

**Submission  
No 49**

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

**Name:** Emeritus Professor Simon Chapman  
**Position:** Emeritus Professor in Public Health, University of Sydney  
**Date Received:** 2 November 2023

Partially  
Confidential

## **The Secretary**

### **Inquiry into E-cigarette regulation and compliance in New South Wales**

I write to provide your Inquiry with information and suggestions about the regulation of vaping in NSW.

Here is a summary of my relevant expertise and background in this matter.

I am an Emeritus Professor in Public Health at the University of Sydney, from which I retired in February 2016.

My full [CV](#) with links to most publications

My personal blog at [simonhapman6.com](https://simonhapman6.com) (see 66 blogs on vaping here <https://simonchapman6.com/blog-archive-list/>). The blog has been visited 119,075 times.

My [Conversation column and articles](#) (n=113): 3.734 million reads

Ranked 16,808 for citations among 9,749,150 authors worldwide with 5 or more publications (in any field) from 1996-2022 (see [here](#)) and 132 among 59,062 public health authors

### **Career highlights**

- Deputy editor (1992-97), Editor (1998-2008), Emeritus Editor since 2009, BMJ's [Tobacco Control](#)
- World Health Organization World No Tobacco Day Medal for tobacco control, 1997
- National Heart Foundation (Australia), President's Gold Medal, 1999
- American Cancer Society's [Luther Terry Medal](#) for Outstanding Individual Leadership. 13th World Conference on Tobacco or Health, Helsinki, August 2003
- [President's Award](#) Thoracic Society of Australia, 2006
- [NSW Premier's Award](#) (medal and \$50,000): Outstanding Cancer Researcher of the Year, 22 May 2008
- Elected [Fellow](#) of the Academy of Social Sciences of Australia (FASSA) 2008
- [Sidney Sax Medal 2008](#): Public Health Association of Australia
- Distinguished Professorial Achievement Award, Faculty of Medicine, University of Sydney \$10,000. November 2012
- Elected Honorary Fellow, Faculty of Public Health of Royal Colleges of Physicians of the United Kingdom March 2013

- [Officer in the Order of Australia \(AO\)](#) Jun 10, 2013 “for distinguished service to medical research as an academic and author, particularly in the area of public health policy, and to the community.”

- [Australian Skeptic of the Year](#) (awarded by Australian Skeptics Inc, Nov 23, 2013)

My latest book is *Quit smoking weapons of mass distraction*. Sydney University Press (2022)  
[OPEN ACCESS e-book](#) (6,280 accesses since Jul 25, 2022)

\*\*\*\*\*

In the matter of vaping in Australia, state governments’ main responsibilities and powers lie in ensuring that the only supply of vaping products (VPs) occurs via prescribed access through pharmacies; in cooperating with the Therapeutic Goods Administration and the Commonwealth Government to ensure that VPs are not advertised or promoted in any way defined in the Bill soon to be tabled in the Federal Parliament; and in regulating where VPs can be consumed.

In this submission, I will focus only on those matters where the NSW Government has responsibilities. I have previously made a public submission to the TGA’s call in late 2022 for comment on issues such as the safety and effectiveness of vaping in assisting smoking cessation. I append that submission to this present submission.

### **A thought experiment**

First, let me begin with a thought experiment.

Imagine the consequences if a huge, national pharmacy chain, in intense competition with its rivals for the multi-billion dollar prescription drug market was to say “We have decided to ignore the need for a prescription and supply prescription-only medicines to anyone asking for any prescribed drug.” Anyone wanting antibiotics, codeine, statins, steroids, anti-hypertensive drugs ... you name it ... could walk in, hand over their money and walk out with whatever drugs they wanted.

The reaction to this would be swift and iron-fisted, as shown [here](#) and [here](#) in cases where pharmacists were investigated and disciplined over unaccounted-for scheduled drugs.

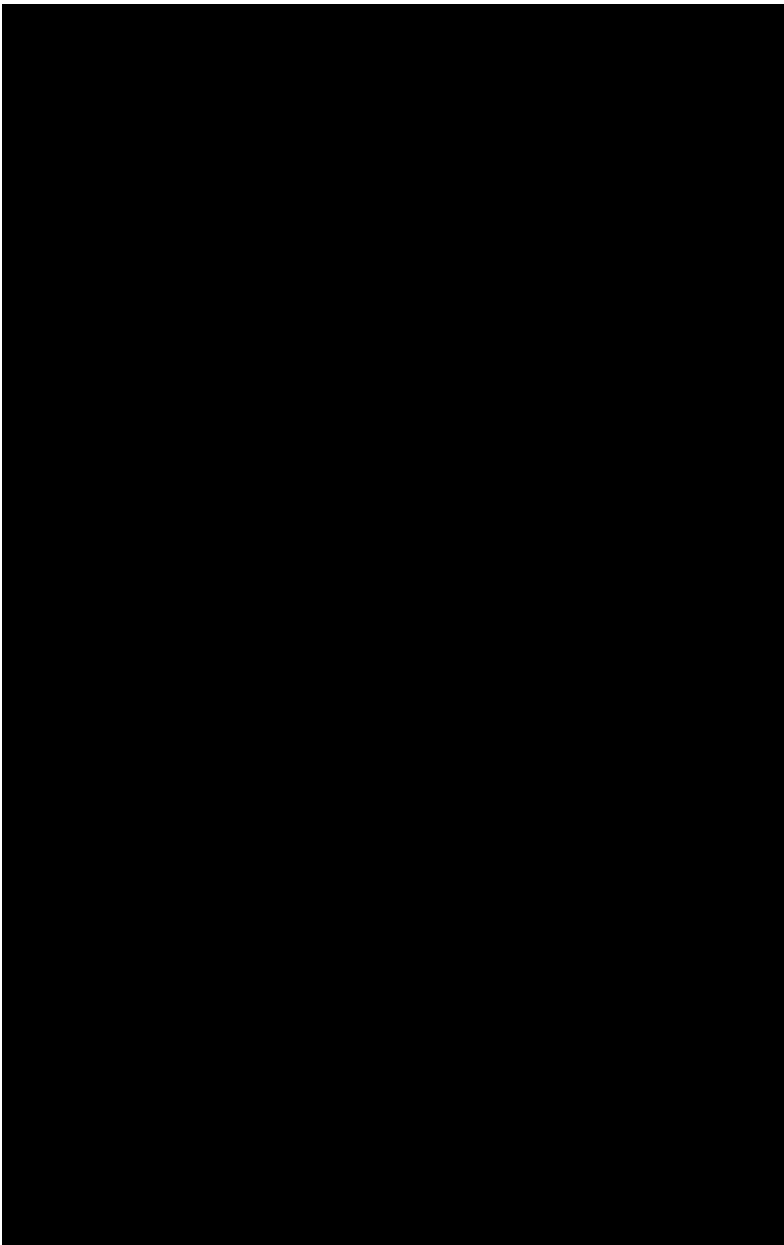
Yet this is in effect what has been happening on a national scale in Australia since Oct 1, 2021, the date when the only legal access to nicotine vaping products became via a prescription legally needing to be dispensed at pharmacies and nowhere else. But as is now blindingly obvious, only a tiny proportion of people who vape – estimates put this at below 4% -- are today getting their vapes in this way. The rest are still buying them openly online, from shops brazenly signed with “Vapes sold here” or from many hundreds of suburban and town market stalls. Corner shops, petrol stations and an army of on-line sellers are openly defying the law.

There has been widespread, wholesale ignoring of the law across the country. Retailers have openly displayed, advertised and sold vaping products containing nicotine, often including those falsely labelled as not containing nicotine. ([This recent study](#) of VPs confiscated from 598 Sydney school student found that nearly all nearly all had av 40mg/ML nicotine, high levels of WS-23 coolant chemical and unapproved for inhalation flavour chemicals.

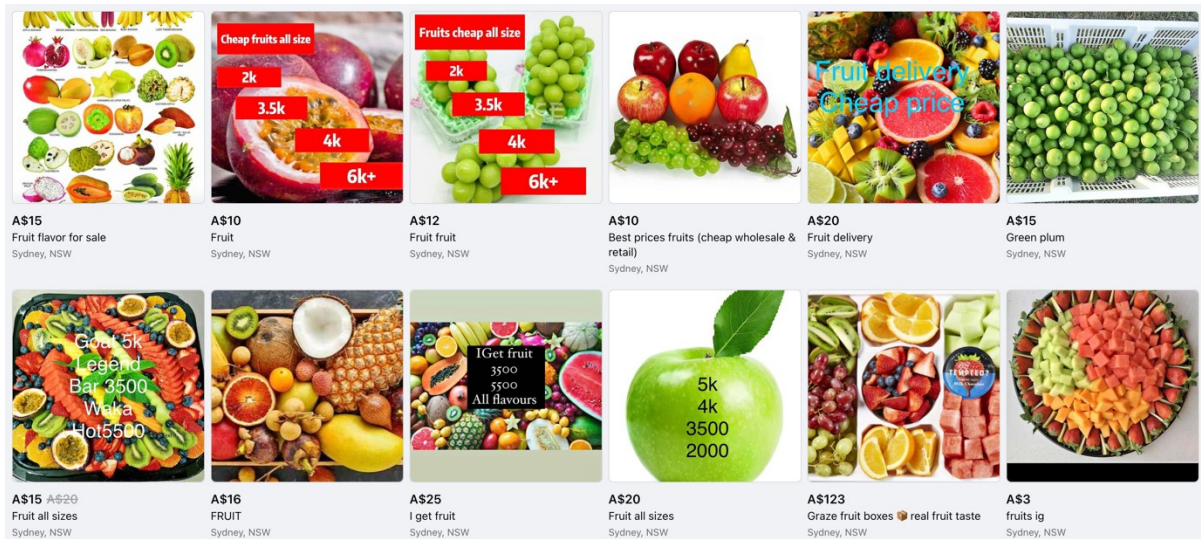
This has occurred because of a perfect storm of the following factors:

- There has been strong, rising demand for VPs, particularly by school children and persons aged under 35. Many of these vapers have never smoked. Many others continue to smoke for years after they also take up vaping
- Those importing and retailing these products can earn extraordinary profit margins (see below)
- The number of seizures and prosecutions for illegal selling have been tiny, relative the number of outlets selling these products and the number of illegal (be definition) black market transactions that occur across all of these outlets
- The maximum fines for selling VPs in NSW are paltry, sending a signal to illegal retailers that the government does not take this illegal trade seriously
- Retailers illegally selling VPs reason that the probability of being apprehended, stock seized, charges laid, prosecutions proceeding and maximum fines given by courts is exceedingly small: simply an unlikely irritant-level potential cost to be balanced against the massive profits to be made by breaking the law

Below is a photo of a vaping retailer I took very recently in [REDACTED] in Sydney. There are many retailers similarly flagrantly advertising from their storefronts that they sell vapes.



Below is a screenshot I took on 31 Oct at 4.25pm of the results of searching on Facebook Marketplace for the innocuous word “fruit”. But these advertisements are not for actual fruit. “Fruit” is instead being used as a code word for fruit flavoured vapes. The screen shot shows just a small sample of many such ads on Facebook Marketplace. I’m told that similar commerce is occurring on other social media platforms. They have been appearing unabated for several years.



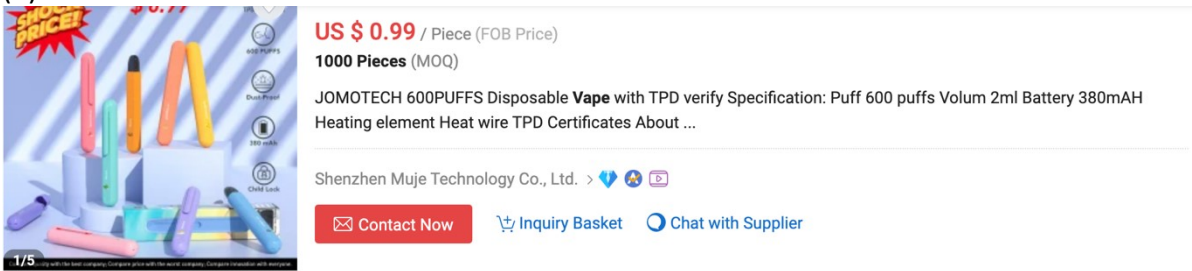
Arguments that the illegal sale of VPs is now so widespread as to make it “impossible” to meaningfully mitigate its extent – that the genie is now so far out of the bottle that it cannot be returned -- are VERY ignorant about the history tobacco control.

When I commenced my work in tobacco control the late 1970s, over 40% of men and 30% of women smoked, Today, some 10.7% of Australians smoke daily. If the attitude was taken in the 1970s that it was an impossible task to radically reduce smoking prevalence to and beyond the levels we have today, many thousands more than would have died than still occur each year despite Australia being internationally acknowledged as being in the forefront of tobacco control.

### Highly profitable

[This website](#) provides pricing for importers of many Chinese made VPs. Prices vary according to different models including the number of puffs available. In the examples below (1) shows a 600 puff model that costs US\$0.99 when purchased in lots of 1000; and (2) US3.50 - \$3.80 for an 8000 puff model

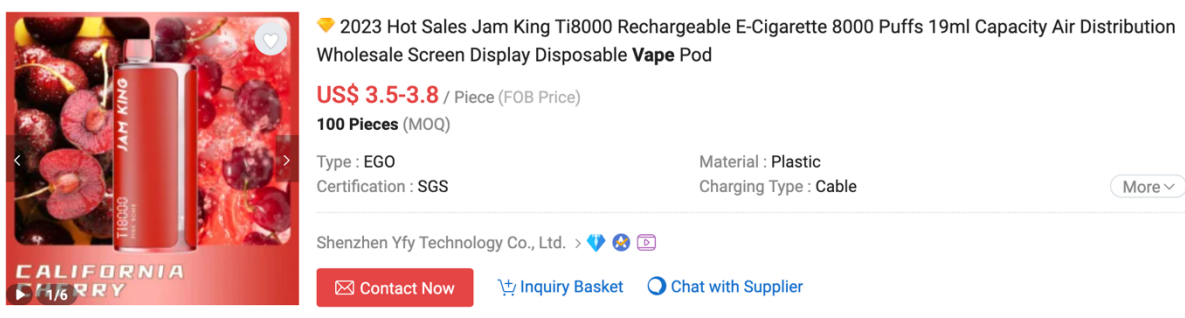
(1)



**US \$ 0.99 / Piece (FOB Price)**  
**1000 Pieces (MOQ)**  
 JOMOTECH 600PUFFS Disposable **Vape** with TPD verify Specification: Puff 600 puffs Volum 2ml Battery 380mAH Heating element Heat wire TPD Certificates About ...  
 Shenzhen Muje Technology Co., Ltd. >

[Contact Now](#) [Inquiry Basket](#) [Chat with Supplier](#)

(2)



2023 Hot Sales Jam King Ti8000 Rechargeable E-Cigarette 8000 Puffs 19ml Capacity Air Distribution Wholesale Screen Display Disposable Vape Pod

US\$ 3.5-3.8 / Piece (FOB Price)

100 Pieces (MOQ)

Type : EGO  
Certification : SGS

Material : Plastic  
Charging Type : Cable

Shenzhen Yfy Technology Co., Ltd.

Contact Now Inquiry Basket Chat with Supplier

An importer with control of retailing in Australia who invested \$US50,000 (AUD\$79,000) in example (1) -- the 600 puff JOMOTECH above -- and retailed each for AUD\$15 would stand to make an AUD \$1.106 million profit, 14 times their investment. If they invested the same US\$50,000 (AUD\$79,000) in the 8,000 puff EGO at a unit price of US\$3.50 (this buying 22,571 EGO vapes) and retailed them for AUD\$25 each (see Facebook Marketplace prices above for indicative retail prices) they would make \$564,275 less their \$79,000 investment, leaving \$485,275 profit – over 6 times their investment.

Cheap disposable flavoured vapes thus promise enormous returns to those seeking to make fast money. The market segments most attracted to cheap vapes are those on low incomes, which importantly includes school children.

### Critical importance of seriously deterrent fines

In NSW, the current maximum penalty for selling VPs is \$1,650, six months in prison or both, in addition to the loss incurred by confiscation and destruction of illegal stock without compensation. This maximum penalty contrasts dramatically with those being handed out by the TGA for advertising vapes.

This week, the Federal Court penalised a vaping company and its director \$4.9m plus costs for advertising VPs in Australia, after being prosecuted by the TGA. This follows penalties to other illegal VP advertisers and importers which have included of [\\$105,600 \(Jul 2023\)](#), [\\$588,840 for illegal VP importing](#) (Jun 2023); [\\$16,000 to an individual](#) importing VPs (May 2023); and [\\$66,000 for importing VPs](#) (April 2023).

[In Taiwan businesses which manufacture, import, sell or advertise VPs](#) face a fine of a minimum NT\$10 million (AUD\$493,000) up to NT\$50 million (AUD2.466 million).

[In Singapore](#), any person convicted of selling VPs is liable to a fine of up to \$10,000 (AUD\$12,000) or imprisonment of up to 6 months or both for the first offence, and a fine of up to \$20,000 (AUD\$23,000) or imprisonment of up to 12 months or both for the second or subsequent offence.

Unless NSW lifts its penalties to seriously deterrent levels, most retailers who have long been knowingly breaking the law, will continue to do so. They will understandably reason that in the unlikely event that they are prosecuted, that the maximum fines they face are

frankly petty cash inconveniences, with next to zero risk to their rivers of money from continuing to sell vapes.

[NSW Health has released data](#) in August on the number of successful prosecutions for selling NVPs between Jan 2020-Jun 2023. There have been just 27 of these, with 441,645 NVPs seized.

I'm advised that several factors have inhibited far wider prosecutions and seizures.

1. At present only VPs containing nicotine are prohibited from sale in Australia other than to those with a prescription. This will change with the passage of Commonwealth legislation in the coming months when *all* VPs, regardless of whether they contain nicotine, will be proscribed from sale in any other retailer than licensed pharmacies to those with a doctor's prescription. Until that time, successful prosecutions have required enforcement officers to determine whether a VP contains nicotine. This involves laboratory testing which is time-consuming and expensive. This has clearly greatly inhibited far more widespread efforts at prosecution
2. During the COVID pandemic, many Health Department staff were reassigned to COVID-related duties. It is possible that raiding vaping retailers was given low priority across this time.
3. While there is a link on NSW Health's website to report retailers selling or advertising VPs, it has been given scant publicity compared with, for example, Crime Stoppers. You have to go looking hard for it. I have personally reported several retailers but have never received any follow-up advice on any of these reports. This silence would discourage the public from reporting more than once.

The Cancer Council NSW has an army of active volunteers around the state who participate in fund raising, education and support for cancer control. I would encourage the government to consider partnering with the Cancer Council to have its volunteers systematically attempt to purchase VPs across the state on a regular basis, providing statutory declarations and photographic evidence of their efforts.

This may greatly increase the number of reports that NSW Health would receive and with significantly increased penalties, would greatly facilitate more prosecutions and compliance with the law.

Unless all Australian state and territory governments seriously address the rampant vape sales law-breaking in each jurisdiction, the Federal Government's prescription access policy will fail because many vapers will continue to purchase illegal VPs.

### **"Prohibition?"**

To those who argue that the prescription access model is "prohibition", it only needs to be pointed out that by this definition of prohibition all prescribed drugs are equally "prohibited": all antibiotics, statins, hypertension control drugs, cholesterol drugs, oral contraceptives, string pain killers, anti malarials etc. In 2020=21, in a population of 25 million, [314.8 million prescriptions were dispensed](#) under the PBS and RPBS. Added to that were many more non-subsidised prescriptions.



It is clearly absurd to argue that such widespread access to restricted drugs via prescription is remotely akin to true prohibition of the sort that applies to illicit drugs.

### **Public vaping**

With vapes not being banned under the proposed Federal legislation but allowed only to be sold to those with a doctors' prescription, vaping, like smoking, of course should not be illegal. However vaping causes significant indoor air pollution, particularly when large numbers of vapers vape in confined settings.

Here, it is significant that there is no airline in the world which allows vaping on board aircraft.

[This study](#) measured suspended particulate matter at an indoor vaping meeting. During 6 time points when the event was ongoing, between 59 and 86 active vapers were present in the event room (room volume=4023 m<sup>3</sup>). While the event was ongoing, median PM<sub>2.5</sub> concentrations in the event room increased from a baseline of 1.92–3.20 µg/m<sup>3</sup> to concentrations that ranged from 311.68 µg/m<sup>3</sup> (IQR 253.44–411.84 µg/m<sup>3</sup>) to 818.88 µg/m<sup>3</sup> (IQR 760.64–975.04 µg/m<sup>3</sup>).

Importantly, **PM<sub>2.5</sub> concentrations observed at the vaping event were higher than concentrations reported previously in hookah cafés and bars that allowed cigarette smoking.** This study indicates that indoor vaping can expose non-users to significant secondhand vape aerosol. Governments should prohibit vaping anywhere smoking is prohibited.

I would be pleased to answer any questions in person at the Inquiry.

Simon Chapman AO  
Emeritus Professor School of Public Health  
University of Sydney  
2 Nov 2023

## **Attachment included with submission**

[Response 407969927](#), Professor Simon Chapman, Therapeutic Goods Administration: Proposed reforms to the regulation of nicotine vaping products