

**Submission
No 27**

E-CIGARETTE REGULATION AND COMPLIANCE IN NEW SOUTH WALES

Organisation: Cancer Council NSW

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Submission to the Inquiry into E-cigarette regulation and compliance in NSW

Cancer Council NSW

03 November 2023



3 November 2023
Chair
NSW Legislative Assembly
Committee on Law and Safety

The Hon. Edmund Atalla, MLA

Cancer Council NSW welcomes the opportunity to provide this response to the **Inquiry into options to improve e-cigarette regulation and compliance in New South Wales**.

We also take this opportunity to commend the NSW Government for their enforcement and compliance activities to date, aimed at cracking down on the sale of illegal e-cigarettes and for developing educational resources that respond to community needs.

We endorse the need for improved regulation and strong, sustained compliance action to reduce access to illegal e-cigarettes and prevent the uptake of vaping among young people and those who have never smoked tobacco.

Our submission comments and evidence-based recommendations are consistent with the Inquiry's Terms of Reference and draw on our groundbreaking *Generation Vape* research findings and our extensive policy expertise.

Tobacco and e-cigarette control is a continuing priority for Cancer Council NSW, and we are committed to working with the NSW Government to protect the health of the people of NSW.

If you have any further enquiries about this submission, please contact Michelle Daley, Policy Lead, Tobacco Control Policy via email: [REDACTED]

Regards



Ms Anita Dessaix
Director, Cancer Prevention & Advocacy
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Executive summary

Cancer Council NSW welcomes the opportunity to respond to the Inquiry into options to improve e-cigarette regulation and compliance in New South Wales (NSW). We are Australia's leading cancer charity dedicated to reducing the impact of cancer.

Australia has seen significant progress in tobacco control and reductions in tobacco use. However, the rise in electronic cigarette (e-cigarette) use, particularly among young people, risks undermining this progress. We must use this window of opportunity to prevent a new generation from becoming addicted to nicotine.

NSW survey data indicates that 16.5% of young people aged 16-24 years were current e-cigarette users in 2022, up from 4.5% in 2019-2020. Our groundbreaking Generation Vape research project (generously supported by the NSW Government) indicates most of those trying an e-cigarette for the first time are aged less than 16 and access is considered easy. These trends highlight the limitations of the current regulations in NSW and Australia, and the need for strong government action to reduce ease of access to e-cigarettes.

Evidence on the negative health effects of e-cigarettes continues to mount. A recent review of the global evidence identified that risks of e-cigarettes include addiction, intentional and unintentional poisoning, acute nicotine toxicity, seizures, burns, injuries, and lung injury. While the long-term health risks are not yet known, there is growing evidence that vaping, especially by young people who have never smoked, increases the risk of taking up tobacco smoking.

We strongly support the proposed extension of federal legislation to prohibit all forms of e-cigarette advertising and marketing. Young people are being exposed to e-cigarette advertising and promotion both online and in retail settings. These products are clearly marketed and designed to appeal to children and young people and widely available and accessible, despite being proven to cause harm. We must prioritise the health and wellbeing of our young people and protect them from nicotine addiction and the health impacts from vaping.

There are limitations in the current regulatory framework in NSW that impact its effectiveness to reduce harm from e-cigarettes. The proliferation of 'non-nicotine' e-cigarettes hinders enforcement efforts, requiring authorities to seize and test for nicotine, with retailers exploiting this regulatory loophole. Despite this, NSW Health has shown leadership and been proactive in undertaking enforcement and compliance activities. Under these difficult circumstances, seizure data indicates significant volumes of illegal product are circulating in the market.

We are confident that the implementation of the proposed federal e-cigarette reforms will help "turn off the tap" on the flood of illegal e-cigarettes entering the country and will simplify and aid enforcement efforts. At the same time, people choosing to quit smoking can continue to have a legal pathway to access e-cigarettes for cessation purposes under the care of their health professional. Monitoring impacts and ongoing compliance will require sustained resourcing and a coordinated response between agencies, at all levels of government. Collaboration between the NSW and Australian Governments is critical.

Cancer Council NSW will continue to advocate for stronger action to protect the health of young people and non-smokers. This includes an end to the supply of all e-cigarette products outside the prescription model. We implore the NSW Government to show further leadership, support the federal reforms and ensure the legislative and regulatory framework for addressing e-cigarette use in NSW is robust and effective. A summary of our recommendations follows.

Summary of recommendations

Terms of Reference A

Recommendations to strengthen the impact of NSW Government programs and services

- The NSW Government should continue to work collaboratively with the Australian Government to support and urgently implement the federal e-cigarette reforms and ensure coordinated action.
- Sustained investment from the NSW Government and evaluation of evidence-based public education campaigns to increase knowledge and awareness of the harms of vaping and cessation support options is required.
- The NSW Government acknowledges public education, school-based programs and cessation services are secondary measures to complement the primary strategy of regulatory reform and compliance.
- The NSW Government should take a coordinated intergovernmental approach to address vaping to avoid duplication across its portfolios. This should include health, education, police, small business and other portfolios as appropriate.
- Sustained investment from the NSW Government (along with the Australian Government) in large-scale research projects, such as Generation Vape, that form the evidence base on vaping and young people and directly inform and evaluate policies, programs and services is required.
- School-based interventions or programs should be viewed as supportive measures to broader NSW Health led measures (such as regulation and compliance) and where possible, embedded into existing policies or curriculum to reduce the burden on teachers and ensure consistency across NSW schools. Cancer Council NSW does not support the adoption of vape detectors.
- NSW Health establish, map and communicate vaping cessation support pathways and ensure there is coordination across government.

Terms of Reference B

Recommendations to strengthen NSW's current regulatory framework

- The NSW Government to work collaboratively with the Australian Government to phase out the availability of non-nicotine e-cigarette products to end the regulatory loophole.
- The NSW Government to support the proposed extension of federal legislation to prohibit all forms of e-cigarette advertisements, marketing, sponsorship and promotion.
- The NSW Government to sustain enforcement efforts to ensure compliance with advertising and promotion restrictions in the retail environment.
- The NSW Government supports the Australian Government reforms and ensures consistency with state legislation.
- The NSW Government works with the Australian Government to ensure that border controls on the importation of all vaping products are significantly strengthened and effectively implemented.
- The NSW Government invests in investigating and mapping the illegal supply chain for e-cigarettes in NSW to ensure effective compliance and enforcement.
- The NSW Government sustains investment to enable effective compliance and enforcement monitoring and a coordinated response between state government agencies, with clear roles and responsibilities.
- That NSW Government reviews regulations that determine how breaches of e-cigarette retailing are penalised to ensure they are clear, strengthened and simplified.

- The NSW Government expands public education to improve public awareness of the fact that smoke free laws also apply to vaping.
- The NSW Government comprehensively disseminates resources for enclosed public areas and relevant outdoor public areas that emphasises that 'no smoking means no vaping'.
- The NSW Government reviews and refines key messages to communicate changes to e-cigarette policy and legislation following the implementation of proposed federal reforms.

Terms of Reference C

Recommendations to improve NSW can work with the Federal Government to implement reforms on e-cigarette products

- That NSW Government work with the Australian and State and Territory governments to establish joint governance structures to foster effective planning, coordination of action, resource and intelligence sharing, and ongoing review.
- That any required legislative changes in NSW are coordinated by the NSW Government with other state, territory and Australian governments to ensure a consistent and effective outcome for suppliers, retailers, and consumers.
- The NSW Government should take a coordinated intergovernmental approach to address vaping to avoid duplication across its portfolios. This should include health, education, police, small business and other portfolios as appropriate.

About Cancer Council NSW

Cancer Council NSW (CCNSW) is the leading cancer charity in NSW dedicated to reducing the impact of cancer and ensuring programs and services reach communities throughout NSW. We are the only non-government organisation in Australia that works across every cancer, including research, prevention, support and advocacy.

We rely on the generosity of the community to conduct our work – 94% of our revenue comes to us from the community. In 2022/23, our revenue was \$90 million – with \$4.2 million in funding from governments, mostly in the form of competitive research grants.

To achieve our vision of a cancer free future, we work alongside local communities to:

- support people affected by cancer by providing emotional and practical support programs, as well as evidence-based information about cancer
- enable the community to reduce their cancer risk through programs, information and policy efforts in skin cancer prevention, nutrition, alcohol, tobacco control and cancer screening
- advocate and speak up to achieve better cancer outcomes
- conduct and fund world-class research to reduce the impact of cancer.

CCNSW is a committed partner in delivering the *NSW Cancer Plan 2022–2027* and working in collaboration with all health system and community stakeholders to achieve the best possible cancer outcomes for people in NSW. CCNSW is a lead or partner in 14 out of 37 actions identified within the *NSW Cancer Plan 2022-2027*.

Tobacco and e-cigarette control

CCNSW's tobacco control work is undertaken by the Tobacco Control Unit (TCU). The team's mission is to reduce the impact of tobacco use through evidence-based tobacco control policy and programs. The team's policy and program focus include state, federal and international issues covering tobacco control research, policy analysis and development, program development and implementation, advocacy and evaluation.

The TCU also collaborates with The Daffodil Centre, a world leading research Centre on cancer control and policy – a joint venture between The University of Sydney and Cancer Council NSW. Cancer Councils across Australia work to make a lasting impact on cancer outcomes by shaping and influencing policy and practice across the cancer control continuum; developing and disseminating evidence-based cancer information; convening and collaborating with cross sectorial stakeholders and consumers to set priorities; and speaking as a trusted voice on cancer control in Australia. Cancer Council has a long and proud history in tobacco control policy and advocacy, with world leading experts in a range of tobacco control focus areas.

Cancer Council acknowledges the traditional custodians of the lands on which we live and work. We pay respect to Aboriginal and Torres Strait Islander elders past, present and emerging and extend that respect to all other Aboriginal and Torres Strait Islander people.

Introduction

Tobacco control (including e-cigarettes) is a continuing priority for Cancer Council NSW. It is estimated that tobacco use causes at least 16 types of cancer^{1 2} and that around 3,330 cancer deaths in NSW per year are attributed to current and past tobacco use.³ These deaths are entirely preventable.

Australia has seen significant progress in tobacco control and reductions in tobacco use, with the latest data (2019) showing that 11.6% of Australian adults smoke daily, down from 24% in 1990.⁴ In New South Wales (NSW), adult daily smoking has also decreased over the last 20 years to 8.2% in 2022.⁵

However, the rise in electronic cigarette (e-cigarette) use risks undermining this progress. In recent years, we have seen increased use of e-cigarettes among young people aged 16-24, with a doubling of use in NSW between 2020 and 2021.⁶ Concerningly, evidence shows around a three-fold increased risk of smoking uptake in non-smoking e-cigarette users⁷, therefore strong action is warranted to improve e-cigarette regulation and compliance in NSW. The NSW government endorsed the National Tobacco Strategy 2023-2030⁸, which includes an objective to prevent the uptake of e-cigarettes by young people and those who have never smoked. Our recommendations align with this objective.

For convenience, our submission feedback is organised according to the Committee's Terms of Reference.

Options to improve e-cigarette regulation and compliance in NSW.

Terms of Reference A

Comments on the current situation in NSW regarding:

The prevalence of e-cigarette use among children and young people.

Summary of Recommendations

- The NSW Government should continue to work collaboratively with the Australian Government to support and urgently implement federal e-cigarette reforms and ensure coordinated action.

Action is urgently needed to address the increase in e-cigarette use (vaping) prevalence among young people in NSW. According to the NSW Population Health Survey, 16.5% of young people aged 16-24 years reported as current e-cigarette users in 2022, up from 4.5% in 2019-2020.⁴ The continued rise in vaping highlights the limitations of the current regulations in NSW and the need for strong government action to reduce access to e-cigarettes and ensure compliance with current laws.

The [Generation Vape Research Project](#) led by Cancer Council NSW studies vaping behaviours among teenagers aged 14-17 and young adults aged 18-24 in NSW and nationally. The most recent data collected between February and April 2023 (Wave 4) as shown in *Figure 1* found that:

- among a NSW sample of 416 young people aged 14-17 years, 18.4% have 'ever vaped'
- among 850 young adults, 37% identified as a current vaper with 12% vaping daily.⁹

Most of those trying an e-cigarette for the first time were aged less than 16 years, while qualitative data also indicates a decreasing age of initiation. The study also found that 42% of teenagers who had never vaped were curious to try, which presents a significant concern that if action is not taken, vaping prevalence will continue to rise.

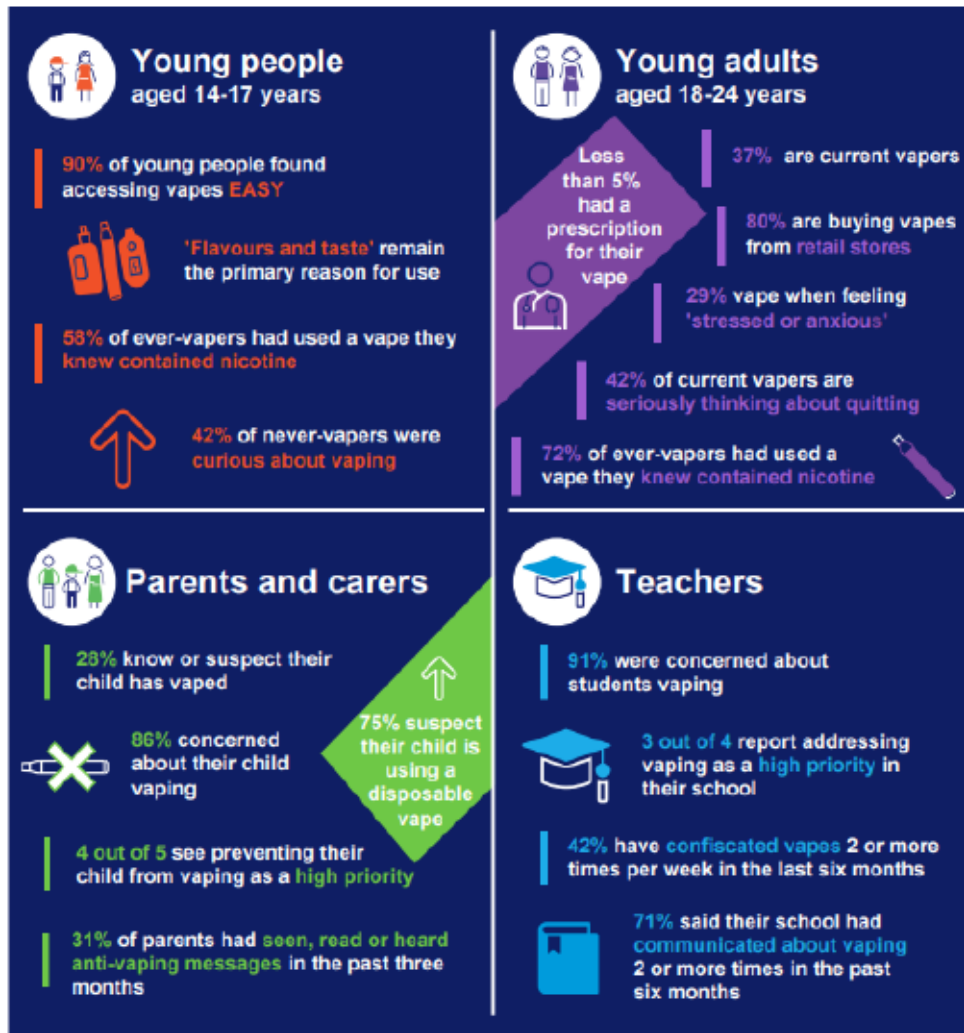
Along with young people aged 14-24 years, Generation Vape also surveyed parents of young people and secondary school teachers. Results indicate:

- 86% of parents are concerned about their child vaping and four out of five see preventing their child vaping as a high priority.
- 91% of teachers are concerned about students vaping at their school and three out of four say addressing vaping in their school is a high priority.⁵

Figure 1 Generation Vape Findings Summary (NSW) - Wave 4 (Feb-May 2023)



FINDINGS SUMMARY: NSW WAVE 4 (FEB-MAY 2023)



Citation: Jerkinson, E, Madigan, C, Egger, S, A, Brooks, A, Dessaix, A, Rose, S, McGill, B, Yazdjojiou, A, Freeman, B. Generation Vape Findings Summary: NSW (Wave 4). Cancer Prevention and Advocacy Division, Cancer Council New South Wales, September 2023.

We know from Generation Vape findings, reports in the media, and anecdotal evidence that vaping is a growing problem in schools, causing disruptions and teachers feeling overwhelmed and unsupported.

Since 2020, Life Ed has surveyed over 13,000 secondary school students in NSW on their perceptions about their peers' attitudes and behaviours on vaping, compared to their own.¹⁰ These survey findings showed that 50% of students think their classmates vape 'at least every week' and 20% said 'every month or so'. When asked about their own vape use, 72% said they had never used a vape, 15% said 'rarely, or only tried it', 5% said 'every month or so', and 8% said 'at least every week'. These findings show that while there is a strong perception from

young people that the majority of their secondary school peers vape, this is not the case in reality with almost three out of four students in NSW not vaping. These findings highlight the window of opportunity we have for policy change before we continue to see vaping prevalence among young people rise.

The national Australian Secondary School Alcohol and Drugs (AASAD) survey explores adolescent substance use in Australia.¹¹ While the most recent NSW data from ASSAD has not yet been published (TBC for release in mid-November), it is anticipated that these results will reflect similar vaping prevalence to that of the NSW Population Health Survey and Generation Vape.

Health risks associated with e-cigarette products.

Summary of Recommendations

- Sustained investment from the NSW Government and evaluation of evidence-based public education campaigns to increase knowledge and awareness of the harms of vaping and cessation support options is required.
- The NSW Government acknowledges public education, school-based programs and cessation services are secondary measures to complement the primary strategy of regulatory reform and compliance.

Health impacts.

Evidence on the negative health effects of e-cigarettes continues to mount. The most up-to-date comprehensive systematic review of the global evidence, undertaken by the Australian National University (ANU)¹², identified that risks of e-cigarettes include addiction, intentional and unintentional poisoning, acute nicotine toxicity, seizures, burns, injuries, and lung injury. Less direct evidence uncovered in the review indicates adverse effects of e-cigarettes on cardiovascular health markers, including blood pressure and heart rate, lung function and adolescent brain development and function. The long-term health risks of vaping are not yet known.

In June 2022, the National Health and Medical Research Council (NHMRC) CEO statement on e-cigarettes outlined the national advice on e-cigarettes based on the most up to date scientific evidence.¹³ The statement included:

- All e-cigarette users are exposed to chemicals and toxins that have the potential to cause harm. In addition to nicotine, more than 200 chemicals have been associated with e-liquids.
- E-cigarettes containing nicotine are addictive and people who have never smoked are more likely to take up tobacco smoking following their use.
- E-cigarettes have not been proven to be a safe and effective smoking cessation tool. There are, however, proven safe, evidence-based treatments available to help smokers quit such as nicotine replacement therapy (NRT), pharmacotherapy and behavioural interventions.
- For former smokers, using an e-cigarette may increase the chance of smoking relapse.¹⁴

There is growing evidence that vaping can cause inflammation of the mouth, leading to gum disease and other oral health issues.¹⁵ A recent study demonstrated that those who were vaping had a higher risk of developing caries.¹⁶ Evidence also suggests the *potential* for nicotine e-cigarettes to lead to oral cavity cancer creating a heightened awareness on the short-and long-term health risks of vaping.¹⁷

Vaping is also associated with a range of mental health conditions, including anxiety, depression and stress, according to a new report released in October 2023 by the Australian Institute of Family Studies.¹⁸ The study found that vaping is associated with anxiety disorders, higher perceived stress levels, depressive symptoms and suicidal ideation in adolescents.

The growing number of EVALI (e-cigarette or vaping product use associated lung injury) cases in 2019 brought serious attention to the dangers of vaping.¹⁹ The inflammatory response in the lungs caused by inhaling substances was strongly associated with Vitamin E acetate and Tetrahydrocannabinol (THC).²⁰ By mid-February 2020, the US Center for Disease Control reported more than 2,800 cases of lung injuries requiring hospitalisation and 68 deaths in the US.²¹ Evidence has concluded that e-cigarettes can have short-term health effects, and that people should only be breathing clean air - particularly those at risk of, or who have existing, respiratory conditions.

The 'gateway effect'.

Cancer Council NSW is particularly concerned about growing evidence that vaping, especially by young people who have never smoked, increases the risk of taking up tobacco smoking. The ANU e-cigarette harms report found strong evidence that non-smokers who vape are around three times as likely to go on to smoke combustible cigarettes as non-users, supportive of a what is known as a 'gateway effect'.⁶ Tobacco use remains the leading cause of morbidity and mortality in Australia²² and vaping has the potential to significantly increase smoking rates, jeopardising decades of progress in tobacco control.

Poisoning in children.

E-liquids contain an array of chemicals including nicotine, which can cause potentially lethal side effects in small quantities. The AusVape Safety Study conducted by the NSW Poisons Information Centre found that between January and December 2022 calls to the Centre regarding e-cigarettes increased significantly from 82 calls in 2020, to 254 calls in 2022. Of these, 71% of cases concerned children under the age of four.²³ E-cigarettes and nicotine e-liquids pose a critical risk to infants and children with the minimum potentially lethal dose reported to be anything greater than 0.5mg/kg.²⁴ Tragically, in Victoria in 2019, a 19-month-old baby died from nicotine e-liquid ingestion.²⁵

Exposure to nicotine and other chemicals.

E-cigarettes commonly contain nicotine, the addictive drug also found in traditional cigarettes, which when used by young people can harm the parts of the brain that control attention, learning, mood, and impulse control.²⁶ In Australia nicotine is classified under the Standard for the Uniform Scheduling of Poisons (Cth) ('the Poisons Standard') as a schedule 4 'prescription only medicine'.

The **Generation Vape** study found more than half of ever-vapers had used an e-cigarette that they knew contained nicotine and a further 27% did not know whether they had used a e-cigarette containing nicotine or not.¹⁹ The use of nicotine salts in vapes results in higher ratings of appeal, sweetness, and smoothness, while having lower reports of bitterness and harshness compared to free base nicotine.²⁷

Many e-cigarettes falsely claim or mislead users to think they are nicotine free when they are not, which presents a significant health risk to young people. NSW Health commissioned the University of Wollongong to undertake detailed analysis of over 750 e-cigarettes seized from retailers and confiscated by schools in Sydney over 2022/23.²⁸ The study findings showed that almost all products tested contained nicotine (98%) despite most not listing it as an ingredient on the product or packaging. A proportion of the devices tested were found to contain chemicals that are known to cause harm to health including ethylene glycol, acetoin, benzaldehyde and cinnamaldehyde.

Low numbers of users accessing the prescription model.

The scheduling of vaporiser nicotine as a schedule 4 (Prescription Only) medicine recognises that nicotine containing e-cigarettes should only be used under medical supervision. This ensures the products are used as part of a comprehensive smoking cessation program that includes behavioural support and avoids prolonged use. Yet it is estimated that a very low proportion of current users obtain nicotine vaping products using a prescription as accessing nicotine e-cigarettes via illegal retail sale outside of the prescription pathway is easy (see Section ii. where regulatory loopholes and widespread availability are discussed in further detail).

This lack of medical supervision for people using e-cigarettes to attempt to quit smoking has the potential to increase harm, as patients are not being regularly reviewed and monitored. We know that across the Australian population, over half of all current e-cigarette users continue to smoke tobacco (referred to as 'dual use').²⁹ Given this data is from 2019, we anticipate the current proportion of dual users to be much higher. Dual use has a higher potential for harm as users are exposed to toxins from both products.³⁰ Further, as the Standard for Nicotine Vaping Products (TGO -110)³¹ applies only to prescribed products, it is not known how many of the products most consumers are using conform to the Standard.

Impact of programs and services aimed at preventing uptake or continuing use of e-cigarettes.

Summary of Recommendations

- The NSW Government should take a coordinated intergovernmental approach to address vaping to avoid duplication across its portfolios. This should include: health, education, police, small business and other portfolios as appropriate.
- Sustained investment from the NSW Government (along with the Australian Government) in large-scale research projects, such as Generation Vape, that form the evidence base on vaping and young people and directly inform and evaluate policies, programs and services is required.
- School-based interventions or programs should be viewed as supportive measures to broader NSW Health led measures (such as regulation and compliance) and where possible, embedded into existing policies or curriculum to reduce the burden on teachers and ensure consistency across NSW schools. Cancer Council NSW does not support the adoption of vape detectors.
- NSW Health establish, map and communicate vaping cessation support pathways and ensure there is coordination across government.

To date, there has been limited research into the impact of programs and services aimed at preventing uptake and continuing use of e-cigarettes. While evaluation data is lacking in some areas, there have been multiple initiatives spanning campaigns, research, and resource development aimed at preventing or addressing vaping among young people.

The 'Do You Know What You're Vaping?' Campaign.

In March 2021, NSW Health launched the 'Do You Know What You're Vaping?' campaign³² which included a toolkit with a range of factsheets, social media assets, posters, videos and other templates. The campaign was designed to provide young people with the facts about vaping, address the myths, and increase awareness of the health impacts of vaping.

The campaign evaluation showed that between March and June 2022, the webpage was viewed almost 120,000 times, over 10 million people were reached across 46 organic posts on NSW Health social media, and 11.5 million impressions were generated by paid social

media.³³ The campaign performed well among the desired audience of young people with 80% saying the ads were easy to understand, 84% said they delivered an important message, and 80% said they were informative. Since the initial launch, Cancer Institute NSW has developed a second phase of the campaign in July 2022 with assets featuring on social media, outdoor media, online videos, audio, and influencer content.

Generation Vape evaluated the awareness of the 'Do You Know What You're Vaping?' campaign message and between February and April 2023 (Wave 4), 41% of 14–17-year-olds in the study could recall seeing, reading, or hearing the campaign message.⁵

The 'Do You Know What You're Vaping?' campaign and toolkit filled a significant gap in resources and initiatives aiming at preventing vaping and uptake of e-cigarettes among young people and has since been licensed across most states and territories in Australia. The campaign showed a clear ability to drive positive behavioural change among 14–17-year-olds in relation to vaping²⁴ and it is important that this campaign continue to be evaluated, updated, and improved to reflect growing levels of knowledge and awareness in the NSW community.

Upcoming federal and state campaign/public education activity.

In October 2023, Minderoo Foundation launched the unCloud campaign³⁴ which aims to expose the industry behind e-cigarette use and empower young people to say no to vaping. With a target audience of 14-25 years the national campaign includes digital, social and out-of-home assets such as posters. The Australian government also announced funding for tobacco and e-cigarette public education, with timings and approach not yet finalised.³⁵

In NSW the development of ongoing public education campaigns in the tobacco and e-cigarette space needs to remain on the agenda to ensure that nicotine users are supported to quit and just as importantly, that non-users remain strong in resisting the use of nicotine products. We support the recent funding announcement and commitment from the NSW Government to provide \$11.9 million over three years to deliver a campaign targeting reduced uptake of vaping among young people.³⁶

Personal Development, Health and Physical Education (PDHPE) Curriculum.

In 2022, the NSW Department of Education launched an updated PDHPE curriculum for Years 7-9 with a particular focus on the facts about vaping and reframing vaping.³⁷ The various learning sequences focused on weighing up risk and reward, fact checking, learning from history, the power of brands and marketing, and developing and applying critical thinking skills. These curriculum updates were informed by the findings from Generation Vape as well as the learnings from the 'Do You Know What You're Vaping?' campaign.

While the curriculum has not yet been evaluated, stakeholder and school community feedback has been positive, with teachers anecdotally reporting that they feel more informed and confident to talk about vaping with their students. It is important to note that any school-based interventions or programs should be embedded into existing curriculum delivery and school policies to reduce the burden on teachers and ensure vaping is comprehensively and consistently addressed across all schools in NSW.

Vape detectors in schools.

Cancer Council NSW understands that the NSW Department of Education is considering the implementation of vape detectors in NSW schools. According to qualitative data from Generation Vape⁵, many schools that have already installed vape detectors report this strategy as being ineffective and adding to the already cumbersome burden vaping is placing on teachers and schools. Vape detectors are merely a tool to identify when vaping is occurring in a school. Given the issue of vaping is already widely established and reported by teachers, we argue the universal implementation of these devices is redundant and relies heavily on teachers physically following up on the alerts.

Vaping is causing a significant burden on schools and interfering with the quality of education being delivered. While the Department of Education has a role to play in preventing uptake and use of e-cigarettes among young people, the root of the problem lies outside the school gates. The actions taken by schools are not enough alone to combat this issue and vaping must be primarily addressed through the Health portfolio by reducing supply and access to e-cigarettes. Cancer Council NSW does not recommend vape detectors as a strategy to address vaping.

Life Ed Vaping Education Modules

Life Ed Australia run a series of education modules in NSW based primary and secondary schools. Since 2020, 30,964 primary students have participated in the vaping education modules and of the 4,459 who were surveyed afterwards, positive results were found in both behavioural change intent and increase knowledge awareness.³⁸ The module evaluation survey found that:

- 97% of the students understand how nicotine affects the body.
- 93% of the students said they feel like they can say 'no' if offered a vape.
- 90% of students are less likely to vape after what they learned.

Findings from over 4961 primary school teachers who had used Life Ed's 'Teacher Assessment Tool' to assess students learning across the vaping education modules showed that:

- 87% of their students identified nicotine as a drug.
- 88% identified that vapes may contain chemicals.
- 80% discussed the laws governing the advertising and sale of nicotine products.
- 78% identified some of the effects vaping has upon the body.
- 84% discussed strategies to address pressure to vape.

These results demonstrate the positive impact education-based initiatives can have in increasing young people's knowledge and awareness of vaping and the health impacts but should not be adopted in isolation. Instead, educational approaches should be adopted as a complementary approach alongside strong policy action to reduce access and supply of vaping products.

Generation Vape Study.

The Generation Vape research project, led by Cancer Council NSW, has been instrumental in providing valuable data and insights into the behaviours, attitudes, knowledge, and perceptions of vaping among young people aged 14-24 years. The findings from the study have directly informed policy decisions at both state and federal levels and have been drawn upon to guide programs, campaigns and other educational initiatives aimed at preventing e-cigarettes use and uptake.

Generation Vape is the first and largest study of its kind in NSW and across Australia and is uniquely placed to evaluate policy changes and their impact on e-cigarette use and uptake among young people. Research studies like Generation Vape that directly inform policy and program approaches need ongoing funding and should be a continued priority for the NSW Government to monitor and track vaping among young people.

Cessation support

Cessation support to quit vaping or address nicotine dependence is lacking in Australia with no services currently tailored to young people. This gap has been recognised by the NSW Government with announcements made in September 2023 to dedicate \$2.5 million over the next 12 months to increase services to help young people quit vaping.³⁹ This includes a new digital platform, enhancements to the ICanQuit platform and an online learning module for youth services across NSW.

The Quitline and iCanQuit platform are the primary sources of quitting support currently available in NSW, yet these services are designed for adults and have not yet been tested with a youth audience. NSW Health has recently released a 'Guide to Support Young People to Quit E-Cigarettes' intended for health professionals, while the Sydney Children's Hospital and the Royal Australian College of General Practitioners have released similar guides for clinicians. These have not yet been evaluated to determine effectiveness or impact; however, they have been developed with expert guidance and are grounded in the strong evidence base that exists for tobacco cessation. It is imperative that NSW Health evaluates the effectiveness of the guidelines and brief intervention for vaping cessation among young people. Healthy North Coast (mid north coast Primary Health Network) has been designated as the lead for development of a health pathway for vaping cessation, targeted at young people. It is intended that this pathway (estimated to be released by the end of 2023) is implemented across NSW and Australia once it is finalised.

Given the current gaps in cessation support and growing number of young people experiencing nicotine dependence or addiction from vaping, it is important to explore support pathways and ensure communication and coordination across government portfolios including health and education. Cancer Council NSW is currently undertaking a research project funded by the nib Foundation to scope vaping cessation support services for young people across Australia and will use these findings to inform the development of a vaping cessation platform. It is important to note that different young people will require different levels of support and that all programs work together, building on one another, to ensure that young people have a range of support services that are appropriate and relevant to their needs.

Other school-based programs.

We are aware that the Matilda Centre within the University of Sydney is currently developing and testing an e-cigarette prevention program for Year 8 students in 42 schools across NSW, Queensland and Western Australia.⁴⁰ Given this study is underway with the study protocol recently published,⁴¹ we are not aware of any evaluation or measures of impact. In late 2022 a protocol for the Cochrane systematic review on interventions to prevent or cease electronic cigarette use in children and adolescents was released.⁴² The findings of this review will be important for the NSW Government and stakeholders to consider in supporting young people in particular.

Terms of Reference B

Comments on NSW's current regulatory framework

Effectiveness in reducing harm from e-cigarette use

Summary of Recommendations

- The NSW Government to work collaboratively with the Australian Government to phase out the availability of non-nicotine e-cigarette products to end the regulatory loophole.
- The NSW Government to support the proposed extension of Australian legislation to prohibit all forms of e-cigarette advertisements, marketing, sponsorship and promotion.
- The NSW Government to sustain enforcement efforts to ensure compliance with advertising and promotion restrictions in the retail environment.

Currently, it against the law in NSW to sell:

- a nicotine e-cigarette product to anyone without a prescription for it.
- a non-nicotine e-cigarette product to anyone under the age of 18 years.

Retailers of non-nicotine e-cigarettes in NSW are regulated under the Public Health (Tobacco) Act 2008 (NSW). Pharmacies that sell nicotine e-cigarettes are regulated under federal and NSW therapeutic goods legislation. However, the Public Health (Tobacco) Act 2008 (NSW) requires all retailers of e-cigarettes, including pharmacies, to notify the Ministry for Health that they sell them. NSW Health and the wider team working in enforcement and compliance has led the way on monitoring and seizures of e-cigarettes and should be applauded for the work that they undertake and the strong relationships that have been established between a local health districts and local area police commands in tackling this issue together.

Nicotine e-cigarettes can be imported and prescribed only as permitted by therapeutic goods legislation. There are no import restrictions on non-nicotine e-cigarettes. There are however limitations in the current regulatory framework in NSW that impact its effectiveness to reduce harm from e-cigarettes. Examples follow:

a) Legislative loopholes are created from 'non-nicotine' e-cigarette availability.

The proliferation, availability, and regulation of 'non-nicotine' e-cigarettes as a consumer product undermines the effectiveness of the currently regulatory framework. This is because many of these products do in fact contain nicotine, even if they are not labelled as such.⁴³

These products are harmful because they are attractive to children and young people, promote smoking-like behaviours, and serve no therapeutic purpose. Non-nicotine vaping products also greatly hinder enforcement efforts by drawing a legal distinction between nicotine and non-nicotine products, which cannot be verified without laboratory testing.

b) Easy access to e-cigarettes undermines education aimed at young people.

Education is an important component of knowledge and skill building for healthy decision making among young people. To be effective however, education needs to be supported by policy and environments that reinforce the key messages and themes. The efforts of the

education sector, especially schools, are undermined by easy access to e-cigarettes by young people⁴⁴ and social norms that make their use increasingly acceptable among peers. While there are some excellent resources available, and integration of key messages into the PDHPE curriculum, schools are not resourced to monitor the scale of vaping among students, manage nicotine addiction issues or effectively support students to quit vaping, with unclear referral pathways.

c) Restrictions on advertising and promotion of e-cigarettes need strengthening.

Young people are being exposed to e-cigarette advertising and promotion both online and in retail settings which has been shown to reduce risk perceptions and stimulate curiosity, increasing susceptibility to use.⁴⁵ This undermines existing restrictions in NSW.

Recent data collected between February and April 2023 as part of Generation Vape showed that over one in four (26%) young people aged 14-17 years who had bought a vape themselves, had purchased through social media.⁵ The study also showed that exposure to e-cigarette advertising and promotions on TikTok, Instagram, Snapchat and YouTube through influencers or celebrities had significantly increased from 2021 to 2023. Many of the survey participants reported seeing or hearing promotions for vapes in physical retail stores including vape stores (26%), tobacconists (21%), convenience stores (18.5%), or petrol stations (16%).

Qualitative data collected through focus groups and interviews also suggests that despite the existing restrictions, young people are directly and indirectly exposed to e-cigarette advertising and promotions. Many participants reported purchasing “under-the-counter” vapes from retail stores where shop attendants pulled out a vape “menu” with brand imagery and flavours for the young person to choose from.⁵

These findings are consistent with a recent study by Pettigrew et al. 2023 which found that despite advertising restrictions in place in the four countries they explore (including Australia), large majorities of young people reported being exposed to e-cigarette advertising.⁴⁶ Key exposure locations appeared to be on social media and advertising on or around vape shops and other retailers.

A joint report by VicHealth and Quit⁴⁷ examined online marketing tactics of the e-cigarette industry and found that many TikTok and Instagram accounts that post vaping content are disguising themselves as individual accounts but are in fact linked to an online e-cigarette store. The report also found that the e-cigarette industry is increasingly using social media influencers, with Instagram home to more than 18,000 Australian “vaping influencer” profiles which are set up specifically to promote vaping.

We commend NSW Health for their ongoing efforts in monitoring compliance and enforcing existing restrictions on advertising and promotion. Cancer Council NSW supports the proposed extension of federal legislation to prohibit all forms of e-cigarette advertisements.⁴⁸ The changes incorporated into new federal legislation, should they be supported, will then need to be reinforced by NSW regulation. Regulations should be carefully constructed with sustained monitoring and enforcement action required to ensure retailers (both physical and online) comply with the law to prevent young people’s exposure to e-cigarette advertising and promotion. This is particularly important in the retail environment where regulation should cover for example at the point of sale, on signage in front of the store, the store windows or in the proximity of the retail space.

Policy and enforcement strategies should be future proofed to keep up with the rapidly evolving marketing techniques and ensure that pharmacy retail settings and online prescription providers and fillers in NSW are also complying with the same strict advertising standards on all prescription medicines. The NSW Government must ensure pharmacies do not promote the availability of e-cigarettes onsite or through their online purchase system, or promote “price” specials, product availability or any other form of promotion or advertising.

We also argue that the promotion of corporate social responsibility activities by the e-cigarette industry should be prohibited. Industry players are increasingly relying on promotion of so called 'socially and environmentally responsible' business practices as a means of 'rebranding' themselves and fostering associations between the e-cigarette industry, and socially responsible ideals and causes that are far removed from the harms of e-cigarette use.

Effectiveness in preventing illegal supply.

Summary of Recommendations

- The NSW Government works with the Australian Government to remove the current regulatory loophole created by the availability of non-nicotine e-cigarettes.
- The NSW Government supports the Australian reforms and ensures consistency with state legislation.

Regulatory loopholes.

The current legislation in NSW does not effectively prevent the illegal supply of e-cigarettes. A primary reason for this is the regulatory distinction between nicotine and non-nicotine e-cigarettes, which has resulted in complexities and/or failures of enforcement at all levels of government. Nicotine can only be detected by laboratory testing, which has hampered enforcement efforts and enabled importers and suppliers to evade laws by deliberately mislabelling products.

Recent product seizures from NSW Health indicate that nicotine vaping products are being illegally imported, transported, stored and sold in large quantities in breach of federal, state and territory laws. For example, between 1 January 2022 to 30 June 2023, NSW Health has conducted over 5000 inspections and seized around 369,000 nicotine containing vapes and e-liquids, with an estimated street value of over \$11.8 million.⁴⁹

The reforms announced by the Australian government to ban all vapes, except those for legitimate therapeutic use supplied on prescription, will greatly aid enforcement and compliance efforts in NSW and should curb easy access to vapes by children and young people. Prior to and after implementation of these reforms the NSW government must sustain compliance and enforcement efforts, maintain ensure adequate resourcing, and continue to communicate the law to retailers and the broader public.

Widespread availability is a key driver of use.

The widespread availability of e-cigarettes, including disposables, acts as a key driver of use by young people. In a cross-sectional study of 721 teenagers aged 14-17 years in NSW, nearly 80% of teenagers who had vaped reported that it was very, easy or quite easy to access them.⁵⁰ This trend has continued over three waves of research, with access appearing to be getting easier with over 80% of both teenage ever-vapers and young adult current-vapers reporting in Wave 4 data collection (February-May 2023) that e-cigarettes were either very easy, easy or quite easy to access,⁵ Insights from the focus groups and interviews indicate that e-cigarettes are becoming more prominent in the community with retailers illegally displaying and selling products.

For teenagers aged 14-17 years, the primary channel for access is through a friend selling or sharing. This is often achieved by a peer or contact buying large quantities of e-cigarettes online and on-selling to other young people. Concerningly, access via retail stores has increased over the research waves with almost a third (32%) purchasing at either a tobacconist, convenience store or vape store. For young adults aged 18-24, the majority (83%)

are purchasing through retail stores with only 4.8% reporting they had a prescription from a health professional.⁵

It is anticipated that the proposed federal reforms, which aim to reduce unlawful importation and supply, will lead to a marked decrease in vaping prevalence among young people. We believe other aspects of the proposed reforms such as the ban on all but two flavours, banning all single use, disposable e-cigarettes and the requirement for pharmaceutical-style packaging, will decrease their appeal to children and young people. The NSW Government must ensure these reforms are supported and necessary changes made to our state legislation to ensure consistency and enable effective enforcement.

Challenges to enforcement and compliance.

Summary of Recommendations

- The NSW Government works with the Australian Government to ensure that border controls on the importation of all vaping products are significantly strengthened and effectively implemented.
- The NSW Government invests in investigating and mapping the illegal supply chain for e-cigarettes in NSW to ensure effective compliance and enforcement.
- The NSW Government sustains investment to enable effective compliance and enforcement monitoring and a coordinated response between state government agencies, with clear roles and responsibilities.
- That NSW Government reviews regulations that determine how breaches of e-cigarette retailing are penalised to ensure they are clear, strengthened and simplified.
- The NSW Government expands public education to improve public awareness of the fact that smoke free laws also apply to vaping.
- The NSW Government comprehensively disseminates resources for enclosed public areas and relevant outdoor public areas that emphasises that 'no smoking means no vaping'.
- The NSW Government reviews and refines key messages to communicate changes to e-cigarette policy and legislation following the implementation of proposed federal reforms.

Legislative loopholes make enforcement difficult.

Nicotine e-cigarettes are being supplied illegally in NSW retail stores due to the legislative loopholes outlined above. Currently, there is little to stop illegal e-cigarettes being imported into the country. Disposable e-cigarettes, in colourful packaging with sweet flavours, are marketed to children and young people. Critically, the unregulated market for so called "non-nicotine" e-cigarettes makes it difficult to enforce current laws and address illegal importation and sale of nicotine e-cigarettes.

NSW Health is responsible for inspecting retail stores and seizing illegal products and has been proactive in undertaking enforcement and compliance activities, under difficult circumstances. The sheer scale and complexity of the enforcement and compliance challenge is clear. While NSW Health Compliance Officers do their best to enforce the law, seizure data indicates significant volumes of illegal product are circulating in the market. For example, from 1 January to 30 June 2023, NSW Health seized 187,000 products, up from 61,000 at the same time the previous year. Between 1 January 2022 and 30 June 2023, NSW Health reported conducting over 5,000 inspections and seizing around 369,000 nicotine e-cigarettes and e-liquids, with an estimated street value of over \$11.8 million.⁵¹

We commend the recently announced funding boost by the NSW Government⁵² to expand compliance and monitoring activities across the state and continue to crack down on retailers who illegally sell nicotine e-cigarettes. A regulatory challenge is that NSW Health Compliance Officers are not authorised to inspect warehouses, creating a loophole in the system. Under current NSW legislation, NSW Police can only act if they see, or have reasonable suspicion, that a retailer is breaking the law and have a warrant to enter the premises.

A conference presentation by NSW Health in May 2023 illustrated the lengths some retailers take to skirt the law, including concealing illegal products through false walls, hidden storage cabinets in kickboards, or behind locked bars.³² Further, the legal sale of non-nicotine e-cigarettes to adults in NSW in general retail stores has normalised recreational use and exposed young people to vaping promotions and attractive products. In many cases, this has been used as a cover for illegal sales of nicotine e-cigarettes.

A coordinated response is required.

To overcome significant enforcement challenges, the border controls on the importation of all vaping products must be significantly strengthened, to stem the flow of illegal nicotine vaping products into Australia and reduce the burden on compliance action further down the supply chain. To this end, we support the intent of proposed federal changes⁵³ and have provided constructive feedback on how they can be optimised further. In essence, we believe the federal e-cigarette reforms will help “turn off the tap” on the flood of illegal vaping products entering the country and make them harder for non-smokers, including children and young people, to access.

Effective compliance and enforcement monitoring will require ongoing resourcing and a coordinated response between agencies, at all levels of government. Clear agency roles and responsibilities need to be defined to enable effective collaboration and address any deficiencies in the current system. It makes sense for NSW Health to lead day to day compliance and enforcement activities in NSW, with the coordinated support of law enforcement agencies. Recent examples of joint operations between federal and state agencies⁵⁴ led by Australian Border Force (Illicit Tobacco Taskforce), and the Therapeutic Goods Administration⁵⁵ also provide a model of how intelligence sharing, and collaboration across state and federal governments can combat illicit tobacco and e-cigarette networks and seize unlawful products.

A sustained workforce to inspect premises would need to be supported by regulatory changes to close loopholes (e.g. warehouse inspections). This is particularly important considering the announced federal changes where there are anecdotal reports of retailers ‘stockpiling’ illegal e-cigarette products in preparation for policy change. Once implementation of the proposed federal changes commences, the illegal supply and retailing of e-cigarette products will need to be monitored on an ongoing basis to measure and track impacts on the scale of the issue and ensure adequate resourcing for sustained compliance and enforcement efforts in NSW.

Taking action against e-cigarette retailers who break the law.

The prohibition on tobacco retailing is established by sections 33–38 of the Public Health (Tobacco) Act 2008 (NSW). These sections do not currently apply to e-cigarettes, making it more difficult to act against retailers that break the law. There are provisions in the NSW Medicines, Poisons and Therapeutic Goods act 2022 in relation to the supply of nicotine, though not all provisions of this updated legislation have commenced as regulations are still being finalised. There are some gaps in the NSW Poisons and Therapeutic Goods Act 1966 and associated Regulations. Notably, there are currently no Penalty Infringement Notices for illegal nicotine supply in the Regulations, so costly legal action is needed to prosecute infringements and issue penalties. In our view, the maximum penalty for each infringement needs to be reviewed to ensure it deters retailers from acting illegally and is reflective of the burden to the community.

Addressing second hand aerosol exposure.

The use of e-cigarettes is covered alongside tobacco smoking in the NSW Smoke-Free Environment Act 2000 and related Smoke-Free Environment Regulations 2016 - meaning anywhere a person cannot smoke, they cannot vape. Despite this, vaping in designated smoke-free places has created a significant problem in the community and has contributed to the social normalisation of vaping, particularly in licensed premises such as pubs and clubs. We know that e-cigarette use leads to increased airborne particulate matter in indoor environments.⁵⁶ Recent evidence also indicates potential harm from breathing in second-hand aerosols from e-cigarettes, such as airway and other irritations⁵⁷ and an increased risk of bronchitis or shortness of breath.⁵⁸

Due to the inconspicuous nature of vaping and the ability for a person to vape or “graze” consistently and conceal the product quickly and easily, smoke-free environment rules are more difficult to enforce. Anecdotal reports to Cancer Council NSW from community members indicate that exposure to second-hand aerosols from e-cigarettes is a growing issue. Patrons of restaurants, licenced premises, cinemas, public transport and other public places are unwillingly being exposed to clouds of toxic vapour, impacting their ability to breathe clean air and affecting personal enjoyment in public spaces.

To increase awareness and compliance with Smoke-Free Environment regulations, we recommend that the NSW Government expand public education and comprehensively disseminate resources for smoke-free areas that emphasise ‘no smoking or vaping’. While NSW Health has developed useful health promotion posters⁵⁹ that communicate that ‘no smoking means no vaping’ these are optional to display and public awareness and understanding of the rules appears low. There are no mandatory signs under the Smoke Free Environment Regulation that cover both smoking and vaping. Further nuancing in communication will be required following the introduction of Australian government reforms.

Terms of Reference C

Comments on how NSW can work with the Federal Government to implement reforms on e-cigarette products

Summary of Recommendations

- That NSW Government work with the Australian and State and Territory governments to establish joint governance structures to foster effective planning, coordination of action, resource and intelligence sharing, and ongoing review.
- That any required legislative changes in NSW are coordinated by the NSW Government with other State, Territory and Australian governments to ensure a consistent and effective outcome for suppliers, retailers, and consumers.
- The NSW Government should take a coordinated approach to address vaping to avoid duplication across its portfolios. This should include: health, education, police, small business and other portfolios as appropriate.

Reform is welcomed.

Among other measures to tighten e-cigarette laws, the Australian Minister for Health and Aged Care announced on 2 May 2023⁶⁰ that the Australian Government will work with states and territories to:

- stop the importation of non-prescription e-cigarettes;
- increase the minimum quality standards for e-cigarettes including by restricting flavours, colours, and other ingredients;
- require pharmaceutical-like packaging;
- reduce allowed nicotine concentrations and volumes;
- ban all single use, disposable e-cigarettes;
- close down the sale of e-cigarettes in retail settings (other than the sale of prescribed nicotine e-cigarette products by pharmacies); and
- make it easier to get a prescription for legitimate therapeutic use.

The proposed federal reforms are comprehensive, tackling the issue of vaping at all angles – prevention, enforcement, community education and quit smoking support. We believe they will make the existing regulations more effective by ensuring that nicotine vapes are legitimately being used by those people who want to try these products to quit smoking under medical guidance.

Coordinated action needed for post-reform implementation.

To be most effective, the federal reforms must be supported by states and territories. While the proposed Australian Government legislation is yet to be tabled, it is vital that the NSW Government prepares for post-reform implementation. This includes coordinating action across portfolios and seeking partnerships with community and non-government organisations such as Cancer Council NSW to align our efforts.

Assuming the reforms are successfully adopted, an initial challenge will be in closing down sales in specialist stores, convenience stores and other retail settings. Any required NSW legislative changes will need to be coordinated with other states and territories and the Australian government to ensure a consistent and effective outcome for suppliers, retailers, and consumers.

A vital first step will be to agree on definitions that will be used in all relevant legislation nationally as well as the timeframe for shutting down retail sales. We believe a reasonable timeframe is 6-12 months and is best aligned across jurisdictions to remove the risk of loopholes and simplify the enforcement process. Implementation of the retail shutdown should be structured and well planned with all relevant Ministers and government portfolios aware of the process and timeframes.

Intergovernmental governance structures will need to be established to foster effective planning, coordination of action, resource and intelligence sharing, and ongoing review. Avoiding duplication of effort should be a high priority. For example, NSW Health has already developed high quality educational resources⁶¹ aimed at young people that have been licenced to other states and territories. Other evidence-based behaviour change initiatives could be collaboratively planned, delivered and evaluated to ensure maximum impact and reduce costs, effort and time. Future social marketing campaigns should be funded and coordinated nationally, with support and adaptation by states and territories.

As e-cigarettes will remain a legal product via prescription for legitimate therapeutic use, and supplied by pharmacies, there will still need to be ongoing monitoring to ensure compliance with relevant advertising and sales regulations. While the Australian Government wants to make it easier to get a prescription for legitimate therapeutic use, the proliferation of online doctors providing vaping prescriptions with little medical oversight is concerning and needs ongoing monitoring.

Conclusion

Cancer Council NSW are proud of our history in developing evidence-based tobacco control policy and programs and funding contemporary research that contributes to policy and practice. Effective tobacco and e-cigarette control requires a comprehensive strategy, including a strong regulatory approach to reduce tobacco and e-cigarette use and protect public health.

In summary, the regulatory and compliance environment in NSW needs further strengthening to address the growing use of e-cigarettes among young people as a rapidly escalating public health crisis. These products are clearly marketed and designed to appeal to children and widely available and accessible by young people, despite being proven to cause harm. We must prioritise the health and wellbeing of our young people and protect them from nicotine addiction and the detrimental health impacts from vaping.

Cancer Council NSW will continue to advocate for strong action, including a phase out on the supply of all vaping products outside the prescription model. Our position is aligned with the announcements made by the Australian Government in May 2023, and we are confident that the introduction of these reforms will support the NSW Government to better protect the health of the people of NSW. We implore the NSW Government to show leadership, support the federal reforms and ensure the legislative and regulatory framework for addressing e-cigarette use in NSW is robust and effective.

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