

17 September 2018

Economic Policy Scrutiny Committee
Legislative Assembly of the Northern Territory

Board of directors
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Dr Alex Wodak AM
Dr Joe Kosterich
Dr Catherine Silsbury
Mr Stephen Elsom

Re: Tobacco Control Legislation Amendment Bill 2018

Thank you for the invitation to make a submission to the inquiry into the Tobacco Control Legislation Amendment Bill 2018.

The Australian [Tobacco Harm Reduction Association](http://www.athra.org.au) (ATHRA) is a health promotion charity established to improve public health by reducing the harm from tobacco smoking in Australia. ATHRA aims to raise awareness of tobacco harm reduction strategies and to provide accurate information to the public, health professionals and other stakeholders on reduced-risk alternatives to smoking.

ATHRA is managed by a Board of Directors, which consists of four independent medical practitioners and one consumer representative with an interest in public health. None of the directors have any financial or commercial relationship with any electronic cigarette or tobacco company.

Executive summary

- The Assembly should not pass the Bill
- The Northern Territory has the highest smoking rates in Australia. Indigenous adults in the NT have the highest smoking rates of all states and territories
- E-cigarettes are an established tobacco harm reduction tool for smokers who are unable or unwilling to stop smoking or nicotine unaided or with approved therapies
- E-cigarettes have helped millions of smokers to quit and could contribute substantially to reduced smoking rates and improved public health in the NT
- Electronic cigarettes are at least 95% less harmful than smoking
- The fundamental flaw of the Bill is that it **defines nicotine-containing electronic cigarettes as tobacco products**
- E-cigarettes are consumer products designed as a safer alternative to an existing lethal consumer product, combustible cigarettes
- E-cigarettes should be regulated according to their level of risk
- Regulation should encourage the uptake of a safer alternative to smoking, not discourage it. It is unethical to allow the sale of combustible tobacco products and restrict availability of a far safer alternative
- The Bill infringes the fundamental right of citizens to optimal health.

General comments

We appreciate the proposed legislation is well intentioned and aims to reduce the harm from smoking tobacco. However, the proposed approach will have the opposite effect. It will reduce access by smokers to far safer products, protect the cigarette industry and will lead to more smoking-related disease and death.

The Northern Territory has the highest smoking rate in Australia, 20.9% compared to the national average of 14.9% [[AIHW 2016](#)]. Smoking rates are especially high among **Indigenous people**. In 2014, 45% of Indigenous adults in the NT (18+) smoked daily, compared to the national average of 35% [[NATSISS, ABS 2017](#)].

Other disadvantaged groups also have higher smoking rates, such as those with mental illness, substance users, lower socio-economic groups, homeless people and prisoners. Smoking is the largest cause of financial and social inequalities.

Current strategies are no longer having the desired impact and new, innovative and effective strategies such as e-cigarettes are needed. Their availability in the Northern Territory could have a substantial effect on reducing smoking rates, improving public health and inequalities.

Nicotine-containing e-cigarettes are available as consumer products in most industrialised countries, such as the UK, US, EU, Canada and NZ and have helped millions of smokers to quit. The scientific consensus is that they are far less harmful than smoking and can help smokers who are unable or unwilling to quit unaided or with approved therapies.

This submission addresses e-cigarette use (vaping) specifically. However, we support the wider availability of other reduced-risk tobacco alternatives for the same reasons. These include

- Swedish snus
- Heated tobacco products

Definitions

The fundamental flaw of the Bill is that it **defines nicotine-containing electronic cigarettes as tobacco products**. Electronic cigarettes are not tobacco products. They do not contain tobacco, there is no combustion and smoke and they carry only a small fraction of the risk of tobacco products.

The presence of nicotine does not make e-cigarettes tobacco products, just as nicotine replacement therapies and tomatoes (which contain nicotine) are not tobacco products.

Classification as tobacco products carries a misleading message to smokers that e-cigarettes are equally harmful as tobacco cigarettes and would discourage their uptake. Instead, the uptake of vaping should be encouraged as a quitting tool or as a far safer substitute for smoking.

Tobacco classification would subject vaping devices to restrictions that are excessive for the level of risk involved and reduce their accessibility. Appropriate regulation of nicotine products should be based on risk and proportionate.

Vaping devices are **consumer products** designed to replace an existing lethal consumer product already on the market, combustible cigarettes. They are defined and regulated as consumer products in the UK, all countries of the EU, Canada and NZ.

Tobacco Harm Reduction

Complete cessation of all tobacco and nicotine is always the preferred goal. However, a large proportion of smokers are unable or unwilling to quit unaided or with conventional therapies and remain at high risk. Tobacco harm reduction (THR) aims to reduce the health risks in continuing smokers. This involves switching from combustible tobacco to a lower-risk alternative that delivers the nicotine smokers are addicted to, but without smoke. The most effective products available are e-cigarettes, Swedish snus (a moist oral smokeless tobacco in small pouches placed in the mouth) and heated tobacco products (which heat a special tobacco stick without combustion).

E-cigarettes can replace smoking by delivering high doses of nicotine as well as the behavioural and sensory aspects of the smoking ritual.

[Nicotine](#) has only a minor role in smoking-related disease. It does not cause cancer, lung disease or heart disease. Almost all the harm from smoking is caused by burning tobacco, which produces thousands of chemicals, tars, carbon monoxide, other toxic gases and solid fine particles. The overwhelming scientific consensus is that e-cigarettes are substantially safer than smoking, at least 95% less harmful according to the UK [Royal College of Physicians](#) and [Public Health England](#).

Harm reduction has already been successfully employed in other fields, such as HIV / AIDS, road safety and intravenous drug use. Here government programs have addressed high-risk behaviour (eg unsafe sex), through strategies, education and products to help change to lower-risk behaviour. Tobacco harm reduction is no different.

Tobacco harm reduction is mandated by Australia's international treaty commitments and our own national tobacco strategy:

- THR is an integral part of the World Health Organisation's [Framework Convention on Tobacco Control](#) (FCTC) treaty, under Articles 1(d) and 1(f). As a signatory of the FCTC Australia is obliged to introduce THR strategies along with other tobacco control measures.
- THR is also one of the objectives of the [National Tobacco Strategy 2012-2018](#), 'reduce harm associated with continuing use of tobacco and nicotine products' (Part 5.2, page 11). THR is complementary to conventional tobacco control strategies. (4)

The evidence to date

The most recent evidence on electronic cigarettes was summarised last month in the UK Parliament [House of Commons Science and Technology report on e-cigarettes](#), which concluded e-cigarettes are substantially less harmful than conventional cigarettes and are a proven stop-smoking tool. The report recommended:

'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'

- Vaporisers are ‘substantially less harmful—by around 95%—than conventional cigarettes’
- They ‘lack the tar and carbon monoxide of conventional cigarettes—the most dangerous components of conventional cigarettes—which are produced by combustion. Some potentially harmful components are present ... but at substantially lower levels in e-cigarettes’.
- ‘Second-hand vapour does not cause harm’.
- ‘Concerns about the risk of e-cigarettes potentially providing a ‘gateway’ into conventional smoking, have not materialised.’
- ‘British youth experiment with e-cigarettes but regular use is rare and very largely confined to young people who have smoked’.

These findings are in close agreement with independent, comprehensive reviews of the evidence by other UK authorities:

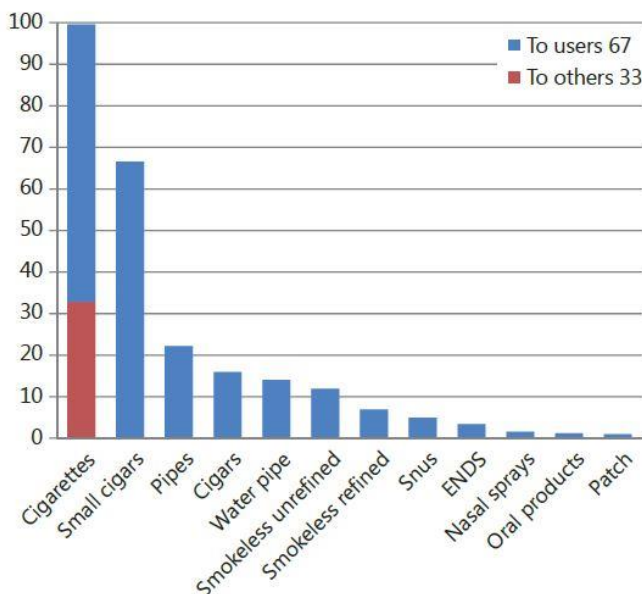
- Royal College of Physicians (UK)
[Nicotine without smoke. Tobacco Harm Reduction. RCP 2016](#)
- Public Health England (UK)
[Evidence review of e-cigarettes and heated tobacco products. Public Health England 2018](#)

Other international, independent reports which support vaping include:

- National Academies of Sciences, Engineering and Medicine (US)
[Public Health Consequences of E-Cigarettes. NASEM Jan 2018](#)
- Canadian Institute for Substance Use Research
[Clearing the Air Evidence Review Monograph, Uni Victoria, Canada. 2017](#)

Proportionate, risk-based regulation

All nicotine products fall on a risk-continuum and should be regulated according to their level of risk. At the high-risk end of the continuum are combustible cigarettes; at the low-risk end are nicotine replacement products and e-cigarettes. The following table shows the range of nicotine products and their level of risk [[link](#)]. The harm from e-cigarettes (ENDS) is only marginally higher than approved nicotine replacement products.



Regulation needs to strike the right balance between allowing the use of vaping by addicted smokers who are unable or unwilling to quit smoking as well as protecting the community from unintended consequences, such as uptake by non-smokers. According to the UK [Royal College of Physicians](#):

‘There is a need for regulation to reduce direct and indirect adverse effects of e-cigarette use, but this regulation should not be allowed significantly to inhibit the development and use of harm-reduction products by smokers’

We believe this Bill does not strike the correct balance.

Regarding the specific questions raised:

a) whether the Assembly should pass the Bill
<p>The Assembly should not pass the Bill. It incorrectly classifies electronic cigarettes as tobacco products and applies regulations which are not proportionate to risk.</p> <p>The Bill does not recognise that electronic cigarettes are a far less harmful alternative for smokers and function as a harm reduction alternative. E-cigarettes can result in substantial health improvements for smokers who switch.</p> <p>Harsh regulation will discourage uptake of vaping by addicted smokers and lead to worse public health outcomes. Light touch regulation as consumer products is needed to promote confidence in the products, make them accessible to smokers, raise awareness of their role and to encourage smokers to switch.</p>
b) whether the Assembly should amend the Bill
<p>The aim of regulations should be to maximise the substantial benefits to adult smokers who are unable to quit while minimising the small, potential risks to users and the wider community. Regulation should make e-cigarettes more accessible, introduce quality and safety standards and make switching to the safer alternative more appealing.</p> <p>Excessive and harsh regulatory controls can have harmful unintended consequences and lead to the perpetuation of smoking. According to the Royal College of Physicians:</p> <p>‘A risk-averse, precautionary approach to e-cigarette regulation can be proposed as a means of minimising the risk of avoidable harm, eg exposure to toxins in e-cigarette vapour, renormalisation, gateway progression to smoking, or other real or potential risks. However, if this approach also makes e-cigarettes less easily accessible, less palatable or acceptable, more expensive, less consumer friendly or pharmacologically less effective, or inhibits innovation and development of new and improved products, then it causes harm by perpetuating smoking. Getting this balance right is difficult.’</p>

Electronic cigarettes should be managed under the existing consumer laws, and not covered under tobacco or therapeutic legislation. Regulatory options for vaping include:

- Modifying the Tobacco Control Act to include a separate section on e-cigarettes eg converting it to the Tobacco Control and Vaping Act, allowing for different and appropriate regulation for each category.
In Canada, the Tobacco Act became the Tobacco and Vaping Products Act when nicotine-vaping was legalised
- As a separate Bill, eg the Vaping Bill
- As part of an existing consumer Bill

Suggested proportionate, risk-based regulation for e-cigarettes

1. Sales

Restricting sale and supply of nicotine containing e-cigarettes to people under 18 years, the minimum age of legal cigarette purchase, is the most politically acceptable rule. Similarly, vending machines would be restricted to adult environments.

2. Advertising

Responsible advertising and promotion are recommended to inform addicted smokers of the benefits of vaping and to encourage uptake as a safer alternative. Banning the advertising of low-risk products is disproportionate and is similar to banning anti-smoking advertising. Excessive restriction impairs the ability of the safer product to compete with cigarettes.

It is possible to provide protection to young people by restricting the timing, placement and subject matter of advertising – an approach often used to restrict alcohol advertising. While some exposure to young people is unavoidable, the evidence so far shows that e-cigarettes are likely to be reducing youth smoking rates, not increasing them and there is no significant evidence of harm.

Some restrictions are appropriate to protect youth and non-smokers. For example, the UK [Code of Non-Broadcast Advertising](#) outlines a range of sensible rules.

3. Product quality and safety standards

Mandatory national product manufacturing standards for e-cigarettes and e-liquids are required. Internationally, a range of standards have been/are being developed, such as the French AFNOR standards and the European Union CEN standards.

Issues covered include manufacturing standards for devices and components; E-liquid standards; Emissions standards; Refill bottle design: child resistant containers; Labelling; Packaging standards; Electrical safety

4. Display and taste testing

Vape shops

Vape shops should be able to display products and discuss them with customers. Staff members (who often vape) help users select the right device from a wide range of choices, teach them to use, clean and maintain them, advise on e-liquid selection and electrical safety issues.

Customers should be able to sample flavours in vape stores as this is an important factor in choosing the right product. Two studies of vape stores have found no evidence of significant exposure to hazardous chemicals in ambient air.

Tobacconists

Display of vaping products and information about vaping should be allowed where combustible cigarettes are sold to raise awareness of the safer alternative and to encourage switching.

5. Point of sale restrictions

There is no justification for restricting point of sale outlets to one per shop.

6. Use in public and smoke-free areas

Allow businesses and local authorities to make their own decisions about whether to allow **indoor** vaping in their premises. Unlike second-hand tobacco smoke, there is no evidence that such passive exposure is likely to cause significant harm.

Public Health England and Action on Smoking and Health UK have both produced evidence-based guides to help public places and workplaces make local policy. This approach is also supported in New Zealand.

The issue for bystanders is one of nuisance and etiquette, not public health. This does not justify legislation to override the preferences of owners or managers of public spaces.

The benefits of allowing e-cigarette use in some workplaces and public places outweigh concerns that this might normalise smoking behaviour.

- There is no evidence that e-cigarettes are renormalising tobacco smoking
- Banning e-cigarettes sends the misleading message that they are just as harmful as smoking and could deter switching from smoking to vaping
- Bans may drive vapers out with smokers and encourage them to start smoking
- Indoor vaping bans remove one advantage of vaping relative to smoking and so may discourage switching and encourage relapse

There is no justification for **outdoor** vaping bans.

7. Vaping in motor vehicles with children <16 years

There is no evidence of harm from passive vaping. However, restricting vaping in the confined space of a motor vehicle when children are present seems reasonable.

8. Licensing of retailers

This is appropriate. A separate licence to the licence for tobacconists.

9. Post market surveillance

Post-marketing surveillance will be required to evaluate the effects of legislation. Product notification and recall pathways are required as well as enforcement procedures, such as for sales to youth, and continuing research.

c) whether the Bill has sufficient regard to the rights and liberties of individuals

The Bill infringes the fundamental right of citizens to optimal health. Smoking is a very powerful addiction and many smokers try and fail repeatedly to quit. Vaping is a far safer alternative to smoking. It is unscientific and unethical to prevent access to a much less harmful alternative which is likely to lead to substantial health improvements.

The 'harm principle' developed by [John Stuart Mill](#) should be considered

'That the only purpose for which power can be rightfully exercised over any member of a civilized community, against his will, is to prevent harm to others. His own good, either physical or moral, is not a sufficient warrant.'

As there is **no evidence of harm from exhaled vapour**, the state has no right to restrict the freedom of individuals to make safer choices which are not causing harm to others.

Furthermore, there is no justification on health grounds for a **blanket ban** or prohibition of vaping. A more nuanced approach is needed. The decision to restrict or allow vaping in private premises and workplaces should be left up to the individual owners, not the government.

People have the right to seek and receive accurate information concerning health issues. By treating reduced-risk products the same as smoked tobacco, this Bill sends the incorrect messages that they are just as harmful as smoking and discourages their use.

d) whether the Bill has sufficient regard to the institution of Parliament.

No response

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On behalf of the Board of Directors of ATHRA