

Closing loopholes in Australian vaping laws: Why Australia's proposed vaping reforms are sound public health policy

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It's a story we have heard countless times in recent years from young people – accessing vapes is easy, common, and happening at school, online, and through convenience retailers.¹ The widespread availability and retailing of vapes across Australia has gone hand in hand with the rapid rise in young people vaping. The sale of vapes from local shops, positioned near schools, and with their enticing displays of candy and sweets lining the entrance, attracts a new young customer base. The vapes themselves come in the very same candy-scented flavours and are sold cheaply, and illegally, to young people. These self-claimed 'responsible retailers' are addicting a new generation to nicotine (see Fig. 1).

In October 2021, the Australian Government made it illegal to sell vaping products that contain nicotine – to anyone – at retail outlets.² Users of nicotine vaping product are required to have a prescription from a doctor and must purchase the vaping liquids from a pharmacy if they wish to legally access a vape within Australia, or through the personal importation scheme.

So how then have vape shops and sellers been able to continue to illegally sell vaping products? How have children continued to very easily access vaping products? Because so-called non-nicotine vapes are currently exempt from the prescription-only access model. This means retailers can readily incorporate vape retailing within their existing business model, be it a tobacconist, convenience store, chicken shop, or petrol station, and claim to only be selling non-nicotine vapes to adult customers. In reality, these irresponsible retailers are knowingly selling nicotine-containing vapes to young people. This is evidenced by the high-volume of illegal product seizures reported by nearly all Australian governments.³

Advocates for more liberal market access to vapes accuse the Australian prescription-model of creating a 'black market' for vaping products.⁴ Their favoured solution is to allow nicotine-vapes to be sold

by 'responsible retailers', just like any other consumer good. The very same "responsible retailers" who are illegally selling vaping nicotine vaping products.⁵ For example, the British American Tobacco funded 'Responsible Vaping Australia' campaign is a thinly veiled 'astro-turf' lobbying effort to weaken vaping laws.⁴ Given how easily young people can access nicotine-vapes, Australia currently has a 'free-for-all market' rather than a 'black market'. The October 2021 prescription-only access model has never been implemented fully in Australia due to the glaring omission of not capturing non-nicotine vapes and associated enforcement challenges. Enforcing the non-nicotine only policy is not only time consuming, due to rigorous seize-and-test for nicotine protocols required by authorities, but also a losing battle given the high-volume of products being imported and sold.

No one is pretending there is a large market for non-nicotine vapes. Inexperienced users of vapes report being curious about nicotine effects, including head-spins, while more experienced users quickly find themselves addicted to nicotine. To be clear, non-nicotine vapes are not simply 'flavoured water vapour' and often contain banned chemicals that are known to be harmful.⁶ The loophole that allows non-nicotine vapes to be legally sold has served only to undermine the prescription-only access model and has allowed the tobacco and vaping industry to cry foul that the system isn't working. Closing this loophole is a key strategy to ending young people's easy access to vapes.

Under proposed reforms announced in May 2023 by Federal Health Minister Mark Butler, vape products – regardless of nicotine content – will no longer be permitted for general retail sale in Australia.⁷ All vaping products will be deemed prohibited imports and all vaping liquids will only be sold in pharmacies, with a valid prescription. This move sits within a package of foreshadowed vaping reform measures that will also include more tightly regulating the prescription vaping

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Fig. 1: Vaping products seized by NSW Ministry Health, Image credit NSW Ministry of Health.



products that will be available for use. There will be limits on nicotine concentration and flavours and disposable vaping products will not be permitted. This essential legislative change will both end easy access to vapes, and facilitate a prescription-only pathway for valid users. The prescription-only model will finally be implemented fully and able to function as originally intended. Together, these reforms will stop the overwhelming flood of illegal vaping products coming into Australia and see the end of local shops selling vapes.

Comprehensively addressing access and supply of vaping products is crucial if Australia hopes to roll back the alarming rise in young people vaping, who are then vulnerable to life-long nicotine addiction. Other jurisdictions that have taken a soft approach to vaping regulation, such as banning flavour descriptors, or restricting advertising, have not seen youth vaping rates significantly decline.⁸ While Australia has had much success in reducing tobacco smoking rates, through the continuous adoption of public health strategies over decades, it

seems absurd to not learn from the past. We must not lose sight of the fact that today, the overwhelming majority of Australian adults and young people do not smoke. Allowing harmful, addictive products, marketed to children, to be freely sold in every corner shop, in every community, is simply not sound public health policy.

Ensuring that vaping products are only accessible to people seeking to use them to fully quit smoking, is a cornerstone of this policy change. All smokers should have easy access to support and evidence-based advice from a health professional about quit smoking tools, medicines, and methods. There is no call to 'ban' vaping, nor is there a call to criminalise people who vape. Rather this policy position strikes a balance between protecting young people from a notoriously predatory industry and providing controlled access to a highly addictive and harmful product.

Concerns have been raised that this policy will have dire, unintended consequences, particularly that young people will turn to smoking if

they are unable to easily access vaping products. Australia is amongst nations with some of the strongest tobacco control policies in the world, which will soon be made even stronger. Cigarettes in Australia are expensive, sold in unbranded packages with graphic health warnings, do not have the same pleasant flavours and smell as vapes, and it is socially unacceptable to smoke in most public places. A separate package of tobacco control reforms has been announced by Minister Butler that will see tobacco health warnings refreshed, flavoured and menthol-cigarettes banned, online advertising prohibited, and greater reporting requirements placed on the tobacco industry.⁷ Attempts by vaping advocates to delay or water-down these planned vaping reforms also distract from the fact that non-smokers who try vaping have around threefold the odds of initiating smoking when compared with non-smokers who have not used vapes.⁹

Ending the retail sale of all vaping products and enabling a true prescription-only access pathway for users who are under the care of a health professional is smart policy. Australia has a proud history of taking the lead on novel public health policy reforms. The urgent introduction and enforcement of these reforms is needed to ensure that the window of opportunity to act to end youth vaping is not lost. Once this policy is adopted, Australia must then turn its attention to ending the general retail sale of tobacco products, a policy measure gaining increasing momentum globally. Whether vapes or tobacco, the only thing young people should be breathing into their lungs is clean air.

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Conflicts of interest

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