



## Submission to the Public Accounts and Estimates Committee

### Inquiry into vaping and tobacco controls

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#### **VAADA Vision**

*A Victorian community in which the harms associated with drug use are reduced and general health and well being is promoted.*

#### **VAADA Objectives**

*To provide leadership, representation, advocacy and information to the alcohol and other drug and related sectors.*

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## About VAADA

The Victorian Alcohol & Drug Association (VAADA) is a member-based peak body representing organisations that support people who have alcohol and other drug (AOD) needs in Victoria. We work to prevent and reduce AOD-related harms in the Victorian community by ensuring the people experiencing those harms, and the organisations that support them, are well represented in policy design, program development and public discussion.

### We do this by

- Engaging in policy development
- Advocating for systemic change
- Speaking on issues identified by our members
- Providing system leadership
- Creating space for professional collaboration in the AOD sector
- Maximising opportunities to build professional capacity and capability
- Keeping our members and stakeholders informed about issues relevant to AOD
- Supporting evidence-based practice that reduces AOD-related harms and maintains the dignity of those who use AOD (and related) services.

### Acknowledgement of Country

VAADA acknowledges First Peoples as the traditional owners of the land on which we reside and work. We pay respect to Elders past and present and acknowledge that First Peoples have never ceded sovereignty to country. VAADA supports Voice, Truth and Treaty.



## Executive Summary

VAADA welcomes the opportunity to contribute to the Victorian Government's Public Accounts and Estimates Committee's *Inquiry into Vaping and Tobacco Controls*. The rapid proliferation of vaping and e-cigarettes in Australia is a cause for serious concern and, in VAADA's view, requires a robust and nuanced regulatory approach from both state and federal governments.

VAADA understands the Victorian government is unable to adjust federal laws relating to e-cigarettes. However, the adequacy of Commonwealth legislation and regulatory settings is included in the present Inquiry's Terms of Reference. As such, much of VAADA's submission addresses policies outside the state government's control. Nonetheless, the state government can and should lobby the federal government to implement evidenced-based legislation relating to the regulation of e-cigarettes and vaping products. As the peak body for AOD treatment services in this state, and with a long history of working in harm reduction, VAADA is well placed to contribute to the discussion on reducing the harm of e-cigarette and tobacco use in Victoria. We also include a section on areas of reform for Victoria.

VAADA is concerned that Australia's current approach to regulating e-cigarettes – where e-cigarettes are only accessible with a prescription and from a pharmacy – will not reduce the risks posed by illicitly imported e-cigarettes but will limit legal access to these devices for harm reduction purposes. Currently in Australia, both traditional cigarettes and illegal e-cigarettes are far easier to access than a legal e-cigarette.

Unfortunately, Australia has missed its opportunity to take a strong, pre-emptive stance on e-cigarettes. Use of these devices is now a widespread, established and popular behaviour, particularly among young people.<sup>1</sup> E-cigarettes are used widely and sold in plain sight from both specialist and mixed-business retailers. As senior lecturer in Criminology at Deakin James Martin has said in relation to e-cigarettes: 'Supply-side restrictions in any illicit market are difficult to pull off, and nearly impossible to pull off when they're already established.'<sup>2</sup> Decades of experience working in the illicit drug space has taught us that restricting access to products for which there is established demand fails to reduce demand, availability or harms.

Instead, the established black market for e-cigarettes will continue to operate and remain highly profitable. This is a challenge because it limits governmental control over how and for what purposes e-cigarettes are accessed, is likely to exacerbate associated harms by increasing users' exposure to unregulated and potentially dangerous products, and potential criminalisation. In VAADA's view, what matters now is how Australia adapts to this new paradigm where nicotine use is beginning to rise. Furthermore, the forgone taxation revenue of unregulated products limits resourcing to the government to address nicotine-related harms.

It is incumbent upon Australian governments, state and federal, to introduce robust and evidence-based frameworks for the legalisation and *effective* regulation of e-cigarettes. Regulation should have a public health focus, aimed at: (i) preventing and reducing e-cigarette

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<sup>1</sup> AIHW (2024) *National Drug Strategy Household Survey 2022-2023: Young People's use of vapes and e-cigarettes*, Australian Institute of Health and Welfare, Australian Government.

<sup>2</sup> Robinson, Natasha (15 March 2024) 'The vape ban has utterly failed. What now?' *The Australian*, available [here](#).

uptake by young people and non-smokers, (ii) disincentivising the importation and sale of illicit e-cigarettes, (iii) limiting the harms associated with both tobacco and unregulated e-cigarette devices and e-liquids, (iv) supporting access to e-cigarettes for smoking cessation and harm reduction where evidence supports this, and (v) preventing individuals being subject to criminal penalties for personal possession and use of e-cigarettes.

For these reasons, and in line with several other prominent bodies such as the Australian Drug Foundation, the Royal Australia and New Zealand College of Psychiatrists, and the Australian National Advisory Council on Alcohol and Other Drugs (ANCAD), VAADA advocates for the robust regulation of e-cigarettes and vaping products as consumer goods in a way that is proportionate, supported by evidence and strikes a balance between prevention and harm reduction.

## Introduction

The rapid proliferation of e-cigarette use, particularly among young people, has become a global public health concern. Around the world, countries are struggling to adapt to the rise of vaping and e-cigarettes. There is no simple answer to the problems e-cigarettes pose. No country's approach is perfect.

The situation in Australia is no exception. The use of nicotine-containing e-cigarettes has grown dramatically over the last decade, particularly in the last five years.<sup>3</sup> While new laws further restricting access to e-cigarette devices came into effect on January 1<sup>st</sup> 2024, there is little evidence to suggest these have reversed this trend.<sup>4</sup> Recent data indicates that a significant amount of e-cigarette use is recreational (i.e. not for the purposes of smoking cessation or harm reduction).<sup>5</sup> This trend is concerning and demonstrates that the ban on imports and sale of nicotine-containing e-cigarettes – in place since 2008 – has been ineffective.<sup>6</sup>

While VAADA agrees that the best way to avoid the harms associated with tobacco and nicotine products is to not use them, we are concerned that an overly restrictive approach will do little to reduce the availability of illegally imported, unregulated e-cigarettes. Australia is already a highly desirable market for other imported illicit drugs such as heroin, methamphetamine, cocaine and others.<sup>7</sup> Yet, despite very strong legislative, regulatory and enforcement regimes prohibiting their importation, possession, use and sale, they remain widely available and easily accessible.<sup>8, 9</sup> Indeed, Australian illicit drug prices are among the highest in the world.<sup>10</sup>

While recognising some significant differences between other psychotropic drugs and nicotine, it would be unwise to assume the renewed ban on e-cigarettes will work when previous bans and those relating to other illicit drugs have failed.

As the peak body for AOD service providers in Victoria, VAADA has a particular interest in reducing the harms associated with tobacco and nicotine use. People who use drugs are significantly more likely to smoke compared to the general population and are at greater risk of

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<sup>3</sup> In 2016, lifetime use of e-cigarettes was below 1 in 10 Australians and has grown to 1 in 5 in 2022-23. Current e-cigarette use in Australians aged 14+ was 1.2% in 2016 but has grown to 7% in 2022-23. See AIHW

<sup>4</sup> In the first month of the new ban, which came into effect on 1 January 2024, Border Force seized 150,000 disposable e-cigarettes (view media article [here](#)). While the number of e-cigarettes being imported is unclear, this is likely to be a fraction of the total number.

<sup>5</sup> AIHW (2024) *National Drug Strategy Household Survey: Tobacco and e-cigarettes/vapes* Australian Institute of Health and Welfare, Australian Government.

<sup>6</sup> Morphet, Hall and Gartner (2023) 'The Development of E-cigarette Policy in Australia: The Policy, How it came about and How it is Justified', *E-cigarettes and the Comparative Politics of Harm Reduction*, Palgrave MacMillan.

<sup>7</sup> ACIC (2024) *Report 21 of the National Wastewater Drug Monitoring Program*, Australian Criminal Intelligence Commission, Commonwealth of Australia.

<sup>8</sup> Sutherland et al (2023) *Australian Drug Trends 2023: Key findings from the National Illicit Drugs Reporting System (IDRS) interviews*, National Drug and Alcohol Research Centre.

<sup>9</sup> Sutherland et al (2023) *Australian Drug Trends 2023: Key findings from the National Ecstasy Drugs Reporting System (EDRS) interview*, National Drug and Alcohol research Centre.

<sup>10</sup> ACIC (2023) *Illicit Drug Data Report 2020-21*, Australian Criminal Intelligence Commission, Australian Government (available here).

smoking-related health harms.<sup>11</sup> In fact, while rates of daily smoking in the general population have dropped to historic lows (just 8.3% of adults in 2022-23),<sup>12</sup> rates of smoking among people who use drugs (PWUD) are estimated to be as high as 87%.<sup>13</sup> Furthermore, people who use drugs are far more likely to die of smoking-related illness than from their use of other drugs.<sup>14</sup> Although the long-term impacts of e-cigarette use are not fully understood, there is clear evidence that e-cigarettes are less harmful than traditional cigarettes.<sup>15</sup> For people who are acutely addicted to cigarettes including those with comorbidities that make quitting cigarettes more difficult (poor mental health, AOD issues, etc.), e-cigarettes have the potential to reduce harms associated with tobacco use.

Furthermore, while the evidence regarding the efficacy of e-cigarettes as a smoking cessation strategy is mixed, a 2022 Cochrane review found high-certainty evidence that e-cigarettes increase smoking quit rates compared to other nicotine replacement therapies.<sup>16</sup> However, it should be noted this review did not measure long-term efficacy.

VAADA is very concerned that the current regulatory approach will limit legitimate access to nicotine e-cigarettes for smoking cessation and harm reduction.

In this submission, VAADA proposes developing a broad regulatory framework aimed at effectively responding to vaping as an established, accessible and popular behaviour and promoting good public health by striking a balance between prevention and harm reduction.

VAADA commends Australia's record of effective tobacco regulation and commitment to the World Health Organization's *Framework Convention on Tobacco Control*.<sup>17</sup> VAADA strongly supports the Convention's objectives, in particular, protecting public health from the commercial and vested interests of the tobacco industry, including the use of covert tactics to undermine effective tobacco control. It is with this in mind that VAADA proposes pursuing the "least worst" approach to the regulation of e-cigarettes, which, unfortunately, are here to stay.

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<sup>11</sup> The IDRS (see <sup>1</sup>) EDRS (see <sup>2</sup>) have consistently shown smoking rates of around 90% and 60% respectively, among interviewees.

<sup>12</sup> AIHW (2024) *National Drug Strategy Household Survey 2022-2023: Tobacco and e-cigarettes/vapes*, Australian Institute of Health and Welfare, Australian Government.

<sup>13</sup> Skelton et al (2017) 'Addressing tobacco in Australian alcohol and other drug treatment settings: a cross-sectional survey of staff attitudes and perceived barriers', *Substance Abuse Treatment, Prevention and Policy*, vol. 12.

<sup>14</sup> Bandiera et al (2015) 'Tobacco-related mortality among persons with mental health and substance abuse problems,' *PLoS One*, vol. 10.

<sup>15</sup> A 2022 Cochrane review found good evidence that e-cigarettes expose users to fewer toxicants/carcinogens compared to combustible tobacco products. See Tattan, Hartmann-Boyce et al (2022) 'Heated tobacco products for smoking cessation and reducing smoking prevalence,' *Cochrane Database of Systematic Reviews*.

<sup>16</sup> Hartmann-Boyce, Lindson et al (2022) 'Electronic cigarettes for smoking cessation,' *Cochrane Database of Systematic Reviews*.

<sup>17</sup> WHO (2005) *Framework Convention on Tobacco Control*, World Health Organisation, available [here](#).

## *i. Regulatory landscape*

### **Australia**

Australia is a world-leader in tobacco regulation. With the introduction of plain-packaging and indexed excise tax on tobacco products, Australia's smoking rates are among the lowest in the world.<sup>18</sup> However, our failure to respond adequately and effectively to e-cigarettes threatens this record.

Australia's robust approach tobacco regulation, while effective at reducing rates of smoking, has had the unintended consequence of making illicit alternatives (including the recent entry of e-cigarettes) highly profitable.<sup>19</sup> Illicit tobacco in the form of untaxed cigarettes and loose tobacco ("chop chop") have posed regulatory and enforcement challenges to Australia for several decades.<sup>20 21</sup> However, the advent of e-cigarettes has rapidly disrupted the illicit tobacco market.

Prior to 2024, it was legal for adults to purchase e-cigarettes that did not contain nicotine from a broad range of retail settings including online. For e-cigarettes containing nicotine, the Personal Importation Scheme allowed people with a prescription to order a device online.<sup>22</sup>

The new federal regulations – which came into full effect on 1<sup>st</sup> March 2024 – ban the importation of all non-therapeutic e-cigarettes and e-liquids (including single-use/disposable devices, rechargeable/refillable devices and all e-liquids regardless of nicotine content).<sup>23</sup> Sale of devices imported prior to the ban coming into effect will continue, allowing retailers to run down their stock.

Once the regulations take full effect, the only e-cigarettes allowed will be devices approved for therapeutic use by the TGA.<sup>24</sup> These can be prescribed by a GP or nurse practitioner for the purpose of smoking cessation and harm reduction and purchased from a pharmacy. No e-cigarette devices or e-liquids can be legally sold other than as a prescription medicine dispensed from a pharmacy.

Importers of approved therapeutic e-cigarette devices must obtain a customs licence, a permit to import and must notify the Therapeutic Goods Administration (TGA) that their products comply with the new standards (including restricting flavours to mint, tobacco and menthol).

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<sup>18</sup> Greenhalgh, Bayly, et al (2023) 'Prevalence of smoking – adults', *Tobacco in Australia*, Cancer Council Victoria.

<sup>19</sup> A spate of firebombings targeting tobacconists in Victoria have been colloquially referred to as the 'Tobacco Wars'. See media story [here](#). Another story, regarding the seizing of 10 million illegally imported cigarettes in Victoria is available [here](#).

<sup>20</sup> Aitken et al (2009) 'Smokers of illicit tobacco report significantly worse health than other smokers,' *Nicotine and Tobacco Research*, vol. 11(8).

<sup>21</sup> Scollo et al (2015) 'Use of illicit tobacco following introduction of standardized packaging of tobacco products in Australia: results from a national cross-sectional survey', *Tobacco Control*, vol. 24(2).

<sup>22</sup> See Personal Importation Scheme website [here](#).

<sup>23</sup> The Therapeutic Goods Administration's summary of the new regulations, including links to the new legislation (available [here](#)).

<sup>24</sup> Currently, no devices have been approved on the Australian Register of Therapeutic Goods, however, GPs may be able to prescribe 'unapproved' devices in limited circumstances. See [here](#).

The Australian Government has stated that personal possession and use of vapes will not be criminalised. However, this remains a significant concern for VAADA as we have already seen reports of young people being arrested for possession of e-cigarettes.<sup>25</sup>

## **Victoria**

Victoria's *Tobacco Act (1987)* regulates where people can smoke and vape, as well as the sale and advertising of tobacco and e-cigarette products. Many of these regulations are also embedded in Commonwealth legislation i.e. the *Tobacco Advertising Prohibition Act 1992* and the *Tobacco Plain Packaging Act 2011*.

Victoria's laws have been periodically updated to include e-cigarettes, and vaping is banned anywhere smoking combustible cigarettes is banned.

The main gap in Victorian regulation is that, unlike most other states and territories, tobacco retailers are not licensed.<sup>26</sup> This means that regulatory oversight of tobacco sales is less robust in Victoria compared to other jurisdictions. Licensing schemes in other Australian jurisdictions vary from notification, accreditation/certification, negative licensing and positive licensing schemes (the latter having the most robust regulatory requirements).

Victoria should introduce a mandatory "positive" licensing scheme for tobacco retailers that requires retailers wishing to sell nicotine products to apply for a license and adhere to minimum standards. Licensed tobacconists should be required to be a minimum distance from schools. The licensing scheme should employ broad categories (such as 'products containing nicotine'), so as to be adaptable should federal regulation of e-cigarettes change. Sale of illegal products (as defined by either Victorian or federal legislation) should constitute a breach of licensing conditions. Penalties for breaches should be sufficient enough to avoid them being incorporated into the cost of doing business, and penalties for serious or continued breaches should be severe. This will discourage the sale of illicit e-cigarettes (regardless of the status of e-cigarettes under federal law) and other illicit tobacco products.

In addition to the introduction of a licensing scheme, Victoria should increase investment of enforcement and compliance activities (which the new licensing scheme for tobacconists will support) to minimise the sale of illicit tobacco products. The approach to enforcement should include a compliance date to give retailers time to prepare.

In regards to involvement of organised crime organisations, a balanced regulatory approach will reduce the incentives for black market importation and sale of e-cigarettes.

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<sup>25</sup> One recent media story reports that a 13-year-old boy in NSW was tackled by police after refusing to relinquish his e-cigarette device. See story [here](#).

<sup>26</sup> Queensland has recently introduced a tobacco retailers "positive" licensing scheme which will come into effect on 1<sup>st</sup> September 2024.



## ii. Smoking and vaping prevalence

There are fewer people smoking cigarettes in Australia than ever before. The *National Drug Strategy Household Survey 2022-2023* report by the AIHW shows that adult use of combustible cigarettes has decreased to the lowest rate recorded.<sup>27</sup>

The proportion of people aged 14 years and over who have ever smoked has declined steadily over the last two decades (49% in 2001 compared to 35% in 2022-23). This trend was similar to the number of daily smokers (19.4% in 2001, down to just 8.3% in 2022-23).

Cigarette smoking is less popular with young people than it has ever been: for the first time in Australia, more than half of all tobacco smokers are over 40 years old. What is more, the rate of daily smoking by people aged between 14 and 29 is the lowest it's ever been (14.1% in 2022/23 compared to 21.1% in 2001.)

In contrast, use of e-cigarettes has increased dramatically, especially among young people. Comparing 2022/23 to 2019, lifetime use of e-cigarettes among young people has either doubled or tripled:

- 14-17-year-olds: 9.6% to 28%
- 18-24-year-olds: 26% to 49%
- 25-29-year-olds: 20% to 41%

The younger cohorts are similarly over-represented in current use of e-cigarettes, with those aged 18-24 making up more than 20% of all current users. More than half of young people using e-cigarettes reported that the last e-cigarette they used contained nicotine.

Of those aged 14-17 and currently using e-cigarettes, 32% reported using every day. For those aged between 18-24, the figure was 26%. Among all e-cigarette users, 29% reported that they couldn't stop or cut down on their use of e-cigarettes (this was consistent across all age groups).

The report also shows that there has been a larger increase in vaping than a decrease in cigarette smoking, indicating that use of e-cigarettes is not restricted to smoking cessation and harm reduction. This confirms what has already been widely known: never-smokers are initiating e-cigarette use and they are more likely to be young.

### **Discussion**

While the impact of Australia's new federal regulations is yet to be seen, VAADA does not expect they will reverse the trend of rising e-cigarette use (dominated by illicit devices). Australia's borders are very porous – evidenced by the amount of other illicit substances imported every year.<sup>28</sup> Furthermore, regulation that is too restrictive tends to support black markets by increasing the profitability of illicit importation and sale; which place the products, their sale and use outside the scope of regulatory controls, ultimately failing to reduce drug

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<sup>27</sup> AIHW (2024) *National Drug Strategy Household Survey 2022-2023: Tobacco smoking in the NDSHS*, Australian Institute of Health and Welfare, Australian Government.

<sup>28</sup> ACIC (2024) *Report 21 of the National Wastewater Drug Monitoring Program*, Australian Criminal Intelligence Commission, Commonwealth of Australia.

use, fails to reduce drug-related harms (in fact, usually exacerbating them), and risks criminalising users.

It is worth noting that the importation and sale of nicotine-containing e-cigarettes has been prohibited in Australia since 2008. Despite this, they have continued to be widely imported, sold by retailers, and purchased by young people.

### iii. Health Risks and Benefits

The health risks of e-cigarettes to never-smokers are clear. E-cigarettes and vaping not only pose a risk to an individual's respiratory, dental, ocular and mental health, they risk initiating a person into nicotine addiction.<sup>29 30 31</sup>

Unregulated e-cigarettes pose additional risks to users: not least being exposure to highly dangerous toxicants and carcinogens such as vitamin E acetate, chlorine, formaldehyde, benzene, mercury, arsenic and acrolein, all of which have been detected in unregulated disposable e-cigarettes. Additional health risks are posed by unregulated devices, which may have faulty or unsafe batteries, design features that increase health risks, and often lack tamper-proof and child-proof features.

While any e-cigarette use comes with the risk of health harms, a balanced approach to regulation would allow governments to place strict controls on the design of e-cigarette devices and ingredients. This includes requiring removable batteries in all approved devices (for example, in New Zealand) and banning e-liquids containing high-risk/toxic ingredients, dyes and supposedly "therapeutic" additives such as Vitamin C (which have no therapeutic or health benefits but may create a perception that e-cigarette use is healthy).

One of the limitations of the research is that, because the industry is so varied and unregulated, the evidence on harms is unable to differentiate more harmful from less harmful products (i.e. unregulated vs regulated products). Such evidence, if available, would assist governments to make decisions about what vaping products are legally available in their jurisdictions. A balanced regulatory approach where e-cigarettes are available as a consumer good would support this kind of data collection and tracking.

While research into the long-term health impacts of e-cigarette use is ongoing, the available evidence strongly suggests that e-cigarettes pose fewer risks to health than traditional combustible cigarettes.<sup>32</sup> This means that, for a person who is acutely addicted to nicotine, transitioning from cigarettes to e-cigarettes is a significantly less harmful option.

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<sup>29</sup> Overbeek, Kass et al (2020) 'A review of the toxic effects of electronic cigarettes/vaping in adolescents and young adults', *Critical reviews in Toxicology*, vol. 50(6).

<sup>30</sup> Truong and Cotton (2023) *The Impact of Vaping on Youth Mental Health*, Australian Institute of Family Studies, Australian Government.

<sup>31</sup> McNeill, Simonavičius et al (2022) 'Nicotine vaping in England: an evidence update including health risks and perceptions, 2022', Office for Health Improvement and Disparities, UK.

<sup>32</sup> Tattan, Hartmann-Boyce et al (2022) 'Heated tobacco products for smoking cessation and reducing smoking prevalence,' *Cochrane Database of Systematic Reviews*.

#### v. *Economic Impact*

There will be a range of views and analyses on the economic impacts of e-cigarettes, and the potential benefits and risks of different regulatory models. What is clear though, is that Australia has an established, robust and resilient black market for e-cigarettes. E-cigarettes are substantially cheaper than traditional combustible cigarettes, and while this doesn't fully explain the rapid uptake of vaping among young people – most of whom had never smoked – the low cost of illicit e-cigarettes supports their continuing popularity in Australia, particularly among young people.

VAADA, advocates for the application of excise tax as part of the regulatory suite. While it will be challenging to get the tax settings right, the cost-to-consumer for a legal, regulated e-cigarette should be high enough to disincentivise use by young people, but not so high to drive adult users to seek out cheaper, black-market alternatives.

The revenue generated from the taxation of e-cigarettes can be hypothecated and used to fund awareness and education campaigns, data collection and research on e-cigarettes to expand the evidence, as well as supporting agencies providing smoking cessation services and organisations working with young people. It may also be used to support ongoing monitoring and enforcement of licencing and sale of e-cigarettes. It should be reiterated that while VAADA recognises that not vaping is the safest choice, in light of the current proliferation of e-cigarettes, initiatives such as regulation, research, education and cessation programs must be considered.

Recent research has warned that the increased prevalence of e-cigarettes could increase health systems costs by \$180 million per year in Australia.<sup>33</sup> While this prediction is alarming, it does not take into account the potential for health costs to be reduced by people using e-cigarettes for smoking cessation and harm reduction. Furthermore, this increase in health costs is another reason to introduce effective, evidence-based regulations that discourage e-cigarette use by never-smokers and young people. Regardless of how e-cigarettes are regulated, it is clear that further investment needs to be made in prevention, education and awareness.

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<sup>33</sup> Gordon and Preston (2024) 'Healthcare costs attributable to e-cigarette use and subsequent uptake of cigarette smoking by Australians who have never smoked', *Australian Health Review*, vol. 48(1).

## vi. *International Best Practices*

Australia's current approach to e-cigarette regulation is out of step with other countries in the OECD, with most having opted for robust regulation as a consumer product rather than restricting them to medicinal-use only. This section provides summaries of international approaches to e-cigarette regulation, including successes and challenges.

The European Union (EU) and New Zealand provide instructive examples. While no model is perfect and the quality of regulations is highly dependent upon enforcement, each approach provides important lessons for Australia.

### **European Union**

In Europe, e-cigarettes are governed by EU-wide legislation that sets the minimum standard of regulation. Individual member-states can introduce additional regulations.

The EU-wide regulations include:

- Size limits on e-liquids (10ml for dedicated refill containers and 2ml for cartridges and tanks).
- Safety mechanisms and childproof fastenings for e-liquid containers, cartridges and tanks.
- Warnings on the two largest surfaces of packaging covering at least 30% of the external area. These must state 'This product contains nicotine which is a highly addictive substance' or the above plus 'It is not recommended for use by non-smokers'.
- Consumer information must include instructions on use, addictiveness and toxicity, a list of ingredients, and information on nicotine content and concentration. Promotional materials or information on packs are prohibited.
- Manufacturers and importers bear full responsibility for the quality and safety of the product and must provide detailed information about the product to relevant authorities in the relevant state.
- Prohibition of cross-border advertising, promotion and sponsorship in line with tobacco products.
- Prohibition on commercial communications in the media, including radio and print.
- Prohibition on cross-border sales.
- Prohibition on certain additives, including highly toxic/harmful ingredients, vitamins and colours.

Restrictions on age-limits, e-liquid flavouring and environmental impact are determined by individual member states.

### **New Zealand**

In New Zealand, e-cigarettes are regulated via the *Medicines Act (1981)* and the *Smokefree Environments and Regulated Products Act (1990)* (also known as SERPA). The controls on e-cigarettes apply to all vaping products regardless of nicotine content.

In New Zealand, e-cigarettes can be legally purchased from licensed retailers. There are two license categories: generic and specialist. A generic retailer can sell a limited range of devices and e-liquids (limited to tobacco, menthol or mint-flavoured). Specialist retailers, which must be at least 300m from schools and are restricted to people aged over 18 years, can sell a wider range of devices and flavours. To be classified as a specialist store, a retailer must demonstrate that 70% of sales are e-cigarette products.

All e-cigarette devices (disposable or refillable) must have:

- A child safety mechanism;<sup>34</sup>
- A removable battery;
- Nicotine concentration not exceeding 20mg/ml for disposable devices and 28.5mg/ml for refillable devices.

The removable battery requirement has two effects. It means e-cigarette batteries can be more effectively recycled, reducing fire risk and environmental harms. However, this requirement has, in effect, banned the sale of most disposable vapes (most of which do not have removable batteries).

All e-liquid products must:

- Have a maximum volume of 120ml;
- Have tamper-proof and child-proof features;
- Must limit flavour name to one or two flavour names from a list provided by the Minister of Health.<sup>35</sup>

E-cigarette or e-liquid products must not include cartoon images or images of toys and must not be advertised. The restrictions on flavour descriptions prohibits appealing names. For example, 'Strawberry cotton candy' becomes 'Berry'.

### ***Discussion***

The EU example demonstrates the breadth of regulatory considerations that exist in relation to e-cigarettes. However, there are gaps in the EU model, such as capping nicotine concentration and limiting flavours (though member states may choose to implement these). In 2023, even the tobacco industry was calling for stricter regulations due to startling increases in e-cigarette use among European teenagers.<sup>36</sup> Furthermore, EU member states are increasingly opting to introduce additional restrictions on vaping, such as France's National Committee recommending a ban on all flavours.<sup>37</sup>

New Zealand's regulatory approach is aimed at discouraging non-smokers, especially young people, from using e-cigarettes or other unregulated products. They have had mixed success in this regard. While "specialist" vape retailers are not permitted within 300m of schools, no distance restrictions are imposed on general retailers (which include service stations,

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<sup>34</sup> Child safety mechanism is defined as (i) requires at least two simultaneous or five sequential operations before the device is activated and (ii) automatically deactivates within 10 minutes of vaping ceasing.

<sup>35</sup> The list of NZ Ministry of Health approved flavour names/combinations can be found [here](#).

<sup>36</sup> Furlong, Ashleigh) 2023, 14 August) 'Teen vaping: Did the EU get it wrong on e-cigarettes?' *Politico: Europe*.

<sup>37</sup> *Ibid*.

convenience stores and supermarkets). As a result, e-cigarettes are available close to schools, and rates of e-cigarette use among New Zealand's youth remain concerning.<sup>38</sup>

There are also reports of some retailers in New Zealand blatantly disregarding regulations, by not only selling to people under the age of 18 but also stocking products that breach the regulations relating to imagery, flavours and nicotine content.<sup>39</sup>

However, the degree of regulatory control over e-cigarettes in both examples is much more nuanced than in Australia. By regulating e-cigarettes as a consumer product, the black market is significantly undercut, while maintaining limitations on who can access these products and where they can be sold.

What is clear from these examples, is that any regulatory model must be combined with adequate enforcement, and a comprehensive suite of measures that support the aim of reducing harm.

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<sup>38</sup> Borissenko, Sarah (2024, 28 February), "'Kids are doing this everywhere': New Zealand wrestles with rise of primary school vaping,' *The Guardian*, available [here](#).

<sup>39</sup> Several specialist e-cigarette retailers were caught selling to minors and sold e-cigarettes from an unlicensed retail site (media article [here](#)).

## *vii. Proposed regulatory approach*

In Australia, the age groups most likely to smoke tobacco are the least likely to use e-cigarettes. The opposite is also true: the age groups most likely to use e-cigarettes are the least likely to use tobacco.<sup>40</sup> It is clear from these data that the regulatory mechanisms that have been so effective in reducing tobacco use in Australia are not suitable for e-cigarettes. Australia requires a new, nuanced and robust regulatory approach to e-cigarettes and vaping.

VAADA's expertise is not in regulation or legislation. So, while we are not able to provide a detailed technical regulatory model, we identify key areas that would need to be addressed in a regulatory approach aimed at balancing prevention against harm reduction.

### ***Legal classification***

How e-cigarettes are classified legally will determine the condition of their access. Some countries classify them as drugs, medicines, consumer products, a combination of these or as a unique category. How a product is classified determines what regulations and laws it is subjected to, and which regulatory body oversees its import, manufacture and sale.

Australia should classify e-cigarettes as a consumer product either with a combination as a drug (adding regulatory oversight) or create a unique legal category just for e-cigarettes and vaping products. This would ensure sufficient regulatory oversight to protect consumers and young people. Regulatory experts should be consulted to inform this decision.

### ***Importation***

Importation of e-cigarettes should require a licence. As in the EU, both importers and manufacturers should bear total legal responsibility for compliance of their products with local regulations. Importers are required to notify the local authority of the products imported and declare that they comply with local laws and regulations, with strict penalties for failing to notify or inaccurate notifications.

Importation regulations must also be supported by robust enforcement. Victoria should partner with federal agencies to ensure a cooperative, collaborative enforcement regime.

### ***Device restrictions***

Australia should follow New Zealand's restrictions, requiring all e-cigarettes to:

- Have a removable battery;
- Have tamper-proof and child-safety features;
- Must not exceed 20mg/ml nicotine concentration limit (for single-use and pre-filled devices).

### ***Nicotine concentration and ingredients***

Nicotine concentration should be capped at 20mg/ml for all devices, regardless of nicotine format (freebase or salts).

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<sup>40</sup> AIHW (2024) *National Drug Strategy Household Survey 2022-2023: Young people's use of vapes and e-cigarettes*, Australian Institute of Health and Welfare, Australian Government.



Device features that allow manipulation of nicotine concentration or absorption (i.e. additional air vents) should be banned.

Dangerous additives (those associated with acute harms such as poisoning or lung injury) should be prohibited. Unnecessary additives (such as those that may create perceptions of therapeutic benefit) and dyes (to affect e-liquid colour) should also be prohibited.

### ***Flavour***

Australia should place flavour restrictions on e-cigarettes. Australia should limit flavours, while flavours, such as fruit, soft drink and confectionary flavours, should be prohibited.

### ***Sale***

Sale of e-cigarettes should be restricted to specialty retailers and tobacconists (including online retailers). E-cigarette retailers should be required to be a minimum distance from schools.

Victoria should also introduce licensing legislation that restricts sale of e-cigarettes and devices to tobacconists. Convenience stores and other retailers should be prohibited from selling e-cigarettes and vaping products. Licensing should carry obligations such as notifying the relevant authority. Penalties for breaching the licensing requirements should be substantial.

### ***Excise and price restrictions***

All e-cigarette products including e-juice should have an excise tax applied to them. This should be set at a rate that makes e-cigarettes too expensive for young people, but not so expensive as to push consumers toward black market options.

Taxation levels should be adjustable.

Current promotion restrictions applied to combustible cigarettes – prohibiting advertising, discounts, giveaways, promotions, etc. – should be extended to include e-cigarettes.

### ***Age restrictions and ID verification for purchase***

Purchase of e-cigarettes should be restricted to people aged 18 years, as with traditional cigarettes and alcohol.

Entry to retail stores selling e-cigarettes (i.e. tobacconists) should be restricted to those over the age of 18. Online retailers should be required to employ age-verification software, and there should be maximum volume limits for online orders.

### ***Product labelling and marketing restrictions***

Australia should copy New Zealand's restrictions that prohibit the use of cartoons, images of toys, or bright colours that may appeal to children or young people. Advertising and promotion of e-cigarettes should be heavily restricted.

Labels should be required to include a list of ingredients, a warning that the product contains nicotine, which is an addictive drug, and that use of e-cigarette devices is not recommended for non-smokers. Minimum size for warning labels and ingredients list should be mandated (i.e. 30% of total label surface).

### ***Geographic restrictions***

Vaping should be prohibited everywhere smoking cigarettes is prohibited, including in vehicles carrying people under the age of 18 (this is already the case in Victoria).

Updates to non-smoking area regulations should always extend to include the use of e-cigarettes.

### ***Supporting policies***

The Victorian Government should develop guidelines for responding to vaping and nicotine addiction in schools. These should emphasise that use of e-cigarettes can be a sign of nicotine addiction rather than a behavioural issue. Schools should establish programs and protocols to support students experiencing nicotine addiction, including no-cost provision of NRT therapies to students.

The Victorian Government should consider extending the Mental Health Practitioners in Secondary Schools initiative to include AOD support with a focus on e-cigarettes.

### ***Public awareness campaigns***

Excise tax revenue from e-cigarettes should be hypothecated to fund education and awareness campaigns targeting youth about the dangers of e-cigarettes and nicotine addiction, as well as to establish programs providing Nicotine Replacement Therapies in schools (see above).

Education and awareness campaigns targeting young people should be developed with a view to avoiding being negative in tone, fear-based, judgemental or stigmatising of people who use e-cigarettes. The most effective education campaigns are respectful in tone and seek to educate their audience.

### ***Penalties for possession***

Personal possession of unapproved e-cigarette devices or those not meeting regulatory requirements should not be subject to pecuniary fine or criminal penalties. Specific guidance and training should be developed by Victoria Police, instructing officers that e-cigarettes possession is not a criminal offence, even if the person is under the age of 18.

Criminal penalties for the importation of illicit e-cigarettes should apply, indexed against penalties for illicit importation of tobacco.

### ***A note on enforcement***

E-cigarettes that contain nicotine have been illegal in Australia since 2008. Their proliferation in spite of these longstanding restrictions demonstrates the significant gap in enforcement in both Australia and Victoria.

A legalised, regulated model will only function if enforcement is proactive, coordinated and effective. Without adequate enforcement, it won't matter what the regulations are - illicit, unregulated e-cigarettes will continue to be imported, sold and purchased in Victoria (and Australia more broadly).

It should be noted that while VAADA contends that these initiatives are likely to improve the current state of e-cigarette use (especially of illicit, unregulated devices) and reduce harm, they are not fool-proof. The illicit trade in e-cigarettes will continue.

## Conclusion

In this submission, VAADA has addressed several key issues relating to the effective regulatory control of e-cigarettes. It is our view that there is no single solution that will fix this problem: e-cigarettes and vaping are now an entrenched feature of the landscape of Australia's drug consumption.

In VAADA's view, regulation of e-cigarettes should be balanced and proportionate: it is a skewed situation where a dangerous product (combustible cigarettes) is easier to access than a less harmful alternative (legal e-cigarette). We see a model that places targeted, evidence-based yet strong controls and restrictions on various aspects of e-cigarettes manufacture, importation, sale and use as the best way to balance prevention and harm reduction.

There are several areas of this inquiry where VAADA has limited expertise, such as the environmental impact of e-cigarettes and how to respond to the organised crime element of the illicit tobacco trade. The Committee should seek out and consider expert advice in these areas.

While much of what is addressed in this submission is outside the state government's control, Victoria has an important role to play in regulation of e-cigarettes. The introduction of a licensing scheme for tobacco/nicotine retailers is long overdue (even without the additional complications caused by the arrival of e-cigarettes). State agencies will also play a vital role in enforcement and compliance regardless of the model adopted by the federal government. The Victorian government should ensure regulatory and oversight bodies are able to fulfil their missions swiftly and effectively.

It is up to Australian governments to determine how best to prevent uptake of e-cigarettes by non-smokers and young people while supporting access to these devices for those who will benefit from them. Australia and Victoria should heed international lessons, both the successes and failures, and take a flexible approach. If a regulatory regime fails to deliver its intended outcomes, it should be changed.