

**Submission
No 9**

E-CIGARETTE REGULATION AND COMPLIANCE IN NEW SOUTH WALES

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Date Received: 25 October 2023



**Submission to the New South Wales Legislative Assembly Committee on Law
and Safety's inquiry: *E-cigarette regulation and compliance in New South Wales***

By

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25th October 2023

About the submitter:

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Declarations:

Dr Jongenelis has not ever received services, assistance, or support (whether monetary or non-monetary in nature) from the tobacco industry and/or e-cigarette industry.

Dr Jongenelis has not ever provided services, assistance, or support (whether monetary or non-monetary in nature) to the tobacco industry and/or e-cigarette industry.

Any opinions expressed are solely those of Dr Jongenelis and do not represent the views or opinions of her employer.

Summary:

Thank you for the opportunity to comment on the Committee on Law and Safety's inquiry: *E-cigarette regulation and compliance in New South Wales*. It is pleasing to see the New South Wales Government take e-cigarette use seriously and investigate ways in which use can be addressed.

Preventing increases in the use of e-cigarettes, especially among young people, and minimising the harms associated with use should be public health priorities¹. Although Australia's efforts to date have been largely successful in protecting public health policies from tobacco industry interference, e-cigarettes and other "smoke-free" products constitute a mechanism via which the tobacco industry is renewing its activities under the guise of creating a smoke-free world. Australia has always been a world leader in tobacco control and we are continuing to pave the way by implementing effective, evidence-based policies. It is imperative that we adopt an evidence-based approach to regulating e-cigarettes as these devices have the potential to undermine decades of effective tobacco control efforts that have produced a substantial decrease in the prevalence of smoking.

Responses to the Terms of Reference:

a(i). The current situation in NSW regarding the prevalence of e-cigarette use among children and young people.

In Australia, use of e-cigarettes among adult smokers and non-smokers increased from 4% in 2013 to 11% in 2019². Prevalence rates of use among adolescent and young adult non-smokers **more than tripled** over the same time period. These figures likely represent an underestimate of the true prevalence of vaping among youth, with a recent national study reporting rates of use that were much higher³. In terms of the type of products being used, a recent survey of Australian e-cigarette users found that 78% of 12- to 17-year-olds and 87% of 18- to 24-year-olds were using *nicotine* e-cigarettes at least monthly⁴. When asked to indicate the strength of the nicotine they

used, a quarter reported that they did not know. Most adolescents and young adults were found to be using disposable and pod-based e-cigarettes. Such products are cheaper than other types of e-cigarettes^{5,6}, and it has been suggested that their inexpensiveness is a potential risk factor for youth uptake⁷. Of further concern, the e-liquids in these types of e-cigarettes are typically nicotine-salt-based. The lower pH of these e-liquids reduces the harshness of the inhaled aerosol, making the e-liquid highly palatable and easy to inhale^{8,9} and resulting in more intense puffing and greater nicotine delivery¹⁰.

Given the potential risks associated with nicotine exposure in adolescence and young adulthood (see Section aii), these results indicate that most e-cigarette users within these population groups are at considerable risk of harm. In addition, the use of nicotine reported by adolescents supports evidence that these products are being sold in Australia illegally. Indeed, a quarter of adolescent vapers report sourcing their nicotine e-liquid from tobacco or vaping retailers, despite it being illegal to sell these products to minors⁴. This suggests that greater enforcement of laws regarding the sale of liquid nicotine is needed. ***This is currently being hampered by the absence of a positive licensing scheme in New South Wales. The introduction of such a scheme is critical to facilitating monitoring of retailer compliance and optimising enforcement of existing laws.***

E-cigarettes are part of Big Tobacco's product diversification strategy to offer new and novel nicotine delivery devices, especially those that have maximum appeal to young people. The rapid and substantial increase in youth use of e-cigarettes reflects trends seen in other countries and is likely attributable to the youth-appealing nature of e-liquid flavours and e-cigarette advertising^{11,12}. The vaping industry continues to target adolescents and young adults via the development of new youth-oriented e-juice flavours (e.g., bubblegum, popcorn, Red Bull, fruit loops, Skittles, unicorn milk)^{13,14}; the use of appealing e-juice packaging (e.g., cartoons on labels, e-juice boxes that resemble fruit juice cartons)¹⁵⁻¹⁷; the development of e-cigarettes that resemble USB drives, asthma inhalers, pens, remote controls, and hoodie drawstrings (thus promoting 'stealth vaping')^{18,19}; and sponsorship of youth-oriented events¹³. In addition, there is research to suggest that ads for e-cigarettes feature themes (e.g., expression of identity,

friendship, sex, attainment of social status) and use techniques (e.g., animation, cartoons, attractive and young protagonists) that have known appeal to youth^{20,21}.

The vaping and tobacco industries need a new population of individuals to become addicted to nicotine to drive their profits²². The emergence of the vaping industry has the potential to undermine years of successful tobacco control in Australia, and action is therefore urgently needed to protect the Australian public from the activities of this industry. Ultimately, the goal of the vaping/tobacco industries is the maximisation of sales and profits. If the vaping and tobacco industries' goal was to genuinely support smokers to quit and exit the market altogether, with no uptake by non-smokers, both industries would cease to exist within the next few decades.

a(ii). The current situation in NSW regarding health risks associated with e-cigarette products.

Statements issued by Australia's Chief Medical Officer²³, the National Health and Medical Research Council¹, and numerous other Australian health organisations express significant concerns about e-cigarettes and endorse the World Health Organization's call for the precautionary principle to be applied when dealing with these devices. ***E-cigarettes are not harmless***; they have been found to contain a number of substances known to be harmful to health, including formaldehyde, tobacco-specific nitrosamines, nicotine, and heavy metals²⁴⁻³¹. There are also significant health risks associated with their use, including reduced lung function, stiffness of the arteries, and increased risk of cardiovascular disease³²⁻³⁹. In a recent review documenting the risks associated with e-cigarette use, the addictive nature of nicotine was highlighted⁴⁰. This systematic review of the worldwide evidence on the health effects of e-cigarettes also found that among non-smokers, ***there is strong evidence that use of e-cigarettes has multiple health harms and no health benefits***. Uptake of use in adolescents and young adults is problematic given the impact of nicotine exposure on brain development⁴¹. The health risks associated with use are not limited to nicotine, with evidence indicating that the flavourings and other additives found in e-cigarettes are particularly harmful to health⁴². This is concerning given almost all Australian vapers use flavoured devices⁴.

There are several risks associated with e-cigarettes that extend beyond direct health harms. First, there is consistent and compelling evidence indicating that e-cigarette use acts as a gateway to tobacco smoking. ***A recent meta-analysis concluded that non-smokers who use e-cigarettes are approximately three times more likely than those who avoid e-cigarettes to initiate tobacco cigarette smoking***⁴³. Second, prevalence of ‘dual use’ is high⁴⁴, with this pattern of tobacco use found to be the most common⁴⁵. Such use does little to reduce the harms associated with tobacco use, with complete abstinence from smoking required to achieve health benefits⁴⁶. Finally, although marketed as an effective smoking cessation aid, research suggests e-cigarette use may drive former smokers back to combustible tobacco cigarettes, with the aforementioned meta-analysis finding that former smokers who use e-cigarettes are more than twice as likely to relapse than former smokers who do not use the devices⁴³.

It is important not to be persuaded by anecdotal reports of individuals quitting smoking with the aid of e-cigarettes. E-cigarettes are not a panacea for smoking cessation. While use may be beneficial for those who use the products to quit smoking completely and promptly, this is not the reality. Research has shown that among those who use both e-cigarettes and tobacco cigarettes, 55% will go back to exclusive cigarette use 2 years later, 26% will continue to be using both products 2 years later, and just 12% will have switched completely to e-cigarette use⁴⁷. ***This means that for the vast majority of smokers, e-cigarette use does not assist with cessation.*** We should not be condemning a new generation to nicotine addiction based on these ‘success’ rates.

We will soon be in a situation, if we are not already, where the number of non-smokers who take up vaping outnumbers the smokers who will successfully quit smoking using these products. The net costs and benefits of e-cigarette use must be assessed at the population-level. ***To date, this assessment indicates that e-cigarette use contributes to more population-level harms than benefits***⁴⁸.

a(iii). The impact of programs and services aimed at preventing uptake or continuing use of e-cigarettes.

Awareness of the harms associated with nicotine-containing e-cigarettes is reasonably high, with a study funded by the National Health and Medical Research Council finding that around 4 in 5 adolescents and young adults believe the products to be harmful to health⁴⁹. Awareness of the harms associated with non-nicotine products is significantly lower, with around two-thirds believing these products to be harmful. The underestimation of the harms associated with non-nicotine and flavoured e-cigarettes is concerning. Those involved in the development of e-cigarette health communications/programs should ensure that these do not focus solely on the harms associated with nicotine but also feature information about the risks associated with use of non-nicotine e-cigarettes. **There should also be greater investment in quit vaping services to assist those who have become dependent on e-cigarettes, especially children.**

b(i), b(ii), & b(iii). NSW's current regulatory framework, in particular its effectiveness in reducing harm from e-cigarette use, its effectiveness in preventing illegal supply, and challenges to enforcement and compliance and ways to overcome these.

A comprehensive approach to managing e-cigarette use is critical. In New South Wales, non-nicotine products are able to be sold by retailers despite the harms they cause. Additionally, as noted in Section a(i), there is no positive licensing scheme in New South Wales. **This is an unacceptable regulatory framework in which New South Wales operates.** If you are to succeed in reducing e-cigarette use in New South Wales, all e-cigarette products must be prohibited from retail sale and a positive licensing scheme must be introduced to assist with enforcement.

c. How NSW can work with the Federal Government to implement reforms on e-cigarette products.

The Federal Government has engaged in a thorough consultation process and met with leading public health and tobacco control experts to discuss the implementation of reforms on e-cigarette products. The reforms announced by Minister Butler on the 2nd May 2023 are key to reducing vaping prevalence rates. It is pleasing to see the Federal Government take action to

ensure these products are accessible to those who may benefit, while protecting those for whom use has multiple harms. It is important that states support the Federal Government in their efforts. However, further action at the state level is needed if we are to protect Australians from an industry that is determined to maintain its profits. **It is critical that all states, including New South Wales:**

- **prohibit the supply of all e-cigarette products, regardless of nicotine content, except by pharmacies**
- **bolster monitoring and enforcement to address illegal retail sale of e-cigarette products**
- **ban all forms of advertising, promotion, and sponsorship of e-cigarette products**
- **ensure ongoing community education and support for those wanting to quit**

d. any other related matter.

No comment.

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