



Education and Health Standing Committee

Clearing the air on e-cigarettes

Factors regarding regulation that require consideration

**Report No. 1
June 2017**

Legislative Assembly
Parliament of Western Australia

Committee Members

Chair	Ms J.M. Freeman, MLA Member for Mirrabooka
Deputy Chair	Mr W.R. Marmion, MLA Member for Nedlands
Members	Ms J. Farrer, MLA Member for Kimberley
	Mr R.S. Love, MLA Member for Moore
	Ms S.E. Winton, MLA Member for Wanneroo

Committee Staff

Principal Research Officer	Dr Sarah Palmer, BA (Hons), PhD
Research Officer	Ms Jovita Hogan, BA (Hons)

Legislative Assembly	Tel: (08) 9222 7494
Parliament House	Fax: (08) 9222 7804
Harvest Terrace	Email: laehsc@parliament.wa.gov.au
PERTH WA 6000	Website: www.parliament.wa.gov.au/ehsc

Published by the Parliament of Western Australia, Perth.

June 2017.

ISBN: 978-1-925116-88-5

(Series: Western Australia. Parliament. Legislative Assembly. Committees.
Education and Health Standing Committee. Report 1)

328.365

Education and Health Standing Committee

Clearing the air on e-cigarettes

Factors regarding regulation that require consideration

Report No. 1

Presented by

Ms J.M. Freeman, MLA

Laid on the Table of the Legislative Assembly on 29 June 2017

Chair's Foreword

THE use of e-cigarettes has been increasing in Australia over the past five years, but many of us still do not know what they are and whether they are harmful or helpful. The battery-operated devices heat a cartridge of liquid which produces a vapour for inhaling and exhaling. This is known as vaping. Whilst they have been targeted at people who are trying to quit smoking, the jury is still out as to their effectiveness in this regard, and public health bodies have raised concerns about the unknown ill-effects of vaping.

To this end, devices containing liquid nicotine are banned in Australia. However, it is not illegal to use non-nicotine e-cigarettes, which usually contain a flavoured liquid. The problem for Western Australians is that it is illegal to supply any product that resembles a tobacco product, so people in this state who want use non-nicotine e-cigarettes have to source them elsewhere. But how can they be confident they are getting what they ordered in this unregulated market? It is known anecdotally that cartridges which say they do not contain nicotine do in fact contain nicotine. Furthermore, users may be blissfully unaware that it is illegal to sell or use nicotine-based e-cigarettes.

Similarly, there is a level of uncertainty about vaping in smoke-free areas. At present, it is up to the owners of individual premises to decide whether to allow it or not. Our regulations have nothing to say on this topic. People vaping in places where smoking is not allowed presents a mixed public health message.

While other countries around the world have legalised nicotine e-cigarettes because they are seen as significantly less harmful for smokers than traditional cigarettes, Australia is yet to be convinced. For the time being at least, we have to work around a nonsensical regulation that allows the sale of nicotine for indisputably harmful tobacco products but not for a product which is widely regarded as less harmful.

A federal parliamentary committee inquiry announced recently may or may not change this; regardless, there are many unanswered questions about e-cigarette use and Western Australians, including health workers, need to be given a clearer understanding of the issues. Although labelled a report, what we are presenting here is more along the lines of a discussion paper, with the intention of prompting the State Government to consider how to deal with e-cigarettes into the future.

A handwritten signature in blue ink, appearing to read 'James Freeman', with a long horizontal flourish extending to the right.

MS J.M. FREEMAN, MLA
CHAIR

Contents

Ministerial Response	i
1 The law as applied to e-cigarettes	1
<hr/>	
It is time to look more closely at regulation	1
E-cigarettes produce vapour, not smoke	2
Vaping is cheaper than smoking	3
Nicotine used in e-cigarettes is classed as a poison	3
People in WA have found a way to use e-cigarettes	4
Altering the classification of nicotine as a dangerous poison is difficult	5
Current regulations are mostly in reference to non-nicotine e-cigarettes	8
2 Arguments for and against restriction	11
<hr/>	
For restriction - <i>The risks of vaping are unknown</i>	11
Against restriction - <i>E-cigarettes are the safer alternative</i>	12
In conclusion	14
Appendices	15
<hr/>	
1 Terms of reference for Federal parliamentary committee inquiry	15
2 Committee's functions and powers	17
3 Glossary	19
4 Acronyms	21

Ministerial Response

In accordance with Standing Order 277(1) of the Standing Orders of the Legislative Assembly, the Education and Health Standing Committee directs that the Minister for Health reports to the Assembly as to the action, if any, proposed to be taken by the Government with respect to the recommendation of the Committee.

Chapter 1

The law as applied to e-cigarettes

It is time to look more closely at regulation

Electronic cigarettes are becoming increasingly popular, particularly among smokers seeking to quit the habit. There are two main types of electronic cigarettes, commonly known as e-cigarettes: those that contain liquid nicotine, and those that do not. In Australia, it is not legal to sell or to use e-cigarettes that contain nicotine. Regulation of the non-nicotine devices varies from state to state.

Following a parliamentary inquiry in 2015–16, South Australia is in the process of amending its tobacco legislation to include e-cigarettes in the restrictions imposed on tobacco products. Most other Australian jurisdictions are preparing to review their legislation, if they have not already done so. The regulation of non-nicotine e-cigarettes is largely due to concerns about possible unknown health effects.

Anecdotal evidence suggests that many Western Australians are unaware that nicotine e-cigarettes are illegal in Australia, and that selling a device which resembles a tobacco product is illegal in Western Australia. Knowledge of the rules governing the use of non-nicotine e-cigarettes is similarly scant, it seems; for example, business owners and patrons alike are unsure of their rights regarding use of e-cigarettes in smoke-free venues.

At the end of May, the Federal Government declared it would stand by its ban on nicotine-based e-cigarettes, but also announced an inquiry by a House of Representatives committee to review the ban.¹ The inquiry will investigate the role of e-cigarettes in helping people to quit smoking, any health impacts of using the devices, international approaches to regulation and legislation, as well as an appropriate regulatory framework for Australia. (*See Appendix 1 for full terms of reference.*)

Outcomes of the House of Representatives committee inquiry may impact on how states and territories regulate e-cigarettes. It is therefore important that parliamentary members are aware of the issues in the debate.

1 Joe Hildebrand, 'Gone in 60 seconds: Govt backs vaping law then announces inquiry one minute later', *News Limited*, 30 May 2017.

Chapter One

If nicotine-based e-cigarettes were legalised on the basis of a committee recommendation, it would open the door for WA to also make them legal. This would necessitate drafting legislation to govern how they are sold, used and promoted.

If they remain illegal, the WA Government needs to ensure that there are clear guidelines in place for the enforcement of regulations regarding e-cigarette use. The Government also needs to be able to reassure users of legal non-nicotine e-cigarettes purchased online or in other states that the product being used is safe.

In light of the federal inquiry and the fact that WA's laws governing e-cigarettes are incomplete and, it would seem, only loosely enforced, we believe it is timely for the relevant governing bodies and authorities to re-examine current e-cigarette regulations.

E-cigarettes produce vapour, not smoke

E-cigarettes – also known as e-cigs, personal vaporisers (PVs), Electronic Nicotine Delivery Systems (ENDS) and Electronic Non-Nicotine Delivery Systems (ENNDS) – are battery-operated electronic devices designed to create vapour for inhalation.

The vapour is created by heating a cartridge which may contain liquid nicotine, flavouring and other chemicals. The mist is inhaled through a mouthpiece and then exhaled by the user as a visible vapour (hence the term “vaping”).

The devices now come in many shapes and sizes but typically mimic traditional tobacco cigarettes, cigars or pipes in appearance.

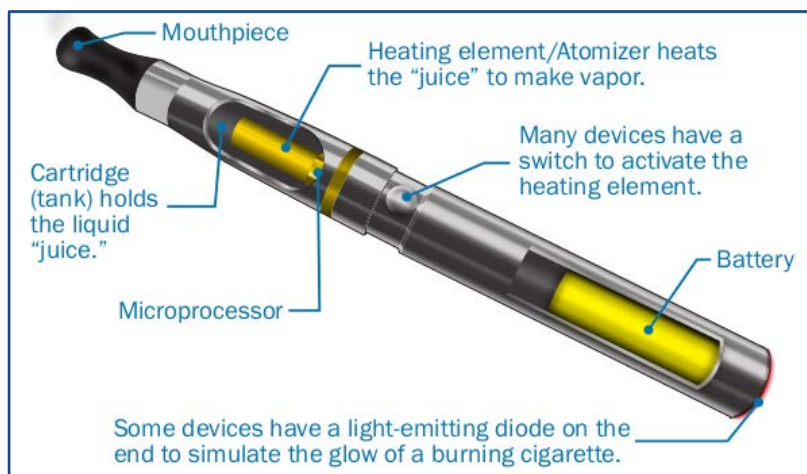


Figure 1: Components of an e-cigarette. *Diagram by FEMA.*²

2 Federal Emergency Management Agency, USA. Sourced from https://www.usfa.fema.gov/downloads/pdf/publications/electronic_cigarettes.pdf, Public Domain, <https://commons.wikimedia.org/w/index.php?curid=43896821>

Vaping is cheaper than smoking

The start-up costs in relation to vaping vary considerably. An online search revealed the most basic of kits are available for around \$25, with more advanced kits costing \$200 or more. The price for liquid varies slightly but 30ml of e-liquid is available for approximately \$25.³ Ongoing costs include the replacement of the heating coil and the cost of the liquid.⁴

Dr Colin Mendelsohn, an associate professor from the School of Public Health and Community Medicine at the University of NSW, has compared the cost using cigarettes versus e-cigarettes. Dr Mendelsohn calculated that a pack-a-day smoker on 20 cigarettes a day spends \$7,300 a year on cigarettes while the typical cost of “vaping” or using nicotine e-cigarettes for the same period would be \$1,150 per year. By his calculations Dr Mendelsohn concluded that vaping is at least 85 per cent less expensive than smoking.⁵

Nicotine used in e-cigarettes is classed as a poison

Nicotine is classified as a dangerous poison (Schedule 7) under the Standard for the Uniform Scheduling of Medicines and Poisons (*see Box 2 for an explanation of scheduled substances*). Hence, it may only be supplied when appropriate licences and permits are in place.

Nicotine is listed in Schedule 7 of the Poisons Standard as follows:⁶

NICOTINE except:

- a) *when included in Schedule 6;*⁷
- b) *in preparations for human therapeutic use; or*
- c) *in tobacco prepared and packed for smoking.*

3 eCigarette World Australia website. Accessed from <http://www.ecigworld.com.au/> on 16 June 2017.

4 Andy McEwen and Hayden McRobbie, 'Electronic Cigarettes: A briefing for stop smoking services', National Centre for Smoking Cessation and Training, UK, January 2016.

5 Joe Hildebrand, 'Decision could cost millions of Australians \$6000 a year', *News Limited*, 1 March 2017.

6 Therapeutic Goods Administration, *Poisons Standard February 2017*, Department of Health. Accessed from Federal Register of Legislation website, https://www.legislation.gov.au/Details/F2017L00057/Html/Text#_Toc471222308 on 31 May 2017.

7 Nicotine in preparations containing 3 per cent or less of nicotine when labelled and packed for the treatment of animals.

Chapter One

As indicated in Schedule 7, nicotine may legally be used for human use in the manufacture of cigarettes and for therapeutic purposes such as tobacco replacement gum where appropriate approvals and licences have been granted.

An e-cigarette which claims to have therapeutic value (e.g. it acts as a smoking cessation aid) may be assessed by the Therapeutic Goods Administration (TGA). If approved and registered by the TGA, an e-cigarette product containing nicotine may potentially be legally sold and possessed, subject to state regulations.

The TGA may allow e-cigarettes marketed for therapeutic use to be imported into Australia under the personal importation scheme. Certain requirements must be met to participate in this scheme, such as the quantity of product that can be imported. As nicotine is a restricted substance, the importer would require a prescription for the product from a medical practitioner.⁸

To date, only one e-cigarette device has been assessed by the TGA, and was rejected.⁹ Hence no nicotine-based devices are legally available in Australia.

However, even if an e-cigarette product was approved by the TGA, its supply would still likely be illegal in Western Australia. Under the *Tobacco Products Control Act 2006*,¹⁰ it is illegal to sell products which resemble tobacco products. A 2014 decision of the Supreme Court of Western Australia¹¹ found that e-cigarettes, whether or not they contain nicotine, resemble a tobacco product and cannot legally be sold in WA.

People in WA have found a way to use e-cigarettes

Although it is illegal to supply electronic nicotine devices in WA, they are widely available online.

Nicotine cartridges can also be purchased online in a variety of strengths and/or premixed in an e-liquid solution.

Vapers may also be using non-nicotine e-cigarettes, which are legal to use, even though they cannot be sold in WA.

8 If the product makes a therapeutic claim but does not contain nicotine it is still subject to approval by the TGA and could be made available under a personal importation scheme, without a prescription.

9 Select Committee on E-Cigarettes, *Final Report*, Parliament of South Australia, 24 February 2016, p 39.

10 Section 106a.

11 *Hawkins v van Heerden* [2014] WASC 127.

BOX 1 Summing up: the legality of e-cigarettes

- E-cigarette products that contain liquid nicotine are illegal to sell or possess
- E-cigarette products that contain liquid nicotine and make a therapeutic claim are legal subject to TGA approval, but none have been approved
- E-cigarette products that do not contain liquid nicotine but make a therapeutic claim are legal to possess but not to sell without TGA approval
- E-cigarette products that do not contain liquid nicotine and do not make a therapeutic claim are legal to possess and to sell, although supplying them is illegal in WA

Altering the classification of nicotine as a dangerous poison is difficult

E-cigarettes are regulated under a complex combination of Commonwealth and state laws regulating poisons, therapeutic goods and tobacco control.

The Commonwealth *Therapeutic Goods Act 1989* (the TG Act) provides the basis for nationally uniform controls for goods containing scheduled substances.

The states and territories adopt the schedule (known as the Poisons Standard), but they implement it according to their own poisons legislature. Each state/territory has its own laws that determine where consumers can buy a particular drug or poison, how it is to be packaged and labelled, and penalties for possession, use and supply.¹²

In WA, the applicable legislation is the *Medicines and Poisons Act 2014* and the *Tobacco Products Control Act 2006*.

The Tobacco Products Control Act (TPCA) provides that products which resemble tobacco products cannot be sold in WA.

The Medicines and Poisons Act provides that nicotine in liquid form, as used in e-cigarettes, is classified as a Schedule 7 poison.

12 Therapeutic Goods Administration website, Department of Health. Accessed at <http://www.tga.gov.au/stateterritory-scheduling-information> on 1 June 2017; Select Committee on E-Cigarettes, Final Report, Parliament of South Australia, 24 February 2016, p 47.

Chapter One

Section 4(1) of the Act contains a table listing the schedule of substances and defines “Schedule 7 – Dangerous Poison” as follows:

Substances with a high potential for causing harm at low exposure and which require special precautions during manufacture, handling or use. These poisons should be available only to specialised or authorised users who have the skills necessary to handle them safely. Special regulations restricting their availability, possession, storage or use may apply.

As expected, this is exactly the same wording as in the Poisons Standard.

The list of scheduled substances is determined by the Federal Health Department chief

The secretary of the Federal Department of Health makes decisions on the scheduling of medicines or chemicals. Applications proposing to amend the Poisons Standard can be made to the secretary.

The Scheduling Policy Framework for Medicines and Chemicals (SPF), developed by the Australian Health Ministers’ Advisory Council (AHMAC),¹³ states:

It is envisaged that in all cases the states and territories will adopt (by reference) the scheduling recommendations in the Poisons Standard and give effect to them through their relevant drugs and poisons legislation. However, each jurisdiction reserves the right to implement a different scheduling decision to that included in the Poisons Standard to accommodate local circumstances.¹⁴

However, in the interests of maintaining national uniformity, departure from the schedule is obviously not encouraged and “must be fully justified in an annual report to AHMAC”.¹⁵

According to WA’s Medicines and Poisons Act, “the Governor may, on the recommendation of the Minister, make regulations classifying a substance as a poison included in a Schedule referred to in the Table”.

13 The AHMAC oversees the development of a national approach to regulatory policy and administrative protocols relating to the availability and accessibility of medicines and chemicals in Australia. The AHMAC comprises representatives of each state and territory government, the Australian Government and the New Zealand Ministry of Health.

14 Australian Health Ministers’ Advisory Council, *Scheduling Policy Framework for Medicines and Chemicals*, Therapeutic Goods Administration, Department of Health, 1 February 2015, p 6. Accessed from <https://www.tga.gov.au/publication/ahmac-scheduling-policy-framework-medicines-and-chemicals> on 1 June 2017.

15 *ibid.*

Two parliamentary committees (Federal and South Australian) have recently conducted inquiries into regulation of e-cigarettes.

The Senate Economic References Committee inquiry lapsed before it could be completed, due to the dissolution of Federal Parliament. But the committee published an interim report in May 2016 just prior to dissolution, in which it was suggested that “nicotine in a form suitable for use in e-cigarettes be exempted from Schedule 7” and that “Schedule 7 needs to be amended as a matter of urgency”.¹⁶

The South Australian Select Committee on E-Cigarettes stated in its February 2016 report that it cannot alter the schedule, but sought to look at the penalties that apply.¹⁷

This is counter to the advice of the Scheduling Policy Framework, presented above; however, the report may have been alluding to the difficulty of changing the schedule. The chance of success in challenging scheduling decisions is slim.

The TGA this year rejected an application by the lobby group New Nicotine Alliance

BOX 2 Scheduled substances

The scheduling of substances allows restrictions to be placed on their supply to the public, in the interests of public health and safety.

Scheduling of poisons takes into account toxicity and criteria such as purpose of use, potential for abuse, safety in use and the need for the substance.

The Poisons Standard (the legal title of the Standard for the Uniform Scheduling of Medicines and Poisons) assigns poisons to one of nine schedules according to the danger they pose, with nine being the most harmful.

Poisons for therapeutic use (medicines) are mostly included in Schedules 2, 3, 4 and 8 with progression through these schedules signifying increasingly restrictive regulatory controls.

Schedules 5, 6 and 7 contain medicines and agricultural, domestic and industrial poisons which require stricter container and labelling requirements and special regulatory controls.

Nicotine is classified under Schedule 7, along with chlorine, mercury, arsenic, benzene, cyanides, hydrofluoric acid and strychnine, among others.

16 Senate Economic Reference Committee, *Personal choice and community impacts – Interim report: the sale and use of tobacco, tobacco products, nicotine products and e-cigarettes*, Senate Printing Unit, Parliament House, Canberra, May 2016, pp 21, 23.

17 Select Committee on E-Cigarettes, *Final Report*, Parliament of South Australia, 24 February 2016, p 47.

Chapter One

Australia to have nicotine exempted from Schedule 7, citing insufficient evidence of the long-term safety of nicotine exposure through e-cigarettes and the health risks posed by increased access to the liquid, particularly to children through unintentional ingestion.¹⁸

The Federal Government reiterated this position at the end of May 2017 in response to a letter signed by 140 doctors, scientists and experts from around the world urging the Prime Minister to reclassify nicotine for use in e-cigarettes.¹⁹

Current regulations are mostly in reference to non-nicotine e-cigarettes

Regulation of e-cigarettes is largely a state concern, with the exception of the Poisons Schedule on which poisons regulations are based (although even that, in theory, is within a state's power to amend).

Consequently, regulation of e-cigarettes varies across the country, generally according to whether they contain liquid nicotine, whether they are sold commercially or owned for personal use, and whether they claim to be of therapeutic value.²⁰

With all states adopting the Schedule 7 classification (making liquid nicotine illegal) and no successful TGA applications for therapeutic use, state regulations around the nation are essentially in reference to non-nicotine e-cigarettes.

Regulations (and planned regulations) in other states relate to: the sale of e-cigarettes to minors; use in smoke-free areas; and advertising, promotion and display of e-cigarettes and related products.

In WA current prohibitions on smoking in relation to workplaces,²¹ beaches, outdoor eating areas and in or on vehicles where children are present²² do not apply to e-cigarettes.

18 F. Dawson, 'Australia turns down appeal to reclassify nicotine for e-cigarette use', *ECig Intelligence*, 23 March 2017. Accessed from <http://ecigintelligence.com/australia-turns-down-appeal-to-reclassify-nicotine-for-e-cigarette-use/> on 20 June 2017.

19 Joe Hildebrand, 'Gone in 60 seconds: Govt backs vaping law then announces inquiry one minute later', *News Limited*, 30 May 2017.

20 Senate Economic Reference Committee, *Personal choice and community impacts – Interim report: the sale and use of tobacco, tobacco products, nicotine products and e-cigarettes*, Senate Printing Unit, Parliament House, Canberra, May 2016, p 4.

21 The *Occupation Safety and Health Regulations 1996* create an offence to smoke in an enclosed workplace. The definitions of smoke are the same as under the TPCA.

22 The TPCA creates an offence to smoke on beaches between the flags, outdoor eating areas, near playground equipment and in or on vehicles where children under 17 years old are present.

This is due to the definition of smoking in the TPCA as meaning “smoke, hold or otherwise have control over an ignited tobacco product”. A tobacco product includes tobacco in any form, a cigarette or cigar where a main ingredient is tobacco, or a product prepared for smoking which contains herbs or plant matter.

E-cigarettes generally do not contain tobacco, therefore presumably do not fall under the TPCA. It is up to individual owners/managers to choose whether to prohibit the use of e-cigarettes on their premises.²³

WA does not appear to have any legislation in place regarding the promotion of e-cigarettes.

Queensland and New South Wales currently have the greatest restrictions around sale, use and promotion, with South Australia poised to amend its tobacco legislation to define e-cigarette products separately from tobacco products, but apply similar regulation. The ACT, Tasmania, Victoria and the Northern Territory are monitoring regulations and considering introducing more restrictive measures.

The South Australian inquiry did not propose legalising nicotine-based cigarettes. It was noted during the inquiry that although illegal, nicotine was often present in e-liquids labelled as nicotine-free. In 2013, testing by New South Wales Health found that 70 per cent of sampled e-liquids contained high levels of nicotine.²⁴

The South Australian inquiry’s 20 recommendations related to sale, use, promotion, product safety and quality control, enforcement, research and taxation.

23 Department of Health webpage, ‘Electronic Cigarettes in Western Australia’. Accessed at http://ww2.health.wa.gov.au/Articles/A_E/Electronic-cigarettes-in-Western-Australia on 2 June 2017.

24 Select Committee on E-Cigarettes, *Final Report*, Parliament of South Australia, 24 February 2016, p 48.

Chapter 2

Arguments for and against restriction

For restriction - *The risks of vaping are unknown*

Arguments for restricting the use of e-cigarettes revolve around safety. Those in favour of maintaining restrictions argue that there is still not enough evidence on the long term health risks of using e-cigarettes. Since the devices are relatively new, not enough time has elapsed to gather convincing evidence that there are no harmful side-effects.

This is the position taken by public health bodies in Australia (e.g. government health departments, the Australian Medical Association, the Royal Australian College of Physicians, the National Health and Medical Research Council, the Cancer Council, the Heart Foundation).

The results of a recent Telethon Kids Institute study comparing the lung health of mice exposed to tobacco smoke with those exposed to e-juices from e-cigarettes showed that e-cigarettes could cause “significant” lung damage. The study showed that even though some e-cigarettes were less dangerous than mainstream tobacco smoke, none were completely harmless.²⁵

Risks to bystanders are also currently unknown. Though some devices emit lower levels of toxicants than conventional cigarettes, it is not clear whether this decreases risks for bystanders. Studies have indicated that toxicants of any level can cause adverse health effects.²⁶

There are also concerns that removing restrictions on e-cigarettes will result in uptake by young people, which may lead to experimentation with other nicotine products. This is known as the gateway effect. Use of e-cigarettes may also “renormalise” tobacco smoking, undermining quit campaigns.²⁷

Limited data is available on this topic. Some international survey data suggests that e-cigarette use is increasing rapidly amongst adolescents, though most of these users also smoke cigarettes. Data from the UK demonstrates that smoking prevalence,

25 Elle Farcic, ‘E-smokes linked to lung damage’, *The West Australian*, 27 May 2017, p 40.

26 Conference of the Parties to the WHO Framework Convention on Tobacco Control, *Electronic nicotine delivery systems*, October 2014.

27 Senate Economic Reference Committee, *Personal choice and community impacts – Interim report: the sale and use of tobacco, tobacco products, nicotine products and e-cigarettes*, Senate Printing Unit, Parliament House, Canberra, May 2016, p 20.

Chapter Two

cigarette consumption and nicotine use continue to decrease gradually though e-cigarette use is growing.²⁸

Another concern is that the e-cigarette market is increasingly owned by the tobacco industry which may employ similar marketing tactics to those used with their tobacco products.

Against restriction - *E-cigarettes are the safer alternative*

Arguments against restricting e-cigarettes revolve around the potential for the devices to reduce harm (i.e. they are safer than tobacco cigarettes) and the anomalies in legislation governing the use of nicotine in cigarettes versus e-cigarettes.

The damage caused by tobacco is seen as outweighing the risks posed by e-cigarettes – hence, e-cigarettes are the lesser of two evils.

Evidence to the Senate inquiry cited a psychiatrist's statement that people "smoke for the nicotine and die from the tar", since it is the combustive effect in cigarettes which causes the most harm, not the nicotine.²⁹

Other submissions said that the current regulations caused harm to individuals and society as a whole by:

*... denying individuals a product which could assist them to quit tobacco smoking; prohibiting the use of a product which is less harmful than legal tobacco products; and unnecessarily penalising (and even criminalising) individuals for behaviour that should not be illegal.*³⁰

A much-cited Public Health England³¹ review in 2015 concluded that while vaping may not be 100 per cent safe, most of the chemicals causing smoking-related disease were absent and the chemicals which were present posed limited danger.³²

Britain's National Health Service now embraces e-cigarettes as valuable smoking cessation aids.³³

28 Senate Economic Reference Committee, *Personal choice and community impacts – Interim report: the sale and use of tobacco, tobacco products, nicotine products and e-cigarettes*, Senate Printing Unit, Parliament House, Canberra, May 2016, p 20.

29 *ibid.*, p 12.

30 *ibid.*, p 14.

31 A peak government health promotion agency.

32 Public Health England, 'E-cigarettes: an evidence update', 19 August 2015, p 7. Accessed from <https://www.gov.uk/government/publications/e-cigarettes-an-evidence-update>

33 Terry Barnes, 'Not quite the time to extinguish debate on e-cigs - dismissing a new and innovative technology is shortsighted', *The Australian*, 1 January 2016, p 12.

The inability to supply products in Australia legally, combined with the lack of regulation, has led to concerns that Australians may be importing unregistered products which are fake or contaminated or contain potentially dangerous ingredients of unknown strength. There are no manufacturing standards and the ingredients in e-cigarette devices can be unreliable and vary significantly.

Those who oppose restrictions note the absurdity of the federal poisons regulations, which dictate that the only lawful nicotine-containing products other than specific cessation aids (e.g. nicotine patches and gum) are “tobacco prepared and packed for smoking” — in other words, “deadly cigarettes”.³⁴

In additional comments in the Senate committee’s interim report, committee member Senator David Leyonhjelm states that it is “unconscionable that a product known to be incredibly unhealthy – tobacco prepared and packed for smoking – is currently exempted, while a product known to be far less dangerous is not”.³⁵

Australia’s cautious position has drawn condemnation from some politicians and a range of health experts, advocates and media personalities who see Australia as trailing behind international practice.

The letter from 140 international experts which was sent to the Prime Minister stated:

*We regret that Australia is increasingly out-of-step with other countries in this regard ... We therefore strongly encourage a prompt reclassification by legislation of low concentrations of nicotine for vaping as a consumer product.*³⁶

The Senate committee’s interim report acknowledged that “some comparable international jurisdictions have taken a considerably more liberal approach to this issue”, and said that the Australian Government should continue to monitor international evidence around the safety, long-term health effects and efficacy of e-cigarettes “in order to appropriately adjust Australia’s regulatory response in the future”.³⁷

34 Terry Barnes, ‘Not quite the time to extinguish debate on e-cigs - dismissing a new and innovative technology is shortsighted’, *The Australian*, 1 January 2016, p 12.

35 Senate Economic Reference Committee, *Personal choice and community impacts – Interim report: the sale and use of tobacco, tobacco products, nicotine products and e-cigarettes*, Senate Printing Unit, Parliament House, Canberra, May 2016, p 23.

36 Joe Hildebrand, ‘Gone in 60 seconds: Govt backs vaping law then announces inquiry one minute later’, *News Limited*, 30 May 2017.

37 Senate Economic Reference Committee, *Personal choice and community impacts – Interim report: the sale and use of tobacco, tobacco products, nicotine products and e-cigarettes*, Senate Printing Unit, Parliament House, Canberra, May 2016, p 21.

Chapter Two

In conclusion

It is currently illegal in Western Australia to use e-cigarettes which contain nicotine and to supply non-nicotine e-cigarettes which resemble a tobacco product. It is technically not illegal to possess non-nicotine e-cigarettes, but the laws that apply to supplying them mean that Western Australians can only buy them online or interstate and overseas. The reality is that the laws governing the sale and use of e-cigarettes are not well-known by the average citizen. While there is limited reliable data on usage, it is likely that WA users are using illegal products, whether knowingly or unknowingly (that is, the product claims to contain no nicotine but does in fact contain nicotine).

So long as it remains illegal to supply e-cigarette products, manufacturing quality and the safety of products will remain an issue of concern.

The different application of laws to tobacco products and e-cigarette devices in relation to promotion, display and use in public places is also confusing. Western Australians are currently at liberty to vape in places that are smoke-free, which may be undermining public health campaigns aimed at encouraging people to quit the habit altogether. More prominent public health messages in relation to vaping also need consideration.

Recommendation

That the Minister for Health report back to the Committee on any considerations that have been given to the regulation of e-cigarettes.

A handwritten signature in blue ink, appearing to read 'James Freeman', with a long horizontal flourish extending to the right.

MS J.M. FREEMAN, MLA
CHAIR

Appendix One

Federal parliamentary committee inquiry terms of reference

Inquiry into the Use and Marketing of Electronic Cigarettes and Personal Vaporisers in Australia

The Standing Committee on Health, Aged Care and Sport will inquire into and report on the use and marketing of electronic cigarettes (E-cigarettes) and personal vaporisers in Australia, in particular:

1. The use and marketing of E-cigarettes and personal vaporisers to assist people to quit smoking;
2. The health impacts of the use of E-cigarettes and personal vaporisers;
3. International approaches to legislating and regulating the use of E-cigarettes and personal vaporisers;
4. The appropriate regulatory framework for E-cigarettes and personal vaporisers in Australia; and
5. Any other related matter.

Appendix Two

Committee's functions and powers

The functions of the Committee are to review and report to the Assembly on:

- a) the outcomes and administration of the departments within the Committee's portfolio responsibilities;
- b) annual reports of government departments laid on the Table of the House;
- c) the adequacy of legislation and regulations within its jurisdiction; and
- d) any matters referred to it by the Assembly including a bill, motion, petition, vote or expenditure, other financial matter, report or paper.

At the commencement of each Parliament and as often thereafter as the Speaker considers necessary, the Speaker will determine and table a schedule showing the portfolio responsibilities for each committee. Annual reports of government departments and authorities tabled in the Assembly will stand referred to the relevant committee for any inquiry the committee may make.

Whenever a committee receives or determines for itself fresh or amended terms of reference, the committee will forward them to each standing and select committee of the Assembly and Joint Committee of the Assembly and Council. The Speaker will announce them to the Assembly at the next opportunity and arrange for them to be placed on the notice boards of the Assembly.

Appendix Three

Glossary

Term	Definition
E-liquid/E-juice	The liquid used within a personal vaporiser/electronic cigarette to produce vapour
Vaper	Someone who uses a personal vaporiser/electronic cigarette device
Vaping	The act of inhaling and exhaling the vapour produced by an electronic cigarette or similar device
Vapour	The emitted aerosols produced by personal vaporisers/electronic cigarette devices

Appendix Four

Acronyms

Acronym	Meaning
AHMAC	Australian Health Ministers' Advisory Council
ENDS	Electronic Nicotine Delivery System
ENNDS	Electronic Non-Nicotine Delivery System
PV	Personal Vaporiser
SPF	Scheduling Policy Framework for Medicines and Chemicals
TGA	Therapeutic Goods Administration
TPCA	Tobacco Products Control Act
WHO	World Health Organisation