from the public about illegal supply of e-cigarettes in retail settings in the past two years?
- b. How many of these reports were made through the website, by phone, or via another channel? (Please provide a breakdown)
- c. What percentage of these reports resulted in a site inspection by NSW Health?

ANSWER

a)

Between 1 January 2022 and 31 December 2023, NSW Health has received 1,448 reports about the sale of liquid nicotine (this may include: e-cigarettes, vapes, re-usable or disposable devices etc.).

In addition, NSW Health has also received 1,004 reports about selling tobacco or e-cigarettes to a minor.

b)

Of the total 2,452 reports NSW Health received about the sale of liquid nicotine and selling tobacco or e-cigarettes to a minor:

- 2,129 were lodged via the online portal <https://www.health.nsw.gov.au/tobacco/Pages/let-us-know-reports-complaints.aspx>
- 143 calls to the NSW Health Tobacco Information Line
- 61 phone calls either to public health units or the Ministry of Health
- 119 were received via other sources, such as emails, ministerial correspondence or other phone calls.

c)

NSW Health uses reports of non-compliance in multiple ways. Some reports result in the inspection of a premises, where other reports are utilised holistically to direct proactive compliance programs.

Between 1 January 2022 – 31 December 2023, NSW Health conducted 1,814 inspections which included compliance checks for liquid nicotine. Of these inspections:

- 623 (35%) were conducted in connection with a single, or multiple reports of non-compliance
- 750 (41%) were conducted as part of proactive compliance programs
- 441 (24%) inspections were follow-up inspections from the above.

QUESTION 8

How is NSW Health working with the Federal Government to coordinate action on vaping reform?

ANSWER

NSW Health is committed to ongoing collaboration with Australian Government agencies, other jurisdictions, and relevant stakeholders to keep our community safe from the harms of tobacco and e-cigarettes.

NSW Health actively participates in all intergovernmental working groups and forums examining vaping reform, including compliance and enforcement.

The NSW Health Secretary co-chairs the multi-agency National Vaping Working Group with the Australian Border Force Commissioner, which is comprised of representatives from Commonwealth, state and territory health and police departments, and the Australian Border Force.

NSW Health supports the national vaping reforms designed to protect young people from the harms of vaping and nicotine dependence and supports the Australian Government's intention to strengthen the prescription pathway for access to therapeutic vapes for smoking cessation purposes.

Once the Australian Government's *Therapeutic Goods and Other Legislation Amendment (Vaping Reforms) Bill 2024* has been enacted, it can be used by state and territory governments to

undertake compliance and enforcement activities. Once made, the changes automatically apply in NSW under the *Poisons and Therapeutic Goods Act 1966*.

The NSW Government is considering how to ensure NSW legislation is streamlined to complement the national laws, making local operations effective and efficient.

The reforms will allow a more streamlined and enhanced national regulatory and enforcement framework. This will support reduction in the sale of illegal products and access by young people.

NSW Health is working to ensure that young people who use vapes, parents and carers, education providers and health professionals are informed and supported as the Australian Government vaping reforms come into effect.

QUESTION 9

What training or resources has NSW Health developed to support healthcare workers to

- understand proposed Australian Government reforms to vaping; and
- implement appropriate smoking/vaping cessation interventions?

ANSWER

a)

The Australian Government, Therapeutic Goods Administration (TGA) is responsible for providing advice and guidance to prescribers and pharmacists on their vaping reforms. The TGA website provides all clinicians with training and resources.

NSW Health is also undertaking a range of activities to support healthcare workers and engages with the Royal Australian College of General Practitioners (RACGP) NSW/ACT. This includes:

- Delivering regular tobacco and e-cigarette updates in the form of webinars, podcasts and newsletter items for their members, content has included a focus on the national vaping reforms.
- Providing extensive feedback on the RACGP provisional guidance on smoking and vaping cessation support for GPs to assist general practice in navigating changes to the availability of vaping products.

NSW Health proactively engages health professionals to provide up to date e-cigarette information and to support understanding of the proposed Australian Government vaping reforms including:

- Specialty clinical service clinicians e.g. oral health, maternity and child and family health, addiction medicine, youth health, etc
- General practitioners
- Wellbeing and Health In-reach Nurses (WHIN)
- Aboriginal Health Practitioners and Aboriginal Health Workers.

Local health districts also support health staff locally. An example is the North Coast Vaping Taskforce, a joint initiative between Mid-North Coast and Northern NSW local health districts.

b)

NSW Health has a comprehensive set of resources and training programs to assist health professionals in supporting [young people to quit](#) smoking and vaping. This includes a [toolkit](#) for initiating conversations about vaping, [nicotine addiction](#) and [quitting vaping](#) as well as a comprehensive cessation training for clinicians.

NSW Health funds the Aboriginal Health and Medical Research Council for cessation efforts among Aboriginal communities.

The Cancer Institute NSW is developing online modules covering a range of cessation topics, including tailored content for specific populations.

Efforts also extend to updating guides and tools for [managing nicotine dependence](#), supporting maternity clinicians, and implementing [Policy Directive: Reducing the effects of smoking and vaping on pregnancy and newborn outcomes](#) statewide.

Prosecutions undertaken during 2023

Each row is a separate prosecution. There were 44 prosecutions undertaken during 2023. A number of individuals were prosecuted more than once.

Prosecution	Charge	Penalty imposed
1	2 x charges under s.10 (3) Poisons and Therapeutic Goods Act <i>sell nicotine without authority</i>	Charge 1: Conditional Release Order, with conviction- 24 months <ul style="list-style-type: none"> • Charge 2: Conditional Release Order, with conviction- 24 months • Professional Costs: \$7,000.00 • Order \$180 payable to the South Eastern Sydney Public Health Unit for the testing of the e-cigarette in charge 1
2	1 x charge s.22 Public Health (Tobacco) Act <i>sell tobacco product to a minor</i>	6-month good behaviour bond
3	1 x charges s. 22 Public Health (Tobacco) Act <i>sell tobacco product to a minor</i>	Fined \$1,000.00
4	1 x charge s.10 (3) Poisons and Therapeutic Goods Act <i>sell nicotine without authority</i>	Fined \$1,250.00 and 6-months community corrections order
5	1 x charge s. 22(2A) Public Health (Tobacco) Act <i>sell e-cigarette to a minor</i>	Fined \$900.00
6	6 x charges s.10 (3) Poisons and Therapeutic Goods Act <i>sell nicotine without authority</i>	Offence 1: dealt with under s.10A Offence 2: fine \$500.00 Offence 3: dealt with under section 10A Offence 4: fine \$500.00 Offence 5: dealt with under section 10A Offence 6: fine \$700.00
7	1 x charge s. 22(2A) Public Health (Tobacco) Act <i>sell e-cigarette to a minor</i>	12-month good behaviour bond
8	1 x charge s. 46(1) Public Health (Tobacco) Act - fail to comply with a direction or requirement of an inspector	12-month good behaviour bond
9	1 x charge s.22 Public Health (Tobacco) Act <i>sell tobacco product to a minor</i>	Plea of guilty & matter dealt with under s.10 - offence proved but court did not proceed to conviction
10	1 x charge s.22 Public Health (Tobacco) Act <i>sell tobacco product to a minor</i>	Plea of guilty & matter dealt with under s.10 - offence proved but court did not proceed to conviction

11	1 x charge s. 22(2A) Public Health (Tobacco) Act <i>sell e-cigarette to a minor</i>	Fined \$300.00
12	3 x charges s.10 (3) Poisons and Therapeutic Goods Act <i>sell nicotine without authority</i>	Offence 1: fine \$1,100.00 Offence 2: fine \$1,100.00 offence 3: fine \$4,100.00
13	2 x charges s.10 (3) Poisons and Therapeutic Goods Act <i>sell nicotine without authority</i>	Offence 1: fined \$700.00 Offence 2: Matter dealt with under s.10A
14	1 x charge s.7 Public Health (Tobacco) Act - <i>sell tobacco in packages without mandatory health warnings</i>	Fined \$700.00
15	2 x cl. 20(2) Poisons and Therapeutic Goods Regulation - <i>dealer without part 8 authority supplies nicotine.</i>	Fined \$500.00
16	1 x s. 43(7)(a) Poisons and Therapeutic Goods Act - <i>intentionally delays or obstructs an inspector when exercising power</i>	Fined \$800.00
17	1 x s. 7(2) of the Public Health (Tobacco) Act - <i>sell tobacco product in package without health warning</i>	Fined \$800.00
18	1 x charge s.22 Public health (Tobacco) Act	12-month good behaviour bond
19	1 x charge s.22 Public health (Tobacco) Act	Fined \$1,000.00
20	1 x charge s.22 Public health (Tobacco) Act	6-nonth good behaviour bond
21	6 x charges s.10 (3) Poisons and Therapeutic Goods Act <i>sell nicotine without authority</i>	Offence 1 Section 10A Offence 2 fine \$500.00 Offence 3 Fine \$500.00 Offence 4 section 10A Offence 5 Fine \$700.00 Offence 6 Fine \$700.00 Offence 7 section 10A
22	1 x charge s.10 (3) Poisons and Therapeutic Goods Act <i>sell nicotine without authority</i> 3 x charges s.7 Public Health (Tobacco) Act - 1 x s.9 Public Health (Tobacco) Act <i>charge display tobacco/e-cigarette accessories in public view</i>	Offence 1 Fine \$400.00 Offence 2 fine \$600.00 Offence 3: \$1,000.00 Offence 4: Fine \$1,000.00 Offence 5: fined \$500.00
23	1 x charge s.22 Public health (Tobacco) Act	Fined \$200.00
24	1 x charge s.22 Public health (Tobacco) Act	Fined \$1,000.00

25	1 x charge s.22 Public health (Tobacco) Act	Fined \$1,000.00
26	1 x charge s.22 Public health (Tobacco) Act	Fine \$100.00
27	1 x charge s.22 Public health (Tobacco) Act	Fine \$600.00
28	5 charges s.10 (3) Poisons and Therapeutic Goods Act sell nicotine without authority	Offence 1 Fine \$1000.00 Offences 2-5 Community Corrections Order
29	1 x charge s.22 Public health (Tobacco) Act <i>sell tobacco to a minor</i>	Fine \$250.00
30	1 x charge s.22 Public health (Tobacco) Act <i>sell tobacco to a minor</i>	Matter dealt with under section 10A
31	1 x charge s.22(2A) Public health (Tobacco) Act <i>sell e-cigarette to a minor</i>	Fine \$5000.00
32	1 x charge s.22(2A) Public health (Tobacco) Act <i>sell e-cigarette to a minor</i>	12-month Conditional Release Order
33	1 x s.16 Public Health (Tobacco) Act - <i>tobacco advertising</i> 3 x s. 9 Public health (Tobacco) Act - <i>display smoking accessories in public view/display e-cigarettes in public view/display tobacco in public view</i> 2 x s.7(2) Public Health (Tobacco) Act <i>tobacco packages not displaying mandatory health warning</i> 5 x charges s.10 (3) Poisons and Therapeutic Goods Act <i>sell nicotine without authority</i>	Offence 1 : Fine \$1500.00 Offence 2: Fine \$1000.00 Offence 3: fine \$1,000.00 Offence 4: fine \$1,000.00 Offence 5: \$15,000.00 Offence 6: Fine \$750.00 Offence 7: fine \$750.00 Offence 8: fine \$750.00 Offence 9 fine \$1,000.00 Offence 10: fine \$1,000.00 Offence 11: fine \$1,000.00
34	1 x charge s. 22(2A) Public Health (Tobacco) Act <i>sell e-cigarette to a minor</i>	Fine \$5,000.00
35	3 x Regulation 20(2) PTGR - supply nicotine without authority 1 x s.9 Public Health (Tobacco) Act - <i>display tobacco product in public</i>	Offences 1-3 Fined \$400.00 on each charge (total \$1200.00) Charge 4 \$3,000.00
36	1 x cl.14 Public Health (Tobacco) Regulation - <i>fail to display smoking kills sign at point of sale of tobacco</i> 1 x s.16(1) Public health (Tobacco) Act - <i>tobacco advertising</i> 5 x s.10 (3) Poisons and Therapeutic Goods Act <i>sell nicotine without authority</i>	Offence 1: fine \$1,000.00 Offence 2: fine \$15,000 Offences 3-8 fined \$550.00 on each (total \$2750.00)
37	1 x charge s.22 Public health (Tobacco) Act <i>sell tobacco to a minor</i>	Matter dealt with under section 10A

38	5 x 10 (3) Poisons and Therapeutic Goods Act <i>sell nicotine without authority</i>	Fine \$400.00 for each offence (total \$2,000.00)
39	1 x charge s.22(2A) Public health (Tobacco) Act <i>sell e-cigarette to a minor</i>	Fine \$500.00
40	1 x charge s.22 Public health (Tobacco) Act <i>sell tobacco to a minor</i>	Fined \$3,000.00
41	1 x charge s.22 Public health (Tobacco) Act <i>sell tobacco to a minor</i>	Fine of \$700.00
42	1 x charge s.22 Public health (Tobacco) Act <i>tobacco to a minor</i>	9 - month good-behaviour bond
43	1 x charge s.22 Public health (Tobacco) Act <i>sell tobacco to a minor</i>	Matter dealt with under section 10A
44	1 x charge s.22 Public health (Tobacco) Act <i>sell tobacco to a minor</i>	Fine \$500.00