

**Submission
No 36**

INQUIRY INTO VAPING AND TOBACCO CONTROLS

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Inquiry into vaping and tobacco controls

Parliament of Victoria, Public Accounts and Estimates Committee

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Author

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- I am an academic, researcher and retired clinician working in smoking cessation and tobacco harm reduction for over 40 years.
- I was a member of the Expert Advisory Group that develops the RACGP Australian national smoking cessation guidelines.
- I am the Founding Chairman of the Australian Tobacco Harm Reduction Association, a registered health promotion charity dedicated to raising awareness of low-risk nicotine products as a substitute for smoking for smokers who can't quit.
- I was an Associate Professor in the School of Public Health and Community Medicine at the University of New South Wales until 2020
- I am a past Vice President of the Australian Association of Smoking Cessation Professionals, Australia's peak body for experts in the field of smoking cessation.

Disclosure

- **I have never received payments from electronic cigarette or tobacco companies**
- I was an unpaid Board member of the Australian Tobacco Harm Reduction Association (ATHRA) from October 2017 - January 2021 when it accepted
 - Unconditional seed funding from the vape retail industry. Funding ceased March 2019
 - A donation from KAC Communications in March 2018, sourced from a surplus arising from the Global Forum on Nicotine conference in May 2017
- Invited speaker at World Vape Show Conference 2022 (Dubai). Travel expenses paid
- Author of the book, *Stop Smoking Start Vaping*

Thank you for the opportunity to make a submission to this important Inquiry. My comments mostly address regulation of nicotine vaping products. I am available to give oral evidence to the Inquiry if requested.

Executive summary

Smoking is the leading preventable cause of death and disability in Victoria and is a leading cause of financial inequality. Vaping is the most popular and most effective quitting aid available and has the potential to substantially reduce smoking rates and improve public health.

The current prohibitive, prescription-only, regulatory model for nicotine vaping products (NVPs) has failed to achieve its goals. It has been rejected by doctors, pharmacists, and the general public and has helped create a thriving illicit market controlled by criminal networks. The illicit market supplies 90% of the vaping market with unregulated products and sells products freely to young people. It has led to escalating criminal activity.

An evidence-based approach to vaping policy is to make nicotine vaping products available as adult consumer products sold from licensed retail outlets with strict age verification, like tobacco and alcohol, as is the case in all other Western democracies. This will enable adult smokers to legally access regulated products, reduce access to young people, largely eliminate the illicit market and criminal activity, and generate appropriate taxation returns.

Vaping is here to stay whether we like it or not. 430,000 Victorian adults now vape and the number continues to increase. The Victorian Parliament must decide whether to allow the current failed model to continue under criminal control or to take control and regulate the market. Public opinion is strongly in favour of regulating NVPs like tobacco and alcohol.

The Victorian Parliament can make legislative changes to allow this regulated model to replace the current failed policy.

Submission

1. Trends in vaping and tobacco use and the associated financial, health, social and environmental impacts on the Victorian community

- The adult daily smoking rate in Victoria is marginally less than the national rate and is declining at the same rate. In 2022/23, 7.6% of Victorians aged 14+ smoked daily. ([NDSHS 2022/23](#))
- The current adult vaping rate in Victoria is increasing at the same rate as nationally. In 2022/23, 7% of Victorian adults 14+ were currently vaping (currently = daily, weekly, monthly or less than monthly).
- In Victoria, the rate of decline in smoking during 2019-2023 increased by 50% (compared to 2016-2019) as vaping tripled during this time. Vaping was an important contributor to the accelerated decline. There were no other significant changes to tobacco control policy during this time.

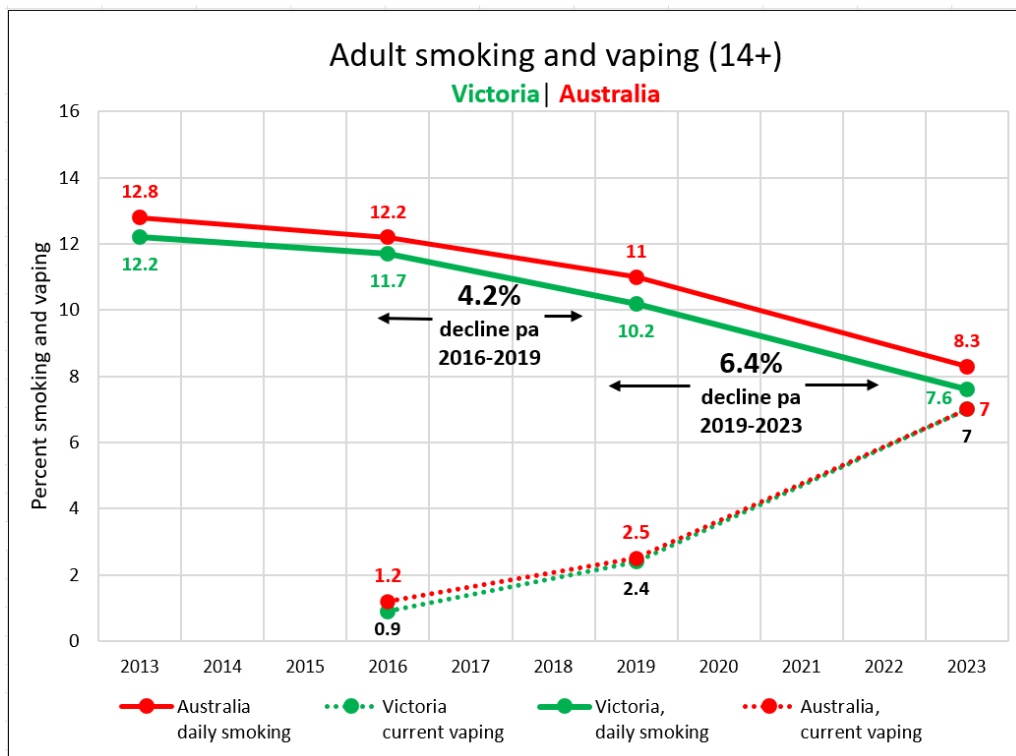


Figure 1. Smoking and vaping in Victoria (NDSHS)

- A report by Roy Morgan in January 2024 found that **8.1% of the adult (18+) population in Victoria (431,000 people)** were current vapers and the number is increasing. ([link](#))

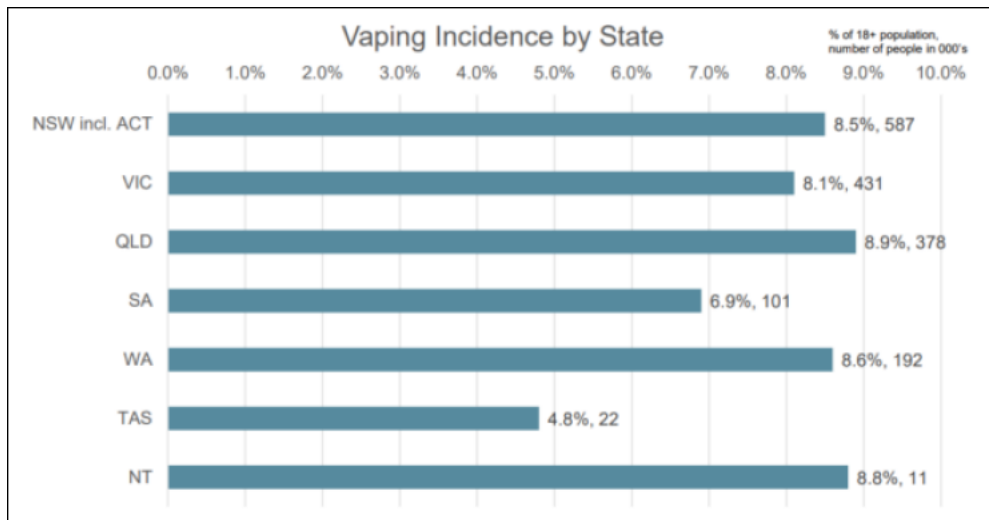


Figure 2. Vaping in Australia by state (adults 18+) (Roy Morgan 2024)

Health impact

Smoking

- Smoking is the leading preventable cause of death and disability in Australia
- Smoking prematurely kills 21,000 Australians each year
- Up to two in three long-term smokers die prematurely as a result of smoking [Banks 2015]
- Long-term smokers live on average 10 years less than non-smokers
- Tobacco was responsible for 9.3% of the total burden of disease in Australia in 2015 [AIHW, BoD 2019]

Vaping

- Vaping is not risk-free but it is far less harmful than smoking. A comprehensive systematic review in September 2022 for England's Office for Health Improvements and Disparities concluded that "Vaping poses only a small fraction of the risks of smoking and is "at least 95% less harmful" than smoking" [[Nicotine vaping in England. OHID 2022](#)]
- The toxic constituents in smoke are either absent in vapour or, if present, are mostly at levels significantly below 5% (mostly below 1%) of doses from smoking
- Smokers who switch to vaping have substantial reductions in exposure to toxicants and significant health improvements
- The lifetime cancer risk from vaping has been estimated as less than 0.5% of the risk from smoking.

Financial stress

- Australia has the highest cigarette prices in the world. [[Numbeo](#)]
- Smoking is a leading cause of financial stress and inequality in disadvantaged populations [[link](#)], especially at a time of sluggish wage growth, high interest rates, and high cost of living. Spending is diverted from food, clothing, etc to smoking.
- Switching to vaping results in substantial financial savings. The average cost of smoking in Australia is \$11,850 per year (13 cigarettes per day; a 20-pack of the leading brand costs \$40). Vaping costs \$500-1,500 per year, depending on the device used.

Vaping reduces smoking-related harm

- Vaping is a quitting aid or long-term substitute for smokers who are otherwise unable to quit

- It is the most effective quitting aid, 60% more effective than NRT [[Lindson. Cochrane Review 2024](#)] [[Lindson, Cochrane Review 2023](#)]
- Vaping is the most popular aid for quitting or reducing smoking in Australia. In 2022/23, 37% of quit attempts were made with vaping, 17% with NRT [NDSHS 2022/3]
- Vaping is an important contributor to the accelerated decline in smoking in countries where it is readily available. [[Beaglehole. Lancet 2024](#)]

Youth use

- Vaping is an adult quitting aid and should not be used by young people, especially non-smokers. However, the prevalence of youth vaping and the health risks to youth are exaggerated.
- Most vaping by young people who have never smoked is experimental, occasional and short-term (NDSHS 2022/23)
- Only 3-3.5% of teens vape daily (NDSHS 2022/23; ASSAD 2023)
- Youth vaping carries relatively minor health risk, especially as most use is experimental and transient [[Evidence Review 2023](#)]
- There is no evidence that nicotine harms the human adolescent brain [[Balfour 2021](#)]
- 3% of 14-17-year-olds may be “addicted” (NDSHS 2022/23)
- Vaping is diverting young people from smoking overall

References:

Mendelsohn CP, Hall W. What are the harms of vaping in young people who have never smoked? Int J Drug Policy 2023 [[link](#)]

Mendelsohn CP. It’s Time to Change the Way We Look at Youth Vaping. Filter 14July2023 [[link](#)]

Mendelsohn C, Wodak A, Hall W, Borland R. Evidence review of vaping. Oct 2023 [[link](#)]

Environmental impact

Cigarettes

- Cigarettes are a leading cause of pollution and environmental damage in Australia and internationally.
- Discarded butts are consistently rated among the most collected litter in clean-up campaigns world-wide.
- Cigarette butts contain high doses of toxic compounds that are leached into the soil and transferred by stormwater to aquatic environments where they harm marine life.
- Discarded cigarettes are an important cause of bushfires and domestic fires.
- Cigarette smoke significantly impairs air quality.

NVPs

- Disposable devices are often discarded in the street and are an increasing source of unsightly litter, requiring clean-up costs.
- Most discarded vapes end up in landfill and can cause fires at waste disposal facilities
- Vapes could be recycled under a manufacturer-funded national recycling program under government stewardship
- Most parts of vapes can be recycled
- A recycling program involves mandatory recycling boxes at point-of-sale, staff training, public education, user incentives for recycling, collection by recycling companies

- A recycling program would first require nicotine vaping products to be legally available for sale through licensed retail outlets. This would require amendment of Victorian state legislation to exempt nicotine vaping products from the Poison Standard. The recycling model can only be applied to the legal market.

Reference: Discussion paper on the environmental impact of vaping products. May 2023

[\[link\]](#)

2. The causes and repercussions of the illicit tobacco and e-cigarette industry in Victoria including impacts on the Victorian justice system, and effective control options

Illicit tobacco

- Australia has a thriving illicit tobacco market, controlled by criminal gangs
- Illicit tobacco makes up an estimated 25% of the tobacco market
- The main reason for the illicit trade is the high cigarette prices. Australia has the highest cigarette prices in the world
- Further price increases should be immediately ceased
- There are substantial enforcement costs. However, enforcement efforts have minimal impact. Public announcements of intercepted products make up only a tiny fraction of the illicit market

Illicit market for e-cigarettes

- A high-profit, low-risk industry, controlled by organised crime networks
- The illicit e-cigarette industry is a direct result of the current 'de facto' prohibition of vaping. Australia's vaping regulations are so harsh, they effectively curtail legal access and push consumers to the illicit market.
- Very few doctors are willing to prescribe nicotine.
- Very few pharmacies stock vaping products and most have a very small range.
- Very few people who vape are willing to use the prescription model because of cost and inconvenience
- Over 90% of Australia's 1.7 million adult vapers have rejected the legal pathways and purchase their vaping products from the black market, despite potential fines and jail time.
- The current model criminalises adults who wish to vape. If legal, regulated vape supplies were available, most vapers would purchase their supplies from the legal market.
- It should be easier, not more difficult, to access the far safer product.

Unintended consequences of the illicit vape market

- Gang wars by crime groups attempting to enlarge market share, including 3 public killings in Victoria (South Yarra, Keilor and Craigieburn)
- Firebombing of over 55 tobacco and vape shops in Australia, most of which have been in Victoria
- Crime gangs are employing vulnerable children to perform firebombings
- Car theft and public high-jacking to access cars for ram raids prior to firebombing

- Extortion of tobacco and vape shops
- No taxation collected
- Unregulated vape products put users at risk
- According to the Iron Law of Prohibition, illegal drugs become more potent and more dangerous.
- The Illicit market sells vapes freely to children and underage users

Effective control of the illicit market

- History has shown that the prohibition of alcohol and psychoactive drugs doesn't cause banned products to disappear, especially when there is a high demand for a product. Bans simply shift the market from legal retailers to criminals and unregulated black markets.
- Enforcement and border control efforts have minimal long-term impact on the supply of drugs in the community. In fact, when substances are banned, suppliers find more creative ways to hide and sell their products, which leaves the buyer at a higher risk of buying unsafe, unregulated products of unknown quality and potency.
- Enforcement, policing and justice system costs are substantial
- The only way to eliminate the illicit market is to replace it with a legal regulated market.
- The preferred option is to sell vapes as adult consumer products from licensed retail outlets with strict age verification, like alcohol and tobacco. This model is working well in other Western democracies such as New Zealand and the United Kingdom.
- New Zealand does not have a significant black market for vapes under this model.

Reference: Mendelsohn C, Wodak A, Martin J, Richter R, Pike R. Briefing on the prohibition of vaping and organised crime. Feb 2024 [\[link\]](#)

3. The adequacy of the State and Commonwealth legislation, regulatory and administrative frameworks to minimise tobacco and e-cigarette harm experienced in the community and control illicit trade compared to other Australian and international jurisdictions

Regulatory frameworks to minimise e-cigarette harm

- Australia takes a precautionary approach to vaping to minimise harm. However, a more evidence-based approach with better public health outcomes is to frame vaping as a tobacco harm reduction opportunity.
- Australia is the only Western democracy to require vapers to have a prescription for nicotine to vape legally. Every other Western country treats nicotine e-liquid as an adult consumer product. Regulated products are sold from licensed retail outlets with strict age verification.
- It makes no sense to make a product that is 95% safer than cigarettes more difficult to access. Cigarettes can be freely purchased from up to 40,000 retail outlets in Australia, 24 hours a day.
- Strict regulation is appropriate to minimise access for young people. However, the recent NDSHS 2022/23 found that only 16% of 14-17-year-olds sourced supplies from retail outlets. Eighty percent get vapes from a friend or family member.
- In countries where vapes are readily available to adult smokers, the rate of decline in smoking has accelerated as vaping has increased. In New Zealand, the adult daily smoking rate fell 49% in 5 years from 2017/18 to 2022/23 after e-cigarettes became widely available.

Adult daily vaping increased from 2.6% to 9.7% during this time. There were no other significant changes in Tobacco Control laws during this time and vaping has played an important role in contributing to this decline.

Reference: Mendelsohn C, Wodak A, Hall W, Borland R. New Zealand vs Australia. The impact of vaping policies on smoking outcomes. Feb 2024 [\[link\]](#)

Public opinion

Australians overwhelmingly support the regulation of NVPs as adult consumer products.

- A Redbridge market research study in September 2023 found that “Nearly 90 per cent of Australians agree or strongly agree that regulated nicotine vaping products should be sold through licensed retail outlets, the same as alcohol and tobacco products. Fewer than 10 per cent disagree.” [\[link\]](#)
- A Roy Morgan survey (February 2023) reported that 73% of adults thought NVPs should be regulated “similar to tobacco or alcohol purchase, restricted by age, sold by licensed retailers, with restricted marketing”. [\[link\]](#)

4. The effectiveness of current public health measures to prevent and reduce the harm of tobacco use and vaping in Victoria and potential reforms

- The current prohibitive approach to vaping was introduced to allow easy access to vaping products for adult smokers who want to quit, while minimising access for young people. It has failed in both goals, and is, in fact, counterproductive.
- Over 90% of adult vapers have rejected the legal model and access their vapes through the illicit market.
- Furthermore, vapes are sold freely to young people through illicit sources.
- Vaping’s potential to help many thousands of addicted smokers to quit is not being realised. Legal, regulated products should be more accessible and smokers who cannot quit with other methods should be encouraged to use vapes as a quitting aid, as they are in New Zealand and the United Kingdom. [\[link\]](#)
- The illicit market increases harm by facilitating access for young people and by supplying unregulated products of unknown quality. Control by criminal gangs has created further issues, discussed above.
- Strategies to reduce youth vaping include
 - Strict age verification at point of sale
 - Licensed retail outlets
 - Harsh penalties and loss of licence for underage sales
 - CCTV at point of sale
 - Restricted advertising
 - Banning of flavour names and colourful packaging that appeal to young people
 - Accurate public education about vaping and the relative risk compared to smoking

Reference: Mendelsohn CP, Hall W, Wodak A. How should nicotine vaping be regulated in Australia? Drug and Alcohol Review 2024 [\[link\]](#)

5. Other related matters

The current flawed regulatory model could be changed by the Victorian Parliament without changes to the federal regulations.

In Victoria, the National *Poisons Standard* is given effect by the [Drugs, Poisons, and Controlled Substances Act 1981](#) and its subordinate instrument *The Poisons Code*. The Victorian Parliament could change the legislation to allow nicotine vaping products to be adult consumer products by amending the state *Poisons Code*. This would require a special provision to omit nicotine from Schedule 7 of the *Poisons Code* when prepared and packaged for use in an e-cigarette.

Following this, a new legal framework would be created to govern all the various aspects of vaping products (i.e., product quality, safety, age restrictions, labelling, packaging). Regulatory oversight could either be given to an existing agency or a new government authority dedicated to the regulation of vaping products.

This would allow regulated NVPs to be sold by licensed retail outlets with strict age verification. Adult vapers would purchase NVPs legally and the illicit market and criminal activity would dramatically diminish. Sales to young people would decline as a result.