



Australian  
Alcohol  
& Other  
Drugs Council

# Remembering the past to shape the future: Australian vaping regulation

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# Change is constant



Our work exists in a constantly changing environment and it is critical that we embrace the lessons of the past and we remain focused on our core principles.

This ensures we can drive policy outcomes that support the communities that we serve and to ensure we are a strong, aligned and coordinated sector.

# Who are we?

- The Australian Alcohol and other Drugs Council is the national peak body representing the AOD sector
- Members comprise:
  - each state and territory peak body for the AOD sector
  - other national peak and representative bodies, such as AIVL, Family Drug Support, APSAD, NIDAC and Australasian Therapeutic Communities Association
  - Professional bodies such as APSAD
  - Research bodies including DPMP and National Centre for Youth Substance Use Research
- So, in short, we are the national version of VAADA

# History of Vaping Regulation in Australia

- 2008: nicotine vapes effectively banned with some limited legal avenues through medical practitioners. Non-nicotine vapes allowed except in WA. State/Territory enforcement.
- 2009-2020: growing vape market and range of parliamentary inquiries into e-cigarette use and harms. Contested policy space.
- Community and health practitioner confusion as to legal status of vapes. Limited use of legal avenues.

Source: Morphet, K., Hall, W., Gartner, C. (2023). The Development of E-cigarette Policy in Australia: The Policy, How It Came About and How It Is Justified. In: Berridge, V., Bayer, R., Fairchild, A.L., Hall, W. (eds) E-Cigarettes and the Comparative Politics of Harm Reduction. Palgrave Macmillan, Cham

## History of Vaping Regulation in Australia (cont'd)

- 2021: Rescheduling nicotine vapes to prescription only medication; importation restrictions. Health practitioners and individuals allowed to source nicotine vapes from overseas. Market continues to grow.
- Take aways from this period:
  - Increased demand and use of vapes as a product within the community and few legal pathways to access
  - Policy response more akin to illicit drug response than a tobacco control response

Source: Morphet, K., Hall, W., Gartner, C. (2023). The Development of E-cigarette Policy in Australia: The Policy, How It Came About and How It Is Justified. In: Berridge, V., Bayer, R., Fairchild, A.L., Hall, W. (eds) E-Cigarettes and the Comparative Politics of Harm Reduction. Palgrave Macmillan, Cham

## 2022: More regulation and AADC response

- TGA: “regulations are not achieving their intended purpose” and it is clear that an “[illicit] market exists and that [nicotine vapes] are being readily accessed [..] without a prescription”.
- AADC priority area: keeping people out of the criminal justice system by promoting the advancement of evidence-based decriminalisation, diversion and throughcare policy, program and legislative initiatives.
- Our policy question:

**If nicotine vapes are a prescription medication and people are accessing a prescription medication illicitly, what are the penalties?**

# Significant penalties

Jurisdiction	Penalty for unauthorised Schedule 4 medicine possession
ACT	Up to \$32,000 or two years prison, or both (s35-1 Medicines, Poisons and Therapeutic Goods Act 2008)
NT	Up to \$16,200 or 12 months prison (s39 Medicines, Poisons and Therapeutic Goods Act 2012)
NSW	\$5,500 or 12 months prison, or both (s18B-2 Drug Misuse and Trafficking Act 1985 No.226 / Schedule 4 Medicines, Poisons and Therapeutic Goods Act 2022 No. 73)
QLD	Police diversion provisions available for up to three possession offences. Up to \$8,625 fines where policy diversion provisions do not apply. (Police Powers and Responsibilities Act 2000 / s146 Health Drugs and Poisons Regulation 1996)
SA	Up to \$10,000 (s18-3 Controlled Substances Act 1984)
TAS	\$1,810 (s91-11 Poisons Regulations 2018)
VIC	\$1,840 (s36B Drugs, Poisons and Controlled Substances Act 1981)
WA	\$45,000 (s14-4 and s115 Medicines and Poisons Act 2014)



## Expanding regulatory framework and expanding criminal penalty

- 2023: new laws to restrict importing and sale of all vapes; maintaining narrow legal pathways for nicotine vapes for smoking cessation
- **Offences:**
  - to possess vapes and vape equipment below a commercial quantity. But what made a 'commercial quantity' was not defined in the Bill
  - Exceptions for personal use possession; 'personal use' not defined, onus on individual to prove vapes were not possessed for sale
  - Tourist restrictions: 2 vapes and 20 vape products. Likely exceeded by moderate use; putting people who use vapes at risk of \$150,000 fine and 12 months prison.

## Public advocacy

- AADC advocacy: people who use vapes should not be criminalised. Criminal penalties will exacerbate harms – discourage help seeking for fear of stigma and criminal response. Appearance at Community Affairs Legislation Committee.
- Emphasis that provisions within the Bill were:
  - Out of alignment with new tobacco control legislation – no penalty for possessing unauthorised tobacco products (e.g. chewing tobacco, ‘snuff’)
  - Out of alignment with broad direction of illicit drug policy – increasing ‘depenalisation’ responses and diversion options (e.g. decriminalisation, caution notices etc)

## Public advocacy (cont'd)

### Australian Greens:

1.7 The committee heard from multiple witnesses during this inquiry as to the importance of ensuring that individuals who have vaping products for personal use are not criminalised as a result of this legislation.

1.3 The Greens do not support the prohibition of vapes for adults and instead will work towards a carefully regulated scheme that focuses on public health outcomes, reducing harm and minimising the use of vaping products.

### Coalition Senators:

1.38 Coalition Senators believe there is a need for States and Territories to harmonise their legislation so as to ensure national consistency over personal use. Mr Dunne from the Australian Alcohol and other Drugs Council summarised the current problems with the existing settings when he said:

*We're finding ourselves in this position within some states and territories where, if you are stopped by a police officer on the street and you are searched for illicit substances and you are found to have vapes and cannabis, you might receive a counselling diversion for your cannabis, but for your vapes you might face fines of up to \$32,000 or 12 months prison in the ACT or, in Western Australia, up to \$45,000 in fines. So it creates an unalignment between tobacco control legislation, vape control legislation and illicit drugs responses.*

## The Outcome

- Amendment to allow the sale of vapes with a nicotine concentration of up to 20mg/mL to be sold over the counter in a pharmacy. The types of flavourings of these vapes were also limited.
- Higher nicotine concentration vapes could be obtained via a prescription
- Effect of removing any criminal offence for possessing a vape under Commonwealth legislation and fixing the issue regarding unauthorised possession of a prescription medication.
- More consistency with both tobacco control and illicit drug policy

## Responding to change

In the face of constant change, we should remember our core values and principles and not forget the past.

We should double down on these values, embrace our history and back ourselves with the expertise and evidence that our sector is so good at developing. We also need to do this with a long term focus.

This is how we can better ensure that our sector is strong, aligned and can weather change – anticipated or not.

# Thank you

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