

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

Organisation: The Heart Foundation

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E-cigarette Regulation and Compliance in New South Wales

The Heart Foundation welcomes the opportunity to provide the Legislative Assembly Committee on Law and Safety its submission on e-cigarette regulation and compliance in New South Wales (NSW).

There are more people living with cardiovascular disease in NSW than any other state in the country.¹ In 2022, 15,266 people in NSW died from cardiovascular disease, accounting for more than a quarter of all deaths in the state.¹ Cardiovascular disease was the second most expensive chronic health condition in Australia, costing over \$12 billion in 2019-20.²

There is unequivocal evidence surrounding the impacts of tobacco smoking on cardiovascular health. People who smoke are two times more likely to have a heart attack, three times more likely to have a stroke, and five times more likely to develop peripheral arterial disease. The risk of dying from heart disease or sudden cardiac death in people who smoke is 4- and 3-fold higher than non-smokers respectively.³

The increased regulation of e-cigarettes should be seen as a high priority for policy and regulatory reform by Australian and state and territory governments. Without strong actions now to reduce rates of e-cigarette use, we will see a surge in avoidable cardiovascular and other chronic diseases in the 2040s and beyond. Responsible governments must act now to prevent this from occurring.

New South Wales has a strong and proud record on tobacco control, including introducing smoke-free areas, public education campaigns and retail display bans. With the rise in use of e-cigarettes, along with their proven negative health impacts, all levels of government must urgently act to prevent a looming public health crisis.

The Heart Foundation is calling on the Government of NSW to:

- 1. Work collaboratively with all governments across Australia to phase out regulatory loopholes that have led to a proliferation of illegal e-cigarette sales.**
- 2. Support the proposed extension of Commonwealth legislation to prohibit all forms of e-cigarette advertisements, marketing, sponsorship and promotion.**
- 3. Sustain enforcement efforts to ensure compliance with advertising and promotion restrictions in the retail environment.**
- 4. Implement a positive licensing scheme for tobacco and e-cigarette retailers.**
- 5. Take a coordinated approach to vaping regulation and compliance to avoid duplication across its portfolios. Actions should be led by the health portfolio with support from the education, police and small business portfolios.**
- 6. Continue and expand funding for cessation support programs targeted at young people.**

A) Comments on the current situation in New South Wales regarding:

i. the prevalence of e-cigarette use among children and young people.

The use of e-cigarettes among children and young people is growing at an alarming rate in Australia. In 2019, approximately 11% of people aged 14 and older reported having tried e-cigarettes, with the highest rates reported among 18-24-year-olds.⁵ Between 2016 to 2019, there was a significant rise in the use of e-cigarettes

among 18–24-year-olds (from 19.2 to 26.1%). The increasing rates of e-cigarette use, particularly amongst Australian children over the last five years, is of significant concern and should be addressed as a high priority.

The use of e-cigarettes is also on the rise in NSW. In 2017, 15.5% of people aged 16-24 reported to have ever used an e-cigarette. In 2021, this figure had risen sharply to 43.2%. A similar trend in e-cigarette use was observed over the same period among 16-24-year-olds who were current users, increasing from 1.8% in 2017 to 16.5% in 2021.⁷ Media, school and community reports also suggest that vaping among young people in NSW has proliferated in recent years.^{8,9}

The Generation Vape study conducted by Cancer Council NSW assessed access to vaping products, types of products used, and the factors associated with vaping and smoking among young people in NSW. The survey of 721 people aged 14-17 found almost one-third of those surveyed (32%, n=233) reported being an ever-vaper, of which more than half (54%) had never smoked cigarettes prior to starting vaping.⁴ The study also found that 16% of participants had vaped in the past month, and 5% reported vaping between 10 and 30 days in the last month.⁴ Alarmingly, 80% of ever-vapers (n=179) reported that they found it easy to access vapes through both commercial and social channels.⁴ More than half of ever-vapers (53%, n=123) had used a vape that they knew contained nicotine. Ever-vapers rated flavourings and taste as the most important characteristic of vapes.

ii. health risks associated with e-cigarette products.

A 2022 global systematic review on the health impacts of e-cigarettes by the Australian National University found strong or conclusive evidence that the use of e-cigarettes increases the risk of a range of adverse health outcomes.⁶ These negative health impacts include addiction; intentional and unintentional poisoning; acute nicotine toxicity, including seizures; burns and injuries; lung injury; dual use with cigarette smoking; and increased smoking uptake in non-smokers.⁶ E-cigarettes can also cause environmental hazards with health implications including indoor air pollution, wastes and fires.⁶ Less direct evidence indicates harmful effects of e-cigarettes on cardiovascular health markers, including blood pressure and heart rate, lung function and adolescent brain development and function.⁶

In June 2022, the National Health and Medical Research Council (NHMRC) CEO statement on e-cigarettes outlined the national advice on e-cigarettes based on the most up to date scientific evidence.¹⁰ The statement included:

- All e-cigarette users are exposed to chemicals and toxins that have the potential to cause harm. In addition to nicotine, more than 200 chemicals have been associated with e-liquids.
- E-cigarettes containing nicotine are addictive and people who have never smoked are more likely to take up tobacco smoking following the use of e-cigarettes.
- E-cigarettes have not been proven to be a safe and effective smoking cessation tool. There are, however, other proven safe, evidence-based treatments available to help smokers quit such as nicotine replacement therapy (NRT), pharmacotherapy and behavioural interventions.
- For former tobacco smokers, using an e-cigarette may increase the chance of smoking relapse.¹⁰

In another study published after the NHMRC review, it was found that long term e-cigarette users had impaired blood vessel function, increasing the risk for a number of life-threatening chronic conditions, including cardiovascular disease.¹¹ In addition, the authors discovered that e-cigarettes had harmful cardiovascular effects in ways that were different from those caused by tobacco smoke. Specifically, they found that different biomarkers of cardiovascular risks were elevated in the blood of people who smoked tobacco cigarettes compared to those who used e-cigarettes.¹¹ These findings suggest that dual use of e-cigarettes and tobacco cigarettes could increase a person's risk of adverse health outcomes, compared to exclusive use of either one of these products.

Evidence indicates that non-smokers who use e-cigarettes are three times more likely to go on to smoke combustible cigarettes.⁶ Of significant concern is the concurrent rise in smoking and vaping among Australian teenagers aged 14-17 since 2018. Data from a recent national survey indicates a marked increase in e-cigarette

use among 14-17-year-olds, from 0.8% in 2018 to 11.8% in 2022.¹² Over the same period, there was a 3-fold increase in tobacco smoking by 14-17-year-olds in just four years, from 2.1% in 2018 to 6.7% in 2022.¹² Smoking prevalence continued to trend upwards into the first quarter of 2023 with preliminary data showing 12.8% of 14-17-year-olds reported smoking.¹² As the data was collected from respondents in capital cities, including Sydney, it does not reflect the smoking prevalence in rural areas, which tends to be higher.

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

To date, there has been limited research into the impact of programs and services aimed at preventing uptake and continuing use of e-cigarettes. While evaluation data is lacking in some areas, there have been multiple initiatives spanning campaigns, research, and resource development aimed at preventing or addressing vaping among young people.

The Heart Foundation supports the NSW Health “Do You Know What You’re Vaping?” campaign and the addition of vaping education materials into the Personal Health and Physical Education curriculum for high school students. These programs must be regularly assessed and updated to ensure their effectiveness in preventing the uptake or continuing use of e-cigarettes.

Cessation support to quit vaping or address nicotine dependence is lacking in Australia with no services currently tailored to young people. This gap has been recognised by the NSW Government with announcements made in September 2023 to dedicate \$2.5 million over the next 12 months to increase services to help young people quit vaping.¹³ The Heart Foundation commends this increase in funding for cessation support and stresses that continued support for young people is vital to ensure that they can safely cease using e-cigarettes.

B) NSW's current regulatory framework.

It is clear that the current regulatory framework aimed at preventing the illegal supply of e-cigarettes is not working in NSW. The ease at which young people are able to obtain e-cigarettes, the number of incorrectly labelled e-cigarettes that are sold at retailers across the state and the proliferation of retailers selling e-cigarettes points to the need to significantly increase enforcement measures and close regulatory loopholes.

i. Its effectiveness in reducing harm from e-cigarette use.

Currently, e-cigarettes containing nicotine can only be *legally* supplied to a user with a prescription and through a pharmacy. However, importers and suppliers are circumventing current regulations and are readily supplying e-cigarettes containing nicotine through retail settings. They are doing so by taking advantage of a regulatory loophole that allows the importation and sale of e-cigarettes that do not contain nicotine. This allows them to import and sell e-cigarettes products marked as not containing nicotine or not listing nicotine as an ingredient, when in fact in most cases they do contain nicotine.

The presence of nicotine can only be determined via laboratory testing, thus allowing e-cigarette manufacturers and suppliers to simply remove nicotine from the labelling of these products and openly sell them throughout NSW. Research conducted by the University of Wollongong detected high concentrations of nicotine in 737 out of 750 e-cigarettes that were seized from retailers or Sydney schools, the majority of which did not have nicotine listed as an ingredient.¹³

The Heart Foundation supports action to remove loopholes that have allowed for the illegal importation and sale of e-cigarettes in retail settings. E-cigarettes should only be made available to those wishing to use them as a therapeutic device to help quit smoking and supplied to people with a prescription and through a pharmacy.

The Heart Foundation supports the proposed changes to Commonwealth legislation to prohibit all forms of e-cigarette advertisements and note that should these changes be enacted, they will require enforcement in

NSW. Regulations should be carefully constructed with sustained monitoring and enforcement action required to ensure retailers (both physical and online) comply with the law to prevent young people's exposure to e-cigarette advertising and promotion.

ii. Its effectiveness in preventing illegal supply.

The proliferation and availability of e-cigarette devices and liquids not labelled as containing nicotine or claiming to be nicotine-free is hampering government compliance and enforcement efforts and spurring ease of access by minors. State and territory regulations that prohibit sales to minors have failed to curb their use among young people.

The current regulatory framework is ineffective in combating illegal supply of e-cigarettes, particularly in preventing their purchase by young people. Recent data from the Cancer Council Generation Vape study revealed that 87% of teenagers aged 14-17 in Australia found it easy to access vapes.¹⁴ In NSW, almost 80% of young people aged 14-17 who had ever vaped found it easy to access vapes.⁴ Young people reported purchasing e-cigarettes through social media, from retailers such as tobacconists, petrol stations or convenience stores or from friends.⁴ The ease in which teenagers are able to obtain e-cigarettes clearly shows that current regulatory frameworks that are intended to prevent the supply of e-cigarettes to children have entirely failed.

iii. Challenges to enforcement and compliance and ways to overcome these.

New South Wales is out of step with other jurisdictions in Australia that have implemented a positive licensing scheme for tobacco retailers of both tobacco products and e-cigarettes. The Australian Capital Territory, Northern Territory, Tasmania, Western Australia and South Australia, all have positive licensing schemes. The Heart Foundation supports the introduction of a positive tobacco retail licensing scheme with a high licensing fee like Tasmania, where the fee is currently set at \$1,161 per annum (includes e-cigarettes).

A Tobacco Retail Licensing Scheme will allow for better enforcement of tobacco control measures (e.g., sales to minors and point of sale regulations) and enable better monitoring of who is selling by providing a more effective mechanism for communication and compliance checking. The fees will provide revenue to fund monitoring activities of the estimated 10,000 businesses in NSW selling tobacco and license fees will result in reduction of tobacco points of sale.

Nicotine e-cigarettes are being supplied illegally in NSW retail stores due to the legislative loopholes outlined previously. Currently, there is little to stop illegal e-cigarettes being imported into the country. Disposable e-cigarettes, in colourful packaging with sweet flavours, are marketed to children and young people. Critically, the unregulated market for so called "non-nicotine" e-cigarettes makes it difficult to enforce current laws and address illegal importation and sale of nicotine e-cigarettes.

In order to prevent the illegal supply of e-cigarettes in NSW, it is vital that the Government of NSW:

- close regulatory loopholes to reduce the illegal importation and sale of e-cigarettes.
- ensure e-cigarettes can only be provided to those wishing to use them as therapeutic device to help quit smoking and supplied through a pharmacy to those with a prescription.
- limit the available flavours of e-cigarettes.

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

The Heart Foundation welcomes the recently announced reforms by the Australian Government to tighten existing e-cigarette regulations (outlined in the National Tobacco Strategy and the recent TGA consultation). These reforms are comprehensive, tackling the issue of e-cigarette and vaping at all angles – prevention, enforcement, community education and quit smoking support.

These federal reforms must be supported by states and territories. While the Commonwealth proposals are yet to be enacted, it is vital that the NSW Government prepares for post-reform implementation. Assuming the reforms are successfully adopted, an initial challenge will be in ensuring that e-cigarettes are only made available through pharmaceutical settings and not specialist stores, convenience stores and other retail settings. Any required NSW legislative changes will need to be coordinated with other states and territories and the Commonwealth to ensure a consistent and effective outcome for suppliers, retailers, and consumers.

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