

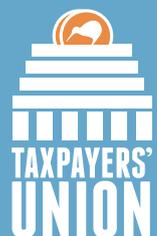
# E-CIGARETTES: REDUCING THE HARM OF SMOKING

A joint report for the Australian Taxpayers' Alliance, MyChoice Australia, and the New Zealand Taxpayers' Union.

Lara Jeffery - November 2016



australian  
taxpayers'  
alliance



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# EXECUTIVE SUMMARY

- Smoking is one of the major public health challenges in Australia and New Zealand. It is a major cause of cancer, cardiovascular disease, respiratory illness, as well as degraded welfare and wellbeing and the World Health Organisation forecasts a billion people around the world will die prematurely this century as a result of smoking.
- 2.8 million Australians smoke, killing 15,000 a year, with the social costs reaching over \$31 billion dollars annually. In NZ, 16.6 percent of adults (650,000 people) are smokers, while two thirds of Māoris and 40 percent of Māori women smoke tobacco daily.
- Nicotine is main reason people choose to smoke and the primary addictive component of smoking tobacco. It is not the cause of smoking-related mortality or morbidity which is caused by the inhalation of toxic particles and gases containing tar and other products of combustion. UK's Royal Society for Public Health advised in August 2015 that nicotine is "no more harmful to health than caffeine".
- Tobacco harm reduction (THR) experts increasingly agree that electronic nicotine delivery systems (ENDS) offer smokers an effective and safe way of obtaining nicotine without the deadly cocktail of chemicals and carcinogens in burning tobacco. This new generation of nicotine products and tobacco substitutes offer the greatest opportunity in harm reduction ever seen in this area.
- Public Health England found that ENDS are at least 95 percent less harmful than smoking cigarettes, and have no identified health risks for bystanders.
- 65 percent of Australian and New Zealand smokers said that they would consider quitting smoking if vaping if e-liquids legal.
- Persons can already purchase Nicotine Replacement Therapy products such as patches and gum through supermarkets. With ENDS demonstrating significantly higher effectiveness rates, public policy dictates this life saving technology being legalised with appropriate regulation.
- The Australian Taxpayers' Alliance, MyChoice Australia & the New Zealand Taxpayers' Union recommend the legalisation of ENDS products within an appropriate regulatory framework.

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# FOREWORD: ASSOCIATE PROFESSOR DR MICHAEL KEANE



The Australian Taxpayers Alliance, MyChoice Australia, and the New Zealand Taxpayers' Union are to be commended for being leaders in public discussion of electronic nicotine delivery systems (ENDS) on both sides of the Tasman.

ENDS – personal vaporisers, e-cigarettes, vaping – may represent not just the emergence of a new technology, but also a catalyst for consensus among sometimes hostile opponents within science, public health, ethics, industry and politics. There is a real potential for a Unity Ticket to emerge in the politics of personal choice.

This is because in the case of ENDS there is an alignment between the freedom of adults to make decisions and take personal responsibility on one hand and, on the other, the desire of public health campaigners to reduce harm to people who – some campaigners believe – are unable to make responsible decisions for themselves.

There is a much quoted saying that “people smoke for nicotine but they die from the tar”. That is, the toxic compounds formed from the combustion of organic tobacco are the main causes of the severe adverse health effects of smoking.

Nicotine, the main psychoactive compound in cigarettes, is not especially harmful. Nicotine itself is addictive, and affects how you feel, but so does coffee. Is chronic nicotine use harmful? We can't say completely 'no'. Indeed, there are some data suggesting that there might be some negative effects of nicotine.

The reason to be optimistic about a Unity Ticket on ENDS is because it appears that – regardless of whether

there are any long term effects of nicotine – the chronic use of nicotine in a non-combustible format appears to be substantially less harmful than smoking cigarettes. As health advocates, we must challenge those who might derail this exciting public health opportunity for consensus.

Many public health advocates have nobly dedicated their lives to the anti-smoking war. However, based on ideology, some extreme anti-tobacco warriors may want to keep fighting that war against smoking with a misplaced attack on ENDS, which represent a potential life-saving ally against cigarette related harm. These warriors must recognise that vaping is not smoking. (My mother always used to tell me that the difference between 'compared to' and 'compared with', is that that 'compared with' relates to two things in the same classification or same order of magnitude. You cannot compare smoking with vaping.)

Specifically, those falsely conflating the two and who therefore advocate prohibitions on ENDS can't have it both ways. They say that adults must not be allowed to make an autonomous choice to smoke cigarettes because smokers are addicted to nicotine and can't stop smoking. This is the rationale for ever higher taxes on cigarettes and ever more prohibitions on sales and advertising with the end goal of outlawing cigarettes completely. Yet if people can't stop their desire for nicotine (including the ritual of inhaling it) then we should allow those addicted to nicotine to choose a much safer path to receive it.

For extreme anti-smoking activists to turn their anger to ENDS is not only illogical but potentially tragic in its consequences. They warn us that ENDS will “re-normalise” smoking. A more significant problem is the reverse normalisation of cigarettes through misinformation and fear of ENDS: smokers may be persuaded that if ENDS are equally or more harmful, they may as well just continue smoking, given that for so many smokers, 'cold-turkey' quitting is out of the question.

This would be a public health travesty and a bitterly sad

and tragically ironic legacy of the extremists within the anti-tobacco lobby who turned their guns on ENDS.

I can't tell you that vaping on ENDS is not bad for you. But public health advocates have a responsibility to rationally inform policy makers. If it turns out in the future that ENDS save lives, then those public health officials who obstruct their availability need to be regarded in the same way as cigarette company executives of yesteryear; we will look back and expose that they knew ENDS would save lives, yet did nothing.

On the basis of available evidence, the defence of "I didn't know prohibiting ENDS would kill" will be no defence at all. We have an obligation to keep reassessing the situation and to keep an open mind about the risks of ENDS, not to simply reject new and disruptive technology in a neo-Luddite manner.

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*For extreme anti-smoking activists to turn their anger to ENDS is not only illogical but potentially tragic in its consequences.*

# INTRODUCTION

The World Health Organization (WHO) forecasts that a billion people around the world will die prematurely during the 21st century as a direct result of the health impact associated with smoking tobacco.

This report focuses on one emerging technology that is proving extremely useful – and popular – in the fight to quit smoking that is at the centre of raging controversy: variously known as “personal vaporisers”, “e-cigarettes”, “heated tobacco products”, “vapes”, or Electronic Nicotine Delivery Systems (ENDS – the official WHO catch-all acronym).

Tobacco harm reduction (THR) experts increasingly agree that ENDS offer smokers an effective aid to quitting, and a far safer alternative means of obtaining the nicotine that most smokers enjoy and find difficult to give up (despite the known dangers associated with burning tobacco, which gives rise to the deadly cocktail of chemicals and carcinogens).

ENDS are proving an unparalleled success in some countries where the technology is being embraced and a polarising issue in others where consumers are being denied the opportunity to choose for themselves.

In general, Europe and the US tend towards progressive and Asia-Pacific towards the repressive on this issue. At one end of the spectrum is the UK, where almost 3 million adults now use e-cigarettes and public health authorities have begun to “encourage” smokers to use them as a means of switching away from smoking. At the other end is (eg) Singapore, where ENDS have been banned in perpetuity as being a greater danger to health than cigarettes.

Public health in both Australia and New Zealand has a patchy record on harm reduction: slow to embrace technology such as seat belts or motorcycle helmets, much quicker to adopt policies on needle exchange for drug users, for example. In the current debate over ENDS and THR, both countries have been at the repressive end of the spectrum: banned in Australia and – at best – a grey area in NZ.

This report has been compiled to coincide with:

- The Australian Therapeutic Goods Administration current consideration of the legalisation of nicotine

for use in vaping;

- The New Zealand Ministry of Health’s current consideration of how to regulate personal vaporisers and make them available for smoking cessation purposes;
- Impending adoption of further restrictions on consumers’ right to choose to use personal vaporisers in numerous Australian states; and
- The World Health Organization’s global meeting on the Framework Convention on Tobacco Control to consider the issues of tobacco harm reduction.<sup>1</sup>

Demand among smokers in New Zealand and Australia for safer alternatives to smoking is well established. Yet at state level (in Australia) and nationally (in NZ), public health authorities have hitherto chosen to refute evidence and expert opinion that the UK and others have warmly accepted. This report seeks to examine the reasons and the future options.

*Tobacco harm reduction experts increasingly agree that ENDS offer smokers an effective aid to quitting, and a far safer alternative means of obtaining the nicotine that most smokers enjoy and find difficult to give up.*

<sup>1</sup> WHO, Seventh Conference of the Parties to the Framework Convention on Tobacco Control, Delhi, November 7-12, 2016.

# 1 - SMOKING IN AUSTRALIA AND NEW ZEALAND

The harms of smoking are significant and well documented. Smoking is a major cause of cancer, cardiovascular disease, respiratory illness, as well as degraded welfare and wellbeing. According to the Cancer Council Australia, two of every three deaths in current long-term smokers can be directly attributed to smoking.<sup>2</sup>

In Australia, 14.5 percent of Australian adults (approximately 2.8 million people) are smokers, and 3 percent of people under 18 smoke daily or less frequently.<sup>3</sup>

The Department of Health has determined that smoking kills an estimated 15,000 Australians each year, with the national economic and social (including health) costs of tobacco related illnesses reaching over \$31 billion dollars annually.<sup>4</sup> The source documents<sup>5</sup> go on to clarify that 77.2 percent of those costs are 'intangible'<sup>6</sup>, and that less than 8 percent<sup>7</sup> of tangible costs of tobacco-related illness are borne by the government sector – a still-considerable \$1.5 billion burden on Federal and State budget outlays each year.

Smokers are disproportionately likely to be from low socioeconomic backgrounds, be unemployed, live in outer, regional and rural areas, as well as greater proportions of indigenous Australians and Torres Strait Islanders,<sup>8</sup> LGB-identifying people, and/or have been diagnosed with or treated for a mental illness.<sup>9</sup>

In New Zealand, 16.6 percent of adults (605,000 people) are smokers.<sup>10</sup> This rate has been slowly declining;

however smoking remains significantly higher among the Māori community, with the latest figures from the New Zealand Ministry of Health showing Maori make up 38 percent of the overall smoking rate, represented by 40 percent of Māori women.<sup>11</sup> While the national smoking rate dropped from 2006/07 to 2011/12, the Māori smoking rate did not change over this time.<sup>12</sup>

<sup>2</sup> [Cancer Council Australia \(2016\) Smoking and tobacco: Smoking.](#)

<sup>3</sup> [4364.0.55.001 - National Health Survey: First Results 2014-15 \(2016\) Australian Bureau of Statistics.](#)

<sup>4</sup> [Department of Health \(3015\) Education and prevention: Tobacco control.](#)

<sup>5</sup> [Collins D., and Lapsley H., \(2008\) The Cost of Tobacco, Alcohol and Illicit Drug Abuse to Australian Society in 2004/05, Commonwealth of Australia, Department of Health and Ageing, Monograph Series No.64, p65.](#)

<sup>6</sup> Ibid. Table 34, p65.

<sup>7</sup> Ibid. Table 37, p67.

<sup>8</sup> [Department of Health, \(2016\) Tobacco Control Key Facts and Figures.](#)

<sup>9</sup> Australian Institute of Health and Welfare (2014) National Drug Strategy Household Survey 2013 Specific population groups chapter: Online data tables ([Excel spreadsheet available to download](#)).

<sup>10</sup> [Statistics New Zealand, NZ Social indicators: Tobacco](#)

[smoking, Figure 4.](#)

<sup>11</sup> [Ministry of Health \(2015\) 'Annual Update of Key Results 2014/15, New Zealand Health Survey'.](#)

<sup>12</sup> Ministry of Health (2013) '[The Health of Māori adults and children](#)', paper associated with the New Zealand Health survey.

# 1.1 – IS NICOTINE THE PROBLEM?

Nicotine, a stimulant traditionally derived from the nightshade plant family, is understood to be the main addictive component of smoking tobacco. However, it is not carcinogenic, nor is it the cause of smoking-related mortality or morbidity. It should further be noted that nicotine, like caffeine, is a natural occurring alkaloid that does not have the ability to alter the function of mind or body, and in addition lacks the ability to provide any pharmacological effect like a medicine. It is possible to become addicted to caffeine or nicotine, however, the human body will regulate them and control the dosage. This threshold is different for each individual.

The harms associated with smoking cigarettes are overwhelmingly caused by the inhalation of toxic particles and gases containing tar and other products of combustion. According to a recent comprehensive report by the The Royal College of Physicians (UK):

*“Of the three main causes of mortality from smoking, lung cancer arises primarily from direct exposure of the lungs to carcinogens in tobacco smoke, COPD from the irritant and proinflammatory effects of smoke, and cardiovascular disease from the effects of smoke on vascular coagulation and blood vessel walls. None is caused primarily by nicotine.”<sup>13</sup>*

This view has been reiterated by the UK’s Royal Society for Public Health, who advised in August 2015 that:

*Nicotine is “no more harmful to health than caffeine.”<sup>14</sup>*

Clive Bates, the former Director of Action on Smoking and Health (London) as well as a founder of the NGO Framework Convention Alliance has noted that:

*“The active drug in tobacco is not the primary cause of harm in smoking and would not be in vaping. It has been understood for four decades that: “people smoke for the nicotine but die from the tar”. Nicotine is not a cause of cancer, cardiovascular disease or the respiratory conditions that dominate the ill health from*

*smoking. Pure nicotine is not completely benign, but it is widely sold in medicinal form and does not cause any serious illness. The US Surgeon General has made a detailed assessment of nicotine risks, and though it is possible to measure many effects on the body, these are trivial compared to smoking: for health, it is always better to vape than to smoke.”<sup>15</sup>*

There are no reports of significant health risks from use of nicotine as a smoking cessation tool in the form of patches, gums, or other currently legal means; and it poses no significant long-term health risks when used at vaping concentrations.

In fact, according to the Royal College of Physicians (UK), the public health industry is coming to agree that the lethal dose of nicotine may be eight to 16 times higher than previously thought.<sup>16</sup>

Nicotine is “no more harmful to health than caffeine”.

Source: UK’s Royal Society for Public Health.

<sup>13</sup> [Tobacco Advisory Group to the Royal College of Physicians \(UK\) 2016, ‘Nicotine without smoke: Tobacco harm reduction’, p5](#)

<sup>14</sup> Royal Society for Public Health, 13 August 2015, ‘Nicotine “no more harmful to health than caffeine”’ ([press release](#)).

<sup>15</sup> [Bates, C., \(2015\) E-cigarettes, vaping and public health: A summary for policy-makers.](#)

<sup>16</sup> Tobacco Advisory Group to the Royal College of Physicians (UK) 2016, ‘Nicotine without smoke: Tobacco harm reduction’, page 57.

# 2 - A "VAPING" ALTERNATIVE

As the dangers of smoking have become known, various products have been created to deliver nicotine for consumption without the harmful effects of inhaling smoke. Quitting completely, unaided - going 'cold turkey', as it is often known - is difficult even for smokers who - aware of the dangers of smoking - actively wish to quit. As such, these products, such as nicotine patches and nicotine gum, are often used for Nicotine Replacement Therapy - a way to quit smoking without suffering the withdrawals from nicotine addiction.<sup>17</sup> In Australia, some of these products are even covered under the Pharmaceutical Benefits Scheme.<sup>18</sup>

Recently, a new class of products have emerged that are proving extremely popular as an alternative to smoking. These are commonly known as "e-cigarettes", "personal vaporizers", "heated tobacco products", or "vapes", but the technical catchall term is Electronic Nicotine Delivery Systems (ENDS).

## 2.1 - WHAT IS VAPING?

Invented in China in 2000 and commercialised a year later, ENDS provide the sensation of smoking without burning tobacco - avoiding the deadly cocktail of chemicals that makes smoking cigarettes so dangerous.

ENDS, provide nicotine without combustion and therefore produce no smoke, and are relatively odourless. Liquid based ENDS such as e-cigarettes use an atomizer to heat a small quantity of flavoured, water-based liquid (usually containing nicotine) until it diffuses into a vapour. Heated tobacco products use electronics to heat a tobacco mixture to produce a vapour. This vapour is then inhaled and exhaled by the user, a process known as "vaping".

This inhalation of vapour approximates the experience of smoking tobacco, which has undoubtedly contributed its popularity and its effectiveness as a smoking cessation device. However, the vapour produced by ENDS is fundamentally different to smoke because it is a water-based vapour, technically known as an aerosol, rather than a product of combustion.

<sup>17</sup> [iCanQuit \(2016\) Nicotine Replacement Therapy.](#)

<sup>18</sup> [Department of Health \(2016\) PBS schedule search: nicotine.](#)

## 2.2 - THE BENEFITS OF VAPING TO AID SMOKING CESSATION ATTEMPTS

ENDS provide considerable benefits as both a smoking cessation device, and as a way to minimize the harm of nicotine consumption - by providing an alternative to smoking.

### 2.2(A) - HARM REDUCTION

The greatest benefit of ENDS is that they are an alternative nicotine delivery system that provides a similar sensation to smoking without the negative health consequences.

There is now considerable evidence that ENDS are vastly safer for users and the general public alike. In 2015 review of the available evidence, Public Health England found that ENDS are 95 percent less harmful than smoking cigarettes, and have no identified health risks for bystanders.<sup>19</sup>

Less than a year later, in April 2016, the UK's Royal College of Physicians released a report stating:

*"Large-scale substitution of e-cigarettes [ENDS], or other non-tobacco nicotine products, for tobacco smoking has the potential to prevent almost all the harm from smoking in society."<sup>20</sup>*

The report went on to say that the vapour from ENDS "contains a far less extensive range of toxins, and those present are typically at much lower levels, than in tobacco smoke," and that "in normal conditions of use, toxin levels in inhaled e-cigarette vapour are probably well below prescribed threshold limit values for occupational exposure, in which case significant long-term harm is unlikely."<sup>21</sup>

<sup>19</sup> [Public Health England \(2015\) E-cigarettes: an evidence update: A report commissioned by Public Health England \(Chapter 9\), by Hajek P, McRobbie H.](#)

<sup>20</sup> [Tobacco Advisory Group to the Royal College of Physicians \(UK\) 2016, 'Nicotine without smoke: Tobacco harm reduction'.](#)

<sup>21</sup> Ibid.

The Royal College of Physicians did acknowledge that it is not currently possible to know the long term health risks associated with ENDS. However they also stated that any long term health risks are “unlikely to exceed 5 percent of those associated with smoked tobacco products, and may well be substantially lower than this figure.”<sup>22</sup>

Because of this evidence, a growing number of public health experts recommend that smokers switch to vaping. 12 other peak UK public health bodies joined Public Health England in releasing a joint statement that “We all agree that e-cigarettes are significantly less harmful than smoking.”<sup>23</sup>

## 2.2(B) – VAPING AS A MEANS TO QUIT

ENDS are also a valuable tool for people who want to quit smoking. More than 1.3 million UK vapers have completely stopped smoking, the joint statement by 13 UK public health agencies noted, with ten times more people using ENDS than engage with public smoking cessation support services.<sup>24</sup> In the European Union, an estimated 6 million adults have successfully quit smoking through the use of nicotine vaping.<sup>25</sup>

Like other alternatives to smoking, NRT is widely supported by public health experts, and actively promoted by government bodies, such as Cancer Council Australia.<sup>26</sup> Some nicotine replacement products are even covered under the Pharmaceutical Benefits Scheme.<sup>27</sup>

However, ENDS provide a significant advantage over other nicotine replacement products, as they have proven themselves to be more effective at helping people quit, as the international evidence shows. PHE praised ENDS when discussing the unprecedented success of the 2016 Swaptober campaign:

*“Last year, out of the 2.5 million smokers who made a quit attempt, 500,000 people (20%) were successful; the highest recorded success rate and up from just 13.6% 6 years ago.*

*This increase in successful stop smoking attempts reflects the high number of people using quitting*

<sup>22</sup> Ibid.

<sup>23</sup> Ibid.

<sup>24</sup> Ibid.

<sup>25</sup> Vardavas, C. I., Filippidis, F. T., & Agaku, I. T. (2015). Determinants and prevalence of e-cigarette use throughout the European Union: a secondary analysis of 26 566 youth and adults from 27 Countries. *Tobacco control*, 24(5), 442-448.

<sup>26</sup> Cancer Council Australia (2016) *Reduce your risk: quit*.

<sup>27</sup> Department of Health (2016) *PBS schedule search: nicotine*.

*aids. In 2015, just over a million people (1,027,000) used an e-cigarette in a quit attempt while around 700,000 used a licensed nicotine replacement product such as patches or gum. In addition, over 350,000 people used their local stop smoking service in 2015 to 2016.”<sup>28</sup>*

As Public Health England stated in their 2015 report:

*“[ENDS] have quickly become the most common aid that smokers in England use to help them stop smoking.”<sup>29</sup>*

It also found there is evidence that ENDS can encourage quitting or the reduction of smoking among those not intending to quit.<sup>30</sup>

This is supported by a recent study of over 7,000 vapers in Malaysia. It found that while 68 percent of the participants reported they had quit smoking altogether, a further 26.8 percent reported they had reduced their smoking consumption.<sup>31</sup> In the same study a large majority (80 percent) admitted they were ‘likely’ or ‘very likely’ to revert to smoking, or increase their smoking, if they were not allowed to vape.

The rapid rise in popularity of ENDS as a means to quit, compared to other nicotine replacement products, may be due the fact that nicotine is absorbed fastest when delivered via oral inhalation — such as smoking or vaping. It is absorbed at progressively slower rates when delivered via skin, mouth, nose, or least efficiently, by oral consumption and digestion.<sup>32</sup>

Whatever the reason, the evidence clearly shows that ENDS can be a phenomenal tool to help people quit smoking. It’s for this reason that a coalition of 13 independent peak advisory bodies in the UK have recommended that cigarette smokers be encouraged to switch to vaping as a means of quitting smoking.<sup>33</sup>

<sup>28</sup> [Public Health England \(2016\) Press release: Quitting smoking sweeps the nation as Stoptober returns.](#)

<sup>29</sup> [Public Health England \(2015\) E-cigarettes: an evidence update: A report commissioned by Public Health England \(Chapter 9\), by Hajek P, McRobbie H, p45.](#)

<sup>30</sup> Ibid, p51.

<sup>31</sup> [7124 Participants \(2016\) Malaysia: vaping for harm reduction.](#)

<sup>32</sup> [Tobacco Advisory Group to the Royal College of Physicians \(UK\) 2016, ‘Nicotine without smoke: Tobacco harm reduction’, p53.](#)

<sup>33</sup> [E-cigarettes: a developing public health consensus - Joint statement on e-cigarettes by Public Health England and other UK public health organisations.](#)

## 2.3 – PREVALENCE AND PUBLIC SUPPORT

Legal or not, vaping has rapidly assumed a level of popularity in both New Zealand and Australia.

In 2013, an international survey found that among Australian smokers 9 percent were current users and 24 percent had tried e-cigarettes.<sup>34</sup> In 2015, 30 percent of current Australian smokers frequently or occasionally used ENDS.<sup>35</sup>

But this number would likely be higher if not for the current legal restrictions on the sale of nicotine vaping products in Australia (discussed in section 3). A third of occasional Australian vapers have cited difficulty accessing e-liquid as a reason that they did not vape more often, while 40 percent of occasional vapers found the cost - including the monetary and time costs of importation – to be prohibitive to more regular use.<sup>36</sup>

It's therefore not surprising that a 2015 survey of Australian smokers found widespread support for legalised, regulated sale of nicotine-loaded e-liquids for vaping provided that regulations did not inhibit access to the devices and refill solutions required.<sup>37</sup>

Of those surveyed:

- 75 percent agreed that ENDS were a 'positive alternative' to tobacco smoking.
- 65 percent agreed that they would consider switching to vaping if e-liquids were legal, met quality/safety standards and were conveniently available.
- 82 percent agreed that "It would be wrong for the government to prevent or delay the introduction of less harmful alternatives to regular cigarettes for adult smokers."

In a similar survey of New Zealand smokers:

- 63 percent agreed that e-cigarettes were a 'positive alternative' to tobacco smoking; and
- 65 percent affirmed that they would consider switching to vaping if e-liquids were legal, met quality/safety standards and were conveniently available.<sup>38</sup>

<sup>34</sup> [Gravelly S, Fong G, Cummings K, et al. Awareness, Trial, and Current Use of Electronic Cigarettes in 10 Countries: Findings from the ITC Project. Int J Environ Res Public Health 2014;11:11691–704.](#)

<sup>35</sup> [Australia Adult Smoker Survey \(2015\) Factasia.](#)

<sup>36</sup> [Ibid.](#)

<sup>37</sup> [Ibid.](#)

<sup>38</sup> [New Zealand Adult Smoking Survey Australia Adult Smoker](#)

There is also considerable support for ENDS among the wider Australian community. In a survey of 4,000 Australian adults, the Sexton Marketing Group found:

- 73 percent of all Australian adults – smokers and non-smokers – support legalisation of nicotine vaping for tobacco harm reduction; and
- 54 percent of all Australian adults – smokers and non-smokers – consider vape legalisation a vote-influencing or vote-changing issue.<sup>39</sup>

*82% of Australians agreed that "It would be wrong for the government to prevent or delay the introduction of less harmful alternatives to regular cigarettes for adult smokers."*

[Survey \(2015\) Factasia.](#)

<sup>39</sup> [Convenience and impulse retailing \(2016\) 'Legalisation of e-cigs 'vote changing''.](#)

## 2.4 – COMMON MISCONCEPTIONS

Regrettably, misinformation concerning ENDS is widespread and broadly believed by some people in key decision-making and -influencing positions, which threatens to undermine this potentially lifesaving technology.

### 2.4(A) – “VAPING IS A FORM OF SMOKING”

Perhaps because of the visual similarity between vaping and smoking, and the commonly used name ‘e-cigarette’, there has been a false equivalence created between ENDS and traditional cigarettes.

This false equivalence was recently epitomized by Victorian state MP, Natalie Suleyman. Speaking on the Tobacco Amendment Bill 2016, Suleyman made the following false claim:

*“Some people are using e-cigarettes, believing it is not really smoking. Well, it is a form of smoking, and it is a filthy form of smoking.”<sup>40</sup>*

As has already been shown, vaping is radically different, and is far less harmful than smoking (see section 2.1). But this misinformation is having a detrimental impact within the public health sector.

According to Dr Derek Yach, former cabinet director at the World Health Organization and the man largely responsible for drafting the Framework Convention on Tobacco Control:

*“The impact of these distorted media stories has led many smokers who had moved to e-cigarettes to move back to regular cigarettes.”<sup>41</sup>*

Dr Yach continued by calling on governments to “view [ENDS] as the smoking cessation aid that they are,” and for policy makers to “adopt regulations that encourage smokers to shift to reduced-harm products such as e-cigarettes...”<sup>42</sup>

<sup>40</sup> Natalie Suleyman MP, Tobacco Amendment Bill 2016 , Second reading, 21 June 2016 , Legislative Assembly Hansard, Page 2693, Parliament of Victoria.

<sup>41</sup> Beaglehole, R., Bonita, R., Yach, D., Mackay, J., & Reddy, K. S. (2015). A tobacco-free world: a call to action to phase out the sale of tobacco products by 2040. *The Lancet*, 385(9972), 1011-1018.

<sup>42</sup> Ibid.

### 2.4(B) – “ENDS ARE A GATEWAY TO SMOKING”

Unfortunately, the Victorian government has chosen the approach of placing the same regulations on ENDS that already exist for cigarettes.<sup>43</sup> According to Victorian Health Minister Jill Hennessy, the justification for this approach was to stop ENDS being used as a gateway to smoking for young people.<sup>44</sup> But the evidence doesn’t support this view.

In the words of Dr Colin Mendelsohn, Associate Professor in the School of Public Health and Community Medicine at the University of New South Wales and an experienced practising tobacco treatment specialist:

*“After ten years of experience in other countries where e-cigarettes are widely available, there is no evidence that this is happening. In fact, the opposite may be true, that e-cigarettes are actually diverting adolescents away from smoking.”<sup>45</sup>*

Professor Linda Bauld, Professor of health policy at Scotland’s University of Stirling and Chair of Cancer Prevention at Cancer Research UK, agreed with this view, stating in an interview that:

*“We’ve got about 40 studies now, so we can be relatively confident that we know what’s happening in relation to e-cigarette use in young people... e-cigarettes at the moment are not creating a new generation of what some people describe as ‘nicotine addicts’.”<sup>46</sup>*

<sup>43</sup> [ABC News, 21 May 2016, E-cigarettes to be treated like tobacco in Victoria, banned in restaurants, enclosed workplaces.](#)

<sup>44</sup> Ibid.

<sup>45</sup> [Dr Colin Mendelsohn \(2016\) Are e-cigarettes a gateway to adolescent smoking?](#)

<sup>46</sup> [Professor Linda Bauld \(2016\) Speech delivered to Global Nicotine Forum 2015.](#)

# 3 - CURRENT LEGAL FRAMEWORK

## 3.1 - AUSTRALIAN LEGAL FRAMEWORK

Nicotine is classified in the Poisons Standard as a Schedule 7 Dangerous Poison, and as a Schedule 4 Pharmacist Only Medicine, by the Therapeutic Goods Administration (TGA).<sup>47</sup> Nicotine for ENDS will fall under schedule 7 if the specific product and brand is not registered as a therapeutic good. Under Schedule 7, nicotine is “Not to be available except to authorised or licensed persons”, although there are no restrictions on importation, and a medical prescription authorizes a person to import a limited supply of nicotine. The monetary and time costs involved in importation can be a barrier to access.

The use of ENDS under Schedule 4 of the Australian Poisons Standard is limited to therapeutic purposes. So far, no ENDS products which have sought to register their product with the Therapeutic Goods Register have been given assent. As such, a person must import a limited supply of nicotine liquid for ENDS for personal use and have a prescription from a doctor to do so in order to legally obtain it.

The TGA is currently considering an application from the New Nicotine Alliance Australia to remove nicotine up to 3.6 percent from schedule 7 and become unscheduled i.e. a consumer product. The proposal along with any public submissions will be considered at the joint meeting of the Advisory Committee on Medicines Scheduling and the Advisory Committee on Chemical Scheduling, 15-17 November 2016. After considering advice from the advisory committees and public submissions, there will be an interim decision. The interim decision will be published on the TGA website in February 2017, inviting further submissions from the public. After considering any further submissions, a final decision is expected to be published on the TGA website in March 2017.<sup>48</sup>

<sup>47</sup> [Poisons Standard November 2016, Federal Register of Legislation.](#)

<sup>48</sup> [New Nicotine Alliance Australia \(2016\) Application for amendment of Schedule 7 entry for nicotine.](#)

## 3.2 - NEW ZEALAND LEGAL FRAMEWORK

Similar to Australia, the sale and supply of ENDS is prohibited when they contain nicotine, while cigarettes and other smoking tobacco products remain legal.

However, there are signs that this may soon change, with the New Zealand Ministry of Health recently conducting public consultation with a view to regularizing the legal situation regarding vaping. The Ministry of Health stated that “The existing provisions for the regulation of e cigarettes, found primarily in the Smoke-free Environments Act 1990 and the Medicines Act 1981, are not adequate.”<sup>49</sup>

There has also been support for a change from the New Zealand government, with Prime Minister John Key stating to the New Zealand Herald:

*“The advice I am getting so far is that there may be a role for e-cigarettes, certainly in terms of people transitioning away from smoking.”<sup>50</sup>*

However, it remains to be seen whether this change occurs, and what regulatory provisions are put in place.

<sup>49</sup> [Ministry of Health \(2016\) Policy Options for the Regulation of Electronic Cigarettes: A consultation document.](#)

<sup>50</sup> [NZ Herald, 31 May 2016, Plain packaging for tobacco likely to be in place early next year.](#)

# 4 – NEGATING THE BLACK MARKET

Despite the current legal restrictions, a thriving black and grey market for ENDS and nicotine e-liquids currently exists to service Australasian vapers. Purchases can be made from online retailers operating outside of Australian or New Zealand jurisdiction, with prices in multiple currencies, secure payments systems, reputable couriers and paperwork and certification. Yet quality, ingredients and safety is often uncertain.

As stated in section 2.3, 30 percent of Australian smokers admit to frequently or occasionally using ENDS.<sup>51</sup> It is likely, that many vapers do so through internet or mail order delivery, as well as personally importing from countries where the product is legal.

This makes the substance impossible for governments and health authorities to effectively regulate; it deprives governments of potential tax revenue that could be used to alleviate the costs of smoking-related illnesses to our public healthcare system; and it makes it difficult for health authorities and policy bodies to accurately study the impact, and potential health risks, associated with ENDS. It also provides increased opportunities for criminal entities who profit from flouting the law<sup>52</sup> and has the effect of criminalising ordinary citizens and voters whose only desire is to reduce the risk to their health.

Perhaps most detrimental however, is how, having to illegal import ENDS is likely to incentivize users to purchase nicotine at higher concentrations (as high as 99 percent) than they would normally use (typically up to 3.6 percent). Users then handle, mix, and dilute the high strength liquids down to their preferred mix with obvious risks that arise when untrained people are working with poisons that can be absorbed through skin.

It is likely that these problem will increase for Australia if New Zealand proceeds with legalization of ENDS, given the geographical proximity and relative lack of customs controls between the two countries.

The best way to alleviate and negate these problems is to legalise and regulate the domestic sale and consumption of ENDS and nicotine e-liquids. A regulated

domestic market will be safer, standardised, and will better meet the rational and legitimate expectations of Australian and New Zealand consumers to be able to use products that can dramatically reduce the risks of smoking and increase the rate of smoking cessation.

<sup>51</sup> [Australia Adult Smoker Survey \(2015\) Factasia.](#)

<sup>52</sup> Dunlop, S., Lyons, C., Dessaix, A., & Currow, D. (2016). How are tobacco smokers using e-cigarettes? Patterns of use, reasons for use and places of purchase in New South Wales. *Med J Aust*, 204(9), 355.

# 5 - CONCLUSION

Based on the evidence showing considerable benefits from ENDS — both as a harm reduction tool, and as a smoking cessation device — and the complete lack of evidence demonstrating the negative health impacts of vaping, The Australian Taxpayers' Alliance, MyChoice Australia, and the New Zealand Taxpayers' Union believes there is a clear benefit to legalizing the domestic sale and use of ENDS and nicotine e-liquid.

The legal sale of these products, complimented by appropriate regulations targeted to minimize potential negative impacts and externalities, is a preferable alternative to keeping them illegal for both moral and pragmatic reasons.

The current legal regime is actively causing harm by both restricting access to a safer form of nicotine consumption, and failing to ensure adequate quality controls through appropriate regulation.

More research can and should be done, but as Tobacco Control Lead at Public Health England, Martin Dockrell, said in 2015, "If we wait for perfect data, we will wait forever, and people will die."<sup>53</sup>

*The current legal regime is actively causing harm by both restricting access to a safer form of nicotine consumption, and failing to ensure adequate quality controls through appropriate regulation.*

<sup>53</sup> [E-cigarettes and harm reduction, Factasia.](#)

# 6 – RECOMMENDATIONS

The Australian Taxpayers' Alliance, MyChoice Australia and the New Zealand Taxpayers' Union recommend that the sale of ENDS and safe quantities of nicotine e-liquids be legalised with appropriate regulations.

The organisations support the development of appropriate regulations which avoid the dangerous error of classifying ENDS similarly to combustible tobacco cigarettes. Were the latter error to occur, a huge opportunity to improve public health, and save thousands of lives, will be wasted.

With this in mind, we propose the following regulatory approach.

The Australian Taxpayers Alliance, New Zealand Taxpayers Union and MyChice Australia jointly call for the following actions to optimise the potential of this new and disruptive harm reduction technology:

1. That the Therapeutic Goods Administration to make the right choice to exempt nicotine for the purpose, and that the NZ Ministry of Health changes laws and regulations to favour full retail availability (to adults) of appropriately regulated ENDS;
2. Governments in Australia and New Zealand not miss grasping a public health opportunity through treating vaping like smoking (such as in the are of excise tax); and
3. The introduction of appropriate regulation at federal level to allow adults to choose less harmful alternatives throughout Australia and New Zealand (harmonization of harm reduction).

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