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**The Economic Policy Scrutiny Committee
Northern Territory Parliament**

Re: Tobacco Control Legislation Amendment Bill 2018

1. We thank the NT government for the opportunity to make a submission to the inquiry into the *Tobacco Control Legislation Amendment Bill 2018* (*the Bill*).
2. The Australian Taxpayers Alliance (ATA) is a 75,000+ member grassroots public advocacy group that stands for individual freedom, minimising government waste and rolling back burdensome regulations with perverse or negative outcomes. MyChoice is an autonomous affiliate organisation of the ATA which advocates for informed consumer choice and evidence-based public health policy.
3. The ATA recognises the public health threat posed by smoking and supports evidence-based public health policy which encourages smoking cessation and/or reduces smoking-related health harms.
4. The scientific evidence overwhelmingly demonstrates that e-cigarettes or 'vapes' are at least 95% less harmful than tobacco smoking and are effective smoking cessation tools which are almost exclusively taken up by smokers seeking safer alternative means of acquiring nicotine. As such, the Bill in its current form effectively encourages smoking and facilitates smoking-related harms by preventing smokers from accessing proven safer alternatives which are also proven to drastically lower the build-up of toxins, carcinogens and tar in the bodies of those who transition from cigarette smoking.
5. The latest figures reveal that more Australians smoked in 2016 than they did in 2013 in raw terms and that our smoking cessation rate between 2013 and 2016 has stagnated to a statistically insignificant degree for the first time in decades.¹ By contrast, the UK which has traditionally lagged behind us in reducing their smoking rates, is now experiencing similar smoking prevalence to Australia and smoking rates in the USA are falling faster than ever.² The UK not only allows smokers to legally access nicotine vapes, but actively encourages doctors, through its public health agencies and anti-smoking strategies, to recommend nicotine vapes to smokers who want to quit or improve their health. The United States and European Union nations have experienced similar drops in their smoking prevalence since 2012, coinciding with the rapid uptake of nicotine vaping technology. Concerningly, the Northern Territory currently has Australia's highest smoking rates. It is submitted that the

¹ Australian Institute of Health and Welfare (2017), National Drug Strategy Household Survey 2016, Table 2 [\[link\]](#)

² UK Annual Population Survey, Office of National Statistics; US National Health Interview Survey, CDC National Centre for Statistics

failure to adopt international best practice by allowing smokers to access a proven safer alternative product and by imposing regulations which create further difficulties for the accessibility and use of these products, is antithetical to positive public health outcomes and an abrogation of evidence-based policy principles as well as informed consumer choice.

6. It is submitted that while vapes are not completely risk-free, the principal consideration of regulatory policy for these proven safer alternatives to legal tobacco cigarettes, should be their relative risk to tobacco products. This submission will present evidence that these products have overwhelmingly been taken up by smokers and have not been widely taken up by people who did not smoke previously. The evidence also indicates that these products are a gateway *away* from smoking rather than a gateway to smoking. As such, it is submitted that effective, evidence-based public policy connotes regulatory frameworks that promote quality and safety standards and facilitate smokers' ability to transition to these products.
7. The salient issues are that the Bill incorrectly classifies vapes as tobacco products and applies regulations which are not proportionate to the risk. The Bill also fails to recognise that electronic cigarettes are a much less detrimental alternative for smokers and function as a harm reduction alternative and can improve the health of smokers who switch.
8. Vapes do not contain or combust tobacco. Instead, nicotine is delivered in a liquid medium which is heated and 'vapourised' prior to inhalation.
9. When consumed through inhalation, nicotine is a benign stimulant no more dangerous than caffeine. It is a member of the nightshade family and a naturally occurring alkaloid that does not significantly alter mind/body function or provide pharmacological effects like a medicine. It is also non-carcinogenic and is not the cause of smoking-related morbidity or mortality.³
10. Nicotine is widely available in patches and gums which are legally sold across the counter in Australia, whereby it is available to consumers as young as 13 and is even covered under the Pharmaceutical Benefits Scheme.⁴
11. Smoking-related harms overwhelmingly arise from the combustion of the tobacco leaf itself,⁵ a process that releases carcinogens, toxins and tar, and not from nicotine.⁶
12. By providing smokers with the nicotine that satisfies their cravings without the tar that detracts their health, nicotine vaping is hence a safer alternative.⁷
13. This is supported by the Royal College of Physicians (UK) which sums up the effects of nicotine as follows: "*At low doses, nicotine is a stimulant, which in the short term increases heart rate and may improve attention, memory and fine motor skills. Although potentially lethal at very high doses, at the blood levels typically achieved by smoking nicotine does not result in clinically significant short- or long-term harms.*"⁸

³ Royal College of Physicians. Nicotine without smoke: Tobacco harm reduction. London: RCP. 2016. [\[link\]](#), pg. 125

⁴ Department of Health (2016) PBS Schedule search: nicotine [\[link\]](#)

⁵ U.S. Food and Drug Administration Website, July 28 2017 [\[link\]](#)

⁶ Shahab L, Goniewicz ML, Blount BC, Brown J, McNeill A, Alwis KU, et al. Nicotine, Carcinogen, and Toxin Exposure in Long-Term E-Cigarette and Nicotine Replacement Therapy Users: A Cross-sectional Study. *Ann Intern Med*. [Epub ahead of print 7 February 2017] doi: 10.7326/M16-1107 [\[link\]](#)

⁷ David J. Nutt, *et al.*, "Estimating the Harms of Nicotine-Containing Products Using the MCDA Approach," *European Addiction Research* **20** (April 2014): 218–25 [\[link\]](#)

⁸ Tobacco Advisory Group to the Royal College of Physicians (UK) 2016, 'Nicotine without smoke: Tobacco harm reduction' pg. 184.

14. Vapes facilitate a consumer's ability to moderate their nicotine dosage. A 2016 study found that experienced vapers were better able to titrate their nicotine dosage with nicotine solutions of different concentrations than using cigarettes.⁹
15. The current proposed Bill denies smokers safer and alternative methods to quit smoking. It has facilitated the rise of an illicit tobacco black market and does not provide effective recommendations to stymie smoking-related diseases and deaths.
16. The ATA recommends amendments to the legalisation on nicotine to allow greater use of ENDS products within an appropriate regulatory framework.

General comments about smoking in Australia

17. Tobacco control should be a significant public health priority in Australia. According to the Australian Cancer Council, two out of every three deaths in long-term smokers can be directly attributed to smoking, and that smoking is responsible for approximately 20% of Australia's cancer disease burden.¹⁰
18. Smoking directly causes the premature deaths of 19,000 Australians every year and costs Australia an estimated \$31.5 billion a year in health, social and economic costs.¹¹ 77.2% of these costs are 'intangible' and although less than 8% of the tangible costs are borne by the public sector, this is still a considerable figure as it places a \$1.5 billion burden on Federal and State budget outlays every year.¹²
19. The current proposal is likely to disproportionately affect smokers negatively. People from low socioeconomic backgrounds, the unemployed, and those living in outer, rural and regional areas are overrepresented in smoking statistics.¹³ Aboriginal and Torres Strait Islanders (ATSI) are also disproportionately likely to be smokers, as are LGBTIQ+ identifying individuals.¹⁴
20. One in three individuals suffering from mental illness are smokers and these individuals also experience lower quitting rates than the general population, with smoking identified as the major contributor to the health gap between the mentally ill and the general population.¹⁵

Tobacco Harm Reduction

21. Tobacco harm reduction is the process of minimising or eliminating the harms inflicted upon smokers by tobacco. It has already been employed in other fields such as road safety and intravenous drug use. Government programs have dealt with high-risk behaviours through education, strategies and products that could facilitate change to lower-risk behaviour.

⁹ Dawkins LE, Kimber CF, Doig M, Feyerabend C, Corcoran O. Self-titration by experienced e-cigarette users: blood nicotine delivery and subjective effects. *Psychopharmacology*. 2016.

¹⁰ [\[link\]](#)

¹¹ Department of Health, (2017) Tobacco Control Key Facts and Figures. [\[link\]](#); Australian Institute of Health and Welfare 2016. Australian Burden of Disease Study: Impact and causes of illness and death in Australia 2011. Australian Burden of Disease Study series no. 3. BOD4. Canberra: AIHW. [\[link\]](#)

¹² Ibid.

¹³ Ibid.

¹⁴ Ibid.

¹⁵ Mendelsohn, Colin P., Dianne P. Kirby, and David J. Castle. "Smoking and mental illness. An update for psychiatrists." *Australasian Psychiatry* 23.1 (2015): 37-43. [\[link\]](#)

22. The ATA submits that while the ultimate aim is to encourage the complete cessation of smoking, a large preponderance of smokers are unable or unwilling to quit and remain at high risk of smoking-related fatalities or diseases. ‘Cold turkey’ is the most desirable method of smoking cessation, the method has a low success rate.¹⁶ Most of those attempting to quit smoking completely, experience relapses and many struggle for the rest of their lives to quit despite *bona fide* intentions and persistent attempts to do so.¹⁷
23. Tobacco control experts have understood this problem for decades, resulting in the development and approval of ‘Nicotine Replacement Therapy’ (NRT). These products (including patches and gums) provide smokers with controlled doses of nicotine and are intended to ease the smokers’ transition out of smoking by targeting their nicotine withdrawals and cravings.¹⁸
24. Tobacco harm reduction is already mandated according to Australia’s international treaty commitments and Australia’s tobacco control policies. The THR is an instrumental aspect of Articles 1(d) and 1(f) of the World Health Organisation’s Framework Convention on Tobacco Control (FCTC) treaty. Australia is a signatory to the FCTC and is thus obliged to introduce various THR strategies in addition to other tobacco control measures. The 2012-18 National Tobacco Strategy has become one of the objectives of the THR as it aims to reduce harm associated with continuing use of tobacco and nicotine products’.¹⁹
25. As noted above, these products have existed on the market for decades and are sold as consumer goods to individuals as young as 13. Some of these products are even covered under Australia’s Pharmaceutical Benefits Scheme.

Effectiveness of vapes as a smoking cessation mechanism

26. The pleasant flavours also incentivise smokers to quit. Most users vape with solutions that are flavoured, providing an appealing sensory experience that makes them a more attractive option than cigarettes and thus enhances their effectiveness as a quit smoking tool. A 2016 Consumer Advocates for Smoke-Free Alternatives Association (CASAA) survey of 27,343 e-cigarette users found that 72% of respondents “*credited tasty flavours with helping them give up tobacco.*”²⁰
27. Similarly, a 2013 internet study by leading researcher Konstantinos Farsalinos, concluded that flavourings in e-cigarettes “*appear to contribute to both perceived pleasure and the effort to reduce cigarette consumption or quit smoking.*”²¹ A pleasant smelling vapour also ensures that passive vapers in the vicinity are spared exposure to far more odorous and dense tobacco smoke which, unlike vapour generated by ENDS products, sticks to clothes.
28. The ATA also submits that vapes are also customisable to the individual quitter’s needs which facilitates individuals to transition out of smoking. Smokers who switch to vaping are able to choose from an innovative range of ENDS products that can be tailored to their individual preferences. For example, some consumers prefer ENDS devices or liquids can

¹⁶ Hyland, Andrew, et al. "Predictors of cessation in a cohort of current and former smokers followed over 13 years." *Nicotine & Tobacco Research* 6.Suppl 3 (2004): S363-S369.

¹⁷ Ibid.

¹⁸ Molyneux, A. (2004). Nicotine replacement therapy. *Bmj*, 328(7437), 454-456. [\[link\]](#)

¹⁹ [http://www.nationaldrugstrategy.gov.au/internet/drugstrategy/publishing.nsf/Content/D4E3727950BDBAE4CA257AE70003730C/\\$File/National%20Tobacco%20Strategy%202012-2018.pdf](http://www.nationaldrugstrategy.gov.au/internet/drugstrategy/publishing.nsf/Content/D4E3727950BDBAE4CA257AE70003730C/$File/National%20Tobacco%20Strategy%202012-2018.pdf) Part 5.2, page 11

²⁰ “Large Survey Finds E-Cigarettes Do Help Smokers Quit,” *Vape Ranks* (website), January 12, 2016, [\[link\]](#)

²¹ Konstantinos E. Farsalinos, et al., “Impact of Flavour Variability on Electronic Cigarette Use Experience: An Internet Survey,” *International Journal of Environmental Research and Public Health* 10 (December 2013): 7272–82 [\[link\]](#)

deliver a similar physical sensation to the throat as a cigarette. ENDS products can achieve this effect without relying on carcinogenic tobacco smoke.

29. Another element is that it is more effective than conventional nicotine patches and gums. The practical advantages of vaping over conventional nicotine products is also supported by the statistics. Randomised controlled trials of early devices with low nicotine delivery were found to be at least as effective as nicotine patches and gums. Studies of more modern devices have shown them to be even more effective.²²
30. The effectiveness is also enhanced by the addition of nicotine. The Cochrane Collaboration, an internationally recognised independent assessor of therapeutic effectiveness, canvassed the results of multiple studies and found that e-cigarettes containing nicotine increased the odds of long-term successful smoking cessation than using e-cigarettes which do not contain nicotine.²³
31. By 2014, an estimated 6 million Europeans had quit smoking by switching to ENDS since the technology was introduced,²⁴ with surveys indicating that 65% of Australians would consider quitting smoking if the e-liquids necessary to vape nicotine were legally available.²⁵ If just two out of three Australian smokers switched to vaping, over 500,000 lives would be saved from premature death.²⁶

Vaping reduces tobacco-related harms

32. Vapes (supported by an appropriate regulatory framework) have been significantly linked to harm reduction. A long-term, cross-sectional study recently found that transitioning from cigarettes to alternative nicotine delivery products **drastically lowers the build-up of carcinogens and tar in the bodies of smokers.**²⁷
33. The UK Royal College of Physicians has found that nicotine delivery products such as vapes and heat-not-burn products are less harmful than conventional smoking of combustible tobacco as they **virtually eliminate a smoker's exposure to carcinogens found in tobacco.**²⁸ For example, the two most dangerous carcinogens in tobacco smoke: Acrylonitrile and 1,2-butadiene, account for more than three-quarters of the cancer risk from smoking and are not found in vapour at all.²⁹

²² Hitchman SC. Associations between e-cigarette type, frequency of use and quitting smoking. *Nicotine Tob Res* 2015.

²³ [\[link\]](#)

²⁴ Farsalinos KE, Poulas K, Voudris V, Le Houezec J. Electronic cigarette use in the European Union: analysis of a representative sample of 27 460 Europeans from 28 countries. *Addiction* (Abingdon, England). 2016. [\[link\]](#)

²⁵ Australia Adult Smoker Survey (2015) Factasia. [\[link\]](#)

²⁶ Levy, D. T., Borland, R., Lindblom, E. N., Goniewicz, M. L., Meza, R., Holford, T. R. & Abrams, D. B. (2017). Potential deaths averted in USA by replacing cigarettes with e-cigarettes. *Tobacco control*, tobaccocontrol-2017. [\[link\]](#); Dr. Colin Mendelsohn – Tobacco Treatment Specialist, 3rd October 2017 “Switching to e-cigarettes could save the lives of half a million Australian smokers” [\[link\]](#)

²⁷ Shahab L, Goniewicz ML, Blount BC, Brown J, McNeill A, Alwis KU, et al. Nicotine, Carcinogen, and Toxin Exposure in Long-Term E-Cigarette and Nicotine Replacement Therapy Users: A Cross-sectional Study. *Ann Intern Med*. [Epub ahead of print 7 February 2017] doi: 10.7326/M16-1107 [\[link\]](#)

²⁸ Royal College of Physicians (London), Nicotine without smoke: tobacco harm reduction. 28 April 2016. [\[link\]](#)

²⁹ Stephens WE. Comparing the cancer potencies of emissions from vapourised nicotine products with those of tobacco smoke. *Tob Control* 2017 [\[link\]](#)

34. Research has also found that nicotine vaping reduces the risk of cardiovascular disease among smokers due to the far lower concentrations of potentially toxic ingredients in vaping solutions than cigarettes.³⁰
35. The Royal College of Physicians and Public Health England not only recommend the legalisation of alternative nicotine delivery products including vapes, but advises **doctors to recommend these products to patients who wish to quit smoking**.³¹ Nicotine vaping has been endorsed by academics and public health institutions including the UK Centre for Tobacco and Alcohol Studies³² and the Canadian Institute for Substance Use Research (CISUR).³³
36. It was also found in a 2016 study that **vapes helped users to moderate their nicotine intake**. This is because the use of liquid solutions available in containers with a fixed capacity makes it far easier to estimate and control intake than tobacco leaves or cigarettes.³⁴
37. According to Dr. Colin Mendelsohn, tobacco treatment specialist and Conjoint Associate Professor of Public Health and Community Medicine at the University of New South Wales, **smokers suffering from mental illness will also be specially benefited by vapes**.³⁵ This claim is also supported by the Royal Australia and New Zealand College of Psychiatrists.³⁶
38. Collins & Lapsley estimated that tobacco costs the Australian government \$65 million annually (or \$85 million annually, adjusted for inflation) due to fires.³⁷ Vapes carry far less fire risk. Legalised nicotine vapes are therefore likely to minimise tobacco-related fire damage.
39. Public health outcomes globally have substantially improved as a result of vapes. Georgetown University's Comprehensive Cancer Centre estimates a reduction of 21 percent in smoking-attributable deaths and 20 percent in life years lost as a result of use of vapes in people born in 1997 or after, compared to what would have happened if e-cigarettes were not an option.³⁸ Another study considered the public health impacts of vaping in the US over a 10 year period. It found that even under conservative estimates about the rate of uptake in vaping by smokers and relative harm, it is likely that 6.6 million Americans will avoid premature deaths with 86.7 million fewer life years lost due to vapes.³⁹ If the study's results are applied to Australia,

³⁰ Benowitz, N. L. (2010). Nicotine addiction. *New England Journal of Medicine*, 362(24), 2295-2303. [\[link\]](#)

³¹ UK Government policy paper, "towards a smoke-free generation" 18 July 2017 [\[link\]](#)

*- The RCP states that vaping is unlikely to represent even 5% (1/20th) of the danger of smoking and may be a great deal less.

³² Britton J, Bogdanovica I, McNeill A, Bauld L. Commentary on WHO report on electronic nicotine delivery systems and electronic non-nicotine delivery systems. UK Centre for Tobacco & Alcohol Studies. 2016.

³³ O'Leary R, MacDonald M, Stockwell T, Reist D. Clearing the Air: A systematic review on the harms and benefits of e-cigarettes and vapour devices. University of Victoria, BC: Centre for Addictions Research of BC. 2017.

³⁴ Dawkins LE, Kimber CF, Doig M, Feyerabend C, Corcoran O. Self-titration by experienced e-cigarette users: blood nicotine delivery and subjective effects. *Psychopharmacology*. 2016.

³⁵ [\[link\]](#)

³⁶ [\[link\]](#)

³⁷ Collins, David John, and Helen M. Lapsley. *The costs of tobacco, alcohol and illicit drug abuse to Australian society in 2004/05*. Canberra: Department of Health and Ageing, 2008. [\[link\]](#)

³⁸ Levy et al, The Application of a Decision-Theoretic Model to Estimate the Public Health Impact of Vaporized Nicotine Product Initiation in the United States. *Nicotine Tob Res* (2016) doi: 10.1093/ntr/ntw158 First published online: July 14, 2016

³⁹ Levy DT. Potential deaths averted in USA by replacing cigarettes with e-cigarettes. *Tobacco Control* 2017 [\[link\]](#)

over half a million premature deaths will be prevented should two out of three smokers here transition to vaping.⁴⁰

40. The most recent evidence to date in August, 2018, involved the UK parliament's conclusions that e-cigarettes are substantially less harmful than conventional cigarettes and are a proven stop-smoking tool. The report summarising these findings recommended that '*Existing smokers should always be encouraged to give up all types of smoking, but if that is not possible they should switch to e-cigarettes as a considerably less harmful alternative*'.⁴¹
41. Public Health England assert that smoking and long-term use is likely to be no more than 5% of the risk of smoking. This is supported by the graphs below which show that electronic cigarettes are positioned closer to the low-risk end of the scale.⁴²
42. Randomised controlled trials of early devices with low nicotine delivery were found to be at least as effective as NRT. Studies of more modern devices have shown them to be even more effective.⁴³
43. For these reasons, the Royal College of Physicians notes that policy or laws that make vapes less easily accessible, less palatable or acceptable, more expensive, less consumer-friendly, less pharmacologically effective or which hinder development and innovation of new products, effectively perpetuate smoking and its harms.⁴⁴

E-cigarette policies overseas

44. The ATA draws on evidence from international approaches to support the effectiveness of vapes as a cessation aid in quitting smoking. In general, **European nations** and the **USA** have adopted a progressive approach by allowing consumers the choice of legally available ENDS products with nicotine. The US Food & Drug Administration (FDA) recently announced strong support for e-cigarettes in tobacco harm reduction,⁴⁵ with FDA Commissioner Dr. Scott Gottlieb declaring that "*Envisioning a world where ... adults who still need or want nicotine could get it from alternative and less harmful sources, needs to be the cornerstone of our efforts.*"⁴⁶
45. **New Zealand**⁴⁷ and **Canada**⁴⁸ are currently in the process of legalising nicotine for use in e-cigarettes.
46. In the **UK**, nearly 3 million adults now use e-cigarettes,⁴⁹ and both public health authorities, (over 20 organisations including Public Health **England** and NHS **Scotland**), and doctors,

⁴⁰ Ibid; Dr. Colin Mendelsohn – Tobacco Treatment Specialist, 3rd October 2017 "Switching to e-cigarettes could save the lives of half a million Australian smokers" [\[link\]](#)

⁴¹ <https://www.parliament.uk/business/committees/committees-a-z/commons-select/science-and-technology-committee/news-parliament-2017/e-cigarettes-report-publication-17-19/>

⁴² <https://www.karger.com/Article/FullText/360220>

⁴³ Hitchman SC. Associations between e-cigarette type, frequency of use and quitting smoking. Nicotine Tob Res 2015.

⁴⁴ Royal College of Physicians (London), Nicotine without smoke: tobacco harm reduction. 28 April 2016 [\[link\]](#)

⁴⁵ Warner KE, Schroeder SA. FDA's Innovative Plan to Address the Enormous Toll of Smoking. Jama. 2017; Gottlieb S, Zeller M. A Nicotine-Focused Framework for Public Health. N Engl J Med. 201.

⁴⁶ [\[link\]](#)

⁴⁷ New Zealand Government. Nicotine e-cigarettes to become legal (media release). 2017. [\[link\]](#)

⁴⁸ Canadian Parliament. Bill S-5. An Act to amend the Tobacco Act and the Non-smokers' Health Act and to make consequential amendments to other Acts. 2017. [\[link\]](#)

⁴⁹ The Guardian, 8th May 2017, "majority of vapers have quit tobacco" [\[link\]](#)

now ‘*encourage*’ smokers to use them as a quit smoking aid.^{50 51} The products are sold as consumer goods and can also be sold through a therapeutic goods pathway after securing approval of the relevant regulator.

47. The **European Union** has also adopted a dual system, whereby there is an ordinary consumer market but also potential for a therapeutic market.⁵²

Vaping as a tobacco control strategy in overseas jurisdictions

48. Since they have been available around the world, vapes have been exclusively taken up by current smokers attempting to quit or reduce their smoking.⁵³
49. As of 2014, over 6 million Europeans had given up smoking completely by transitioning to vapes,⁵⁴ and it is likely that this figure has increased substantially since then. Similarly, over 1.5 million British smokers had quit as of 2016 with the aid of vaping,⁵⁵ and the latest figures from Public Health England (2018) estimate that 20,000+ British smokers a year continue to quit with the aid of vaping.⁵⁶ Approximately 770,000 of these went on to quit both smoking and vaping completely.
50. The UK government found that while the fall in the country’s smoking rate began to stall late in the last decade, smoking sharply reduced between 2012 and 2014 – a period coinciding with rapid uptake of vaping. By 2014, it had hit a record low of 17.4%.⁵⁷ The only significant tobacco control measure implemented by the UK government during this time were cigarette display bans which did not come into effect until 2015, towards the period’s end.⁵⁸
51. A similar trend is observed in the United States where adult smoking rates have fallen rapidly between 2010 and 2017 – from 19.4% to a record low of 14.4% - below Australia’s smoking rate despite the prevalence of far stricter tobacco control regulations including plain packaging and the world’s highest cigarette prices in Australia.⁵⁹
52. Smokers in the US who attempt to quit with the aid of e-cigarettes were over 73% more likely to succeed than those who do not use vapes.⁶⁰ Studies have found that vapes are at least as effective as other nicotine replacements to aid smoking cessation,⁶¹ and are likely to reach more smokers due to their suitability as a cigarette substitute.⁶² A UK study observed 15,532

⁵⁰ Public Health England. E-cigarettes around 95% less harmful than tobacco estimates landmark review.

E-cigarettes: an evidence update 19 August 2015. [\[link\]](#)

⁵¹ NHS Health Scotland. Consensus statement on e-cigarettes. 2017 [\[link\]](#) Accessed 29 September 2017.

⁵² European Commission. Tobacco Products Directive, Electronic cigarettes, Article 20. 2014. [\[link\]](#)

⁵³ McNeill A, Brose LS, Calder R, Hitchman SC, Hajek P, McRobbie H. E-cigarettes: an evidence update. A report commissioned by Public Health England. PHE publications gateway number: 2015260 2015. [\[link\]](#)

⁵⁴ 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.

⁵⁵ ASH. Use of electronic cigarettes (vapourisers) among adults in Great Britain. Fact sheet. May 2017 [\[link\]](#)

⁵⁶ Evidence review of e- cigarettes and heated tobacco products 2018. A report commissioned by Public Health England [\[link\]](#)

⁵⁷ Office of National Statistics (UK), Adult Smoking Habits in Great Britain 1974-2014. 18 February 2016 Table 1 [\[link\]](#)

⁵⁸ Ibid.

⁵⁹ CDC, National Health Interview Survey, 2017 [\[link\]](#)

⁶⁰ Zhu S. E-cigarette use and associated changes in population smoking cessation. *BMJ* 2017 [\[link\]](#)

⁶¹ Clearing the Air: a systematic review on the harms and benefits of e-cigarettes and vapour devices. University of Victoria, Centre for Addictions Research BC, Canada. January 2017 [\[link\]](#)

⁶² Glasser AM. Overview of Electronic Nicotine Delivery Systems. *Am J Prev Med* 2017. [\[link\]](#)

recent smokers and found that those who use e-cigarettes daily were thrice as likely to have quit smoking by the end of the study than those who had never used e-cigarettes.⁶³

53. Data from the United States' 2014/15 Tobacco Use Supplement-Current Population Survey (TUS-CPS) found that both quit attempts and the success rate of quit attempts were positively correlated with vape use.⁶⁴ A survey of over 15,000 American smokers also found that vapes are now more popular than FDA-approved medications as a tobacco cessation aid.⁶⁵ They are also the most popular quitting aid in the UK.⁶⁶

Dispelling misleading evidence about vaping

54. A number of misleading comments have been made by anti-vaping advocates about vaping. The assembly should reconsider the following evidence below when forming a decision regarding the Bill.
55. Contrary to anti-vaping arguments, there is no evidence that e-cigarettes provide a 'gateway' to smoking for youths as they enter adulthood.⁶⁷ This claim is not supported by the evidence, which instead finds that vapourised nicotine has almost exclusively been taken up by smokers attempting to quit or lower their intake,⁶⁸ therefore acting as a 'gateway' *away* from tobacco smoking.
56. A 2014 study in the American Journal of Preventative Medicine found that the few nicotine vape users who were not smoking previously, used the product only 1-2 days a week, indicating that any residual harm from legalised nicotine vaping is minimal.⁶⁹
57. Similarly, evidence from large, national cross-sectional studies also show no evidence that vaping uptake increases the ranks of future smokers in countries where nicotine vaping is legal.⁷⁰
58. Nicotine patches and gums have existed and been approved for smokers as young as 12 years old for 30 years, yet no evidence of adverse effects on adolescent brain development have emerged.⁷¹

⁶³ Giovenco DP. Prevalence of population smoking cessation by electronic cigarette use status in a national sample of recent smokers. *Addict Behav* 2017 [\[link\]](#)

⁶⁴ Levy DT. The Relationship of E-Cigarette Use to Cigarette Quit Attempts and Cessation: Insights From a Large, Nationally Representative U.S. Survey. *Nicotine Tob Res* 2017 [\[link\]](#)

⁶⁵ Caraballo RS. Quit Methods Used by US Adult Cigarette Smokers, 2014–2016. *Prev Chronic Dis* 2017 [\[link\]](#)

⁶⁶ Fidler, J. A., Shahab, L., West, O., Jarvis, M. J., McEwen, A., Stapleton, J. A & West, R. (2011). 'The smoking toolkit study': a national study of smoking and smoking cessation in England. *BMC public health*, 11(1), 479. [\[link\]](#)

⁶⁷ O'Leary R, MacDonald M, Stockwell T, Reist D. Clearing the Air: A systematic review on the harms and benefits of e-cigarettes and vapour devices. University of Victoria, BC: Centre for Addictions Research of BC.; 2017 [\[link\]](#); Polosa R. A critique of the U.S. SG's conclusions regarding e-cig use among youth and young adults in US. *Harm Red J* 2017 [\[link\]](#)

⁶⁸ McNeill A, Brose LS, Calder R, Hitchman SC, Hajek P, McRobbie H. E-cigarettes: an evidence update. A report commissioned by Public Health England. PHE publications gateway number: 2015260 2015. [\[link\]](#); Britton J, Bogdanovica I, McNeill A, Bauld L. Commentary on WHO report on electronic nicotine delivery systems and electronic non-nicotine delivery systems. UK Centre for Tobacco & Alcohol Studies. 2016.

⁶⁹ Warner, K. E. (2016). Frequency of E-Cigarette Use and Cigarette Smoking by American Students in 2014. *American journal of preventive medicine*.

⁷⁰ Kozlowski L, Warner K. Adolescents and e-cigarettes. Objects of concern may appear larger than they are. *Drug Alc Depend* 2017

⁷¹ Lee PN, Fariss MW. A systematic review of possible serious adverse health effects of nicotine replacement therapy. *Archives of toxicology*. 2016.

59. The presence of formaldehyde in e-cigarettes is misleading. This claim is based on a single study which produced formaldehyde from an e-cigarette by deliberately overheating it, thus engaging in unsafe use which is atypical of normal practice and akin to the dangerous effects of coffee being inferred from the consumption of an entire carton of coffee powder in a single sitting.⁷²
60. Subsequent research has confirmed that ‘The high levels of aldehyde emissions that were reported in a previous study were caused by unrealistic use conditions that create the unpleasant taste of ‘dry puffs’ to e-cigarette users and are thus avoided.’⁷³
61. Under realistic conditions, new-generation vapes emit minimal formaldehydes/g liquid at both low and high power.⁷⁴

Recommended amendments to the Bill

62. The purpose of regulations on tobacco control is to maximise the potential for adult smokers to quit while minimising the potential and minor risks to users and the wider community.
63. Regulation of vapes must be ‘proportionate’ to their risk. While vapes are not risk-free and are ‘less safe’ than not smoking or vaping, the overwhelming evidence indicates that they are significantly safer than legal tobacco smoking. As such, the amendment’s attempt to treat vapes the same way as tobacco cigarettes is not only unscientific and misguided, but contrary to evidence-based policy.
- 64. It is hence submitted that a separate *Vape Act* or *Vaping Act* should be enacted to encompass the regulation of these products.**
- 65. It is further submitted that given their proportionately greater risk to not smoking and not vaping, regulation of vapes under a Vaping Act should minimise these harms by including quality control and safety standards for products, regulations or guidelines on vape advertisement that prohibit advertising which appeals to non-smokers or minors and guidelines which approve specific messages that provide an accurate indication of the relatively lesser degree of harm these products pose for current smokers who transition.**
66. This approach is consistent with socially responsible regulations adopted in the UK.⁷⁵ The UK regulations preclude advertising that appeals to minors or targets non-smokers. ENDS advertisements cannot feature anyone appearing to be under the age of 25. These regulations can be adopted as standards and guidelines in Australia.
67. The Australian government should institute the promotion of ENDS as a safer alternative to smoking in guidelines for its anti-smoking advertisements and quit smoking campaigns. This approach is consistent with the 2017 UK Tobacco Control Strategy.⁷⁶

⁷² R. Paul Jensen, *et al.*, “Hidden Formaldehyde in E-Cigarette Aerosols,” *New England Journal of Medicine* **394** (January 2015): 392–4, doi: 10.1056/NEJMc1413069, [\[link\]](#)

⁷³ Farsalinos K. E-cigarettes emit very high formaldehyde levels only in conditions that are aversive to users. *Food Chem Tox.* 2017.

⁷⁴ Farsalinos K. Aldehyde levels in e-cigarette aerosol. Findings from a replication study and from use of a new-generation device. *Food Chem Tox* 2017.

⁷⁵ UK Advertising Code. UK Code of Non-Broadcast Advertising. 2016 [\[link\]](#)

⁷⁶ UK Govt policy paper, 18 July 2017 p. 16 [\[link\]](#)

68. The latest report (2018) from Public Health England has found that many smokers continue to remain uninformed about the relatively low risk of harm incurred by vaping compared to tobacco.⁷⁷ A comprehensive information strategy is therefore vital to ensure that consumers are making informed choices.
69. **Safety:** Safety guidelines should include child-resistant packaging in order to prevent leakage or accidental exposure. There should also be mandatory national product manufacturing standards for e-cigarettes. A range of standards have already been developed internationally such as European Union CEN standards and French AFNOR standards.
70. **Monitoring:** Continuing monitoring of the impact of ENDS products, including evidence on safety, uptake, health impact and effectiveness, should be undertaken. There should also be a focus on monitoring smoking cessation rates and the effect of evolving ENDS technologies in promoting improvements in smoking cessation. This will help inform evidence-based developments in the ENDS regulatory space. **Funding for monitoring and regulation can be derived from revenue generated through tobacco taxes, or in agreement with the vape industry, as vapes provide a viable alternative harm minimisation measure.**
71. **Exemption from Tobacco display bans:** Including vapes under the same display ban rules as tobacco will hurt small businesses such as vape shops and make it more difficult for smokers who are considering the transition to vaping to peruse the options and devices available. Vape shops should be able to display their products so as to engage with customers. Staff members would be able to advise customers on selection, safety, maintenance and usage. The display of vaping products and information helps to raise awareness about its safer nature as a cessation method. Customers should also have the opportunity to sample flavours in vape stores to make appropriate consumer decisions.
72. **Exemption from ‘smoke-free’ public place or workplace laws & outdoor smoking bans:** In cognisance of studies which have found no material health risk to passive smokers due to vaping,⁷⁸ and commensurate with the 2017 UK Government Tobacco Control Strategy, vapes should be exempt from smoke-free restrictions in workplaces and public places including airports. This will incentivise smokers to quit by transitioning to vaping. Businesses and local authorities should be able to make their own decisions regarding whether to permit vaping on their premises. Public health England and Action on Smoking have already developed guidelines based on evidence to facilitate public places and workplaces to create local policies. Banning e-cigarettes in public zones promulgates a misleading message that it is just as harmful as smoking cigarettes. It also dissuades smokers from switching and encourages relapse. **Applying the bans on smoking in outdoor areas to vapes is perverse and unscientific multiple studies have found that vapes do not pose any material risk to passive smokers.**^{79 80 81}

⁷⁷ Evidence review of e- cigarettes and heated tobacco products 2018. A report commissioned by Public Health England [\[link\]](#)

⁷⁸ Hall W, Gartner C, Forlini C. Ethical issues raised by a ban on the sale of electronic nicotine devices. *Addiction* 2015; 110:1061–7 [\[link\]](#); Igor Burstyn, “Peering Through the Mist: Systematic Review of What the Chemistry of Contaminants in Electronic Cigarettes Tells Us About Health Risks,” *BMC Public Health* 14 (January 2014) [\[link\]](#); Royal College of Physicians, *Nicotine without Smoke: Tobacco Harm Reduction*, April 2016 [\[link\]](#);

⁷⁹ Hall W, Gartner C, Forlini C. Ethical issues raised by a ban on the sale of electronic nicotine devices. *Addiction* 2015; 110:1061–7 <http://onlinelibrary.wiley.com/doi/10.1111/add.12898/abstract>

⁸⁰ Igor Burstyn, “Peering Through the Mist: Systematic Review of What the Chemistry of Contaminants in Electronic Cigarettes Tells Us About Health Risks,” *BMC Public Health* 14 (January 2014), <http://bmcpublichealth.biomedcentral.com/articles/10.1186/1471-2458-14-18>

⁸¹ Royal College of Physicians, *Nicotine without Smoke: Tobacco Harm Reduction*,

Answers to Inquiry questions

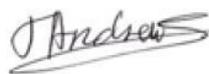
- 73. Should the assembly pass the bill?:** No. The bill unscientifically and incorrectly treats tobacco cigarettes the same as vapes. In doing so, the bill undermines public health outcomes by making it difficult for smokers to switch to a proven safer product which is also proven to improve their health.
- 74. Should the assembly amend the bill?:** It is preferable for the bill to be scrapped entirely instead of amended. A new bill that deals specifically with the regulation of vapes and which regulates them in a manner that is proportionate to their material risks and relative lack of harm compared to cigarettes should be drafted and passed. Points 64-72 of this submission outline an alternative regulatory framework based on international best practice which will improve public health outcomes and help combat smoking and smoking-related harms while minimising any harms or potential harms related to vaping.
- 75. Does the bill have sufficient regard for the rights and liberties of individuals?** No, the bill does not have sufficient regard for individual liberties and rights. Product regulations are premised on the notion of supporting the informed choice of adult consumers, even where these activities are considered more harmful than not engaging in these activities. Prominent examples include the consumption of caffeine, alcohol and other products which cannot be regarded as ‘harm-free’ whereby the individual right and liberty to consume these products is respected as their relative harms do not meet a sufficient threshold for prohibition, and any limits on their use, such as through taxes, sales controls or safety guidelines for example, are proportionate to their relative risk. Given the relative lack of harm posed by vaping when compared to tobacco smoking and vaping’s value as a tobacco harm minimisation measure, regulations should support informed consumer choice and encourage smokers to transition to vaping while minimising any harms or potential harms arising to vapers and limiting the sale of these products to minors or non-smokers. This approach is consistent with international best practice in public health policy/tobacco control strategy, as well as with the principles of individual rights and liberties which are valued in Australia’s liberal democracy.

Conclusion

76. The Australian Taxpayers’ Alliance strongly opposes the recommendations of the Proposed Bill as reducing freedom of choice, hurting taxpayers through both increases in taxation and public expenditure, and doing little to reduce the rates of smoking.



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