

Submission of Dr James Martin
To the Community Affairs Legislation Committee inquiry
Therapeutic Goods and Other Legislation Amendment
(Vaping Reforms) Bill 2024
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I am a senior lecturer in criminology at Deakin University. I have long-standing research expertise in illicit markets, encompassing consumer behaviour and demand, criminal supply networks, and associated policing challenges and strategies, and have provided specialist consultation on these matters to a range of law enforcement agencies, including the Australian Federal Police, Australian Criminal Intelligence Commission, NSW Police State Crime Command, Victoria Police Intelligence and Covert Support Command, and the NSW Crime Commission. I have never sought nor received any funding from the tobacco or vaping industries.

National trends in vaping

Contemporary trends in vaping are well understood with detailed data provided by the recent large-scale National Drug Strategy Household Survey 2022-23 conducted by the Australian Institute of Health and Welfare (AIHW)¹. This report shows that far from being a ‘youth’ phenomenon, vaping is overwhelming concentrated amongst the adult population, with 93% of people who vape being over the age of 18. Daily vaping is most prevalent amongst Australians aged 18-24 (9.3%), 25-29 (6.5%), and 30-39 (4.9%).

There has been much sensationalist media reporting and public alarm around youth vaping, prompted in part by government claims of a ‘new generation of addicts’. However, alarmist government rhetoric on this issue is inconsistent with its own data. The AIHW survey shows that over 70% of teens aged 14-17 have never tried a vape, and just 3.5% vape daily. While any youth vaping is cause for concern, these data suggest that underage vaping is overwhelmingly associated with curiosity and occasional experimentation rather than dependence and are hardly representative of a ‘generation lost to addiction’.

The latest AIHW report also shows that decreases in tobacco use are most pronounced amongst age cohorts that have shown the highest uptake of vaping. This includes under 18s, amongst whom smoking has dropped to its lowest ever recorded level. These data are inconsistent with ‘gateway theories’ that claim that vaping leads to smoking, but rather indicate that vaping is displacing smoking, particularly amongst younger Australians.

Vaping prescriptions and prohibition

87% of people who vape in Australia source their products illegally. This indicates that the current prescription model for vapes has already been rejected by the overwhelming majority of people who vape. People who preference the black market are likely influenced by the additional expenses associated with having to see a GP, associated burdens in time and inconvenience, the limited availability of popular devices (particularly refillable pods), and difficulty in locating pharmacies that stock vaping products. The unpopularity of the prescription model is likely to be further negatively impacted by recently introduced restrictions on flavours in vaping products. While many consider flavours as evidence that vaping products are marketed towards children, flavours are

¹ Australian Institute of Health and Welfare (2024) National Drug Strategy Household Survey 2022-2023, Australian Institute of Health and Welfare, Australian Government, Canberra.

important for adult consumers and have been shown to be play a major role in encouraging smokers to switch to vaping²³⁴.

The demonstrated unpopularity of the prescription model means that current restrictions on vaping products amount to prohibition. Arguments to the contrary rest on the flawed assumption that if people who vape can acquire a medical prescription, then vaping products are not ‘prohibited’. This argument is inaccurate. Alcohol was available via medical prescription during the United States’ failed experiment with alcohol prohibition. However, the availability of medical prescriptions did not make alcohol any less prohibited for the vast majority of consumers for whom the black market represented a more easily accessible, affordable, and attractive alternative. So too is this the case with contemporary vaping in Australia.

The black market

Government restrictions on vaping products have resulted in a large and growing domestic black market. AIHW data show that approximately 6% of the Australian population or 1.3 million citizens, have purchased an illegal vaping product at least once in the past 12 months. This means that illicit vaping products constitute the second largest illegal drug market in the country, being significantly smaller than cannabis (11.5% of the population) but larger than cocaine (4.5%).

While it is difficult to precisely estimate the value of the black market due its clandestine nature, the figures that we do have are alarming. For example, The Victorian Parliamentary Budget Office estimates that the black market for vaping products is valued at more than \$500 million in Victoria alone⁵. Extrapolating these figures country-wide equates to a national illegal vaping market worth in excess of \$2 billion.

It is self-evident that such a large black market represents an extraordinarily lucrative opportunity for organised crime groups who specialise in the trafficking and distribution of illegal goods. These criminal actors often employ violence and intimidation against one another and other market participants (including inadvertent and unwilling ones, such as convenience store owners) to increase their market share and grow their profits. Victoria in particular has been witness to major levels of criminal violence and intimidation, with dozens of firebombings and several homicides associated with the sale of illicit vaping and tobacco products over the past 12 months⁶. Despite the predominance of the known violence occurring in Victoria, this is a national problem, with police reporting similar instances of arson occurring across the country⁷.

² Gendall, P., & Hoek, J. (2021). Role of flavours in vaping uptake and cessation among New Zealand smokers and non-smokers: a cross-sectional study. *Tobacco Control*, 30(1), 108-110.

³ Friedman, A. S., & Xu, S. (2020). Associations of flavored e-cigarette uptake with subsequent smoking initiation and cessation. *JAMA network open*, 3(6), e203826-e203826.

⁴ Gades, M. S., Alcheva, A., Riegelman, A. L., & Hatsukami, D. K. (2022). The role of nicotine and flavor in the abuse potential and appeal of electronic cigarettes for adult current and former cigarette and electronic cigarette users: a systematic review. *Nicotine and Tobacco Research*, 24(9), 1332-1343.

⁵ The Canberra Times (2024) ‘Vape market worth up to \$500 million in Victoria’.

<https://www.canberratimes.com.au/story/8513145/vape-market-worth-up-to-500-million-in-victoria/>

⁶ The Guardian (2024) Tobacco wars: ‘multiple explosions’ heard at another suspected arson attack in Melbourne. <https://www.theguardian.com/australia-news/2024/jan/14/reports-of-multiple-explosions-at-melbourne-tobacco-shop-fire>

⁷ The Guardian (2023) ‘Earn or burn’: the firebombings and underworld conflicts exposing Australia’s illicit tobacco trade. <https://www.theguardian.com/australia-news/2023/oct/22/earn-or-burn-the-firebombings-and-underworld-conflicts-exposing-australias-illicit-tobacco-trade>

Prohibition of large-scale and established black markets are very rarely successful⁸⁹¹⁰¹¹. This is because when demand for an illicit good is high, as is the case with non-prescription vapes in Australia, it is not possible for law enforcement interventions to be mounted at such a scale as to sufficiently undermine the profitability of groups engaged in supply. Tactical successes, such as arrests and seizures, may make good opportunities for publicity, but their practical effects on the market are inevitably short-term and do not affect the long-term profitability of criminal enterprises. Even when large-scale and sophisticated criminal networks can be disrupted, the promise of extraordinary profits mean that there are always new criminal actors ready to step in and supply the market.

Given that vaping products can be purchased wholesale for as little as \$2.50 from legal manufacturers in China¹², and can be retailed for more than 10 times that amount on ‘the street’¹³, the massive profit margins available indicate that law enforcement interventions have little chance of meaningfully diminishing the availability of illegal vapes. Australian Border Force is already stretched well beyond capacity, with the vast majority of illegal drugs sent to Australia successfully making it past border controls¹⁴. Even if 8 out of 10 consignments of illegal vapes were intercepted at the border (an unrealistically high proportion on even the best of days), the two that make it through would ensure that enterprise remains profitable.

Large-scale crackdowns on the retailing of illegal vapes are similarly unfeasible. The Australian Federal Police and state law enforcement agencies have a long list of more pressing crime problems to prioritise (except in the increasing number of instances when competition between suppliers of illegal vapes erupts into serious violence and property damage). Additional funding for health agencies to police retail shops involved with the sale of illegal vaping products may drive some retailing underground, but would be resource intensive and will not affect the fundamental economic profitability of the illegal trade. Rather, criminal enterprises which specialise in evading government controls will adapt and continuing supplying their customers by whatever means available, as is the case with other illegal drugs which are generally cheaper and more readily available than ever¹⁵.

Conclusions

- Current government approaches to vaping are overly restrictive and, as detailed above, have been driven by a misinformed moral panic around youth vaping. Vaping is overwhelming concentrated amongst adult Australians, the vast majority of whom have rejected the government’s current prescription model.
- Australia’s pathologization of vaping is out of step with our international partners, who do not treat people who vape as ‘sick’ and in need of ‘medicine’ but rather as exercising a sensible consumer preference for a less dangerous alternative to tobacco smoking (which remains the leading cause of preventable death in Australia).

⁸ Miron, J. A. (2017). The economics of drug prohibition and drug legalization. In *Drug Abuse: Prevention and Treatment* (pp. 403-423). Routledge.

⁹ Gray, J. (2001). *Why our drug laws have failed: a judicial indictment of war on drugs*. Temple University Press.

¹⁰ Buchanan, J. (2015). Ending drug prohibition with a hangover. *British Journal of Community Justice*, 13(1), 55.

¹¹ Boettke, P. J., Coyne, C. J., & Hall, A. R. (2012). Keep off the grass: The economics of prohibition and US drug policy. *Or. L. Rev.*, 91, 1069.

¹² Made-in-China (2024) Made-in-China wholesale vaping products website. https://www.made-in-china.com/products-search/hot-china-products/Wholesale_I_Vape.html

¹³ ABC News (2023) No fines issued despite rampant selling of illegal vapes in WA, as parent vents frustration. <https://www.abc.net.au/news/2023-05-04/parent-pleads-for-help-to-deal-with-vaping-teens-as-governments/102296538>

¹⁴ Australian Criminal Intelligence Commission (2023) *Illicit drug data report 2020-21*. ACIC, Canberra.

¹⁵ National Drug & Alcohol Research Centre (2021) *Australian Drug Trends 2021: Key findings from the National Ecstasy and Related Drugs Reporting System (EDRS) interviews*. UNSW. Sydney.

- While the long-term effects of vaping cannot be known at this point, international research suggests that it is substantially less harmful than tobacco smoking¹⁶¹⁷¹⁸¹⁹. Indeed, the reduced harm associated with vaping compared to tobacco smoking is why public health authorities in comparable nations, such as the UK²⁰, Canada²¹ and New Zealand²² have embraced vaping as a means to improve public health.
- Australia's approach to vaping is inconsistent with the government's National Drug Strategy 2017-2026, which emphasises harm minimisation as critical to reducing drug-related harms. It makes little sense to impose more punitive restrictions on vaping products compared to widely available and significantly more harmful tobacco products.
- Government restrictions on vaping products have inadvertently created an extraordinarily large, highly profitable, uncontrollable, and dangerous black market. With more than a million regular consumers, this now represents the second largest illegal drug market in the country. The effective prohibition of consumer vaping products constitutes a major crime problem and is associated with serious levels of violence.
- Government restrictions also place an unreasonable burden on already stretched law enforcement agencies. Law enforcement interventions are costly and ineffective in controlling a black market of this size, and are incapable of impacting the long-term profitability of criminal groups which supply the black market.
- Lastly, the growing black market for vaping products risks undermining public health gains. By definition, black markets sit outside the control of government, meaning that products are sold without regard to age restrictions or consumer safety standards. While there are health risks associated with vaping, these risks can be better managed and minimised via legal and regulated markets for these products, just as they are in other comparable nations.

Recommendations

Based on the discussion above, this submission makes three recommendations for government:

- In order to eliminate the black market for vaping products, the government should scrap the prescription-only model. Instead, legislation should be passed ensuring that vaping products be sold via specially licensed premises, with restrictions on advertising (including implementation of plain packaging) and limits on access to under 18s, as is the case with tobacco products.
- The government should implement consumer safety standards for vaping products, emulating successful approaches used overseas, such as in the European Union. These

¹⁶ Marques, P., Piqueras, L., & Sanz, M. J. (2021). An updated overview of e-cigarette impact on human health. *Respiratory research*, 22(1), 151.

¹⁷ Polosa, R., Cibella, F., Caponnetto, P., Maglia, M., Prosperini, U., Russo, C., & Tashkin, D. (2017). Health impact of E-cigarettes: a prospective 3.5-year study of regular daily users who have never smoked. *Nature Scientific Reports*, 7(1), 13825.

¹⁸ Wu, G., Gong, S., He, Y., & Liu, D. (2023). Smoking is associated with elevated blood level of volatile organic compounds: a population-based analysis of NHANES 2017–2018. *Archives of Public Health*, 81(1), 55.

¹⁹ European Commission (2021). Opinion on electronic cigarettes. *European Commission Scientific Committee on Health, Environmental and Emerging Risks*.

²⁰ UK National Health Service (2024) Using e-cigarettes to stop smoking. UK NHS website. <https://www.nhs.uk/live-well/quit-smoking/using-e-cigarettes-to-stop-smoking/>

²¹ Health Canada (2024) Risks of vaping. Health Canada website. <https://www.canada.ca/en/health-canada/services/smoking-tobacco/vaping/risks.html>

²² Ministry of Health New Zealand (2024) Ministry of Health website. <https://vapingfacts.health.nz/the-facts-of-vaping/what-is-vaping/>

regulations will ensure that vaping products are free of adulterants, have sensible limits on nicotine concentrations, be sold in child-resistant packaging, and contain appropriate health warnings.

- The government should also engage in public health messaging that accurately and objectively explains the risks and harms associated with vaping compared to tobacco smoking. This would facilitate demand reduction for vaping products, assist in educating and empowering adult consumers, and reduce health costs by encouraging tobacco smokers to switch to a less harmful alternative.

I thank the committee for the opportunity to submit this document and for their time and consideration.

Yours sincerely,

Dr James Martin SFHEA
Senior Lecturer in Criminology
School of Humanities and Social Sciences
Deakin University