



Position paper: Vaping

1 March 2024

The NSW Users and AIDS Association (NUAA) is a peer-based harm reduction organisation that represents people with lived and living experience of drug use in NSW. Our mission is to advance the health, human rights, and dignity of people with lived and living experience of drug use. NUAA is primarily funded by the NSW Ministry of Health with additional project-specific funding from NSW Local Health Districts, research centres and donations.

NUAA plays a vital role in policy and AOD research. We also provide a diverse range of harm reduction services including a fixed-site and postal needle and syringe program, including a take home naloxone program; clinical service, vein care, hepatitis C point of care testing and linkage to treatment; peer education, publications, and resources; DanceWize NSW – a peer education and harm reduction initiative operating at NSW music festivals, and PeerLine - a telephone peer support line.

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Background

NUAA understands the significant harmful consequences that policy approaches grounded in prohibition and criminalisation can have on people who use illicit substances. For this reason, NUAA are concerned with the Australian Government's current policy approach to 'stamp out vaping' in relation to nicotine vaping products (NVP's), an approach that has been noted by the Therapeutic Goods Administration (TGA) to have failed to reach its objectives to prevent children and adolescents from accessing nicotine vaping products, and has instead contributed to the development of a thriving unregulated 'black market'.¹ The unregulated 'black market' is driving the circulation of vaping products with unknown, harmful, and adulterated ingredients.² These products are more readily available and potent than the regulated market supply and are being freely sold to both minors and adults.

NUAA recognises that the use of NVP's does not come without harms and that the health impact of NVP's has an emerging evidence base. However, it is our position that any vaping regulation should aim to reduce community diversion to the unregulated 'black market' as a priority for addressing vape related harm and balance the competing health interests between:

- ensuring adults who use vaping products as a less harmful alternative to tobacco have equitable access to regulated NVP's, and;
- restricting access to minors and delaying the uptake of vaping by young people.

NUAA calls for a balanced approach to regulation that meets the needs of all key population groups in reducing the risk of personal and community harm. It is also important that community members are equipped with non-judgmental, evidence-based health advice and information to support informed decision making around the risks of nicotine use and vaping practices.

Please note the scope of this position paper includes Nicotine Vaping Products. Vapes containing medicinal cannabis are not included in the scope of this paper.

¹ Therapeutic Goods Administration, TGA consults on potential nicotine vaping product regulatory reforms, published 30 November 2022, <<https://www.tga.gov.au/news/media-releases/tga-consults-potential-nicotine-vaping-product-regulatory-reforms>>

² Mendelsohn C, Wodak A, Hall W. How should nicotine vaping be regulated in Australia? *Drug Alcohol Rev.* 2023 Jul;42(5):1288-1294. doi: 10.1111/dar.13663. Epub 2023 Apr 18. PMID: 37071577

Overview of vaping regulation in NSW

What are vapes?

E-cigarettes, commonly known as vapes, are battery-operated devices that are used to heat a liquid to produce a vapour which is then inhaled. Using an e-cigarette is referred to as ‘vaping’.³ Vapes can come with or without nicotine. For this paper we use the term ‘vape/s’ as the commonly used term when referring to e-cigarettes.

E-cigarettes are mostly used to vape nicotine e-liquid solutions. For this paper, we use the term Nicotine Vaping Products to refer to these products (NVP). E-cigarettes can also be used to inhale other drugs such as THC (cannabis) or nicotine free e-liquids which are made from a mixture of chemicals include solvents, sweeteners, and flavourings.

Devices usually resemble cigarettes, cigars or pipes as well as everyday objects such as pens, USB memory sticks, and large cylindrical or rectangular devices.⁴

How can you access vapes?

In NSW, it is illegal for anyone to buy (or have) a vape with nicotine without a prescription from a medical practitioner. People who are 18 or over can buy a vape that does not contain nicotine from retailers.

Throughout 2024 the Commonwealth government is introducing a range of vaping reforms that will change the way people over 18 can access both nicotine vaping products and nicotine-free vaping products. It is not clear yet when these reforms will be implemented in full or if and/or when the required legislative changes will go into effect. However, The TGA has recommended that anyone across the country currently using NVP’s as part of a smoking cessation strategy without a prescription to speak to a health professional as soon as possible.⁵

The new reforms for e-cigarettes include:

Date	Jurisdiction	Reform
January 1 2024	Commonwealth	<ul style="list-style-type: none">• The importation of all disposables vapes is banned (with limited exceptions). Note: the sale of previously imported disposable vapes can continue under current laws• End of the Personal Importation Scheme for disposable vapes• New Special Access Scheme (SAS C) pathway to enable all medical and nurse practitioners to

³ Australian Government, Department of Health and Aged Care, ‘About vaping and e-cigarettes’ <<https://www.health.gov.au/topics/smoking-and-tobacco/about-smoking-and-tobacco/about-e-cigarettes>>

⁴ Vaping (e-cigarettes), Alcohol and Drug foundation, October 13, 2023 < <https://adf.org.au/drug-facts/vaping-e-cigarettes/>>

⁵ Therapeutic Goods Administration, Vaping reforms webinar – overview of regulatory changes, attended 17 January 2024 < <https://www.tga.gov.au/resources/event/webinars/vaping-reforms-webinar-overview-regulatory-changes#:~:text=The>>

		prescribe therapeutic vapes without requiring pre-authority or approval from the TGA
From February to December 2024 <i>*(subject to legislative changes)</i>	Commonwealth	<ul style="list-style-type: none"> • It will be illegal to import, manufacture or supply vapes that are not registered on the Australian Register or Therapeutic Goods (ARTG) or do not meet the regulatory requirements for unapproved therapeutic vapes • The domestic manufacture, supply, advertising and commercial possession of non-therapeutic and disposable vapes will be banned (with limited exceptions) • There will be new criminal offences with corresponding civil penalty provisions and enhanced enforcement powers • Introduction of minimum quality and safety standards to include requirements for: <ul style="list-style-type: none"> ○ Plain packaging ○ Pharmaceutical labelling ○ Permitted ingredients ○ Lower minimum nicotine concentrations

What does this mean for consumers?

Subject to commonwealth and state legislative changes:

- Consumers will notice that tobacconists, vape shops and convenience stores will no longer stock legal disposable vapes that they have previously been able to purchase.
- Consumers will be able to go to any doctor or nurse practitioner to get a prescription to access nicotine vaping products. However, as with any prescription medication, the decision to prescribe NVP's will be up to the discretion of your medical practitioner.
- Consumers who have a prescription for an NVP will be able to purchase therapeutic vapes for smoking cessation or nicotine replacement therapy through an Australian registered pharmacy with a valid prescription.⁶

It is not clear, when or how the above reforms will take effect in NSW.

⁶ Therapeutic Goods Administration, Vaping reforms webinar – overview of regulatory changes, attended 17 January 2024 < <https://www.tga.gov.au/resources/event/webinars/vaping-reforms-webinar-overview-regulatory-changes#:~:text=The> > ; Therapeutic Goods Administration, 1 January 2024, Vapes: compliance and enforcement <https://www.tga.gov.au/products/unapproved-therapeutic-goods/vaping-hub/vapes-compliance-and-enforcement#:~:text=From%201%20January%202024%2C%20the,seized%20and%20may%20be%20destroyed.>

NUAA's concerns with the 'crack down' on vaping

NUAA are concerned with the unintended and harmful consequences that Australia's prescription-only regulatory model and crack down on vaping products has and will continue to have for adults who use vapes and the broader community. This includes:

- **Driving the growth of a large 'black market' of unregulated and unknown vaping products.** Bans and restrictions are contributing to the increase in unregulated, mislabelled, high nicotine products being sold to adults and young people, and are driving significant community concern around the uptake, safety and impacts of vaping, particularly for minors and young people. A 'black market' eliminates any opportunity for quality control or monitoring for ingredients which could increase risk of harm to people who vape.⁷ Results from a 12-month review of Australia's prescription-only model found that only 2% of NVP purchases were from a pharmacy with a prescription.⁸ This suggests that people's preferred method of access is through retailers, which as a result of the unregulated market, puts consumers at higher risk though accessing unregulated NVP's, increased exposure to harmful ingredients and increased risk of personal harm.
- **Increased medical, administrative and financial barriers for people who vape who wish to access NVPs legally.** The requirement of a vaping script places unnecessary medical and financial burden on people seeking a less harmful alternative to tobacco smoking. Recent Health Department analysis has projected that the Commonwealth vaping reform alongside a prescription only model will require almost 1 million new GP visits.⁹ In addition to the costs of GP visits, consumers are also likely to be required to pay a lot more for vapes – with refillable vaping devices costing up to \$150 at pharmacies.¹⁰ This is not an accessible or sustainable model for anyone given significant GP shortages, a lack of bulk-billing options and high gap fees within the health system. This model may serve as a further barrier for people seeking to transition from cigarettes to NVP's for smoking cessation purposes.
- **Increasing risk of harm through penalisation, stigma and discrimination for people who vape.** Evidence has shown that punitive responses to substance use increases people who use drugs' experiences of stigma and discrimination, as well as a reluctance to seek help.¹¹ NUAA are concerned that an increased risk of stigma and discrimination from any punitive approach may deter those in need of assistance in managing their vaping use from help seeking and is therefore in conflict with government policy objectives to transition people

⁷ Mendelsohn C, Wodak A, Hall W. How should nicotine vaping be regulated in Australia? *Drug Alcohol Rev.* 2023 Jul;42(5):1288-1294. doi: 10.1111/dar.13663. Epub 2023 Apr 18. PMID: 37071577.

⁸ Mendelsohn, Dr C. 2022 'A 12-month review of Australia's prescription-only regulations for nicotine vaping – a predictable policy failure < <https://colinmendelsohn.com.au/wp-content/uploads/2022/09/12-month-review-of-Australias-vaping-regulations-1Oct2022-1.pdf>>

⁹ 'GP visits to rise by 1 million for vapes', Chrysantho's, N, 16 January 2024, Sydney Morning Herald

¹⁰ 'GP visits to rise by 1 million for vapes', Chrysantho's, N, 16 January 2024, Sydney Morning Herald

¹¹ AIVL's Position Statement 'The Harms of Criminalising Drugs', August 2022, < <https://aivl.org.au/wp-content/uploads/2022/08/AIVL-Position-Statement-The-Harm-of-Criminalising-Drugs-4.pdf>> ; Scher, B. D., Neufeld, S. D., Butler, A., Bonn, M., Zakimi, N., Farrell, J., & Greer, A. (2023). "Criminalization Causes the Stigma": Perspectives From People Who Use Drugs. *Contemporary Drug Problems*, 50(3), 402-425. <https://doi.org/10.1177/00914509231179226>

to prescription only vapes. It is critical that policy responses do not create further stigma and barriers to healthcare access.

- **Increasing risk of harm for marginalised groups of people who vape.** NUAA are concerned that a prescription only model, alongside the ban of disposable NVP's may further harm marginalised population groups of people who vape, including but not limited to people experiencing homelessness or rough sleeping, and people who use illicit drugs. These groups of people may already be disengaged from the health system due to experiences of stigma and discrimination and lack of affordability or geographic access to a health practitioner. Moreover, only providing prescription-only access to re-usable NVP's assumes equitable access to somewhere to charge the device, which is not a realistic possibility for some people. The proposed model significantly fails to meet the needs of marginalised groups of people.

NUAA's position on vaping policy

NUAA has developed the following position statements in response to our concerns with the Australian government's approach to vaping regulation. It is our hope that these statements can be used to inform a model of vaping regulation that balances the competing public health interests between adults who use vaping products as a less harmful alternative to smoking and will delay the uptake of vaping by young people, as well as reducing community diversion to the unregulated 'black market'.

1. Nicotine vaping products are a form of harm reduction for adult smokers who wish to reduce or cease smoking.

NUAA supports the use of NVP's as a form of harm reduction that can be used to help adults who wish to reduce or cease smoking. There is concern that the prescription-only model for NVP's limits the accessibility of NVP's to adults. A prescription-only model fails to account for key populations of people who vape who may be disengaged from the health system because of experiences of stigma and discrimination and poor health care delivery. It is important that any regulatory model for vaping doesn't create further barriers or additional medical, administrative, or financial burdens for adults seeking to access nicotine vaping products as an alternative to smoking. These concerns could be addressed by removing the requirement for prescriptions, opening access to safer and regulated NVPs to all adults who require them.

2. No criminalisation or punitive action towards the personal use of vapes.

NUAA does not support the use of punitive or criminal measures to 'curb vaping'. Penalising personal use of any drug, including personal importation, perpetuates stigma and stops people from accessing alternative treatment and support. Penalisation also increases personal harm through increased risk of contact with the criminal justice system and/or financial stress, as well as risks pushing people to access vaping products through the unregulated 'black market'.

3. Inclusion of lived and living experience knowledge in the development and review of any proposed regulations and/ or legislative reform.

NUAA represents community members with lived and living experience of illicit drug use. Core to our work is ensuring that the knowledge and expertise of people with lived and living experience

of drug use is listened to and used to inform the development of any policy and regulations related to AOD use. Engaging with the lived and living experience knowledge of people who use NVP's and other vaping products is important to make sure regulatory frameworks reflect the diversity of use and are responsive to the needs of different people who use vaping products.

4. Reduce community diversion to the unregulated 'black market'

NUAA recognises that Australia's current 'crack down' on vaping has led to a thriving 'black market' that is driving the sale of unregulated and potentially harmful vaping products to children and adults. Any regulatory approach must be alert to the unintended consequences of promoting the expansion of an unregulated 'black market'. It is NUAA's position that a tightly regulated, age-restricted, consumer model for NVP's would limit the growth of the unregulated 'black market'. A consumer regulated model recognises and will be responsive to the balance between reducing the harms associated with the unregulated market, in turn enabling access to adults seeking a less harmful alternative to smoking and restricting minors' access to vaping products.

5. Prevent the marketing or sale of NVP products to minors.

NUAA recognises increasing community concerns around the uptake of vaping in young people and minors. It is our position that these concerns could be addressed through the enforcement of strict age verification alongside increased investment into harm reduction and early intervention education and messaging. The objectives of these interventions should be to increase health promotion and health literacy around nicotine use and vaping for young people and their care givers.

6. Develop an accessible evidence-based, health promotion and health literacy education campaign.

NUAA do not support the use of scare tactics and sensationalism as a method to discourage vaping, particularly regarding children and young people. Campaigns based in fear and sensationalism contribute to stigma and discrimination against people who use drugs and fail to ensure community members are equipped to make informed decisions about their substance use. NUAA call for the immediate development and delivery of an evidence-based harm reduction education campaign, with clear health messaging around the impact of vaping to support non-judgemental, critical decision-making around nicotine use and vaping products for all key population groups. This campaign and messaging should be developed with Aboriginal and Torres Strait Islander community groups and culturally and linguistically diverse community groups to ensure resources and messaging are culturally appropriate and accessible.

7. Increased investment into the social and health impacts of the use of vapes.

NUAA acknowledges that there is a diversity of viewpoints regarding the use of vapes amongst different population groups. For this reason, we call for increased investment into the social and health impacts of vaping to continue to build our understanding of the short- and long-term impacts of vaping across the different population groups of people who vape.¹²

¹² Alcohol, Tobacco and other Drugs Council Tasmania, Vaping Position Paper 2023 <<https://www.atdc.org.au/wp-content/uploads/2023/03/Vaping-Position-Paper-June-2023.pdf>>