

**Submission
No 46**

E-CIGARETTE REGULATION AND COMPLIANCE IN NEW SOUTH WALES

Organisation: ACON

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Legislative Assembly Committee on Law and Safety
Parliament House
Macquarie St
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Submitted online: <https://www.parliament.nsw.gov.au/committees/inquiries/Pages/inquiry-details.aspx?pk=2994#tab-submissions>

Dear Committee

Re: E-cigarette regulation and compliance in New South Wales

Thank you for the opportunity to provide a submission to the Inquiry into E-cigarette regulation and compliance in New South Wales.

ACON is NSW's leading health organisation specialising in community health, inclusion and HIV responses for people of diverse sexualities and genders. We provide programs and services relating to a range of health concerns, including HIV prevention and support, cancer prevention, ageing, mental health and suicide prevention, disability, harm reduction, and safety and justice. We provide tailored services to parts of our communities, including people living with HIV (PLHIV), First Nations people, people from culturally, ethnically and linguistically diverse backgrounds, women, trans people, and people who live in regional and rural NSW. We also provide services to improve diversity and inclusion in the workplace, health services, and in sport.

We make this brief submission to this Inquiry to ensure that regulation of e-cigarettes in NSW remains evidence-informed, to advocate for further research around the use of e-cigarettes among priority populations in the National Tobacco Strategy, including LGBTQ+ people and PLHIV,¹ and to ensure that any public health interventions about the use of e-cigarettes are thoroughly evaluated and adequately and sensitively address usage among LGBTQ+ people, without shame or stigma.

(a) the current situation in NSW regarding:

- i. the prevalence of e-cigarette use among children and young people**
- ii. health risks associated with e-cigarette products**
- iii. the impact of programs and services aimed at preventing uptake or continuing use of e-cigarettes,**

It has long been shown that LGBTQ+ people and people living with HIV smoke tobacco at rates higher than the general population.^{2,3} While these rates have been declining over recent years, inequities remain between LGBTQ+ people and PLHIV, and the general population.^{4,5,6}

The physical and mental health benefits of tobacco cessation are well-documented, and are especially important among LGBTQ+ people, who have disproportionate rates of mental ill-health, and are less likely to engage in cancer screening.⁷

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There are also specific and significant health benefits that apply to cessation among PLHIV, including a decreased risk of AIDS-related diseases, non-AIDS-related cancers, and cardiovascular disease.^{8,9,10} PLHIV, including those on effective treatment regimes, are at elevated risk of cardiovascular disease than the general population, so it is especially important to find ways to reduce this risk.¹¹

New data from a longitudinal survey of LGBTQ+ women in NSW indicates that 13% of LGBTQ women regularly use (daily or weekly) e-cigarettes, or nicotine vaping products (NVPs). Of those regularly using NVPs, 20% had never smoked cigarettes, 45% were ex-smokers, and 35% currently smoked cigarettes.¹² These figures are much higher than previous iterations of the same survey, suggesting, in line with other population groups, a recent increase in e-cigarette use among this cohort.

This Inquiry has a particular focus on the prevalence of e-cigarette use among children and young people. Australian data indicates that 5% of LGBTQA+ young people regularly use e-cigarettes,¹³ and international evidence suggests that LGBTQ+ youth vape more than their peers.¹⁴

There is evidence to indicate a sharp increase of use of NVPs among people who previously never smoked, especially young people, which is cause for significant public health concern and the subject of contemporary policy debate.^{15,16} Any e-cigarette interventions for young people must be inclusive of LGBTQ+ young people.

It is also important to note that nicotine replacement therapies (NRT), such as patches and gum, have long been a part of smoking cessation strategies, but their PBS subsidy does not reflect the well-established evidence of their efficacy, making them hard to access.¹⁷

Nicotine vaping products (NVP) are a form of NRT, but are illegal to use in Australia without a prescription.^{18,19,20} They are more readily available in other jurisdictions where encouraging a switch from tobacco smoking to vaping forms part of the public health strategy, such as New Zealand²¹ and the UK.^{22,23}

NVPs are controversial, especially in Australia, and subject to significant policy debate while their impacts are still under investigation. There is some evidence to suggest that NVPs may be a more effective cessation tool than other forms of NRT, however, this must be considered in balance with the risks of NVPs, including the lack of regulation around safety and quality.²⁴

Data also suggests that NVPs are less harmful than cigarette smoking,²⁵ however, further research is needed, especially on the long-term effects.²⁶ Overall, it is established that NVPs are harmful for people who never smoked, especially young people, and when used for purposes other than smoking cessation, however, given the extreme harms of smoking, people who smoke who have not been able to quit by other means who switch promptly and completely to appropriate NVPs may benefit.²⁷

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

- i. its effectiveness in reducing harm from e-cigarette use**
- ii. its effectiveness in preventing illegal supply**
- iii. challenges to enforcement and compliance and ways to overcome these,**

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

There is a need for sensible policy-making with regard to NVPs. The two significant public health concerns – decreasing use of combustible cigarettes among adults who smoke (and of particular concern for us is smoking rates among PLHIV and LGBTQ+ people), and preventing young people and people who have never smoked from using NVPs – need to be considered in tandem.

Australia has long been a world leader in tobacco public health interventions, including tobacco control, smoke-free zones, plain packaging, and tax policies.²⁸ While NVPs are currently available only with a prescription, there is a thriving illicit market for unregulated NVPs in Australia, that then evade regulatory policies designed for tobacco, such as plain packaging and clear smoke-free zones.^{29,30} There is an urgent need to address compliance with regulation to control this thriving illicit market and ensure that untested and potentially unsafe devices are not readily accessible.

If current Australian and NSW regulation was effectively enforced, combustible cigarettes would be readily and widely available for sale, while NVPs would only be available via a GP prescription and import from overseas.³¹ The control of NVPs should not act as an encouragement to (re)uptake of more readily available, and extremely harmful, combustible cigarettes.

Efforts to control the use of NVPs must increase, and should align with efforts to control the use of tobacco – that is, strict compliance with regulation enforced by the Australian Competition and Consumer Commission (ACCC) that requires control and regulation of the concentration of nicotine in NVPs, control of the sale to minors, control of smoke-free zones, harm warnings on all plain packages, and appropriate taxation and importation restrictions.³² Compliance needs to be strongly monitored at both the federal and state level.

(d) any other related matter

There is a lack of long-term and conclusive data around NVPs. However, evidence does suggest that use of NVPs could be an effective way to encourage cessation among PLHIV who smoke,³³ especially if used in conjunction with other smoking cessation interventions,³⁴ such as integrated care and behavioural support,³⁵ if used as a short-term transition to complete cessation,^{36,37} and particularly for people who have already tried to achieve smoking cessation with other therapies.³⁸ This is a position similar to that proposed by our colleagues at NAPWHA.³⁹

Attached to this submission is an evidence brief we have previously produced outlining the particular harms of smoking for people living with HIV, and the importance of interventions that encourage smoking cessation without shame or stigma among this cohort.

Emerging evidence suggests a link between NVP use and mental distress among young people.⁴⁰ Use of alcohol, other drugs and tobacco is frequently framed by the concept of risk and harm. While it is important to consider the harms caused by practices such as tobacco smoking and NVP use, the focus on risk and harm can be stigmatising, which can have negative consequences, particularly among populations who already experience stigma, discrimination, and minority stress, including LGBTQ+ people, PLHIV, and young people experiencing mental distress.⁴¹ It is critical that interventions to address NVP usage do so without shame or stigma.

Ultimately, there is an urgent need for more research around NVPs as a cessation tool that balances the risks and benefits for LGBTQ+ people and PLHIV. There is also need for research and targeted health promotion interventions around ceasing use of NVPs for LGBTQ+ people, especially young LGBTQ+ people and those who have never smoked.

It is essential that any efforts to reduce NVP use are inclusive of LGBTQ+ people, and do not result in the (re)uptake of smoking combustible cigarettes.

Please do not hesitate to contact Nicolas Parkhill AM, ACON CEO, on [REDACTED] or at [REDACTED] if you require any additional information.

Kind regards

[REDACTED]

Nicolas Parkhill AM
Chief Executive Officer

Notes

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Attachments included with submission

ACON, [Evidence brief: People living with HIV and smoking](#), viewed 17 November 2023