

**Submission
No 54**

E-CIGARETTE REGULATION AND COMPLIANCE IN NEW SOUTH WALES

Organisation: Australian Council on Smoking & Health

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Inquiry into e-cigarette regulation and compliance in New South Wales

Response by

Australian Council on Smoking and Health

ACOSH acknowledges the traditional owners of the land on which we are based, Whadjuk Noongar Country. We acknowledge Noongar Elders and families and pay our respects to Elders past, present and emerging.

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The **Australian Council on Smoking and Health (ACOSH)** is an independent, non-government, not for profit coalition of thirty-three prominent health, education community, social service and research bodies with a shared concern about smoking and health. ACOSH works through advocacy and collaboration on comprehensive strategies to achieve a tobacco and vape free Australia by 2030.

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

ACOSH welcomes the opportunity to contribute to the current Inquiry into options to improve e-cigarette regulation and compliance in New South Wales.

ACOSH works collaboratively across the public health sector, and thus, in submitting to this Committee, endorses the work of other stakeholders – particularly that of Cancer Council NSW, with whom we work closely.

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Introduction

The tobacco industry is renowned for interfering with public policy by lobbying politicians, manipulating public opinion, discrediting the evidence, fabricating support through front groups and threatening litigation¹. These tactics have been employed extensively in Australia in efforts to weaken Australia's regulatory controls on vapes. This insidious industry has a long history of opposition to Australia's precautionary approach, calling for nicotine vapes to be a consumer product to allow them to be widely sold in general retail stores. A free-for-all.

Tobacco industry tactics have focused on vapes as a new product pipeline, to restore long term market sustainability as tobacco use declines². It is anticipated that the tobacco and vaping industries will continue their fierce opposition to the proposed reforms and seek to undermine and delay them.

ACOSH emphasises that Australia is a party to the WHO Framework Convention on Tobacco Control (FCTC). Importantly, Article 5.3 of the FCTC requires public officials to protect public health policies in relation to tobacco control 'from commercial or other vested interests of the tobacco industry.' Considering the high degree of integration between vape manufacturers and the tobacco industry, this obligation unequivocally extends to vapes.

In line with the vast majority of those in the public health coalition, ACOSH strongly supports restricting supply of vapes to those people who have been prescribed them by their GP. For an unapproved product GP-prescription provides the only effective means of encouraging patients to seek behavioural support (including referral to the Quitline), for exploring first-line pharmacotherapies and for ensuring medical monitoring of patients for health effects that might be associated with vaping.

We appreciate this inquiry deals with the response from the NSW Government in aligning with Federal Government reforms and have addressed each Term of Reference within our response below.

Terms of Reference A – the current situation in NSW

Prevalence of e-cigarette use among children and young people

According to the NSW Population Health Survey³, 16.5% of young people aged 16-24 years reported as current e-cigarette users, up from 4.5% in 2019-2020. The most recent findings from the Generation Vape Research Project, led by Cancer Council NSW, shows these rates are even higher, with 18.4% aged 14-17 years having ever vaped, and 37% of young adults identifying as a current vaper (12% reporting daily use).

¹ World Health Organization. Tobacco Industry Interference. A Global Brief. Available at: https://apps.who.int/iris/bitstream/handle/10665/70894/WHO_NMH_TFI_12.1_eng.pdf?sequence=1&isAllowed=y

² Watts C, Jones M, Lindorff K, Freeman B. How tobacco companies use the revolving door between government and industry to influence policymaking: an Australian case study. *Public Health Res Pract.* 2023; Online early publication.

³ NSW Population Health Survey 2021. Source: Health Stats NSW <https://www.healthstats.nsw.gov.au/#/indicator?name=-beh-smo-cat-daily-phs&location=NSW&view=Trend&measure=prevalence&groups=>

Health impacts

Vaping products have been found to contain a significant number of dangerous chemicals, a number of which are listed on the Australian Poison Standard. Larcombe and colleagues⁴ tested these devices and their components, finding a range of harmful chemicals present, including those found in pesticides and cleaning agents. Ingestion of these chemicals into the lungs causes acute lung injury, addiction, poisoning, seizures, trauma and burns. We are also seeing presentations to NSW emergency departments of teenagers experiencing seizures, loss of consciousness and vomiting and e-cigarette use⁵.

A landmark review of the global literature found an increased risk of a range of adverse health outcomes from e-cigarette use⁶. Importantly, this research found that non-smokers who vape are three times as likely to take up smoking than non-vapers – the “gateway effect” – a clear pathway for addicting a new generation of teenagers and young people to a poisonous product.

Impact of programs and services aimed at preventing uptake or continuing use of e-cigarettes

To effectively address this evolving crisis, ACOSH has been advocating for a comprehensive public health approach that involves legislative changes aligned to the best possible scientific research, incorporates programs and services which raise awareness of the dangers of these products, and also support for people to quit. Whilst there are a number of campaign evaluations and resource development in progress in NSW, there is a lack of evaluation data in other areas.

The NSW Government’s “Do You Know What You’re Vaping” campaign included a toolkit with a range of factsheets, social media assets, posters, videos and other templates. The campaign aimed to provide young people with the facts about vaping, address the myths and increase awareness of the health impacts. Evaluation data shows the campaign performed well amongst the target group and showed a clear ability to drive positive behavioural change amongst 14–17-year-olds. Since the launch in March 2021, the campaign materials have been licensed across most states and territories in Australia.

ACOSH strongly recommends the following to address gaps and areas of need across NSW:

- Sustained funding for research to capture prevalence of e-cigarette use amongst NSW population, particularly the Generation Vape Research Project led by Cancer Council NSW.
- Alignment of State legislation with Federal Government reforms to be announced in 2024.
- Investment in evaluation of existing initiatives to ensure interventions and resources are continually updated.

⁴ Larcombe, A., Allard, S., Pringle, P., Mead-Hunter, R., Anderson, N. and Mullins, B. (2022), Chemical analysis of fresh and aged Australian e-cigarette liquids. *Med J Aust*, 216: 27-32. <https://doi.org/10.5694/mja2.51280>

⁵ Sydney Morning Herald (2023, 9 July) Russian Roulette teens suffer seizures vomiting after using snapchat vapes. [<https://www.smh.com.au/national/nsw/russian-roulette-teens-suffer-seizures-vomiting-after-using-snapchat-vapes-20230706-p5dmc5.html>].

⁶ Banks E, Yazidjoglou A, Brown S, Nguyen M, Martin M, Beckwith 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 8<https://www.health.gov.au/our-work/national-tobacco-strategy> Accessed 27 October 2023

- Establish, map, and communicate vaping cessation support pathways and ensure there is coordination across government.

Terms of Reference B

NSW current regulatory framework

It is currently against the law in NSW to sell a nicotine e-cigarette product to anyone without a prescription for it. It is also unlawful to sell a non-nicotine e-cigarette to anyone under the age of 18 years.

Research on non-nicotine labelled e-cigarettes has found these devices are inaccurately labelled, with many found to contain large amounts of nicotine⁷. It is clear that the distinction between nicotine and non-nicotine vapes, from a regulatory perspective, has resulted in complexities and/or failures of enforcement at all levels of government. Nicotine can only be detected by laboratory testing, which has hampered enforcement efforts and enabled importers and suppliers to evade laws by deliberately mislabelling products. Recent product seizures around Australia indicate that nicotine vaping products are being illegally imported, transported, stored and sold in large quantities in breach of federal, state and territory laws⁸.

The legal sale of non-nicotine vapes to adults in all states and territories (except Western Australia) in general retail stores has normalised the recreational use of vapes and exposed young people to vaping promotions and attractive products. In many cases, this has been used as a cover for illegal sales of nicotine vapes. Earlier reform proposals that focussed only on nicotine vapes failed to remedy the defects that have hampered enforcement and facilitated access by children.

The Federal Government will introduce a range of reforms⁹ over the next 12 months which will close this loophole, and ensure these products are destined only to those with a medical prescription. To this end, the proposed measures will also limit the number of chemicals, introduce limitations to the nicotine concentration, and introduce pharmaceutical style packaging.

Once these measures are introduced, all States and Territories will need to resource effective compliance and enforcement monitoring and ensure a coordinated response across all agencies and levels of government.

ACOSH recommends the NSW Government works closely with the Australian Government to ensure border controls on the importation of all vaping products are significantly strengthened and effectively implemented. This should include:

- **Investment in mapping the illegal supply of e-cigarettes in NSW.**
- **A review by NSW Government on the regulations that determine how breaches of e-cigarette retailing are penalised to ensure they are clear, strengthened, and simplified.**
- **A review and refinement by NSW Government on key messages to communicate changes to e-cigarette policy and legislation following the implementation of proposed federal reforms.**

⁷ Chivers, E., Janka, M., Franklin, P., Mullins, B. and Larcombe, A. (2019), Nicotine and other potentially harmful compounds in “nicotine-free” e-cigarette liquids in Australia. *Med. J. Aust.*, 210: 127-128.

<https://doi.org/10.5694/mja2.12059>

⁸ See, eg. WA Government. Media Release. \$10 million of vapes seized in record-breaking bust. 14 August 2023.

⁹ Mark Butler (Minister for Health and Aged Care) ‘Taking Action on Smoking and Vaping’ (Media Release, 2 May 2023) www.health.gov.au/ministers/the-hon-mark-butler-mp/media/taking-action-on-smoking-and-vaping

Terms of Reference C

Working with the Federal Government to implement reforms on e-cigarette products.

ACOSH has been working with a coalition of public health stakeholders to identify the policy and legislative reforms required to protect the population from e-cigarettes. On 2nd May 2023, The Hon. Mark Butler, Minister for Health and Aged Care announced landmark reforms to reduce smoking and stamp out vaping – with a focus on young people. These reforms were welcomed by many in the public health sector and are outlined in the infographic below.

What will the reforms do?



To be effective, ACOSH recommends the following to ensure the NSW Government is prepared for post-reform implementation following the Federal Government's legislative changes. This should involve:

- Establishment of joint governance structures to foster effective planning, coordination of action, resource and intelligence sharing, and ongoing review.
- Ensuring required legislative changes in NSW are coordinated by the NSW Government with other State, Territory and Australian governments to ensure a consistent and effective outcome for suppliers, retailers, and consumers.
- Taking a coordinated approach to address vaping to avoid duplication across its portfolios. This should include: health, education, police, small business and other portfolios as appropriate.

Conclusion

ACOSH supports strong action by the NSW Government to address the evolving issue of vaping within our community.

We call for an urgent and coordinated response which works with the Federal Government to end the ease of access to non-prescription e-cigarettes and ensure adequate resourcing for enforcement and compliance within NSW.