

**Submission  
No 53**

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

**Organisation:** Minderoo

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## Submission to the NSW Committee Inquiry into e-cigarette regulation and compliance

Minderoo Foundation is a proudly Australian philanthropy founded in 2001 by Dr Andrew Forrest AO and Nicola Forrest AO that fights for a fairer future. We incubate ideas, advocate for systems change and accelerate impact.

Minderoo Foundation is setting out to prevent the addiction of new smokers. Research has identified that children and young adults between the ages of 14-25 years are at greater risk of nicotine addiction than older adults.

Minderoo Foundation is a member of the Australian Council on Smoking and Health (ACOSH), an independent, non-government, not for profit coalition of 33 prominent health, education, social service and research bodies with a shared concern about smoking and health. Together we advocate and collaborate on comprehensive strategies to achieve a tobacco and vape-free Australia by 2030.

We have never provided to, or received, any services, assistance, or support from the tobacco or e-cigarette industry.

Minderoo Foundation will continue to advocate for stronger action to protect the health of young people and non-smokers. This includes an end to the supply of all e-cigarette products outside the prescription model. We respectfully submit that the NSW Government shows further leadership, support for Commonwealth reforms and ensures the legislative and regulatory framework for addressing e-cigarette use in NSW is robust and effective.

### **E-cigarette regulation and compliance in New South Wales - Terms of Reference**

#### **a) the current situation in NSW regarding**

##### **i) the prevalence of e-cigarette use by children and young people**

The Generation Vape research project indicates in NSW 37 percent of young people aged 18-24 years are current e-cigarette users.<sup>1</sup> The study also found that most people who try an e-cigarette for the first time are aged less than 16 years and 90 percent of young people aged 14-17 years found accessing vapes easy.<sup>1</sup>

Minderoo conducted a national quantitative study in July 2023 and found that more than half a million young Australians aged between 14 and 25 reported they were vaping daily. In addition, 3 in 10 had vaped in the last 30 days and of those young vapers, 4 in 10 self-reported that they were addicted to vaping.

These trends highlight the limitations of the current regulations in NSW and across Australia, and the need for strong government action to reduce ease of access to e-cigarettes.

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<sup>1</sup> Jenkinson, E, Madigan, C, Egger, S, A, Brooks, A, Dessaix, A, Rose, S, McGill, B, Yazidjoglou, A, Freeman, B. Generation Vape Findings Summary: NSW (Wave 4). Cancer Prevention and Advocacy Division, Cancer Council New South Wales, September 2023. Available from: <https://www.cancercouncil.com.au/wp-content/uploads/2023/10/Gen-Vape-W4-Infographic-NSW.pdf>

ii) health risks associated with e-cigarette products

A recent review of global evidence conducted by the Australian National University identified that risks of e-cigarettes include addiction, intentional and unintentional poisoning, acute nicotine toxicity, seizures, burns, injuries, and lung injury.<sup>2</sup> While the long-term health risks are not yet known, there is growing evidence that vaping, especially by young people who have never smoked, increases the risk of taking up tobacco smoking.<sup>2</sup>

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

Minderoo Foundation acknowledges the NSW Government's efforts to prevent uptake and use of e-cigarettes, particularly the NSW Health led anti-vaping campaign "Do You Know What You're Vaping?" and associated resources, which have been shared in collaboration with other states.

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

Sustained investment by the NSW Government and evaluation of evidence-based public education campaigns to increase knowledge and awareness of the harms of vaping and cessation support options is required.

Minderoo Foundation is aligned with the NSW Government in acknowledging that public education, school-based programs and cessation services are secondary measures that complement the primary strategy of implementing Federal e-cigarette regulatory reform and coordinated action on compliance.

The NSW Government should take a coordinated intergovernmental approach to address vaping to avoid duplication across its portfolios. This should include health, education, police, small business and other portfolios as appropriate.

Sustained investment from the NSW Government in research projects, such as Generation Vape, that form the evidence base on vaping and use by young people that directly inform and evaluate policies, programs and services is required.

School-based interventions and 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.

Minderoo Foundation's research involving young people has shown that 14–25-year-olds require bespoke cessation tools that cater to their needs, and that existing cessation tools that work for adults are unlikely to work for this younger age group. NSW Health should establish, map and communicate vaping cessation support pathways that are age appropriate and ensure there is coordination across government services that offer these.

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<sup>2</sup> Banks E, Yazidjoglou A, Brown S, Nguyen M, Martin M, Beekwith K, Daluwatta A, Campbell S, Joshy G. Electronic cigarettes and health outcomes: systematic review of global evidence. Report for the Australian Department of Health. National Centre for Epidemiology and Population Health, Canberra: April 2022. Available from: [https://openresearch-repository.anu.edu.au/bitstream/1885/262914/1/Electronic%20cigarettes%20health%20outcomes%20review\\_2022\\_WCAG.pdf](https://openresearch-repository.anu.edu.au/bitstream/1885/262914/1/Electronic%20cigarettes%20health%20outcomes%20review_2022_WCAG.pdf)

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

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

We recommend:

That the NSW Government reviews its existing regulations and penalties for breaches of e-cigarette retail sales to ensure they are uniformly enforced and are clear 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.

ii) its effectiveness in preventing illegal supply

We recommend:

The NSW Government to work collaboratively with the Australian Government to phase out the availability of non-nicotine e-cigarette products to end the regulatory loophole.

The NSW Government supports the proposed extension of Federal legislation to prohibit all forms of e-cigarette advertising, marketing, sponsorship and promotion.

The NSW Government to sustain enforcement efforts to ensure compliance with advertising and promotion restrictions in the retail environment.

iii) challenges to enforcement and compliance and ways to overcome these

We recommend:

The NSW Government supports the Australian Government reforms and ensures consistency with state legislation.

The NSW Government works with the Australian 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 government agencies, with clear roles and responsibilities.

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

We recommend:

That NSW Government work with the Australian 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 legislative changes proposed in NSW are done in a manner that is coordinated with other state, territory and Australian governments to ensure consistent and effective outcomes for suppliers, retailers, and consumers.

The NSW Government should take a coordinated intergovernmental approach to address vaping to avoid duplication across its portfolios. This should include health, education, police, small business and other portfolios as appropriate.

**d) any other related matter**

Minderoo Foundation strongly supports the proposed extension of federal legislation to prohibit all forms of e-cigarette advertising and marketing. Young people are being exposed to e-cigarette advertising and promotion both online and in retail settings. These products are clearly marketed and designed to appeal to children and young people and widely available and accessible, despite being proven to cause harm.

The proliferation of 'non-nicotine' e-cigarettes hinders enforcement efforts, requiring authorities to seize and test for nicotine, with retailers exploiting this regulatory loophole. Minderoo Foundation views this as the biggest limitation in the current regulatory framework impacting on the effectiveness of the NSW Government to reduce harm from e-cigarettes. Despite this, NSW Health has shown leadership and has been proactive in undertaking enforcement and compliance activities. Under these difficult circumstances, seizure data indicates significant volumes of illegal product are circulating in the market.

Minderoo Foundation is confident that the implementation of the proposed federal e-cigarette reforms will simplify and support state enforcement and increase effectiveness to reduce harm from e-cigarettes. At the same time, people choosing to quit smoking will be able to continue to have a legal pathway to access e-cigarettes for cessation purposes under the care of their health professional. Monitoring impacts and ongoing compliance will require sustained resourcing and a coordinated response between agencies, at all levels of government.