

Submission to the Therapeutic Goods and Other Legislation Amendment (Vaping Reforms) Bill 2024

About 360Edge

360Edge is Australia's leading specialist alcohol and other drugs consultancy. We provide a full suite of policy and practice advisory services across the spectrum of alcohol and other drug use, as well as allied areas such as mental health, justice and education, supporting governments and frontline services to improve policy and practice in line with the latest evidence. At 360Edge, our vision is for a community that provides the best public health policy and practice responses.

Our four main programs are Workforce Development, Service Improvement, Evaluation and Health Systems Modelling. 360Edge also supports the development and implementation of workplace alcohol and other drug policy through our WorkEdge program and alcohol and other drug prevention in schools through our Schools of Substance program.

CEO, Professor Nicole Lee, is an international leader in alcohol and other drug responses, with 35 years' experience in policy and practice implementation. She is also Adjunct Professor at the National Drug Research Institute, Curtin University; CEO of Hello Sunday Morning; and Board Member of The Loop Australia. She is a member of the Australian National Council on Alcohol and other Drugs (ANACAD), Australia's key expert advisory council to the Australian Government on alcohol and other drugs, which provides policy advice directly to the Health Minister and their Department.

Professor Nicole Lee has provided advice to Australian, state and territory governments as well as international governments across Southeast Asia, New Zealand and the Pacific Islands. She has worked on alcohol and other drug policy with major international organisations such as the World Health Organization and the United Nations Office on Drugs and Crime.

Overview

Thank you for the opportunity to make a submission to the Therapeutic Goods and Other Legislation Amendment (Vaping Reforms) Bill 2024. Our response is based on the latest evidence from Australia and internationally regarding tobacco and vaping and what works to reduce harms.

As specialists in alcohol and other drug policy in Australia, we have published a series of evidence check reports designed to assist services, governments and funders in keeping up to date with the latest evidence regarding alcohol, tobacco and other drug responses. We point you to our [‘What Works: Tobacco Harm Reduction and Vaping’](#) report to access a comprehensive, high quality synthesis of the latest evidence regarding vaping in Australia.

Our submission emphasises the following considerations:

- Currently, access to vaping products is so restricted that 90% of people who use vaping products buy them illegally, supporting a thriving black market. Vaping products are more difficult to access than tobacco cigarettes. When people want a substance that is heavily restricted, they don’t stop using it, they just buy it illegally. Clearly, anyone who is accessing vaping products would prefer to do so legally.
- The evidence is clear that vaping is an effective smoking cessation aid and is significantly less harmful than tobacco cigarettes, so we want as many smokers as possible to switch to vaping to reduce overall harm and improve public health outcomes for Australia.
- As with alcohol, tobacco and all other drugs, we want to avoid teens taking up recreational nicotine vaping, but a thriving black market makes it easier rather than harder for teens to access these products.
- The solution is to make it easier for adult smokers to acquire regulated vaping products, as other jurisdictions such as New Zealand and the United Kingdom have done. This would restrict access to children and reduce the size of the black market. The proposed reforms would make vaping products excessively difficult to access for adult smokers, compounding pressures on GPs and further promoting the black market.

Vaping regulation in Australia

It is integral that any changes to regulations regarding vaping are focused on public health considerations and informed by a strong evidence base. Because smoking is the leading risk factor for death and disease in Australia, the net public health benefits of relaxing regulations on vaping products, a significantly safer alternative, are likely to significantly outweigh potential harms.^[1-3]

Vaping has been legally available via prescription-only in Australia since 2021. Because there are no vaping products registered on the Australian Register of Therapeutic Goods and because vaping is discouraged by health authorities, very few prescribing health professionals are prepared to prescribe vaping products and very few pharmacies stock them. Alongside significant pressures faced by GPs currently and barriers to accessing a GP for some populations, these regulations have made legal vaping products largely inaccessible.^[3]

In the face of consumer demand for a safer nicotine alternative, the development of the thriving vape black market in Australia is a direct outcome of restrictive policies. Currently, 90% of people who use vaping products purchase them without a prescription.^[4]

Vaping products sold through the black market present a significantly higher risk of harm because they are unregulated. This means they lack quality and safety controls, are easily accessible by youth, are inadequately labelled and may contain harmful substances.

The proposed reforms to vaping regulations further restrict access to vaping products in the community and are likely to further exacerbate the current situation. In other jurisdictions, the prohibition of vaping products has not reduced vaping rates and has led to increases in vaping among youth and increases in smoking.^[3]

Vaping is an effective smoking cessation aid

Tobacco remains the leading risk factor contributing to the burden of disease and deaths across Australia, with 8.6% of the disease burden and 13% of deaths being attributable to tobacco in 2018.^[5]

There is strong evidence that vaping increases quit rates compared to other nicotine replacement therapies, such as patches and gum, or compared to counselling only.^[6-8] In jurisdictions with more permissive vaping regulations, smoking has declined more rapidly than in Australia.^[2] Only recently has Australia seen a significant decline in smoking, which has occurred alongside an increase in vaping.

In 2022–2023, 8.8% of Australians were daily smokers, a decline from 11.6% in 2019.^[9] This decline of 24.1% is the largest decline in daily smoking ever recorded in the National Drug Strategy Household Survey. In the same period, there was an increase from 1.5% to 3.5% of people vaping daily.^[4]

People who vape daily are overwhelmingly current or former smokers, with only 1.1% of people who have never smoked vaping daily.^[4]

There has been no change in the proportion of people who don't smoke, so increases in vaping alongside significant declines in smoking indicates that people are shifting away from smoking to the safer nicotine alternative.

It is important that the health risks associated with vaping are contextualised in relation to the significant health risks associated with smoking. Although vaping is not risk free, most experts agree that it is significantly safer than smoking tobacco, so measures to encourage smokers to switch to vaping should be a high priority public health measure.

The carcinogenic compounds found in tobacco cigarettes are either not present or found in very small amounts in nicotine vaping products. Regulated vaping products are estimated to have as low as 5% or less of the harms associated with cigarettes and less than 1% of the cancer risk.^[10-13] The most prevalent adverse effects of vaping include mouth or throat irritation, depressed mood, nausea and insomnia.^[14]

Youth vaping

Increases in youth vaping is a concern to the community. Among young people aged 14–17, only a small proportion (3.5%) vape daily, while the majority have only tried it once or twice (14.2%) or vape occasionally (6.3%).^[4]

There is strong evidence that vaping among youth is generally of an experimental, transient and infrequent nature.^[4, 15-17] Smoking rates among youth in this age bracket have halved and it is estimated that less than one percent of youth are smoking daily.^[9] The increasing availability of illicit vaping products is likely a contributor to increased rates of youth trying vaping instead of smoking.

Youth vaping should be addressed in the same way as youth smoking. Access to cigarettes by youth is restricted by strong regulations around the sale of cigarettes and consistent enforcement of these regulations. Conversely, the lack of regulations around vaping has created a thriving black market in which products are easily accessible by youth.

Given that disposable vaping products are the product of choice among youth, banning these products is an appropriate measure to divert youth from vaping.^[18]

The proposed reforms

The existing restrictions on access to vaping products have led to Australians turning to the black market to access readily available vaping products in a more timely and affordable manner than the alternative of accessing them via prescription. Severely restricting access by prioritising law enforcement over public health will divert people to alternative sources, making no impact on use and significantly increasing the risks.

People who smoke daily are more likely to be socioeconomically disadvantaged and face significant barriers to accessing healthcare. Compared with daily smoking rates in the general population (8.3%), 27.8% of people who are unable to work, 20.4% of people who live in remote or very remote areas, 20.1% of people who identify as First Nations, 15.2% of people who are unemployed and 13.4% of people in the most disadvantaged socioeconomic quintile are daily smokers.^[9]

GPs are currently facing significant pressures, directly impacting people's ability to access care. Almost one quarter (23.4%) of people had to wait longer than acceptable to see a GP in 2021–2022, up from 16.6% the year before.^[19] People living outside of major cities are more likely to report unacceptable wait times. The average fee for a GP consultation has increased significantly and the proportion of GPs bulk billing all patients has halved in the past year, now representing only 12% of GPs.^[19] Most GPs (64%) are considering stopping practising or reducing the time they spend practising in the face of significant workload and burnout issues.^[19]

The proposed reforms will disproportionately impact the most vulnerable Australians while compounding the pressures on GPs. Significant barriers to accessing a GP and obtaining prescription vaping products, including cost, wait times and location, will prevent access to a safer nicotine alternative among the people who need it the most.

Under the reforms, possession of *less than a commercial quantity* of vaping products without a prescription puts Australians at risk of being imprisoned for a year and/or receiving a fine of up to \$156,500, unless they can provide evidence to prove that it is for

personal use only. There are no criminal penalties associated with the possession of cigarettes. This criminalisation of vaping products will not only incentivise people who are dependent on nicotine to use cigarettes over a significantly safer alternative, but will also place vulnerable populations at risk of the significant social and economic harms associated with criminalisation and exacerbate pressures on the criminal justice system.

It is important to reiterate that the prescription model for vaping products has been in place since 2021. Australia is the only country to take this approach. Other jurisdictions, such as the United Kingdom, New Zealand and Canada have highly regulated consumer models for vaping products with measures that ensure quality and safety control, in contrast to the risky unregulated market in Australia. Each of these jurisdictions have seen significant declines in smoking rates in recent years with concurrent increases in vaping.^[20-22]

Vaping is actively promoted by governments and health authorities as an effective method to quit smoking in New Zealand and the United Kingdom. This means that people receive evidence based advice and education around vaping to help them inform their decisions.^[23, 24]

Smoking is a significant public health concern to the Australian community. Any regulatory reforms related to vaping must place public health at the front and centre and consider the important role that vaping products play in smoking cessation. Australia's current prescription model for vaping regulation has increased the risk of harm from vaping compared to strictly regulated consumer models by leading to the development of a flourishing black market that has made vaping products more harmful and easily accessible by youth.

We strongly encourage the Australian government to reconsider this approach and regulate vaping based on public health considerations, informed by scientific evidence and evidence from other jurisdictions.

Thank you for the opportunity to provide feedback on this important Bill. 360Edge are specialists in alcohol and other drug policy and can be called upon to provide further advice if required.

Yours sincerely,



Professor Nicole Lee
Founder and CEO

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