

**Submission
No 55**

E-CIGARETTE REGULATION AND COMPLIANCE IN NEW SOUTH WALES

Organisation: The Law Society of NSW

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THE LAW SOCIETY
OF NEW SOUTH WALES

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10 November 2023

Mr Edmond Atalla MP
Chair, Legislative Assembly Committee on Law and Safety
Parliament House
Macquarie Street
Sydney NSW 2000

By email: lawsafety@parliament.nsw.gov.au

Dear Mr Atalla,

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

Thank you for the opportunity to contribute to this inquiry. The Law Society's Children's Legal Issues and Criminal Law Committees contributed to this submission.

By way of context, the Law Society notes the finding of the Office of the Advocate for Children and Young People (**ACYP**) that "young people have been subject to a targeted campaign, marketing a previously unregulated product, which then became so accessible that it felt ubiquitous."¹ In this challenging environment, the Law Society considers that responses aimed at reducing the prevalence and use of e-cigarettes, particularly among children and young people, should focus on more effectively controlling access to e-cigarettes, information campaigns about the risks associated with e-cigarette use, services supporting the cessation of use, and social and health responses, rather than criminal justice responses.

We commend to the inquiry the report of the ACYP, "*Vaping can affect your whole life, not just your lungs*": *Young people's perspectives on vaping in 2023*. While the study involves a relatively small sample size, it has attempted to be representative. Further, its insights in respect of the underlying determinants of e-cigarette use among young people, and its recommendations in respect of appropriate regulatory reform, education and therapeutic supports are directly relevant to this inquiry. From the perspective of trying to reduce contact with the criminal justice system, we draw the inquiry's attention to the findings of the ACYP in our comments relating to the Terms of Reference below.

- (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**

¹ Office of the Advocate for Children and Young People, "*Vaping can affect your whole life, not just your lungs*": *Young people's perspectives on vaping in 2023*, 38, https://522228.fs1.hubspotusercontent-na1.net/hubs/522228/Vaping%20report%202023/Young_peoples_perspectives_on_vaping_in_2023.pdf (**ACYP Report**).

The experience of our members is consistent with findings of the ACYP that e-cigarette use amongst children and young people is common, particularly in schools, having apparently tripled in the period between 2016-2020 to 27.2%² and is strongly influenced by peer pressure and social circles.³ Our members also agree that e-cigarettes, including those containing nicotine, are readily available, and targeted, to young people online,⁴ and that sharing and collusion regarding concealment of e-cigarettes (and a general culture of group secrecy around use) is common.⁵

The health risks of e-cigarettes are well documented, including, for example, in the National Health and Medical Research Council's Statement on e-cigarettes.⁶ Most relevantly in relation to children and young people, the Statement reports that: e-cigarettes containing nicotine present a risk of exposing users to harmful chemicals and toxins; that the risk may be compounded by inaccurate labelling as to nicotine content; that there are no health benefits to non-tobacco smokers of using these products; and that smoking e-cigarettes increases the likelihood of future tobacco smoking.⁷

(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**

Access to e-cigarettes

We understand that a significant source of e-cigarettes is via online means. Children and young people have reported that their main points of access for purchase are through online channels, via social media "dealers", contacts made via messaging platforms, and from offshore online suppliers.⁸ We note the ACYP's recommendation 1.3 that the NSW Government should invest in NSW Health inspectors' efforts to continue existing inspection and enforcement programs in response to illegal sales of e-cigarettes through physical retail settings and online.⁹ We note that this requires partnership with NSW Police and the Australian Border Force.¹⁰ Further, given the significant challenges involved in attempting to control online retail, we suggest that it may be particularly important for the NSW Government to focus on regulating advertising, including consideration of how to regulate, or to otherwise counter, influencer-based content,¹¹ and providing education.

Regulating the advertising of e-cigarettes

Given that peer pressure and social acceptability is one determinant of e-cigarette use in children and young people,¹² we note the importance of restricting marketing activities aimed at promoting and normalising e-cigarette use. We note the current NSW provisions that regulate the packaging, display and advertising of e-cigarettes.¹³ We also note the World Health Organisation's view that e-cigarettes should be subject to the same restrictions on advertising, promotion and sponsorship as tobacco.¹⁴

² Ibid., 11.

³ Ibid., 4.

⁴ Ibid., 11, 18.

⁵ Ibid., 4, 17.

⁶ National Health and Medical Research Council, *Statement on Electronic Cigarettes*, 2022, <https://www.nhmrc.gov.au/health-advice/public-health/electronic-cigarettes>.

⁷ National Health and Medical Research Council, *CEO Statement on Electronic Cigarettes*, 2022, <https://www.nhmrc.gov.au/health-advice/all-topics/electronic-cigarettes/ceo-statement>.

⁸ ACYP Report, 18.

⁹ Ibid., 8.

¹⁰ Ibid.

¹¹ Ibid., 29, noting the views of some young people that banning vaping by influencers on social media would prevent this being another factor that encourages young people.

¹² ACYP Report, 4.

¹³ *Public Health (Tobacco) Act 2008*, Pts 2, 3.

¹⁴ World Health Organization, *WHO Framework Convention on Tobacco Control, Conference of the Parties to the WHO Framework Convention on Tobacco Control, sixth session, Electronic nicotine delivery systems: Report by WHO*, 2014.

Public health information about e-cigarettes

Effectively addressing the prevalence of e-cigarette use may also require public awareness campaigns providing accurate health information for users, health services and educators. We note the ACYP's finding that awareness of the *Do you know what you're vaping?* campaign amongst young people is relatively low.¹⁵

Services supporting cessation of use

Given the complexity of this issue, we note the ACYP's recommendations 3.1-4.2 in relation to developing cessation supports for young people, including the general principle of needing to co-design programs and resources with young people. Young people in particular may require a range of available measures depending on their age, family and social circumstances, school life, current use and understanding.¹⁶

Social and health responses for young people involved with selling e-cigarettes

Under s 22 of the *Public Health (Tobacco) Act 2008* (NSW) it is an offence to sell e-cigarettes to a person under the age of 18. In the experience of our members, charging young people under this provision can be a disproportionate response and, from the perspective of countering the public health concerns, ultimately ineffective, especially if the circumstances of the alleged offender include addiction and/or disadvantage.

Our view is that the involvement of young people with e-cigarettes should primarily be met with the social and/or health responses, including those outlined above, rather than a criminal justice response. We suggest police approaches should prioritise cautioning and diversionary measures, rather than charging, where possible. The ACYP notes there are opportunities to provide better health-based support for young people, including education and treatment for addiction where necessary.¹⁷

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

There are opportunities for the NSW Government to work with the Federal Government in relation to:

- increasing importation controls regarding e-cigarettes to counter illegal online sales;
- national information campaigns which include consistent messaging through schools and health services;
- strengthening services that support overcoming addiction; and
- supporting the e-Safety Commissioner in initiatives to counter online advertising of e-cigarettes.

Questions at first instance may be directed to Sue Hunt, Senior Policy Lawyer, at [REDACTED] or [REDACTED].

Yours sincerely,

[REDACTED]
Cassandra Banks
President

¹⁵ ACYP Report, 17.

¹⁶ Ibid., 25-29.

¹⁷ Ibid., 21.