



AUSTRALIAN MEDICAL
ASSOCIATION

ABN 37 008 426 793

T | 61 2 6270 5400

F | 61 2 6270 5499

E | info@ama.com.au

W | www.ama.com.au

42 Macquarie St Barton ACT 2600

PO Box 6090 Kingston ACT 2604

AMA Submission to the Standing Committee on Health, Aged Care and Sport Inquiry into the Use and Marketing of Electronic Cigarettes and Personal Vaporisers in Australia

Health.Reps@aph.gov.au

As the peak professional organisation representing medical practitioners in Australia, the Australian Medical Association (AMA) welcomes the opportunity to make a submission to the Standing Committee on Health, Aged Care and Sport – Inquiry into the Use and Marketing of Electronic Cigarettes (e-cigarettes) and Personal Vaporisers in Australia.

To fully consider the use and marketing of e-cigarettes in Australia, it is important to acknowledge Australia's efforts around tobacco control. Tobacco smoking is a leading risk factor for chronic disease and death, including many types of cancer, respiratory disease and heart disease. It is a major cause of cancer accounting for over 20 percent of cancer related deaths. Reducing the rates of tobacco smoking within Australia is vital, and the AMA has actively supported the range of policy measures that seek to reduce smoking rates, and prevent young people from taking up tobacco smoking, including: plain tobacco packaging, tobacco excise increases, advertising bans and subsidised access to smoking cessation aids.

Australia is considered a world leader in tobacco control. According to the Australian Institute of Health and Welfare's *National Drug Strategy Household Survey 2013* daily tobacco smoking in 2013 was 12.8 percent. This is a decline from 24.3 percent in 1991. However, there is no room for complacency; the goal of the Australian Government is to reduce tobacco smoking further, to just 10 percent by 2018.ⁱ

In the context of well-established evidence that tobacco smoking causes cancer, and the resulting declines in smoking rates, it is not surprising that the tobacco industry would recognise the potential in products that either maintain or establish a nicotine addiction.

Nicotine is extremely addictive, a fact the tobacco industry has capitalised on for decades. The growth in e-cigarette products has provided opportunities for sections of the tobacco industry to rebrand themselves as part of the effort to reduce smoking. As health commentators recently said:

'by positioning themselves as 'part of the solution', rather than the essence of the problem, the tobacco industry is seeking to claw back from its pariah status and to re-engage in the policy process'. This is a dynamic to be cautious of... Policy makers who

would shun overtures from Big Tobacco may nonetheless be prepared to meet with “nicotine companies” and producers of smoking cessation devices. This offers tobacco companies a significant opportunity to shape regulatory debates surrounding their core cigarette businesses, potentially undermining effective tobacco control policies which have driven declining smoking rates in Australia and elsewhere.ⁱⁱ

Fortunately, due to Australia’s strategic approach to tobacco control, including restrictions on sale and importation of nicotine, the use of e-cigarettes has not increased at the same rate that has been observed overseas.

It is essential that Australia’s low rates of smoking, and our successes in tobacco control, are factored in to the response to e-cigarettes. Australian decision makers have an opportunity to thoroughly consider the effectiveness of the current response and how that might be improved. The AMA believes that we should not allow e-cigarettes to become a socially acceptable alternative to smoking given that their safety and efficacy as cessation aids has not been established by the relevant Australian authorities. In 2015, the AMA noted specific concerns with e-cigarettes and devised policy positions that state:

- E-cigarettes and the related products should only be available to those people aged 18 years and over and the marketing and advertising of e-cigarettes should be subject to the same restrictions as cigarettes; and
- E-cigarettes must not be marketed as cessation aids as such claims are not supported by evidence at this time.

The current inquiry is concerned with e-cigarettes and ‘personal vaporisers’. The AMA’s submission will refer to both devices collectively as e-cigarettes. The term vaporiser is easily confused with a medical product that produces steam to loosen congestion in infants and children who have colds, upper respiratory tract infections or other breathing problems. There should be no confusion between these products and those that mimic tobacco smoking.

The use and marketing of e-cigarettes (and personal vaporisers) to quit smoking

Despite the variation in the legal status of e-cigarettes across Australian jurisdictions, use of e-cigarettes has increased. Research with Victorian adults in 2013 found 7.3 percent had used an e-cigarette in the past 12 months, compared with 3.6 percent in 2012, 1.8 percent in 2011 and 0.7 percent in 2010, with use more likely in younger age groups.ⁱⁱⁱ

A major driver of the increase in usage of e-cigarettes is the sophisticated and targeted marketing that largely occurs online. This emphasis on online marketing can make monitoring and policing the claims made by online e-cigarette retailers difficult.

Many online e-cigarette retailers claim that their products are recognised cessation aids and also that they do not expose users to toxic carcinogens and chemicals. In Australia, e-cigarettes have not been approved by the Therapeutic Goods Administration as a therapeutic good, and therefore the claims that these products are cessation aids are prohibited under the *Therapeutic Goods Act 1989*.

Further, in what is understood to be a world first, the Australian Competition and Consumer Commission (ACCC) successfully took action against three online e-cigarette retailers for advertising that e-cigarettes and the related solutions did not contain any harmful carcinogens

and toxins. Laboratory testing of the products revealed that this was a false claim and the Federal Court ordered the retailers to pay penalties for breaching Australian Consumer Law.

Many e-cigarette retailers also claim that their products can be used as cessation aids for those smokers who wish to quit. This is despite the nation's leading authority, the NHMRC, stating that there is currently insufficient evidence to support claims around safety or efficacy as cessation aids.

With the exception of the example above, much of the marketing of e-cigarettes in Australia is not actively policed and there is a real risk that consumers will continue to be misled about the safety of e-cigarettes as well as their role in smoking cessation. This marketing is in stark contrast to the restrictions that are applied to the marketing of cigarettes under the *Tobacco Advertising Prohibition Act 1992*. The AMA believes that the marketing and advertising of e-cigarettes should be subject to the same restrictions as cigarettes.

The health impacts of the use of e-cigarettes and personal vaporisers

The analysis undertaken by the National Measurement Institute for the ACCC prior to commencing action around safety claims made by e-cigarettes retailers revealed that the vapour from e-cigarettes contained formaldehyde and acetaldehyde, among other toxins. Formaldehyde is classified by the World Health Organisation International Agency for Research on Cancer (IARC) as a Group 1A carcinogen, meaning there is sufficient evidence to show it is carcinogenic to humans. Acetaldehyde is classified as a Group 2B carcinogen by the IARC, which is classified as being possibly carcinogenic to humans. Exposure to these carcinogens and other toxins will potentially impact on e-cigarette users' health.

While advocates continue to argue that e-cigarettes offer a safer alternative to tobacco smoking, there is limited data on the long term health impacts of e-cigarettes. The NHMRC specifically cautions that the safety of e-cigarettes has not been well established. The longitudinal research that is required to establish safety will take time, but until more definitive evidence on safety becomes available the precautionary principle should be applied to these products.

An often overlooked aspect is the behavioural implications of e-cigarette use; e-cigarettes essentially mimic or normalise the act of smoking. E-cigarettes may result in some smokers delaying their decision to quit, as people may feasibly move between e-cigarettes and tobacco smoking, as their desire to quit varies over time.

Another concern is that e-cigarettes normalise the act of smoking for children and teenagers. Significant efforts have been expended to ensure that children and young people grow up in an environment where smoking of any kind is not perceived as the norm or typical. Fruit and candy flavoured e-cigarette solutions clearly target younger consumers. This has the potential to undermine the significant efforts that have been dedicated to reducing the appeal of cigarettes to children, young people and the wider population. These concerns are supported by research findings that young people using e-cigarettes often progress to tobacco smoking.^{iv}

International approaches to legislating and regulating for e-cigarettes

The regulation of e-cigarettes varies considerably between countries. A number of countries have banned e-cigarettes entirely, including: Brazil, Singapore, the Seychelles, Uruguay and Norway.

Canada is currently in a very similar situation to Australia whereby the nicotine containing solution is technically illegal to sell.

Australia is in a unique position. Low rates of tobacco smoking, access to a range of cessation options and supports as well as the caution voiced by leading authorities suggest that rather than looking to international approaches, Australia should continue to monitor the evidence around e-cigarettes. Only once safety and efficacy has been thoroughly established should consideration about changing regulatory approaches take place.

The appropriate regulatory framework for e-cigarettes (and personal vaporisers)

The regulation of e-cigarettes in Australia is complex. While some States and Territories have introduced laws specifically addressing electronic cigarettes, in other jurisdictions electronic cigarettes are regulated by a number of more general laws relating to poisons, therapeutic goods and tobacco control.

The lack of consistency and small technical loopholes create confusion not only in relation to the availability of e-cigarettes, but also confusion around their safety and efficacy, which has not yet been recognised by the appropriate Australian authorities.

The AMA would like to see more regulation around the advertising and marketing of e-cigarettes. Specifically, the AMA believes that the same restrictions, as set out in the *Tobacco Advertising Prohibition Act 1992*, should also apply to e-cigarettes. The AMA would also welcome moves to address the inappropriate advertising of e-cigarettes as cessation aids. It is important that all consumers, including those who are considering quitting smoking, are accurately informed.

Efficacy and safety of e-cigarettes as cessation aids is an area of rapidly emerging evidence. It is not unusual for two contradictory articles on e-cigarettes to be released in one week. The NHMRC is currently funding \$6.5 million worth of research around e-cigarettes use and efficacy, which when released (progressively from 2018) should provide a much better indication of whether e-cigarettes are a legitimate cessation option in the Australian context. Should convincing evidence emerge in support for e-cigarettes as cessation aids, it would be appropriate to reconsider the approach at that time.

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Contact

Josie Hill
Senior Policy Adviser
Public Health Section
(02) 6270 5446
jhill@ama.com.au

ⁱ Intergovernmental Committee on Drugs. National Tobacco Strategy 2012-18.

ⁱⁱ MacKenzie, R. & Hawkins, B. (2016). How e-cigarettes could 'health wash' the tobacco industry. The Conversation. Available from: <https://theconversation.com/how-e-cigarettes-could-health-wash-the-tobacco-industry-68428?sa=google&sq=e-cigarette&sr=4>

ⁱⁱⁱ Cancer Council Australia & Heart Foundation.(2015) Position Statement - Electronic cigarettes. Available from: [http://wiki.cancer.org.au/policy/Position_statement - Electronic cigarettes](http://wiki.cancer.org.au/policy/Position_statement_-_Electronic_cigarettes).

^{iv} For example see, Primack, BA., Soneji, S., Stoolmiller, M, Fine, MJ & Sargent, D. (2015). Progression to traditional cigarette smoking after electronic cigarette use among US adolescents and young adults. *JAMA Pediatr.* and Bunnell RE, Agaku IT, Arrazola R, Apelberg BJ, Caraballo RS, Corey CG, Coleman B, Dube SR, King BA.(2014). Intentions to smoke cigarettes among never-smoking U.S. middle and high school electronic cigarette users, National Youth Tobacco Survey, 2011-2013. *Nicotine and Tobacco Research.* 2014.