

E-cigarette use in young people – urgent action needed to avert a public health crisis



October 2022

Background/summary

A growing body of observational and empirical evidence demonstrates an alarming increase in the use of e-cigarettes by young Australians. Laws are in place to enable smokers to access nicotine e-cigarette products for smoking cessation with a valid medical prescription, while protecting young people and non-smokers from harm.

On 1 October 2021, the Therapeutic Goods Administration (TGA) clarified, by way of scheduling amendment, that only adult smokers with a valid medical prescription can legally access nicotine e-cigarettes from a registered pharmacy or via the Personal Importation Scheme¹. However, poor enforcement has allowed e-cigarette products to be illegally imported, transported, stored and sold in breach of federal, state and territory laws.

The proliferation and availability of e-cigarette devices and liquids not labelled as containing nicotine or claiming to be nicotine-free is hampering government compliance and enforcement efforts and spurring ease of access by minors. State and territory regulations that prohibit sales to minors have failed to curb their use among young people.²

The only way to halt the epidemic of e-cigarette use among young people is to significantly strengthen enforcement of existing laws and enact additional legislative controls. To this end, **all sales of e-cigarette products, components and liquids that fall outside of the existing TGA prescription pathways should be eliminated**. This includes both domestic retail sales (brick-and-mortar and online) and overseas imports. This action is **urgently** needed in response to the alarming rate of e-cigarette uptake among young Australians.

Recommendations

Cancer Council and other leading public health organisations recommend:

Enforcement of existing legislation

The Federal government must:

- immediately strengthen its enforcement action to intercept imports of nicotine e-cigarette products unless accompanied by a valid medical prescription and/or documentation declaring that they are bound for a registered pharmacy or licensed pharmacy storage facility.

State and territory governments must:

- immediately intensify current compliance monitoring and enforcement of state and territory drugs and poisons laws (which prohibit the general retail sale of e-cigarette products containing nicotine), including product seizures, in relation to both non-pharmacy retailers that sell nicotine e-cigarette products and facilities storing illegal products.

Strengthening of legislative controls

The Federal government must:

- amend the *Customs (Prohibited Imports) Regulations 1956* (Cth) to declare all e-cigarettes, components and liquids a 'prohibited import' (regardless of whether they contain nicotine), **with a clear exemption for products** that may be obtained by pharmacy wholesalers and individuals with a valid prescription under the existing TGA access arrangements.
- introduce a Federal ban on the supply of all e-cigarette products (outside of the TGA framework), regardless of whether they contain nicotine. Again, there should be an exemption for products obtained with a valid prescription under the existing TGA access arrangements.

State and territory governments must:

- amend relevant state and territory legislation to make it an offence to supply e-cigarette products (regardless of whether they contain nicotine) outside of the existing TGA prescription avenues.³ This would help to support a Federal ban and enhance enforcement at the state and territory level.⁴

- introduce tough penalties for non-pharmacy retailers selling e-cigarette products, components and liquids after the ban, and inform retailers that strong enforcement measures will be in place.

All governments must:

- prohibit all forms of advertising, promotion and sponsorship in relation to e-cigarette products, components and liquids (regardless of whether they contain nicotine)⁵ and proactively monitor and take strong action against illegal marketing including online and via social media.

Why urgent action is required

E-cigarette use by young Australians is high and increasing

- E-cigarette use is increasing and is most common among young people. In 2019, 26.1% of people aged 18-24 reported ever-use of e-cigarettes compared to fewer than ten percent among those 40 years and older.⁶
- In the 2017 Australian Secondary Students' Alcohol and Drug Survey (ASSAD),⁷ 14% of 12-17 year old school students indicated that they had tried e-cigarettes. These figures are expected to be significantly higher when results of this year's ASSAD are released (currently in field).
- Only 21% of the students who reported in the ASSAD survey that they had used e-cigarettes had smoked more than 9 cigarettes in their lifetime at the time they first tried an e-cigarette. Sixty-eight percent of them had never smoked a cigarette or had only had a few puffs (20%).⁸
- In the combined years of 2020 and 2021, the NSW Population Health Survey estimated that e-cigarette use was highest among young people aged 16-24, both for ever-use (32.7%) and current use (11.1%).⁹ Similarly, the NSW Smoking & Health Survey 2021 found that adults under 40 were significantly more likely to have tried or used e-cigarettes than those aged 40 and over.¹⁰
- Current use of e-cigarettes among young people 18-24 in Victoria has increased dramatically between 2018-19 to 2022, with the increase for young females 18-24 being 2.8% to 15.2%; and young males 18-24 being 10.8% to 19.4%. Brick-and-mortar stores, such as tobacconists and dedicated vaping shops, are the most common place of purchase of e-cigarette devices (75.1%).¹¹
- Reports of e-cigarettes being used by students in school bathrooms and classrooms (including primary schools) are being reported by mainstream media.¹²
- In 2019, over one-third of current e-cigarette users were aged under 25, and over half were aged under 30.¹³

E-cigarettes harm young people and public health

The most up-to-date comprehensive systematic review of the global evidence, undertaken recently by The Australian National University (ANU)¹⁴, found:

- conclusive evidence that e-cigarettes can cause burns and injuries including severe injuries serious enough to cause death;
- conclusive evidence that intentional or accidental exposure to nicotine e-liquids can lead to poisoning, which can be severe and can result in death;
- conclusive evidence that use of e-cigarettes can result in acute nicotine toxicity;
- conclusive evidence that use of e-cigarettes can lead to seizures;
- documented cases of interference in cardiac devices;
- conclusive evidence of acute, serious respiratory diseases among both smokers and non-smokers including illness serious enough to require hospitalisation and intubation;
- conclusive evidence that use of e-cigarettes results in increased airborne particulate matter in indoor environments;
- substantial evidence that e-cigarettes can cause fires and environmental waste; and
- substantial evidence of dependence on e-cigarettes among non-smokers.

In addition, the review could provide no reassurance (i.e., found that there is no available evidence) that e-cigarette use by non-smokers does not also increase the risk of cardiovascular conditions, cancer, diabetes or other as yet unidentified health problems.

Finally, there is strong evidence that non-smokers who use e-cigarettes are three times as likely to go on to smoke combustible tobacco cigarettes as non-users, supportive of a gateway effect.¹⁵

According to a report of the US Surgeon General, exposure to nicotine during adolescence may have long-term consequences for brain development, impacting learning, memory and attention, and increasing the risk for rapid and lasting addiction and future use of other drugs.¹⁶

The e-cigarette industry continues to grow rapidly

- The e-cigarette market is growing globally worldwide and is predicted to continue its rapid growth in the future. The market for e-cigarettes is now estimated to be a multi-billion US dollar market and tobacco companies now own many of the leading e-cigarette brands.¹⁷
- In Australia, young people are subject to increased exposure to e-cigarettes through retail promotion and access as well as online advertising.¹⁸ It is estimated that 30- 50% of sales are conducted online globally¹⁹, facilitated by aggressive promotion of these products over the internet.²⁰
- E-cigarette products are widely available and can be purchased from 'vape' stores, tobacconists, convenience stores, online stores and online marketplaces facilitated by social media.

Current controls are failing to protect young people

- Nicotine e-cigarette products that are imported without a medical prescription can be intercepted at the border and referred to the TGA for investigation and enforcement action. However, the Australian Border Force does not have power to seize and destroy the products and take direct enforcement action because they are not currently prohibited goods under the *Customs (Prohibited Imports) Regulations 1956* (Cth).
- Drawing a distinction between non-nicotine and nicotine e-cigarette products further hampers enforcement efforts at the Australian border and also in the domestic retail environment because this can only be determined by laboratory analysis.
- Nicotine has been found in samples of e-cigarette liquids labelled as 'non-nicotine'.²¹
- Since January 2022, NSW Health has seized more than \$1 million worth of illegal e-cigarettes and liquids containing nicotine.²² Similarly, WA Health has recently seized almost 1000 illegal e-cigarettes and in the past three years, has seized more than 16,000 illegal nicotine e-cigarette products.²³ There have also been reports of large seizures in the ACT. However there are few reports of seizures in Victoria, Queensland or South Australia, despite obvious high levels of illegal sales in those states too.
- The escalation in prohibited product seizures and reports of increasing product use in young people suggest:
 - » deliberate mislabelling of e-cigarette products to avoid detection at the Australian border; and
 - » that non-pharmacy retailers are not deterred by current rules and changes from 1 October 2021 and will continue to build a market for nicotine e-cigarettes outside the prescription pathway.
- Products purchased online are being delivered to residential addresses from warehouses located in Australia, indicating that there are storage facilities in major Australian cities housing illegal products.
- Legislation that prohibits the sale of e-cigarette products to minors has failed to stop these products falling into the hands of children. This result is inevitable when the products are so widely available.
- E-cigarette products have no place in the general retail market. The existing TGA pathways for accessing e-cigarette products with a prescription are in line with the limited evidence supporting their use for smoking cessation purposes in the clinical context in combination with behavioural counselling.²⁴ Outside of this setting, the sale of e-cigarette products serves no constructive purpose, and has the potential to undermine decades of progress in reducing smoking prevalence.
- All Australian governments must take action to eliminate e-cigarette retail sales outside the pharmacy sector, together with greatly enhanced enforcement of breaches in all states and territories and stronger federal enforcement of unlawful product imports.

Conclusion

All Australian governments support the principles set out in the “Policy and regulatory approach to electronic cigarette (e-cigarettes) in Australia”²⁵ being:

- Protecting the health of children and young people;
- Protecting the health of current adult cigarette smokers;
- Evidence-based;
- Relevant to Australia’s national circumstances;
- Precautionary approach;
- Protecting public health gains;
- Protecting public health policy from all commercial and other vested interests related to e-cigarettes, including the interests of the tobacco industry;
- Legal clarity to the public;
- Complementary with jurisdictional regulation and existing health and social policy frameworks.

The evidence presented above shows that these recommendations are necessary to convert the principles underpinning the intergovernmental position into actions to protect the health of young Australians from the harms of e-cigarettes.

Developed by Cancer Council’s Tobacco Issues Committee

Endorsed by



AUSTRALIAN CHRONIC DISEASE PREVENTION ALLIANCE



¹ Therapeutic Goods Administration. Notice of final decision to amend the current Poisons Standard - nicotine. 21 December 2020. Canberra: Government of Australia 2020. Available from: <https://www.tga.gov.au/sites/default/files/notice-final-decision-amend-current-poisons-standard-nicotine.pdf>

² Medicines and Poisons laws ban the sale and supply of nicotine-containing products that are not accompanied by a medical prescription, except if those products are TGA approved Nicotine Replacement Therapies (NRT) for oromucosal or transdermal use. Note that in Western Australia, products that resemble tobacco products, including e-cigarette devices and their components, whether or not they contain nicotine, cannot be sold (to any customers regardless of age) by tobacco or general retailers under the *Tobacco Products Control Act 2006*. See Government of Western Australia. Department of Health. Electronic cigarettes in Western Australia. Available from: https://www2.health.wa.gov.au/Articles/A_E/Electronic-cigarettes-in-Western-Australia [viewed on 16/6/22]. In other states and territories, however, sales of products not containing nicotine are allowed to customers over the age of 18. See Greenhalgh E, Smith L, Grace C, and Scollo M. 18B.8 Legal status in Australia, InDepth 18B: Electronic cigarettes (e-cigarettes). Melbourne: Cancer Council Victoria, 2021. Last update: Oct 2022; Viewed Available from: <https://www.tobaccoinaustralia.org.au/chapter-18-harm-reduction/indepth-18b-e-cigarettes/18b-9-legal-status>

- ³ In Western Australia, the current prohibition on the sale of these products should be crystallised with specific legislative provisions.
- ⁴ Amending state and territory tobacco control legislation to include a ban on retail sale of non-prescription e-cigarette products would enable state and territory health departments (or tobacco licensing authorities) to enforce the ban in retail stores. A similar arrangement exists in many jurisdictions regarding smokeless tobacco. In Victoria, for example, the sale or manufacture of smokeless tobacco is banned under the Tobacco Act 1987 (Vic) in addition to being banned as an unsafe consumer product under the Australian Consumer Law (see s 15 of the Tobacco Act 1987 (Vic)).
- ⁵ It is noted there are already advertising restrictions in place in respect of prescription medicines.
- ⁶ Australian Institute of Health and Welfare. Data tables: National Drug Strategy Household Survey 2019 - 2. Tobacco smoking chapter, Supplementary data tables. Canberra: AIHW, 2020. Available from: <https://www.aihw.gov.au/reports/illicit-use-of-drugs/national-drug-strategy-household-survey-2019/data>.
- ⁷ Guerin N and White V. ASSAD 2017 Statistics & Trends: Australian secondary school students' use of tobacco, alcohol, over-the-counter drugs, and illicit substances: Second Edition. Cancer Council Victoria, 2020. Available from: <https://www.health.gov.au/sites/default/files/documents/2020/07/secondary-school-students-use-of-tobacco-alcohol-and-other-drugs-in-2017.pdf>
- ⁸ Guerin et al op cit.
- ⁹ See NSW Government, Health Stats NSW. Electronic Cigarette Use. Accessed 20 October 2022. Available from: <https://www.healthstats.nsw.gov.au/#/indicator?name=-beh-smo-ecig-phs&location=NSW&view=Trend&measure=prevalence&groups=Electronic%20cigarette%20use&compare=Electronic%20cigarette%20use&filter=Electronic%20cigarette%20use,Current%20user,Ever%20used>.
- ¹⁰ Cancer Institute NSW. NSW Smoking & Health Survey 2021. Sydney: Cancer Institute NSW, 2022. Available from: <https://www.cancer.nsw.gov.au/getattachment/ec08f894-1b61-4916-863b-60033ac73381/nsw-smoking-health-survey-2021.pdf>.
- ¹¹ Bayly M, Mitsopoulos E, Durkin S, Scollo M. E-cigarette use and purchasing behaviour among Victorian adults: Findings from the 2018-19 and 2022 Victorian Smoking and Health Surveys. Prepared for: Quit Victoria. Centre for Behavioural Research in Cancer, Cancer Council Victoria: Melbourne, Australia, October 2022. Available from: [https://www.cancervic.org.au/downloads/cbrc/R22_MB_E-cigarette use and purchasing behaviour among Victorian adults.pdf](https://www.cancervic.org.au/downloads/cbrc/R22_MB_E-cigarette%20use%20and%20purchasing%20behaviour%20among%20Victorian%20adults.pdf).
- ¹² See, for example: Jordan Baker. 4 June 2022. Student collapses while vaping in school toilets due to massive nicotine dose. Sydney Morning Herald. Available from: <https://www.smh.com.au/national/nsw/student-collapses-while-vaping-in-school-toilets-due-to-massive-nicotine-dose-20220603-p5aqyj.html>; Samantha Hawley. 7 April 2022. How school kids got hooked on vaping. ABC News Daily (podcast). Available from: <https://www.abc.net.au/radio/programs/abc-news-daily/how-school-kids-got-hooked-on-vaping/13829910>.
- ¹³ Banks E, Yazidjoglou A, Brown S, Nguyen M, Martin M, Beckwith K, Daluwatta A, Campbell S, Joshy G. Summary Brief: Review of Global Evidence on the Health Effects of Electronic Cigarettes. Report for the Australian Department of Health. National Centre for Epidemiology and Population Health, Canberra: April 2022. Available from: <https://nceph.anu.edu.au/files/E-cigarettes%20health%20outcomes%20review%20summary%20brief%202022.pdf>
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- ¹⁵ Banks E, et al, op cit.
- ¹⁶ US Department of Health and Human Services. E-Cigarette Use Among Youth and Young Adults. A Report of the Surgeon General. Atlanta, GA: US Department of Health and Human Services, Centers for Disease Control and Prevention, National Center for Chronic Disease Prevention and Health Promotion, Office on Smoking and Health, 2016. Available from: https://www.cdc.gov/tobacco/data_statistics/sgr/e-cigarettes/index.htm
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- ²² NSW Health. NSW Health sizes more than \$1 million of illegal nicotine vapes. 16 May 2022. Available from: https://www.health.nsw.gov.au/news/Pages/20220516_00.aspx#:~:text=NSW%20Health%20has%20seized%20more,to%20more%20than%20%243%20million.
- ²³ Government of Western Australia, Department of Health. WA Health seizes hundreds of illegal nicotine vapes. 23 May 2022. Available from: <https://ww2.health.wa.gov.au/Media-releases/2022/May/WA-Health-seizes-hundreds-of-illegal-nicotine-vapes>.
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- ²⁵ Australian Government, Department of Health. Policy and regulatory approach to electronic cigarettes (e-cigarettes) in Australia. 28 November 2019. Available from: <https://www.health.gov.au/resources/publications/policy-and-regulatory-approach-to-electronic-cigarettes-e-cigarettes-in-australia>