

**Submission
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E-CIGARETTE REGULATION AND COMPLIANCE IN NEW SOUTH WALES

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E-cigarette regulation and compliance in New South Wales

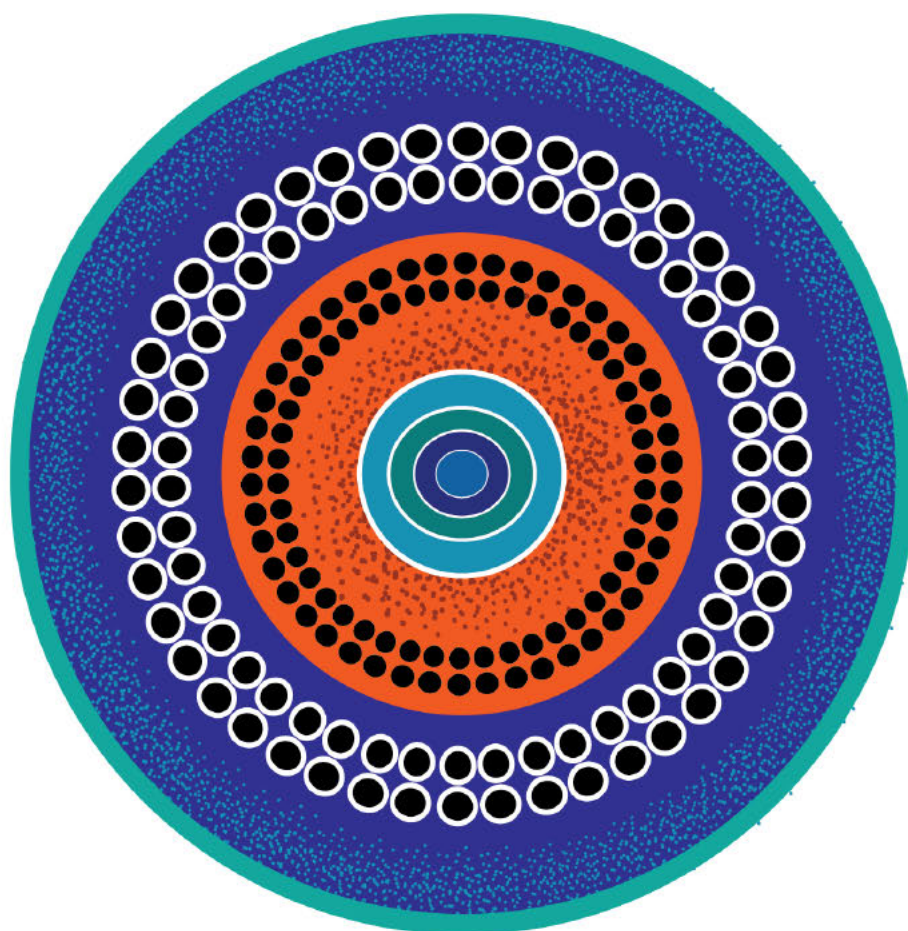


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'Unified' created by Jasmine Sarin, a proud Kamilaroi and Jerrinja woman.

Artwork elements: the outside circles consist of figures, signifying that people come first and should be consulted and included in services that affect their health and wellbeing. These are also symbolic of the people and community who have been a part of the project. The subsequent layer of circles represents the journey of research and cycle of collecting, analysing, interpreting and presenting information. It shows the process of research in community. The innermost circles represent the impact and the change that we are seeing on the ground through sharing stories, knowledge and success.



**Tobacco
Free**



INTRODUCTION

Fuelled by the tobacco industry, smoking is the leading cause of preventable disease nationally, leading to over 20,000 deaths annually [1] and costing \$AUD137 billion in 2015/16 – the most recent estimates [2]. Up to two-thirds of people who currently smoke will die prematurely from smoking [3] and more than one third of Aboriginal and Torres Strait Islander adult deaths are attributable to tobacco use, and 50% among those aged ≥ 45 years [4]. Further, people who do not smoke, but use e-cigarettes are three times as likely as non-users to start smoking and become regular smokers [5]. So while the rates of tobacco use among Aboriginal and Torres Strait Islander peoples are 2.9 times higher than that of non-Indigenous Australians [2], the rapid increase in e-cigarette prevalence and proliferation of e-cigarette use, including among Aboriginal and Torres Strait Islander children, young people and people who do not smoke is of increasing concern. Further, e-cigarettes directly impact health and wellbeing,[6] underscoring the need for an inquiry into the Tobacco Industry and its associates for the harms they cause in New South Wales and across Australia, particularly among Aboriginal and Torres Strait Islander communities. This situation emphasizes the requirement for structural changes and systemic support to create an environment that promotes freedom from nicotine addiction and dependence.

Strong commitment by the New South Wales Government to support and enforce e-cigarette (vaping) regulation is critical to preventing harms, including uptake of e-cigarettes by non-smokers and upholding the human right to health. Strengthening efforts, including structural changes to prevent uptake and decrease current use in the Aboriginal and Torres Strait Islander context is strongly recommended.

Background

Colonisation plays a significant role in the establishment of tobacco use as an addictive commodity, with tobacco provided as rations instead of wages until the late 1960s. This practice of tobacco rations, along with exclusion from the cash economy and the education system, has had lasting and intergenerational consequences, manufacturing low socioeconomic status (SES) [1, 7]. Low SES is linked to higher smoking rates, which contribute to elevated rates of tobacco-related morbidity and mortality. The ongoing process and effects of colonisation continue to undermine Indigenous peoples' agency, self-determination, and sovereignty, including the ability to be free from commercial tobacco and nicotine dependence.[1, 7]

So while Aboriginal and Torres Strait Islander leadership has driven a significant 10% reduction in tobacco use, from 50% in 2004-05 to 40% in 2018-19 more work is required to eliminate tobacco related disease and death [8, 9] The vast majority of Aboriginal and Torres Strait Islander peoples who smoke want to quit (70%) or wish they never took it up (75%) [10]. We also know that the stigma and discrimination experienced by peoples who smoke can further isolate them from communities from which they draw support, solidarity, and a shared sense of belonging [11-13]. This highlights the potential and important role of governments in supporting and enforcing e-cigarette (vaping) regulations, consistent with the majority of Australians supporting the enforcement of stricter measures to reduce the access of tobacco products to minors [4, 14] as well as alignment with the National Tobacco Strategy 2023-2030 and the World Health Organization's Framework Convention on Tobacco Control.





Options to improve e-cigarette regulation and compliance in New South Wales, with particular reference to:

(a) the current situation in NSW regarding:

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

In Australia, e-cigarette use has been on the rise, with rapid industry growth and increases in retail stores (online and bricks and mortar stores). In 2016, the highest rates of e-cigarette use were observed among people aged 16-24 years, with 32.7% having ever used e-cigarettes and 11.1% currently using e-cigarettes [15]. The overall use of e-cigarettes among people aged 14 and over increased from 8.8% in 2016 to 11.4% in 2019 nationwide [7]. In 2021, it was estimated that 16.2% of individuals aged 18 and over in New South Wales (NSW) had ever used an e-cigarette, and 5.5% were daily users [16]. A 2022 study of students aged 14-17 revealed that over 20% had used e-cigarettes in the past year, with NSW representing 53.8% of the study sample [8]. The recent findings from the Generation Vape project show that 87% of people aged 14-17 years found vapes to be easily accessible [9].

The latest results for February to April 2023 from Generation Vape indicate that initial e-cigarette use was most frequently among those under 16 years [10]. These results also indicated that within NSW, 18.4% of those aged 14-17 years have ever vaped, and of these 36% are currently using e-cigarettes and 12% are using e-cigarettes daily [17]. Further, more than 50% of the Aboriginal and Torres Strait Islander population residing in NSW are under the age of 24 years [1], making the increasing rates of e-cigarette use among young people a major cause for concern. An increase in the uptake of Aboriginal and Torres Strait Islander peoples using e-cigarettes has the potential to undermine the work that has been done to reduce the prevalence and incidence of people smoking tobacco hence urgent measures are needed to stop this trend.

We support the recommendations that the:

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





ii. health risks associated with e-cigarette products

Good health is more than the absence of disease. Health is a holistic concept that includes physical, social, emotional, cultural, and spiritual wellbeing, for the individual and the community. There are many direct and indirect health impacts from e-cigarettes, including poisoning, acute nicotine toxicity and addiction, lung injury, as well as the burns and injuries from the lithium batteries that power these devices [1]. The National Health and Medical Research Council (NHMRC) CEO statement clearly outlined the dangers related to the use of e-cigarettes and cautioned against their use on the basis of the health risks posed [21]. These include but are not limited to the potential exposure to unknown concentrations of nicotine and more than 200 toxic chemicals, seizures, poisoning, throat irritation, cough, dizziness, headaches, nausea and E-cigarette or Vaping Associated Lung Injury (EVALI), [1, 22]. There is also the potential risk of long-term impacts, [10] with the lag time in exposure and onset of health conditions, as well as the increased risk of tobacco use in the future. Further, tobacco use currently results in over 20,000 tobacco related deaths per year in Australia, [23] increasing demand on an stretched healthcare system.

Finally, caring for Country and the impact on the environment is undermined by disposable e-cigarettes and tobacco filters (the most commonly littered item worldwide, with 4.5 trillion filters littered in the environment each year) [19]. In addition to the health and wellbeing impacts, this is in direct contravention of Goal 12 of the Sustainable Development Goals for responsible consumption and production [20].

GATEWAY EFFECT

People who have never smoked or are non-smokers but use e-cigarettes are three times as likely as non-users to start smoking tobacco and become regular smokers [5]. **Smoking causes over a third (37%) of all deaths among Aboriginal and Torres Strait Islander people and 50% of all deaths among those aged 45 and over** [26]. In addition to the grief that is felt with any death, there is substantial loss of knowledges, languages, protocols, customs, kinship and lore [27]. As a result, the harms from e-cigarettes and the 'gateway effect' is unacceptable, particularly considering that tobacco use is the single largest cause of preventable morbidity and mortality, [15]

POISONING

E-cigarettes can cause poisoning and immediate inhalation toxicity, including seizures, particularly in children and adolescents [1]. Nicotine consumption can be fatal with the potential for poisoning from either intentional or accidental exposure [28]. There is an increased risk of accidental poisoning for babies and small children, with small amounts of nicotine consumption proving fatal. A number of accidental poisonings have been recorded in children under six years of age [9]. There is currently variation in e-cigarette nicotine levels sold in Australia [8], with many unlabelled e-cigarettes containing nicotine [27] and tests conducted by the World Health Organization (WHO) on e-cigarettes that were declared as having no nicotine, found to contain nicotine [29].





CHEMICAL EXPOSURE

There is no regulatory requirement to disclose the ingredients in e-cigarettes. When a user inhales e-cigarette vapour they are commonly exposed to nicotine and the solvent carriers, flavourings, tobacco specific nitrosamines, volatile organic compounds, phenolic compounds, tobacco alkaloids, aldehydes, free radicals, reactive oxygen species, furans, and metals [7]. Although some chemical constituents are considered safe for human consumption in food, they may cause damage when inhaled [27, 30].

The aerosols generated by e-cigarettes commonly increases the concentration of particulate matter, including nicotine and other toxic substances such as formaldehyde, acetaldehyde and acrolein [7]. These emissions pose risks to users and non-users [1, 28].

NICOTINE ADDICTION

Nicotine exposure, addiction and dependence is harmful [4, 31]. E-cigarettes not labelled as having nicotine are frequently found to contain this highly addictive substance [1]. According to the Generation Vape project more than 50% of ever-vapers had used a nicotine containing e-cigarette, with 27% not aware if the vape they used contained nicotine [32]. Nicotine e-cigarettes can cause dependence or addiction [1], and in conjunction with aggressive marketing, novel product designs and appealing flavours that target children and young people, the widespread availability is driving increased use. Nicotine exposure in childhood and adolescence seriously impacts brain development and may cause learning and anxiety disorders [27]. Adolescence is a time of major brain plasticity. Vaping during this time can lead to long-term alterations in brain function and behaviour, including long term addiction [33]. Evidence indicates an association between the use of e-cigarettes and anxiety, increased stress, depression, and suicidal ideation among adolescents [8].

BURNS

Exploding lithium batteries used in e-cigarettes may cause severe burn injuries, permanent nerve damage or fatal trauma [7]. There are currently no child-safety mechanisms mandated on e-cigarettes.

E-CIGARETTES AS A TOBACCO CESSATION DEVICE

The RACGP guidelines for GPs do not recommend using e-cigarettes a first line for smoking cessation therapy, but when used should cease being used within 3-6 months [RACGP update on prescribing]. Although available under the prescription model, e-cigarettes are not endorsed for their efficacy as a smoking cessation tool [NHMRC statement]. there is limited evidence for using e-cigarettes for smoking cessation, with numerous harms as outlined through this submission. Given such limitations, a precautionary approach should be used, only prescribing e-cigarettes with cessation advice to informed people who have unsuccessfully tried other smoking cessation methods [7, 34]. Australia's unique evidence-based prescription-only model aims to avoid the use of e-cigarettes other than for the purpose of smoking cessation [34].





OTHER HEALTH IMPACTS

Given the human right to health and the magnitude of premature morbidity and mortality, including tobacco related morbidity and mortality, [35][36] the emerging evidence indicating increased risk to health outcomes among young e-cigarette users is of particular concern [20][37]. We support the 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 support options as required.
- The NSW Government acknowledges public education, school-based programs and cessation services are secondary measures to complement the primary strategy of regulatory and compliance reform.

iii. the impact of programs and services aimed at preventing uptake or continuing use of e-cigarettes.

Nationwide and across New South Wales, there is growing concern among many Aboriginal and Torres Strait Islander peoples about e-cigarette use, especially among children and young people. The current successful delivery of evidence based smoking cessation programs within Aboriginal and Torres Strait Islander communities encourages and positively supports people to quit with contextually relevant and culturally suitable strengths-based practices. This empowers people to begin their quit journey supported by engaging education to prevent young people from taking up smoking, delivered by locally embedded Tackling Indigenous Smoking teams.

Aboriginal and Torres Strait Islander peoples are asking for access to reliable and accurate evidence-based information on the harms of e-cigarette as well as more tools, resources, and training to deliver vaping specific education and prevention programs. They also need for more financial support to develop and deliver the strategies and programs to support those who have developed nicotine dependent to quit vaping. Aboriginal and Torres Strait Islander communities are calling upon government to reduce accessibility to e-cigarettes, especially for young people. Taking such action and the provision of adequate resources by the NSW Government will enable communities to build upon and grow these already successful tobacco cessation programs and activities to also encompass e-cigarettes.

Increased uptake of e-cigarettes in Aboriginal and Torres Strait Islander communities will continue unless effective, locally relevant strategies and structural reforms are implemented – supported by strong regulations and enforcement. These should be developed, implemented, and evaluated with Aboriginal and Torres Strait Islander peoples, building on significant place based programs, policies and interventions.





We support the recommendations that:

- NSW Government takes a coordinated approach to address vaping to avoid duplication across portfolios. Action should be led by the health portfolio with support from the 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. We do not support the adoption of vape detectors in schools, and cannot stress enough the importance of focusing on the system and predatory industries that fosters harm, addiction and dependence, as opposed to 'individual blame'.
- NSW Health establish, map and communicate vaping cessation support pathways and ensure there is coordination across government.

(b) NSW's current regulatory framework, in particular:

i. its effectiveness in reducing harm from e-cigarette use

We fully endorse the recommendations:

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

ii. its effectiveness in preventing illegal supply

We fully endorse the 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 federal reforms and ensures consistency with state legislation.





iii. challenges to enforcement and compliance and ways to overcome these,

We fully endorse the recommendations:

- The NSW Government works with the Commonwealth 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 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.

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

Prevalence of commercial tobacco use has decreased over time, with trends indicating more and more people are quitting, or not taking up smoking. Since 2004, there has been a significant decline of 9.8% in daily smoking prevalence from 50.0% among Aboriginal and Torres Strait Islander peoples aged 18+ to 40.2% [38]. At the same time, the tobacco industry and their affiliates continues to evolve and adapt, introducing new products and promotions to entice people to the market.

When the Australian Government Minister for Health and Aged Care the Hon Mark Butler MP announced changes to revitalise tobacco control in May 2023, he outlined a comprehensive approach to address the increasing use of non-prescription e-cigarettes. Being developed as a novel product by the tobacco industry, the e-cigarette has been distributed under the guise of 'harm reduction' and introduced into an unregulated marketplace, targeting children and young people with attractive packaging and sweet flavour offerings. This calls for an increasing need to target the upstream factors and structural reform of tobacco control and the unscrupulous actions of the tobacco industry and affiliates. More actively regulating the supply of tobacco and emerging products is urgently required, assisting communities to be nicotine free and uphold the right to health. This includes the banning of all retail sale and supply of all non-prescription e-cigarettes.





With coordinated and collaborative actions between agencies and all levels of government, the successful implementation of these ongoing reforms around e-cigarettes will enable the NSW Government to act and protect the health of its population from the harms of vaping.

We welcome current and ongoing reforms/activities at state and federal level to combat the social, health and wellbeing harms caused by e-cigarettes and support the recommendations:

- That NSW Government work with the Federal 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 Commonwealth governments to ensure a consistent and effective outcome for suppliers, retailers, and consumers.
- The NSW Government should take a coordinated approach to vaping regulation and compliance to avoid duplication across its portfolios. Action should be led by the health portfolio with support from the education, police and small business portfolios.

(d) any other related matter.

WASTE MANGEMENT

As outlined above, health and wellbeing includes individual, community, and environmental wellbeing, with environmental harms from vaping related waste of increasing concern. The concern around the ongoing and increasing environmental impacts of e-cigarettes and tobacco products, including but not limited to indoor air pollution, increased litter waste from disposable vapes, fire hazard of lithium batteries [39] will impact us today, and for future generations. Management strategies for safer disposal of e-cigarettes must be developed and implemented, especially considering the increase in e-cigarettes that is continuing to compound this issue. Further, reducing the environmental impact of disposable vapes and tobacco waste, such as filters, is in line with WHO's Sustainable Development Goals [40], including protecting waterways and marine life and preserving the non-renewable resources used in batteries.





CONCLUSION

In upholding the right to health, New South Wales Government must act quickly to minimise and ultimately eliminate e-cigarette related harms. Tobacco use continues to be responsible for over a third (37%) of all Aboriginal and Torres Strait Islander adult deaths, increasing to half of all deaths aged 45 and over. We cannot risk nicotine addiction and dependence on multiple fronts, as the health and wellbeing of Aboriginal and Torres Strait Islander peoples and all Australians, is too important and the risks are too great.

As the oldest living cultures in the world, Aboriginal and Torres Strait Islander peoples have shown great resilience in the face of historical and ongoing challenges. We need to take the next logical step in tobacco control: supporting and enforcing e-cigarette (vaping) regulation is critical to preventing harms. We need to implement evidence-based structural change to foster a nicotine free future, instilling agency, self-determination and sovereignty. This will help to minimise the damage from people harming industries and their products, such as the active development, marketing and sale of tobacco and e-cigarette products to Aboriginal and Torres Strait Islander peoples and communities. With structural supports and appropriate resourcing, including NSW Government upholding retail enforcement, communities can continue to promote health and wellbeing. The time is now to improve our health, wellbeing and to be nicotine free, for our children, and future generations.





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