

E-CIGARETTE REGULATION AND COMPLIANCE IN NEW SOUTH WALES

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AUSTRALIAN ASSOCIATION OF CONVENIENCE STORES

INQUIRY SUBMISSION

E-CIGARETTE REGULATION AND COMPLIANCE IN NEW SOUTH WALES

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Overview

The Australian Association of Convenience Stores (AACS) represents over 7,000 convenience stores throughout Australia, employing more than 80,000 Australians generating \$10 billion in sales (excluding fuel). Our members include prominent retailers like Ampol, Viva Energy, 7-Eleven Australia, BP Australia, and many smaller, often family-owned businesses that support local communities across urban and rural regions in Australia.

The existing prescription-only regulatory framework for nicotine vaping products (e-cigarettes) has created a rampant youth vaping crisis and put legitimate convenience stores at a disadvantage, as they are unable to sell these products legally and in a regulated manner, unlike tobacco products and other smoking cessation aids. This situation has led to the emergence of a black market for these products, which are easily accessible to children.

AACS is grateful for the opportunity to contribute to the Law and Safety Committee's inquiry on options to improve e-cigarette regulation and compliance in New South Wales. We welcome the chance to share our insights and expertise on the current landscape and challenges faced in this area, and to collaborate in identifying and implementing effective strategies for addressing the current vaping product black market regulatory failure and its associated risks.

Background

Against the recommendations made by AACS at the time, the former Federal Government introduced the current prescription model for e-cigarettes in an attempt to restrict access to children.

Analysis commissioned by AACS and conducted by Roy Morgan Research¹ in September 2023 shows that the current model has regrettably resulted in the growth of a black market which targets children and bypasses any proper safety and ingredient regulations. The introduction of the prescription model on 1 October 2021 has resulted in:

- Over 1.6 million Australian adults (7.9% of the adult population) now vape each month (Roy Morgan, September 2023);
- 92% of e-cigarettes being purchased through the black market (Independent Economics, March 2023); 8% only of e-cigarette consumers are using the prescription model as intended;
- The creation of a lucrative black market, bypassing all regulatory controls and allowing children to access vapes freely, with no age identification measures imposed;
- The imposition of unnecessary costs on Australian governments, through the Medicare rebate, costly and futile enforcement initiatives and unclaimed GST; and
- Lawful businesses facing significant declines in foot traffic and loss of supplementary purchases with over a million Australian adults purchasing their vaping products from black market retailers.

¹ Roy Morgan Single Source, September 2019 – September 2023

The Current Situation in NSW

Prevalence of e-cigarette use

Research conducted by Roy Morgan this year highlighted that vaping in Australia has grown by 347% in the last 5 years – with 1.6 million adult Australians now using e-cigarettes.² There is now an additional 308,000 vapers in Australia compared to December 2022, a rise of 23%.

The Roy Morgan research commissioned by Independent Economics showed only 8% of e-cigarette purchases are being made legally with a prescription – meaning that 92% are using the black market to purchase e-cigarettes and evading Australia's e-cigarette control framework and tax system.³

The New South Wales adult vaping population is estimated by Roy Morgan to be 8.2%, in September 2023.⁴ This number has grown significantly by 496% in the last four years. New South Wales is leading the nation in the growth of e-cigarette consumption, with now over half a million adult vapers.

Consultation with AACCS members and their experience in communities further outlines the growth of the black market and the risk that consumption of illegal e-cigarettes will continue to accelerate and spread through the state. The rapid expansion of the black market to date underscores the urgency of addressing the issue of unregulated access to e-cigarettes and developing an effective regulatory framework to control the market.

Associated health risks

AACCS implores the New South Wales Government to act with urgency to address the current failed vaping policy framework— especially in relation to youth vaping. New South Wales is experiencing a dramatic increase in youth vaping fuelled by an unregulated black market that is easily accessible. Other nations, like New Zealand are seeing a sharp decline since regulating e-cigarettes like an adult consumer product:⁵ A the New Zealand public health group funded by The Ministry of Health, Heart Foundation and Māori Public Health, Action for Smokefree 2025 have stated:

New Zealand was slow to enact legislation to regulate vaping. Controls on marketing, sales, nicotine limits and access for people under 18 were not passed until 2020, and not implemented until August 2021.

This delay was costly to youth. In the six years between 2015 and 2021 daily vaping had already increased from 1% in Year 10 students to almost 10%, and from 1% to 18.6% for under 25s.

ASH is concerned about this level of youth vaping but notes that since the vaping regulations were implemented, the rate of increase in daily vaping in youth has slowed markedly and was just over ten percent (10.1%) in 2022. Regular vaping, defined as at least once a month, has decreased. This suggests that the regulations are starting to have the desired impact.

The significant risk associated with the proliferation of the unregulated black market for e-cigarettes in New South Wales is the lack of safety standards for these products. When consumers purchase vaping

² Roy Morgan Single Source, September 2019 – September 2023

³ Independent Economics, Tobacco and vaping products in Australia: An updated economic assessment, March 2023

⁴ Roy Morgan Single Source, September 2019 – September 2023

⁵ Action for Smokefree 2025, Vaping and young people: ASH position statement, May 2023

products from the black market, they expose themselves to potentially harmful chemicals that may be present in unregulated vaping products, as well as the danger of faulty electronics and heating elements. Unlike regulated products, black market items do not undergo stringent testing or adhere to any safety guidelines. This can lead to the consumption of dangerous substances, contamination, or even malfunctioning and exploding devices.

The use of unregulated black market vaping products can also put a serious strain on communities and the health system. When individuals vape harmful chemicals or use devices with faulty batteries, they increase the likelihood of developing adverse health effects, ranging from respiratory issues to more severe long-term consequences, as well as the risk of injury from battery explosions. This not only affects the well-being of the individual users but also puts a burden on the health system, as more resources are required to treat unregulated vaping-related illnesses and injuries. Furthermore, the presence of dangerous substances and safety defects in black market products can contribute to negative public perceptions of vaping, potentially undermining the efforts of those seeking to use the category as a way to quit smoking.

Impact of programs and services

Increasing vape education and prevention programs are a component of addressing the growing black market. The New South Wales government's recent announcement of \$2.5 million over 12 months to help young people quit vaping through new digital resources and platforms is positive. However, the continued growth in vaping in New South Wales indicates that government education and prevention programs are not working. Despite existing online resources and public facing government advertising campaigns, the state has led the growth of vaping in Australia with over half a million over 18 year old vapers in New South Wales.

Effective government vape education and prevention programs require appropriate resourcing. The Australian newspaper has reported that implementing a federal regulatory framework for vaping products, could generate an estimated \$1.7 billion in tax revenue and import tariffs over the course of four years.⁶ This substantial revenue stream could be strategically allocated to fund comprehensive education and prevention programs designed to inform children and young people about the risks associated with vaping products and to discourage their use.

By investing in these initiatives, the government could effectively address the concerns outlined in the terms of reference, ultimately promoting a healthier future for the younger generation. Effective education and prevention programs could cover topics such as the potential for addiction and the importance of making informed choices regarding personal health and well-being.

Implementing a regulated and controlled nicotine vaping market, drawing from the successful approach taken with tobacco control, can effectively drive down the youth vaping rate in Australia. By adopting a similar strategy for e-cigarettes, the government can ensure the taxation revenue generated from a regulated market is allocated effectively to raise awareness about the health effects of vaping products and support services and programs that work to prevent both the initial uptake and continued use of these products among children and young people.

⁶ A regulatory crackdown on vaping products by the Albanese government would raise about \$1.7bn, The Australian, 16 March 2023

Furthermore, regulating vaping products like tobacco will reduce youth access to the black market, enabling legally enforceable retail licensing and mandatory age identification at the point of sale.

NSW Regulatory Framework

Effectiveness in reducing harm

The current prescription-only model requires consumers to have a prescription for all purchases of e-cigarette, requiring a GP visit, and restricting sales to pharmacies or overseas retailers. Many doctors do not understand how to prescribe, and many pharmacies don't supply vapes. These hurdles in obtaining vapes, particularly for people who want to quit smoking, are what have led to the emergence of a large-scale black market. This is essentially the prohibition of vapes in all but name. In fact, Action for Smokefree New Zealand 2025 uses the Australian prescription model to indicate what they want to avoid doing:

Evidence from overseas has shown that [controlled purchase] models do not reduce youth vaping. In Australia, where nicotine vapes are illegal unless prescribed, youth vaping is still increasing.

A recent survey of 700 14-17-year-olds in New South Wales found 32% had tried vaping. This compares to the 2021/22 New Zealand Health Survey that reported 30% of New Zealand 15-17 years olds had tried vaping. Whilst we do not want young people to vape at all, we also wish to avoid a situation as in Australia where people who are vaping are using illegal and unregulated products that may increase potential harms.

The current regulatory framework in New South Wales fails to deter or capture the illegal operators who have seized on lax enforcement. Illicit operators openly sell vapes throughout New South Wales in illegitimate stores, while others target young people and children through social media. The intention of the current regulatory environment to reduce the potential harm caused by vapes is undermined by the scale of illicit consumption in New South Wales.

Challenges of enforcement and preventing illegal supply

The current enforcement approach to vaping in New South Wales has failed to stem the growth in illegal vape consumption. It is noted that the New South Wales government has increased funding for enforcement, with a \$4.3 million investment to double the number of inspectors to clamp down on illegal vape sales. While the increased funding is welcome, the problem of illegal vape sales is larger than a \$4.3 million problem for New South Wales.

The Daily Telegraph⁷ reported on 23 October 2023 that the funding will increase the number of dedicated vape inspectors employed by New South Wales Health from seven to 14. The news report quoted New South Wales Health as stating the agency had “conducted over 5,000 inspections and seized around 369,000 nicotine vapes and e-liquids,” in the past 18 months.

The New South Wales government's response is inadequate to the size of the problem. 369,000 nicotine vapes seized in New South Wales represent a fraction of the estimated 100 million vapes that are imported into the country each year. From January to June 2023, the government recorded only two successful prosecutions for the illegal sale of e-cigarettes and e-liquids containing nicotine.⁸ A total of 14 dedicated vape inspectors in New South Wales is not sufficient to police the over half million vapers and enforce the millions of vapes sold in the state each year.

⁷ Out of puff: Just 7 ‘vape cops’ spearhead war on e-cigs, The Daily Telegraph, 23 October 2023

⁸ <https://www.health.nsw.gov.au/tobacco/Pages/enforcement-nicotine-containing-e-cigarettes.aspx>

Comparison of Regulatory Frameworks

Australia is the only country in the world to restrict access to e-cigarettes on a prescription-only basis.⁹ In contrast, the UK, US, EU, Canada, and New Zealand treat nicotine as a consumer product, available for adults from licensed retail premises.

The UK government, for example, recognises that vaping is far less harmful than smoking and can be an effective quitting device. It has committed to providing clear, evidence-based information on the relative harm of nicotine and e-cigarettes, with campaigns such as 'Stoptober' featuring vaping products.¹⁰ The UK has seen a significant decrease in smoking rates, with vaping playing a major role in reducing the incidence of smoking.

The US has also seen a dramatic fall in vaping rates among teenagers in the National Youth Tobacco Survey from the U.S. Centres for Disease Control and Prevention.

New Zealand's government aims to better support smokers in switching to regulated products that are less harmful than smoking. In April 2021, the Ministry of Health published proposals for a 'Smokefree Aotearoa,' which explicitly aims to encourage smokers to quit or switch to vaping or smokeless tobacco products.¹¹ As a result, New Zealand's smoking prevalence has reached a historic low of 8%, making it one of the lowest smoking rates in the world.

Health Canada also acknowledges that switching completely to vaping will 'immediately reduce exposure to the harmful chemicals founds in cigarette smoke'.¹² The Tobacco and Vaping Products Act (TVPA) of May 2018 aimed to protect young people from nicotine addiction and tobacco use while allowing adult access to vaping products as a less harmful alternative to smoking.¹³

Given the success of these countries in controlling e-cigarette sales and reducing youth access, it would be prudent for the New South Wales Government to consider adopting a similar regulatory framework for vaping products. By regulating vaping as an adult consumer product, the government can reduce youth access to vaping products, effectively control the market, and improve public health outcomes.

Implementing Reform with the Federal Government

Policy Solution

It is clear the current regulatory model has not met its stated objectives and the government has lost control of the e-cigarette market, affecting Australian parents, schools, children, healthcare providers, retailers and consumers. No amount of enforcement under the current regulatory model is likely to contain the spread of the illicit market for e-cigarettes. Australia no longer has an option to prevent vaping, the key is now control.

To reduce youth access to e-cigarettes, the government must effectively control the e-cigarette market. Without control of the illicit market, illegal black-market operators will continue to sell unregulated e-cigarettes to children. The only solution to fix the current prescription model policy failure is to implement

⁹ [Have GPs been supported for vaping to go prescription-only from October?](#), RACGP, 26 August 2021

¹⁰ [Stoptober launches to give smokers the confidence to quit](#), UK Department of Health and Social Care, 24 September 2022

¹¹ [Position Statement on vaping](#), New Zealand Ministry of Health

¹² Government of Canada, [Vaping and quitting smoking](#)

¹³ Government of Canada, [Vaping and quitting smoking](#)

regulatory reform that controls the whole market by providing Australia's 1.6 million adult vapers with a controlled pathway to lawfully purchase e-cigarettes in the same way tobacco or alcohol products are sold. This can be achieved through the following three measures:

1. Regulated retail sales of e-cigarettes;
2. Product standards of e-cigarettes; and
3. Uniform licensing scheme for retailers.

Regulated retail sales of nicotine vaping products

Regulating e-cigarettes as an adult consumer product like tobacco and alcohol will enable the government to control the market and provide a lawful regulated supply to adult consumers. If adult consumers are given the choice to buy legally, adult consumers are more likely to shift their purchasing habits from the black market and rapidly move into the legitimate lawful market - which is underpinned by quality standards and youth access prevention measures in retail stores.

Product standards of nicotine vaping products

The current policy settings and enforcement measures have failed. The New South Wales Government must look at other successful regulatory models currently operating in New Zealand, the United Kingdom and Canada.

Similar to the purchase of tobacco products, a new model could permit adults to buy regulated vapes with strict electrical safety and ingredient standards from responsible retailers upon age identification. This would support informed product choice by consumers and reduce the reach of the growing black market which targets children, bypasses health controls, and the tax system.

Uniform licensing scheme for retailers

Rather than fuelling an illegal black-market trade in unregulated vaping products, adults should be able to purchase these products from responsible, legitimate retailers - who have safely retailed other nicotine products for decades.

AACS supports a Responsible Retailer Code, to demonstrate how retailers can fulfil a crucial role in ensuring vapes are not being sold to underage Australians. Allowing retailers to sell vaping products would benefit both business owners and the Australian Government.

Revenue generated from the sale of these products with the application of GST, import taxes and corporate taxes would contribute to funding schools, hospitals, infrastructure and other essential government initiatives.

Any Other Related Matter

Waste management of vaping products

Regulating the vaping market as an adult consumer good can enable manufacturers and retailers to implement product stewardship schemes to manage waste more effectively, as has been observed in other regulated markets. This approach would not only create a safer environment for adult consumers but also provide a framework for environmental responsibility.

Government regulation would encourage manufacturers to invest in sustainable practices, including eco-friendly packaging, recycling programs, and safer disposal methods for lithium-ion batteries and e-waste components. It would also facilitate collaboration between the government, vaping product manufacturers, and recycling organisations to create more comprehensive and targeted waste management solutions.

In regulated markets, product stewardship schemes have been successful in managing waste from vaping products, as they ensure that manufacturers and retailers are held accountable for the environmental impact of their products throughout their life cycle. Such schemes promote the development of environmentally friendly product designs, recycling initiatives, and public awareness campaigns on proper disposal methods.

By regulating vaping products as an adult consumer good, the government can set clear guidelines and standards for manufacturers and retailers, fostering a culture of environmental responsibility within the industry. This approach will not only contribute to the controlled use of vaping products but also help mitigate their environmental impact through better waste management and sustainable practices.

Government regulation of the vaping market is crucial for addressing the waste management and environmental challenges associated with vaping products. By treating these products as an adult consumer good and implementing product stewardship schemes, the government can facilitate a more effectively controlled and more environmentally friendly vaping market that benefits both adult consumers and the environment.

Summary

New South Wales' growth in adult consumption of e-cigarettes has occurred despite the prescription model that prohibits adults from purchasing e-cigarettes without a prescription. Acknowledging this growth in adult consumer demand notwithstanding the consumer prohibition controls in place, AACS strongly recommends the New South Wales Government consider establishing a pathway for the regulated controlled sale of e-cigarettes through lawful and responsible retailers.

Continuing to regulate this category as a prescription medicine will simply be destined for another policy and health failure. Adult consumer demand being serviced by the black market will remain, even if significant taxpayer dollars are spent on additional enforcement measures.

In contrast, if adults are given the choice to buy these products legally, these adult consumers are more likely to discard their purchasing habits from the black market and move into the legitimate lawful market which can be underpinned by quality standards and youth access prevention measures in retail stores.

Most importantly, this will see less availability for minors seeking products. This policy can work and has been proven to work in New Zealand - where after introducing legislation to strictly control vaping products as an adult consumer good, New Zealand's youth vaping rate in 2022 has started to decline, as is the case

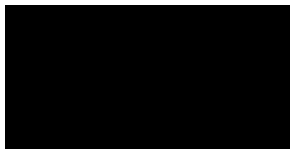
in the United States.¹⁴ The policy crisis of youth access can only be addressed if the government regulates where supply meets the adult consumer demand.

In the context of the e-cigarette market's adult consumer dynamic, AACCS recommends that the New South Wales Government's regulatory priority be the establishment of a controlled and regulated e-cigarette market that enables the lawful sale of products to adult consumers. By introducing strict adult consumer regulations, the government can shift demand from the black market to lawful, responsible retailers.

Similar to Australia's success in driving youth smoking to record lows from an effective tobacco control framework, the New South Wales Government will not be able to effectively address this issue without control of the e-cigarette market. Government control of the e-cigarette market will only be possible by introducing strict adult consumer regulations that shift demand from the black market to lawful responsible retailers. This approach aligns with other comparable jurisdictions such as New Zealand, the European Union and the United States Government's stance, emphasising the importance of a well-regulated retail market for eliminating illegal sales and restricting access to minors.

Yours sincerely,

Theo Foukkare



CEO

Mobile: 

¹⁴ [Youth daily smoking rates remain at record low in annual ASH Year 10 survey, regular vaping decreases for the first time in 7 years](#), Action for Smokefree 2025, 30 November 2022