

Vaping - An inquiry into reducing rates of e-cigarette use in Queensland

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AUSTRALIAN ASSOCIATION OF CONVENIENCE STORES

INQUIRY SUBMISSION

**VAPING – AN INQUIRY INTO REDUCING RATES OF E-CIG-
ARETTE USE IN QUEENSLAND**

5 MAY 2023

Overview

The Australian Association of Convenience Stores (AACCS) represents over 7,000 convenience stores throughout Australia, employing nearly 100,000 Australians generating \$10 billion in sales (excluding fuel). Our members include prominent retailers like Ampol, Viva Energy, 7-Eleven Australia, BP Australia, and many smaller, often family-owned businesses that support local communities across urban and rural regions in Australia.

The existing prescription-only regulatory framework for nicotine vaping products has created a rampant youth vaping crisis and put legitimate convenience stores at a disadvantage, as they are unable to sell these products legally and in a regulated manner, unlike tobacco products and other smoking cessation aids. This situation has led to the emergence of a black market for these products, which is easily accessible to children.

AACCS recommends the Queensland Government adopt the Northern Territory Government's position that "*creation of a well-regulated retail market is the most pragmatic way to eliminate the current illegal sale of a range of products with largely unknown safety profiles.*"¹ We believe that a well-regulated market would help protect public health while providing a fair playing field for convenience stores.

AACCS is grateful for the opportunity to contribute to the Health and Environment Committee's inquiry. We welcome the chance to share our insights and expertise on the current landscape and challenges faced in this area, and to collaborate in identifying and implementing effective strategies for addressing the current vaping product black market regulatory failure and its associated risks.

Background

Against the recommendations made by AACCS at the time, the former Federal Government introduced the current prescription model for nicotine vaping products (NVPs) in an attempt to restrict access to children.

Analysis commissioned by AACCS and conducted by Roy Morgan Research² and Convenience Measures Australia (CMA)³ in 2022 shows that the current model has regrettably resulted in the growth of a black market which targets children and bypasses any proper safety and ingredient regulations. The introduction of the prescription model on 1 October 2021 has resulted in:

- Over 1.2 million Australian adults (6.1% of the adult population) now vape each month (Roy Morgan, August 2022);
- 88% of NVPs being purchased through the black market (CMA research, June 2022); 12% only of NVP consumers are using the prescription model as intended

¹ [NT Submission to TGA Consultation on Nicotine Vaping Product Regulatory Reform](#), January 2023

² Roy Morgan Single Source, October 2021 – September 2022

³ CMA Consulting, Nicotine Vaping Product Usage & Change, June 2022

- The creation of a lucrative black market, bypassing all regulatory controls and allowing children to access vapes freely, with no age identification measures imposed;
- The imposition of unnecessary costs on Australian governments, through the Medicare rebate, costly and futile enforcement initiatives and unclaimed GST; and
- Lawful businesses facing significant declines in foot traffic and loss of supplementary purchases with over a million Australian adults purchasing their vaping products from black market retailers.

Policy Solution

It is clear the current regulatory model has not met its stated objectives and the government has lost control of the NVP market, affecting Australian parents, schools, children, healthcare providers, retailers and consumers. No amount of enforcement under the current regulatory model is likely to contain the spread of the illicit market for NVPs.

To reduce youth access to NVPs, the government must effectively control the NVP market. Without control of the illicit market, illegal black-market operators will continue to sell unregulated NVPs to children. The only solution to fix the current prescription model policy failure is to implement regulatory reform that controls the whole market by providing Australia's 1.2 million adult vapers with a controlled pathway to lawfully purchase NVPs in the same way tobacco or alcohol products are sold. This can be achieved through the following three measures:

1. Regulated retail sales of nicotine vaping products;
2. Product standards of nicotine vaping products; and
3. Uniform licensing scheme for retailers.

Regulated retail sales of nicotine vaping products

The current prescription-only model requires consumers to have a prescription for all purchases of nicotine vaping products, requiring a GP visit and restricting sales to pharmacies or overseas retailers.

Many doctors do not understand how to prescribe, and many pharmacies don't supply vapes. These hurdles in obtaining vapes, particularly for people who want to quit smoking, have led to the emergence of a large-scale black market. Illicit operators sell to willing adults but also target young people and children through social media. Regulating nicotine vaping products as an adult consumer product like tobacco and alcohol will enable the government to control the market and provide a lawful regulated supply to adult consumers.

If adult consumers are given the choice to buy legally, adult consumers are more likely to shift their purchasing habits from the black market and rapidly move into the legitimate lawful market - which is underpinned by quality standards and youth access prevention measures in retail stores.

Product standards of nicotine vaping products

The current policy settings and enforcement measures have failed. The Queensland Government must look at other successful regulatory models currently operating in New Zealand, the United Kingdom and Canada.

Similar to the purchase of tobacco products, a new model could permit adults to buy regulated vapes with strict electrical safety and ingredient standards from responsible retailers upon age identification. This would support informed product choice by consumers and reduce the reach of the growing black market which targets children, bypasses health controls and the tax system.

Uniform licensing scheme for retailers

Rather than fueling an illegal black-market trade in unregulated vaping products, adults should be able to purchase these products from responsible, legitimate retailers - who have safely retailed other nicotine products for decades.

AACS supports a Responsible Retailer Code, to demonstrate how retailers can fulfil a crucial role in ensuring vapes are not being sold to underage Australians. Allowing retailers to sell vaping products would benefit both business owners and the Australian Government.

Revenue generated from the sale of these products with the application of GST, import taxes and corporate taxes would contribute to funding schools, hospitals, infrastructure and other essential government initiatives.

Inquiry Terms of Reference

Prevalence of vaping

Research conducted by Roy Morgan this year highlighted that vaping in Australia has grown by 285% in the last 5 years – with 1.2 million adult Australians now using nicotine vaping products⁴. This number has grown at a pace of approximately 1,000 adult Australians per day in the period since the introduction of the new regulations in October 2021.

Commissioned survey results from Convenience Measures Australia showed only 12% of NVP purchases are being made legally with a prescription – meaning that 88% are using the black market to purchase nicotine vaping products and evading Australia’s NVP control framework and tax system.⁵

⁴ Roy Morgan Single Source, October 2021 – September 2022

⁵ CMA Consulting, Nicotine Vaping Product Usage & Change, June 2022

Queensland's adult vaping population is estimated by Roy Morgan to be 5.8% in September 2022. This has grown significantly by 235% from September 2018 to September 2022. Queensland's growth rate in adult vaping incidence ranks as the third highest out of all States, following New South Wales and Victoria.

Market intelligence indicates that Queensland is poised for even further growth as the black-market trade in nicotine vaping products continues to accelerate its spread throughout the state. This rapid expansion underscores the urgency of addressing the issue of unregulated access to nicotine vaping products and developing an effective regulatory framework to control the market.

Population Health Impact

In the recently updated Cochrane Review in November 2022⁶, a University of Oxford led team, concluded that nicotine vaping products increased quitting rates compared with other forms of smoking cessation.

The Cochrane Review further found that nicotine vaping products were more effective in supporting smoking cessation than behavioural support such as counselling, and other common methods including Nicotine Replacement Therapy in the form of patches or gum. The Cochrane Review's analysis of data from 22,000 participants in 78 studies provided the "strongest evidence to date on the benefits of using vaping as a smoking cessation aid.

Dr Sarah Jackson, Principal Research Fellow, UCL Tobacco and Alcohol Research Group in the Cochrane Review stated, "*These findings follow a recent review of the harms of e-cigarettes, which show clear evidence that vaping poses only a small fraction of the health risks of smoking. Take together, these reports should provide reassurance to smokers that e-cigarettes are much safer to use and can increase your chances of quitting.*"⁷

The Cochrane Review is considered the gold standard for any publication and provides a strong basis for consideration concerning any policy approach made toward nicotine vaping products.

A recent report from the Centre for Economics and Business Research (Cebr) found the potential net healthcare saving if 50% of United Kingdom smokers switched to vaping to be £698 million⁸. The healthcare budgets of countries that have regulated NVPs as adult consumer products are benefiting greatly. The United Kingdom Government stated "*vaping devices such as e-cigarettes have played a major role in the decrease in smoking prevalence in the UK*"⁹.

⁶ Cochrane Database of Systematic Reviews, Electronic cigarettes for smoking cessation, 17 November 2022

⁷ Science Media Centre, Expert Reaction to Cochrane Review, 17 November 2022

⁸ Cebr, Economic impact assessment of the vaping industry, September 2022

⁹ UK Office for National Statistics, Adult smoking habits in the the UK: 2021, 6 December 2022

Latest data from the New Zealand Government also reveals a rapid decrease in smoking rates to record lows since the introduction of adult consumer regulations for NVPs with the New Zealand Action for Smokefree 2025 Director stating “*The influence of safer alternatives to smoking such as vaping, efforts by grassroots smoking cessation programmes and the investment going into communities to stop people smoking are all working.*”¹⁰

Risks of unregulated vaping products

A significant risk associated with the proliferation of the unregulated black market for nicotine vaping products in Queensland is the lack of safety standards for these products. When consumers purchase vaping products from the black market, they expose themselves to potentially harmful chemicals that may be present in unregulated vaping products, as well as the danger of faulty batteries and other safety defects. Unlike regulated products, black market items do not undergo stringent testing or adhere to any safety guidelines, which can lead to the consumption of dangerous substances, contamination, or even malfunctioning and exploding devices.

The use of unregulated black market vaping products can pose serious health risks to individuals and put a strain on communities and the health system. When individuals vape harmful chemicals or use devices with faulty batteries, they increase the likelihood of developing adverse health effects, ranging from respiratory issues to more severe long-term consequences, as well as the risk of injury from battery explosions. This not only affects the well-being of the individual users but also puts a burden on the health system, as more resources are required to treat unregulated vaping-related illnesses and injuries. Furthermore, the presence of dangerous substances and safety defects in black market products can contribute to negative public perceptions of vaping, potentially undermining the efforts of those seeking to use the category as a way to quit smoking.

Education and prevention programs

The Australian newspaper has identified that a regulatory crackdown on vaping products by the Albanese government through an adult consumer good regulatory framework would raise approximately \$1.7 billion over four years in taxes and import tariffs.¹¹ This substantial revenue stream could be strategically allocated to fund comprehensive education and prevention programs designed to inform children and young people about the risks associated with vaping products and to discourage their use.

By investing in these initiatives, the government could effectively address the concerns outlined in the terms of reference, ultimately promoting a healthier future for the younger generation. Effective education and prevention programs could cover topics such as the potential for addiction and the importance of making informed choices regarding personal health and well-being.

¹⁰ ASH, Health Survey Shows NZ On Track To Achieve Smokefree 2025, 17 November 2022

¹¹ A regulatory crackdown on vaping products by the Albanese government would raise about \$1.7bn, The Australian, 16 March 2023

Implementing a regulated and controlled nicotine vaping market, drawing from the successful approach taken with tobacco control, can effectively drive down the youth vaping rate in Australia. By adopting a similar strategy for nicotine vaping products, the government can ensure the taxation revenue generated from a regulated market is allocated effectively to raise awareness about the health effects of vaping products and support services and programs that work to prevent both the initial uptake and continued use of these products among children and young people.

Furthermore, regulating vaping products like tobacco will reduce youth access to the black market, enabling legally enforceable retail licensing and mandatory age identification at the point of sale.

Waste Management of Vaping Products

Regulating the vaping market as an adult consumer good can enable manufacturers and retailers to implement product stewardship schemes to manage waste more effectively, as has been observed in other regulated markets. This approach would not only create a safer environment for adult consumers but also provide a framework for environmental responsibility.

Government regulation would encourage manufacturers to invest in sustainable practices, including eco-friendly packaging, recycling programs, and safer disposal methods for lithium-ion batteries and e-waste components. It would also facilitate collaboration between the government, vaping product manufacturers, and recycling organisations to create more comprehensive and targeted waste management solutions.

In regulated markets, product stewardship schemes have been successful in managing waste from vaping products, as they ensure that manufacturers and retailers are held accountable for the environmental impact of their products throughout their life cycle. Such schemes promote the development of environmentally friendly product designs, recycling initiatives, and public awareness campaigns on proper disposal methods.

By regulating vaping products as an adult consumer good, the government can set clear guidelines and standards for manufacturers and retailers, fostering a culture of environmental responsibility within the industry. This approach will not only contribute to the controlled use of vaping products but also help mitigate their environmental impact through better waste management and sustainable practices.

Government regulation of the vaping market is crucial for addressing the waste management and environmental challenges associated with vaping products. By treating these products as an adult consumer good and implementing product stewardship schemes, the government can facilitate a more effectively controlled and more environmentally friendly vaping market that benefits both adult consumers and the environment.

Comparison of Regulatory Frameworks

Australia is the only country in the world to restrict access to NVPs on a prescription-only basis.¹² In contrast, the UK, US, EU, Canada, and New Zealand treat nicotine as a consumer product, available for adults from licensed retail premises.

The UK government, for example, recognises that vaping is far less harmful than smoking and can be an effective quitting device. It has committed to providing clear, evidence-based information on the relative harm of nicotine and e-cigarettes, with campaigns such as 'Stoptober' featuring vaping products.¹³ The UK has seen a significant decrease in smoking rates, with vaping playing a major role in reducing the incidence of smoking.

New Zealand's government aims to better support smokers in switching to regulated products that are less harmful than smoking. In April 2021, the Ministry of Health published proposals for a 'Smokefree Aotearoa,' which explicitly aims to encourage smokers to quit or switch to vaping or smokeless tobacco products.¹⁴ As a result, New Zealand's smoking prevalence has reached a historic low of 8%, making it one of the lowest smoking rates in the world.

Health Canada also acknowledges that switching completely to vaping nicotine is less harmful for smokers who have tried approved methods to quit without success. The Tobacco and Vaping Products Act (TVPA) of May 2018 aimed to protect young people from nicotine addiction and tobacco use while allowing adult access to vaping products as a less harmful alternative to smoking.¹⁵

Given the success of these countries in reducing smoking rates and promoting tobacco harm reduction, it would be prudent for the Queensland Government to consider adopting a similar regulatory framework for vaping products. By regulating vaping as an adult consumer product, the government can reduce youth access to vaping products, effectively control the market and improve public health outcomes.

Summary

Queensland's growth in adult consumption of NVPs has occurred despite the introduction of the prescription model that prohibited adults from lawfully purchasing NVPs without a prescription. Acknowledging this growth in adult consumer demand notwithstanding the consumer prohibition controls in place, AACCS strongly recommends the Queensland Government consider establishing a pathway for the regulated controlled sale of NVPs through lawful and responsible retailers.

Continuing to regulate this category as a prescription medicine will simply be destined for another policy and health failure. Adult consumer demand being serviced by the black market will remain, even if significant taxpayer dollars are spent on additional enforcement measures.

¹² [Have GPs been supported for vaping to go prescription-only from October?](#), RACGP, 26 August 2021

¹³ [Stoptober launches to give smokers the confidence to quit, UK Department of Health and Social Care](#), 24 September 2022

¹⁴ [Position Statement on vaping](#), New Zealand Ministry of Health

¹⁵ [Vaping and quitting smoking](#), Government of Canada

In contrast, if adults are given the choice to buy these products legally, these adult consumers are more likely to discard their purchasing habits from the black market and move into the legitimate lawful market which can be underpinned by quality standards and youth access prevention measures in retail stores.

Most importantly, this will see less availability for minors seeking products. This policy can work and has been proven to work in New Zealand - where after introducing legislation to strictly control vaping products as an adult consumer good, New Zealand's youth vaping rate in 2022 has started to decline.¹⁶ The policy crisis of youth access can only be addressed if the government regulates where supply meets the adult consumer demand.

In the context of the NVP market's adult consumer dynamic, AACCS recommends that the Queensland Government's regulatory priority be the establishment of a controlled and regulated NVP market that enables the lawful sale of products to adult consumers. We support the Northern Territory Government's position that the *"creation of a well-regulated retail market is the most pragmatic way to eliminate the current illegal sale of a range of products with largely unknown safety profiles."* By introducing strict adult consumer regulations, the government can shift demand from the black market to lawful, responsible retailers.

Similar to Australia's success in driving youth smoking to record lows from an effective tobacco control framework, the Queensland Government will not be able to effectively address this issue without control of the NVP market. Government control of the NVP market will only be possible by introducing strict adult consumer regulations that shift demand from the black-market to lawful responsible retailers. This approach aligns with the Northern Territory Government's stance, emphasising the importance of a well-regulated retail market for eliminating illegal sales and promoting public health.

¹⁶ [Youth daily smoking rates remain at record low in annual ASH Year 10 survey, regular vaping decreases for the first time in 7 years](#), Action for Smokefree 2025, 30 November 2022