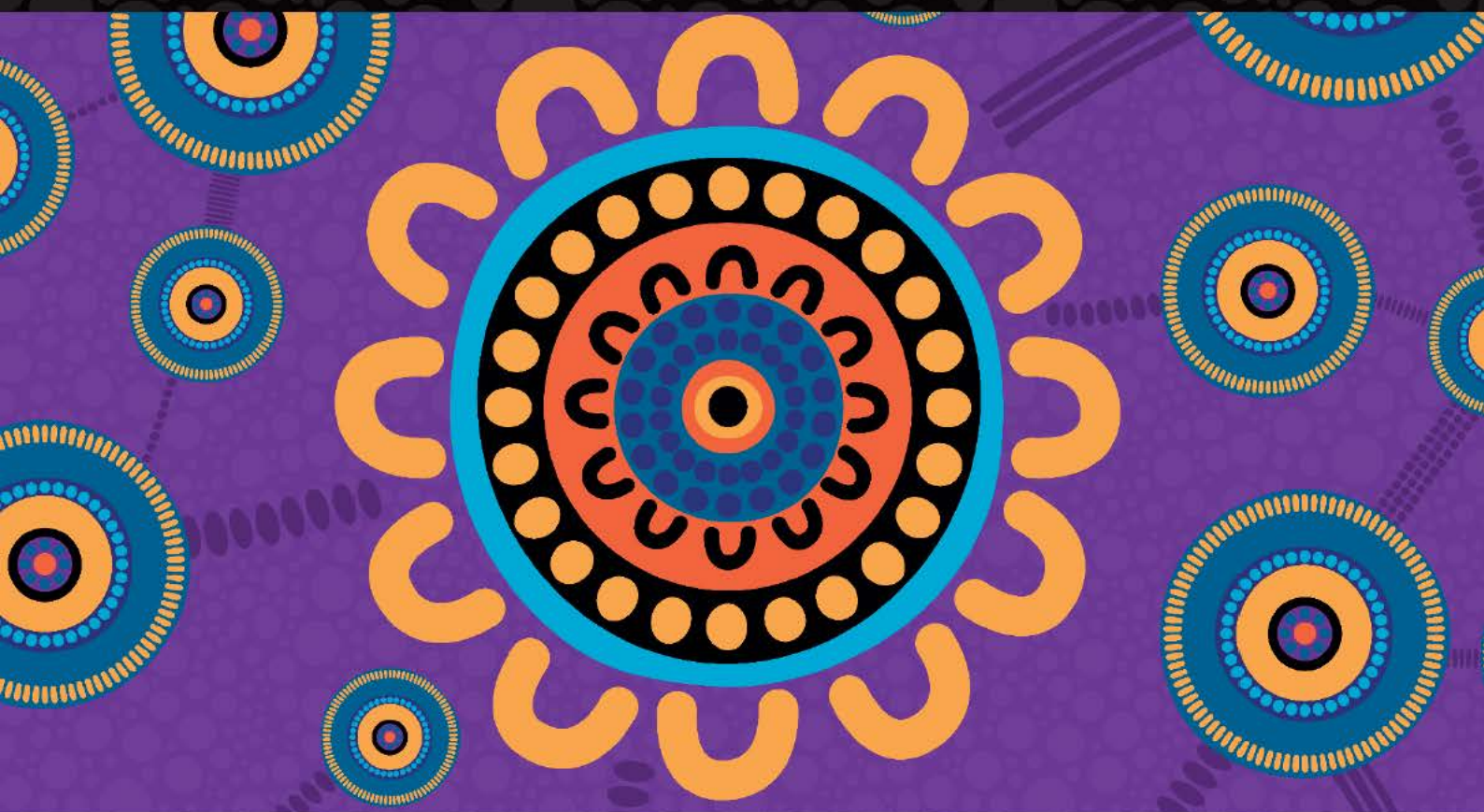


Tobacco and Other Smoking Products (Vaping) and Other Legislation Amendment Bill 2024

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Tobacco and Other Smoking Products (Vaping) and Other Legislation Amendment Bill 2024

**Submission to the Queensland Parliament
Health, Environment and Agriculture Committee**



Tobacco Free Program

Yardhura Walani | National Centre for Aboriginal and Torres Strait Islander Wellbeing Research

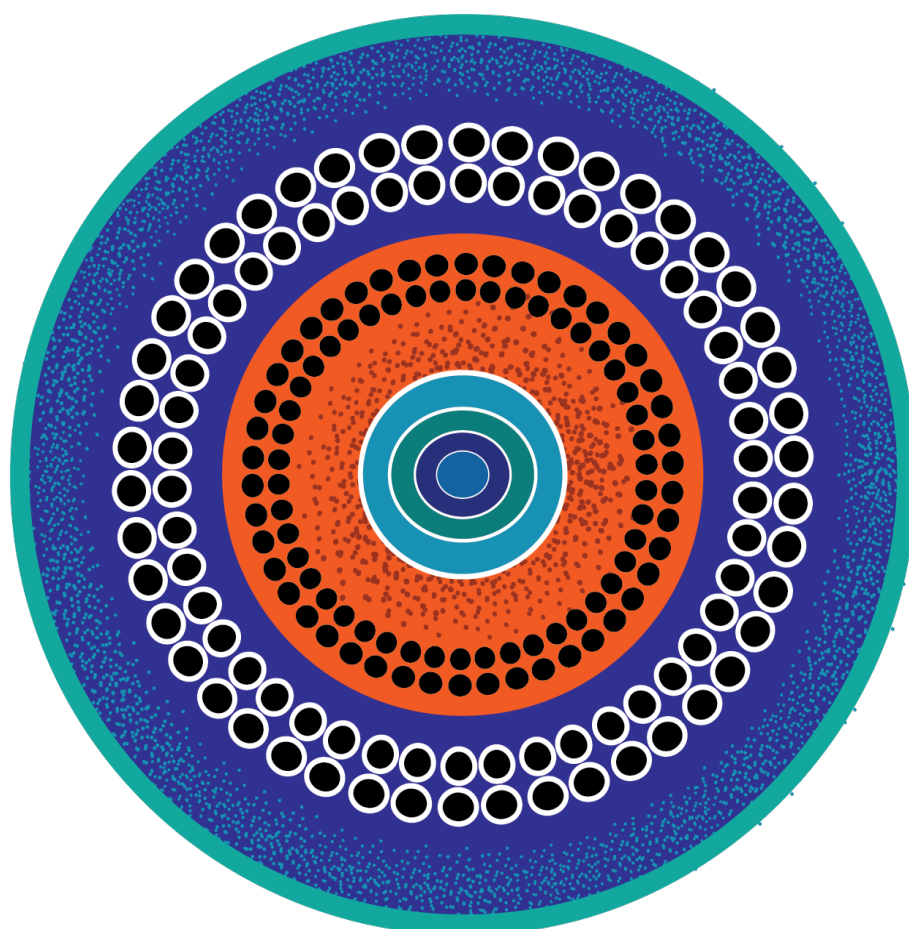
National Centre for Epidemiology and Population Health

The Australian National University



Acknowledgements

The authors acknowledge and respect the diversity among Aboriginal and Torres Strait Islander peoples, including the many nations, language groups, cultures and protocols. We pay our respects to all Elders past, present and future.



‘Unified’ created by Jasmine Sarin, a proud Kamilaroi and Jerrinja woman

Artwork elements: the outside circles consist of figures, signifying that people come first and should be consulted and included in services that affect their health and wellbeing. These are also symbolic of the people and community who have been a part of the project. The subsequent layer of circles represents the journey of research and cycle of collecting, analysing, interpreting, and presenting information. It shows the process of research in community. The innermost circles represent the impact and the change that we are seeing on the ground through sharing stories,



Mr Aaron Harper MP
Chair
Health, Environment and Agriculture Committee

Dear Mr Harper

We are pleased to provide our submission to the Queensland Parliament's Health, Environment and Agriculture Committee on the Tobacco and Other Smoking Products (Vaping) and Other Legislation Amendment Bill 2024.

Consistent with the World Health Organization's Framework Convention on Tobacco Control (WHO FCTC), we have never accepted support, including funding or resources in any capacity from the tobacco or vaping industry, its confederates, affiliates, or any of their third-party allies.

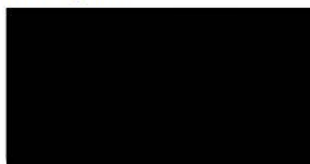
We strongly support Queensland's approach to regulating vaping products and enforcing the Therapeutic Goods and Other Legislation Amendment (Vaping Reforms) Bill 2024 (Commonwealth Bill). Our succinct submission focuses on providing evidence and arguments in the Bill's support.

Vaping or e-cigarette use generates harms. Nicotine addiction is itself a discrete and challenging harm. Aboriginal and Torres Strait Islander peoples and Australians more broadly have indicated that they do not want to live under the control of addiction and dependence. However, the commercial Tobacco Industry that generated a cycle of addiction and dependence, illness, and premature death through the promotion and sale of products for profit continues to thrive. This cycle has created significant societal costs, impacting the health and wellbeing of individuals and communities, now and for future generations.

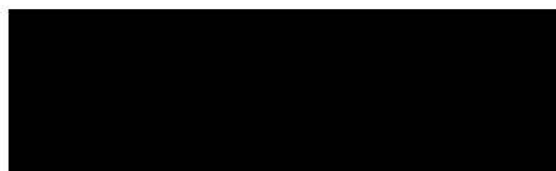
The extensive health, social and economic harms from commercial tobacco use as a result of successive policy failures are well established. **The ongoing commercial retail sale of tobacco as a legal product that when used as directed, kills, is an anomaly.** This should not have been allowed to occur. We must learn from these errors when developing, implementing, and evaluating vaping policy. Evidence indicates that vaping is harmful. Vaping products are not designed, marketed, targeted, or promoted to people who smoke and have been unable to quit. They are designed to create a new generation of users while pitched to policy makers, health professionals and communities under the false guise of 'harm reduction'.

We commend the Queensland Government on this legislation to allow adequate regulation and enforcement of the sale of vaping products, protecting the health of all Australians.

Kind regards



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INTRODUCTION AND OVERVIEW

Health is a fundamental human right [1]. In upholding the human right to health, governments have a role in actively protecting the health of Aboriginal and Torres Strait Islander peoples and *all* Australians [2]. Meaning there is a clear obligation to eliminate the completely preventable harms generated by commercial tobacco and nicotine use. This does not mean perpetuating new harms or substituting one harm for another. This is consistent with the federal, state and territory governments' agreement to end the now widespread availability of commercially produced and marketed vaping products and in accordance with the commitment to the WHO FCTC [3].

The vast majority of Aboriginal and Torres Strait Islander people who smoke wish they never took it up and want to quit [4]. Most people quit unaided i.e. 'cold turkey'. Medically assisted quitting makes up a small proportion of all quit attempts and within that proportion, few people are interested in vaping to support their quit attempt [5]. The evidence for vaping as a cessation support is mixed and is not recommended by the Royal Australian College of General Practitioners (RACGP) as a first-line smoking cessation treatment. However, evidence of vaping harms, particularly to young people, continues to grow [6]. This includes harms from nicotine addiction, risk to brain development and being three-times as likely to start smoking, compared to those who do not vape [6].

It is clear that vapes (and commercial tobacco products) should not be universally available as an everyday consumer product. Despite the purchase of nicotine vapes technically only being available under prescription under the existing laws, we have witnessed the widespread availability of these products in shops across Queensland. It is critical that the Queensland Government's laws are amended to be fit for purpose to enforce the Commonwealth legislation and ensure vaping products are no longer available in other retail environments.

From October 2024, the Commonwealth Bill will restrict the legal supply of vapes through pharmacies to people aged 18 years and over, or to people under 18 with a prescription. These products will have regulated pharmaceutical like packaging and restricted nicotine levels. This legislation aims to ensure vapes are only supplied in the context of smoking cessation.

This is consistent with the evidence for medically supervised/behavioural supports to aid quitting for the small number of people requesting this pathway. Further, this mechanism will help mitigate dual use of vaping and smoking, and/or 'switching' to long term vaping. It will also



help to protect young people, people who do not smoke or vape, as well as people who do smoke and vape from the widespread exposure and increased normalisation of these harm generating products, undermining decades of work in tobacco control.

Consistent with the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP) [2] and the WHO FCTC [3], meaningful engagement with Aboriginal and Torres Strait Islander peoples is critical to the development, implementation, and evaluation of measures to eliminate commercial tobacco and nicotine harms.

The Tobacco Free Program at Yardiwura Walani, the National Centre for Aboriginal and Torres Strait Islander Wellbeing Research at the Australian National University has had the opportunity to continue to meaningfully engage with Aboriginal and Torres Strait Islander peoples and communities since our establishment. This includes hearing Aboriginal and Torres Strait Islander expectations of governments in relation to action and accountability on commercial tobacco and vaping harms, consistent with UNDRIP. We have heard ongoing calls to reduce access to the retail sale of vapes and tobacco products. The widespread retail availability of vapes across urban, regional, and remote locations has, in effect, communicated that such products must be safe, and that vaping must somehow be endorsed by health authorities and governments.

It is the expectation of individuals and communities that governments act to protect the health and wellbeing of Aboriginal and Torres Strait Islander peoples, and all Australians, from harm generating products by regulating retail sales. This legislation will help address these calls and is consistent the National Tobacco Strategy 2023-2030 Priority Area 8, to strengthen regulation to reduce the supply, availability and accessibility of tobacco products [7] and the WHO FCTC [3]. With this action to reduce retail availability of vaping products, there is an opportunity to seek to similarly reduce retail supply of tobacco products.

We commend the Queensland Government on this legislation to allow adequate regulation and enforcement of the sale of vaping products, protecting the health of all Australians, and in supporting a range of smoking cessation supports and tobacco control more broadly.



BACKGROUND

Historically, there was minimal use of native tobacco or cultivated products among Aboriginal and Torres Strait Islander peoples [8]. Colonisation systematically entrenched commercial tobacco use and nicotine addiction, with tobacco provided as rations to Aboriginal and Torres Strait Islander peoples, instead of wages until the late 1960s. Such colonial machinery has driven commercial tobacco use and exacerbated the social determinants of smoking, entrenching inequities and social disadvantage [8]. This is a consequence of multiple policy failures, including the exclusion of Aboriginal and Torres Strait Islander peoples from the cash economy and the education, social and healthcare systems. The effects from these ongoing processes of colonisation continue to undermine Indigenous peoples' agency, self-determination and sovereignty, including the ability to be free from nicotine addiction and dependence [8] [9].

Fuelled by the commercial Tobacco Industry and within this context, we continue to see Aboriginal and Torres Strait Islander peoples disproportionately harmed by commercial tobacco use. The tobacco epidemic is thriving in Australia with smoking still the single largest cause of disease and death. **This includes 37% of all Aboriginal and Torres Strait Islander deaths and 50% of Aboriginal and Torres Strait Islander deaths among those aged 45 years and over** [10]. In addition to the grief and trauma experienced from the erosion of quality of life, tobacco related diseases, and ultimately death, the Tobacco Industry causes wide and ongoing intergenerational damage to Aboriginal and Torres Strait Islander cultures by undermining the sharing of knowledges, languages, protocols, customs, and lore, through premature deaths [8].

The Tobacco Industry continues to actively target Indigenous peoples and communities

Figure 1 shows a Philip Morris letter promoting e-cigarettes to an Aboriginal corporation in 2019. Vaping proponents continue to contact Aboriginal and Torres Strait Islander leaders and public health figures, as recently as late 2023, requesting support to promote vaping among Aboriginal and Torres Strait Islander peoples and communities.



Figure 1: Philip Morris letter promoting e-cigarette to an Aboriginal corporation

Despite the efforts of a well-resourced Tobacco Industry, there have been significant declines in commercial tobacco prevalence among Aboriginal and Torres Strait Islander peoples since 2004-05 [11]. Further, the vast majority of Aboriginal and Torres Strait Islander peoples who smoke want to quit (70%) or wish they never took it up (75%). This speaks to nicotine addiction and dependence, and the need to support and foster environments conducive to being nicotine free [4].

VAPING/E-CIGARETTE GENERATED HARMS

Health is not merely the absence of disease. Health encompasses physical, social, emotional, cultural, spiritual, and environmental wellbeing for the individual and the community. There are many direct and indirect health impacts from vaping, including poisoning, acute nicotine toxicity and addiction, lung injury, as well as burns and injuries from lithium batteries [6] [12]. Further, the environmental harms from disposable vapes continues to undermine responsibilities of caring for Country, and is in direct contravention of Goal 12 of the Sustainable Development Goals for responsible consumption and production [13].

The Queensland Government's action, through this state legislation to enforce the Commonwealth legislation, will together minimise the exposure to these harms through regulating access to vapes (including blocking the sale of disposable vapes). This is to be commended. The proposed legislation will help address the inadequate enforcement that has seen the proliferation of vaping outside of therapeutic settings. Most people who vape



accessed nicotine e-cigarettes without a prescription (87%) despite being illegal to do so [5]. Further, almost one third of people who vape, had tried to quit vaping in the past but have been unsuccessful [5]. While under the Commonwealth legislation, adults will no longer require a prescription to purchase vapes from a pharmacy, adequate enforcement through this state legislation will ensure access to vaping products outside of a therapeutic setting will cease. Appropriate enforcement will result in only vaping products with regulated levels of nicotine, restricted flavours and in pharmaceutical like packaging available for purchase on request in pharmacies.

YOUTH AND YOUNG PEOPLE

Vaping in Australia has risen rapidly in response to increased marketing and the exponential increase in retail stores. Ever use of e-cigarettes among people aged 14 and over increased from 8.8% in 2016, to 11.3% in 2019, and again to 19.8% in 2023. Use is primarily among young people. In 2022-23, half (49%) of 18–24-year-olds had ever used e-cigarettes, up from 42% in 2016. Twenty-eight per cent (28%) of 14–17-year-olds had ever used e-cigarettes [5]. **This is not the population profile of people who are smoking and using vaping as a cessation tool.** A new generation of young people who were not smoking are becoming dependent on nicotine. This results in an increased likelihood of moving to tobacco smoking [6].

The rapid uptake of vaping among young people is particularly concerning among Aboriginal and Torres Strait Islander people and communities given the young population profile where the median age is 24 years and one third (33.1%) are under the age of 15 [14]. This age distribution presents good opportunities for youth focused policies to have a significant impact on the health of the Aboriginal and Torres Strait Islander population, such as a nicotine free generation. However, the current uptake of vaping among youth is a significant risk to the success of Aboriginal and Torres Strait Islander tobacco control which has seen significant declines in smoking prevalence over the last two decades [10, 11].

Enforcement of the Commonwealth legislation through this Queensland Government bill will end access to vapes by young people under the age of 18 years (except with a prescription under medically supervised cessation support).



CESSATION SUPPORT: MOST PEOPLE ARE NOT VAPING TO QUIT

Most people are not using e-cigarettes as a cessation tool, and there has been a significant decrease in people aged over 14 years claiming to do so, 31% in 2022, down from 47% in 2016 [5]. The majority of young people indicate they tried e-cigarettes out of 'curiosity': 74% of 14-17 year olds and 68% of 18-24 year olds [5].

Given the harms of vaping and the mixed evidence for e-cigarettes as a cessation support, regulating vape access to a therapeutic setting that requires a conversation with a pharmacist is appropriate. This is consistent with the RACGP Guidance [15] that for people who want to quit but have failed to achieve smoking cessation with first-line therapy (combination of behavioural support and TGA-approved pharmacotherapy), it may be reasonable to recommend nicotine vaping products in conjunction with behavioural support.

Evidence indicates that the general retail supply of vapes has created a new market for nicotine products among those who do not smoke, young people, and more socially advantaged people. This legislation will change the marketplace for vaping products, reducing general access and ensuring that there are opportunities to receive advice and evidence-based cessation supports at the point of purchase. There is an opportunity to further limit the retail availability of nicotine products to also reduce access to tobacco products. Such measures must drive people towards a range of cessation support options.



SUMMARY

Creating supportive environments that promote freedom from nicotine dependence requires structural changes and comprehensive supports. This includes changes to the retail environment for both commercial tobacco and vaping products, adequate resourcing for public health, health promotion, and smoking cessation services along with the provision of a range of evidence-based stop smoking medicines.

Strong commitment and decisive action against the commercial Tobacco Industry is necessary to prevent further harms to Aboriginal and Torres Strait Island peoples, communities, and all Australians from commercial tobacco and nicotine products.

We have known about the harms of tobacco use for over 70 years and in that time the Tobacco Industry has continued to profit from the deaths of too many Australians without accountability. It is past time for an inquiry into the Tobacco Industry to comprehensively put on record the ways in which their businesses have influenced public health policy and directly harmed population health and wellbeing.

Vaping in Australia has and continues to generate harms. This is clearly not a “harm reduction” tool as has been claimed, while simultaneously aggressively marketed, promoted, and sold to youth and young people for profit. Without the strong leadership called for by communities across Australia, the Industry and their associates will impose another harm generating product on Aboriginal and Torres Strait Islander peoples and communities. Taking action through this legislation now is critical to upholding the human right to health for all Australians.

Thus, we welcome and support this state legislation and its role in enforcing the national changes. Those changes are in accordance with Australia’s obligations to the WHO FCTC [3] and an extension of the wider Commonwealth tobacco control reforms to protect public health through the elimination of tobacco and nicotine harms.

In particular, we strongly support restricting the commercial supply of vapes in general retail settings and the related penalties, without targeting individual users that may now be nicotine dependent. This ensures the focus remains on structural actions against a commercial industry that has been profiting at the expense of the health of Australians, and minimises the risk of over-policing population groups, such as Aboriginal and Torres Strait Islander peoples and communities.



RECOMMENDATIONS

We encourage the Queensland Government and *all* governments across Australia, including local, state and federal governments, to strengthen the regulation(s) of commercial tobacco products and ultimately eliminate their retail supply. After this time, pharmacy supply of vaping products should also be phased out as they will no longer be required as a cessation product.

We reiterate calls for an *inquiry into the commercial Tobacco Industry and their associates* as they continue to fuel 21,000 deaths across Australia each year, including taking the lives of more than 1 in 3 (37%) Aboriginal and Torres Strait Islander peoples [16] [10].

In addition to structural changes, such as reducing the retail presence of tobacco and vaping stores, there is a need for local, regional and national public health and health promotion strategies to promote and support being nicotine free. This should be developed, implemented, and evaluated with Aboriginal and Torres Strait Islander peoples and communities, building on strong existing Aboriginal and Torres Strait Islander leadership and effective place-based programs and policies.

There are also opportunities to increase training and funding to improve referral pathways to cessation supports, building capability and capacity to ensure the health workforce can provide effective and timely evidence-based nicotine cessation supports, and not drive people to seek unproven alternatives.

It is important to carefully monitor and evaluate the impact of the state and commonwealth legislative changes, particularly among the Aboriginal and Torres Strait Islander population. A key challenge is obtaining quality data and adequate sampling to identify and understand trends in specific geographic areas and among different population groups. For example, even the most recent National Drug Strategy Household Survey 2022 lacks reliability for Aboriginal and Torres Strait Islander people, as well as remote areas [5]. Governments must ensure that data collected is of sufficient quality to ensure efficacy for monitoring and evaluation of the impact and outcomes. Doing so would also enable statistically robust evidence to inform programs, policies and embed continuous quality improvement processes.



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