

**Submission  
No 45**

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

**Organisation:** 360Edge

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Legislative Assembly Committee on Law and Safety  
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## **Submission to the inquiry into e-cigarette regulation and compliance in New South Wales**

### **About 360Edge**

360Edge is Australia's leading specialist alcohol and other drugs consultancy. We provide a full suite of policy and practice advisory services across the spectrum of alcohol and other drug use, as well as allied areas such as mental health, justice and education, supporting governments and frontline services to improve policy and practice in line with the latest evidence. At 360Edge, our vision is for a community that provides the best public health policy and practice responses.

Our four main programs are Workforce Development, Service Improvement, Evaluation and Health Systems Modelling. 360Edge also supports the development and implementation of workplace alcohol and other drug policy through its WorkEdge program and alcohol and other drug prevention in schools through our Schools of Substance program.

CEO, Professor Nicole Lee, is an international leader in alcohol and other drug responses, with 33 years' experience in policy and practice implementation. She is also Adjunct Professor at the National Drug Research Institute, Curtin University; CEO of Hello Sunday Morning; and Board Member of The Loop Australia. She is a member of the Australian National Council on Alcohol and other Drugs (ANACAD), Australia's key expert advisory council to the Australian Government on alcohol and other drugs, which provides policy advice directly to the Health Minister and their Department.

Professor Nicole Lee has provided advice to Australian, State and Territory governments as well as international governments across South East Asia, New Zealand and the Pacific Islands. She has worked on alcohol and other drug policy with major international organisations such as the World Health Organization and the United Nations Office on Drugs and Crime.

## Overview

Thank you for the opportunity to make a submission to the inquiry into e-cigarette regulation and compliance in New South Wales. Our response is based on the latest evidence from Australia and internationally regarding e-cigarettes and what works to reduce harms.

As specialists in alcohol and other drug policy in Australia, we have published a series of evidence check reports designed to assist services, governments and funders in keeping up to date with the latest evidence regarding alcohol, tobacco and other drug responses. We point you to our [What Works in Tobacco Harm Reduction and Vaping](#) report to access a comprehensive, high quality synthesis of the latest evidence regarding e-cigarettes in Australia.

There is no doubt that the increasing use of e-cigarettes among young people is deeply concerning to the community. Many of the risks and harms from e-cigarette use, including use among youth, are outcomes of the circulation of unregulated e-cigarette products through the black market in response to excessively strict regulations. Taking a hardline prohibitionist approach to e-cigarette products is not likely to improve the situation and can in fact exacerbate the harms.

In our submission, we provide a synthesis of the latest evidence regarding e-cigarette use among young people in NSW, the health risks associated with e-cigarette products and how these compare with tobacco products, school based e-cigarette education programs, the outcomes of NSW's current regulatory framework and how the NSW Government can work with the Federal Government to reduce e-cigarette harms.

## TOR(a): The current situation in NSW regarding:

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

The data regarding prevalence of e-cigarette youth among children and young people is mixed. It is important to note that there is no recent available data on e-cigarette use among Australians aged younger than 14 years. A recent survey investigating e-cigarette use in 4,204 students aged between 14 and 17 across New South Wales, Queensland and Western Victoria found that 74% of participants had never used an e-cigarette, 20.4% had used an e-cigarette in the past 12 months, 10.1% were current users and 5.7% were regular users.<sup>[1]</sup>

The Generation Vape study is a cross-sectional survey examining e-cigarette use patterns among 721 young people aged between 14 and 17 in NSW.<sup>[2]</sup> The study found that 68% of participants had never used an e-cigarette. The majority of participants who had ever used an e-cigarette had done so on fewer than 10 occasions (67%), with 46.8% having only tried a few puffs. Only 6.1% of participants in the sample reported using an e-cigarette on more than 10 days in an average month without COVID-19 restrictions. Among the participants that had used an e-cigarette, 46.4% had smoked cigarettes first.

There is strong evidence that e-cigarette use among Australian youth is generally of an experimental, transient, and infrequent nature.<sup>[1-4]</sup> The increasing availability of illicit e-cigarette products is a likely contributor to increased rates of youth trying e-cigarettes.

ii. **Health risks associated with e-cigarette products**

E-cigarette products were developed as a tool to help smokers quit and reduce the harms of smoking. When assessing the health risks associated with e-cigarettes, it is important to consider these in relation to tobacco and Australia's current regulatory framework. In 2002, 19.6% of NSW youth aged 16-24 were daily smokers, compared with 4.1% in 2022.<sup>[5]</sup> While rates of smoking and associated disease have decreased, tobacco continues to be the leading cause of preventable morbidity and mortality in Australia and the most dangerous form of youth exposure to nicotine.<sup>[6]</sup>

E-cigarette products currently cannot be legally made in Australia and imported products are not tested for safety and quality.<sup>[7]</sup> Because they are commonly purchased through the black market, e-cigarette products are more dangerous than they would be if properly regulated as they are not tested for safety and quality.<sup>[7]</sup> Most studies investigating e-cigarette harms include populations that have been or are tobacco users, which makes it difficult to determine the true harms of e-cigarette use as tobacco contains other chemicals that are associated with significant harms.<sup>[7]</sup>

A meta-analysis of 14 studies found that the most common adverse effects of using e-cigarettes included mouth or throat irritation, depressed mood, nausea and insomnia.<sup>[8]</sup> Some chemicals found in e-cigarette products have been associated with lung problems, but there is currently insufficient evidence that e-cigarette use in non-smokers leads to acute reductions in lung function and respiratory measures.<sup>[9]</sup>

Although e-cigarette use in non-smokers is likely to have some level of harm, e-cigarette products are estimated to be significantly less harmful than tobacco, and are estimated to have as low as 5% or less of the harms associated with cigarettes and <1% of the cancer risk.<sup>[10-13]</sup> There is high certainty evidence that e-cigarette products increase quit rates when compared with alternative nicotine replacement therapy products and switching from smoking to e-cigarette use is associated with improved health outcomes.<sup>[14-16]</sup> The overall public health benefits of e-cigarettes are likely to be considerably greater than potential harms.<sup>[17-19]</sup>

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

There is a dearth of literature evaluating the impacts of programs and services aimed at preventing the uptake or continuing use of e-cigarettes in Australia, let alone NSW. A study published this year investigated the perceptions of e-cigarettes among 218 school staff members across Australia.<sup>[20]</sup> The study found that, while 77% of staff members reported educating students on e-cigarettes, only 6% reported educating teachers and 50% of staff members reported desiring education programs for students and staff.

Concerningly, over one third (36%) of principals reported that students were suspended or expelled at least monthly for e-cigarette possession or use, despite punitive approaches not being beneficial to motivating adolescents towards behaviour change.<sup>[21]</sup>

School based substance use prevention programs have the potential to be highly effective, but less than one in four teachers implement a drug prevention program with evidence of effectiveness due to barriers to implementation.<sup>[22]</sup> OurFutures Institute, partner of 360Edge, published a study protocol for the upcoming OurFutures Vaping Trial this year that addresses this gap.<sup>[22]</sup>

The OurFutures Vaping Program is the first school based eHealth preventive intervention targeting e-cigarette use among young Australians and aims to deliver engaging, accessible and scalable school based e-cigarette education informed by the latest scientific evidence and aligned with the Health & Physical Education Curriculum.<sup>[22]</sup> OurFutures is one of only two school based alcohol and other drug education programs in Australia with a strong evidence base, with previous OurFutures programs having been evaluated to be highly effective.<sup>[22]</sup>

Best practices in addressing adolescent e-cigarette use through school-based programs include developing programs based on theories that promote positive behaviour change; situating programs within a framework of adolescent development and learning styles; and involving youth, educators, parents and healthcare providers in the development of programs.<sup>[21]</sup>

Prevention programs should include elements of social-emotional learning and self-efficacy building and include a combination of normative education addressing information and perceptions and interactive content facilitating discussions and activities.<sup>[21]</sup> The OurFutures Vaping Program effectively incorporates all of the above best practices.<sup>[22]</sup>

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

### i. Its effectiveness in reducing harm from e-cigarette use

Currently, adults in NSW can only legally purchase e-cigarette products from pharmacies or overseas online suppliers with a valid prescription. Because there are no approved e-cigarette products registered with the Therapeutics Goods Administration, few doctors are prepared to prescribe e-cigarette products and very few pharmacies stock e-cigarette products.<sup>[23]</sup>

E-cigarette products can be imported from overseas online suppliers; however, these products are not currently tested for safety and quality and this process can be costly and entail long shipping times.<sup>[7]</sup> This leaves buyers to turn to the black market to access readily available e-cigarette products in a more time effective and affordable manner than the alternative of attempting to obtain a prescription from a GP and source a product through legal means.<sup>[7]</sup>

The thriving black market is a direct outcome of the severe limitations on smokers' ability to access to e-cigarette products and presents a substantially higher risk of harm to buyers because products circulating through the black market (or online suppliers) are unregulated, meaning that they are often of unknown quality and potency and can be easily accessible to minors.<sup>[2, 23-26]</sup>

Because of the lack of regulation in Australia, e-cigarette products purchased through the black market may contain harmful chemicals and do not always accurately label the nicotine concentration level, presenting a substantial risk to buyers.<sup>[7]</sup> The current regulatory framework does not reduce harms from e-cigarette use; it actually presents further harms than if e-cigarette products were more accessible to adult smokers and properly regulated.

ii. **Its effectiveness in preventing illegal supply**

Currently, the majority of e-cigarette users in NSW purchase their e-cigarette products from the black market. Tobacconists, retail outlets, online stores, petrol stations and convenience stores remain the most common places that people in NSW obtain their e-cigarettes from, despite the sale by these outlets being illegal.<sup>[2, 27-28]</sup>

According to the 2019 National Drug Strategy Household Survey, only 0.4% of current e-cigarette users in Australia obtained their e-cigarettes from a pharmacy.<sup>[3]</sup> A study published this year with a sample of 636 e-cigarette users across Australia found that only 1% of current users obtained their nicotine e-liquid from a pharmacy.<sup>[29]</sup>

As mentioned above, the legal availability of e-cigarette products through prescription only has led to the development of this thriving black market.<sup>[23, 26]</sup> Although the sale of e-cigarette products to children under the age of 18 is prohibited and the display, advertisement, and promotion of e-cigarettes is illegal in NSW, these regulations have evidently been insufficient in preventing the illegal supply of e-cigarette products to both children and adults.

iii. **Challenges to enforcement and compliance and ways to overcome these**

The challenges to enforcement and compliance regarding the supply of illegal e-cigarette products come from the nature of the regulatory framework itself. Tightening current regulations and increasing enforcement does not significantly reduce or eliminate long term black market operations for any illegal drugs.<sup>[24]</sup> When law enforcement and border control efforts are more heavily enacted, suppliers find more creative ways to hide and sell their products, leaving buyers at a higher risk.<sup>[24-25]</sup>

Current e-cigarette regulations have left the majority of e-cigarette buyers accessing products through the black market and strengthening restrictions on the availability of e-cigarette products is unlikely to improve this situation.

To overcome challenges to enforcement and compliance while benefiting public health, the current regulatory framework should reorient its approach to ensure regulated access to e-cigarette products for adult smokers; support regulatory controls in the community (including restricting access to children); regulate and approve products checked for quality and safety; and improve public education.<sup>[7]</sup>

Shifting the focus from strengthening law enforcement efforts that have a minimal impact on black market operations to appropriate legal regulation will mean that resources are diverted from an ineffective approach to one that will reduce black market supply, support public health and prevent children from accessing e-cigarette products.

## TOR(c): How NSW can work with the Federal Government to implement reforms on e-cigarette products

The Federal Government has announced that it will coordinate with states and territories to stop the import of non prescription vapes; increase the minimum quality standards for vapes; require pharmaceutical like packaging; reduce the allowed nicotine concentrations and volumes; and ban all single use, disposable vapes, while also making it easier to obtain a prescription for adult smokers wishing to quit.<sup>[30]</sup> The NSW Government should ensure that any implementation of Federal e-cigarette reforms adhere to best practice and current evidence.





As mentioned earlier, currently few doctors are prepared to prescribe e-cigarette products and very few pharmacies stock e-cigarette products.<sup>[23]</sup> The option to access e-cigarette products from overseas through the Personal Importation Scheme is likely to soon end, placing further restrictions on the accessibility of e-cigarette products to adult smokers.

It is imperative that access to e-cigarette products among adult smokers is substantially improved to ensure that these measures are effective in eliminating the black market and reducing access to youth. Otherwise, tightening restrictions to accessing e-cigarette products in the face of high demand is likely to fuel the black market and its associated harms further.

E-cigarette products can only be prescribed by approved Authorised Prescribers. However, approximately only 1.8% of medical practitioners in Australia are authorised to prescribe e-cigarette products.<sup>[31-32]</sup> As such, the NSW Government should prioritise the allocation of funding to training health practitioners on the prescription of e-cigarette products to become Authorised Prescribers.


The possession of prescription drugs, including nicotine e-cigarette products, without a valid prescription, is a criminal offence in NSW and subject to similar penalties to the possession of illicit drugs.<sup>[33]</sup> However, combustible tobacco products, which are significantly more harmful, are not subject to such penalties. The criminalisation of unauthorised possession of e-cigarette products can lead to a range of negative social and economic outcomes, including barriers to accessing healthcare, employment and education.<sup>[34]</sup>

To ensure that Federal e-cigarette reforms do not cause further harm to NSW residents by exacerbating the black market and continuing to criminalise the possession of e-cigarette products, 360Edge recommends that the NSW Government ensures increased access to e-cigarette products for adult smokers by training health practitioners and removes criminal penalties for the possession of e-cigarette products.

Thank you for the opportunity to provide feedback on this important inquiry.

360Edge are specialists in alcohol and other drug policy and can be called upon to provide further advice if required.

Yours sincerely,



Professor Nicole Lee  
*Founder and CEO*

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