

Youth Fact Sheet

VAPING

The laws surrounding the supply and possession of nicotine vaping products changed at the beginning of October 2021.

All nicotine vaping products are now regulated under the Therapeutic Goods Act 1989 as Schedule 4 (prescription only) medicines in the Poisons Standard. This means that a prescription will be required from a medical practitioner to purchase nicotine vaping products from a pharmacy or when importing from overseas websites.

What is a Nicotine Vaping Product?

Nicotine vaping products are finished products (i.e. products ready to supply to consumers) that:

- contain nicotine (whether in base or salt form) in solution, and
- are intended to be vaporised or inhaled using a vaping device (e.g. an e-cigarette or other electronic nicotine delivery system).

Young Person in Possession of a Nicotine Vaping Product S527C Persons Unlawfully in Possession of Property

Young Persons are not intended, under the Poisons and Therapeutic Goods Act 1966, to be able to purchase nicotine vaping products. For Young Persons found in possession of nicotine vaping products, dependent on the circumstances, investigating officers may consider S527C Crimes Act 1900- Persons Unlawfully in Possession of Property. This is based on the fact that Young Persons are unable to lawfully purchase or obtain nicotine vaping products. It is strongly advised that investigating officers liaise with their prosecutors prior to initiating any legal processes to discuss the circumstances.

Young Persons Selling Nicotine Vaping Products?

Unlike tobacco products, non tobacco smoking products, and e-cigarettes and accessories (non-nicotine), there is no specific legislation regarding the sale of nicotine vaping products to Young Persons. A Young Person selling nicotine vaping products, dependent on the circumstances, can also be dealt with under S527C Persons Unlawfully in Possession of Property.

Can These Offence be Dealt with Under the YOA?

S527C NSW Crimes Act 1900 is a summary offence and as such warnings, cautions and conferences are options. As opposed to the possession of nicotine vaping products, the sale of the nicotine vaping products to Young Persons could be considered in regard to the seriousness of the offence and may alter the level of intervention.

Non-Nicotine Product Vapes Legislation Public Health (Tobacco) Act 2008

S22- Sale of Tobacco and Non-Tobacco Smoking Products or E-Cigarettes and E-Cigarette Accessories to Minors

A person must not sell a tobacco or non tobacco smoking product to a person under the age of 18 years. A person must not sell an e-cigarette or e-cigarette accessory to a person who is under the age of 18 years unless it is an authorised product.

Definition of 'Sell' includes; barter or exchange, supply, or offer to supply (for direct or indirect financial gain)

(An e-cigarette that generates or releases an aerosol or vapour, or e-cigarette accessory that contains nicotine is prohibited in NSW unless it is an authorised product. See previous discussion re Poison and Therapeutic Goods Act 1966)

Can This Offence be Dealt with Under the YOA?

A young person selling tobacco or non tobacco products, an e-cigarette or e-cigarette accessory (not containing nicotine), can be dealt with under the Young Offenders Act via a warning, caution or conference.

S26–Seizure of Tobacco Products, Non-Tobacco Smoking Products or E-Cigarettes in Possession of Minors

A Police officer may seize a tobacco product, non-tobacco smoking product or e-cigarette in the possession of a person in a public place if the officer suspects on reasonable grounds that the person is under the age of 18 years.

Any tobacco product, non-tobacco smoking product or e-cigarette seized under this legislation is forfeited to the Crown.

Can this offence be dealt with under the YOA?

No. It is not an offence for juveniles to be in possession of non-nicotine vapes/ e-cigarettes. This legislation gives police the power to seize these products from those Young Persons reasonably believed to be under the age of 18 years if in a public place.

What Happens to the Seized E-Cigarettes & Vapes?

The practice of just throwing away the vapes seized from young persons is strongly recommended against.

As Police, we rely on S216 of LEPR, property that is lawfully in the custody of a police officer or member of the NSW Police Force in connections with an offence (S16 Poisons and Therapeutic Goods Act 1966) or not (S26 Public Health (Tobacco) Act 2008). Under S219 LEPR, an application can be made to the court for disposal. Alternatively, if the property is not fit or suitable for sale, or fails to sell at public auction, it is to be disposed of in accordance with the directions of the Commissioner- this becomes an operational question for the officer in charge and the relevant Local Commanders. Your Exhibit Officer will be able to provide some further clarity in regard to the processes required.

How to Record Vaping/ E Cigarette Related Incidents on WebCops?

For Incident type utilise;
Miscellaneous

For Further Classification type utilise;
Other Miscellaneous Offence

Law Part Codes

Persons Unlawfully in Possession of Property
S527C Crimes Act 1900
LPC 44591

Sale of Tobacco and Non-Tobacco Smoking Products or E-Cigarettes and E-Cigarettes (Non Nicotine) to Minors
S22 Public Health (Tobacco) Act 2008
LPC 69187 (First Offence)
LPC 69188 (Second Offence)

Scenario One

16 year Thomas, was sighted by Police smoking a vape out the front of Hurstville Railway Station. Thomas was spoken to by Police and the vape confiscated (S26(1) Public Health (Tobacco) Act 2008). A review of the vape showed that it was bubblegum flavoured and contained 6mg of nicotine. Thomas later received legal advice and was interviewed in the presence of his support person where he made admissions to possession of a vape containing nicotine without a prescription. He was dealt with via a Caution for the offence of S527C Person Unlawfully in Possession of Property.

Scenario Two

17 year old Mary and Celeste were both reported by security to be selling vapes out the front of Shellharbour Square. Police spoke with both girls and confiscated an amount of vapes and various flavoured non-nicotine liquids (S26(1) Public Health (Tobacco) Act 2008). The girls obtained legal advice and were later interviewed, in the presence of their support person where they made admissions to selling vapes and the liquids to kids they knew from school. Both girls were dealt with under the Young Offenders Act for the offence of S22 Sale of Tobacco and Non-Tobacco Smoking Products or E-Cigarettes and E-Cigarette Accessories- Public Health (Tobacco) Act 2008. Mary was previously not known to Police and received a Caution. Celeste had previously been dealt with for the same offence and was subsequently referred to a Conference.

Scenario Three

16 year old Toby was spoken to by Police in George St Sydney. He was in possession of a vape containing grape liquid- non nicotine. Police confiscated the vape under the following legislation; Section 26 Seizure of Tobacco Product, Non-Tobacco Smoking Product or E-Cigarettes in Possession of Minors under the Public Health (Tobacco) Act 2008. The vape and liquid was retained and advice sought from the Exhibit Officer. The vape and liquid could not be sold and were of no value. Local arrangements were that they were to be destroyed.

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E-cigarette and vaping fact sheet



What

Overall, there are two main types of e-cigarettes: (a) disposable and rechargeable devices that look like cigarettes or USBs; and (b) refillable vaporisers or tank systems that do not look like cigarettes.

E-cigarettes generally comprise four parts: the battery, the heating element, the vapourising chamber, and the solution cartridge. The battery supplies the power to the heating element, for it to become sufficiently warm to aerosolise the solution. The heating element is housed in a chamber, which also holds the aerosol until the user inhales. Some types of e-cigarettes allow users to control the voltage so they can select the amount of aerosol produced and nicotine concentration.

E-cigarette use is commonly referred to as "vaping" due to the vaporising chamber of the device.

Who/origins

The creation of the modern e-cigarette device is credited to Hon Lik, a Chinese pharmacist, who commercialised the modern vaping method in 2003¹. Almost all (90%) e-cigarette products sold globally are made in China, where there are around 1,000 manufacturers².

Transnational tobacco companies have made significant financial investments in acquiring start-up vape companies and developing new commercial e-cigarette lines. British American Tobacco (BAT) owns the global brand Vuse (which consolidates Vype, Ten Motives, Chic, VIP brand), Philip Morris International (PMI) own IQOS Mesh and has a significant stake in JUUL, Lorillard own the brand 'blueCig'; Japan Tobacco International own 'Logic' and 'Ploom'; and Imperial Tobacco have 'Puritane'.

Commercial profits

The global e-cigarettes (vaping) market was valued at about \$14.05 billion in 2018 and is expected to grow to \$29.39 billion through 2022³. The gross profit margin for manufacturers of e-cigarettes is estimated at around 70%⁴.

Deceptive & misleading claims & factoids

The claim that 'e-cigarettes are 95% safer than conventional cigarettes **is not true**.

This claim originated from a 2013 perception "estimate" in a workshop involving 12 people, some with links to the tobacco industry⁵. The "estimate" was based on the participants **perceptions of harm**. It is not based on scientific evidence. This claim was not based on chemical analysis, clinical studies or physiological or epidemiological research or evidence. The authors of the paper have subsequently stated that they "prefer" the summary of their work to be described as indicating that "smoking **is estimated to be** twenty times more harmful to users than vaping e-cigarettes"⁶.

Leading international public health experts agree that the oft-cited "95% safer" claim is an outdated subjective estimate; it does not reflect the current state of knowledge, is grossly misleading and

¹ Electronic cigarettes and health with special focus on cardiovascular effects: position paper of the European Association of Preventive Cardiology (EAPC) AND Grana R, Benowitz N, and Glantz SA. Background paper on e-cigarettes (electronic nicotine delivery systems).

² Technavio. Global e-cigarette market 2016-2020. 2016. Available from: <https://www.technavio.com/report/global-health-and-wellness-e-cigarette-market>

³ (CISTON PRN Vaping Market to Reach a Value \$29.39 Billion at a CAGR of 20.3% From 2018-2022 | a Report From TBRC <https://www.pnewswire.com/news-releases/vaping-market-to-reach-a-value-29-39-billion-at-a-cagr-of-20-3-from-2018-2022-a-report-from-tbrc-300904265.html>. Accessed 050820

⁴ For Juul in the US. See AXIOS: Scoop: The numbers behind Juul's investor appeal <https://www.axios.com/numbers-juul-investor-appeal-vaping-22c0a2f9-beb1-4a48-acee-5da64e3e2f82.html>. Accessed 050820

⁵ Nutt, D, et al. "Estimating the Harms of Nicotine-Containing Products Using the MCDA Approach." European Addiction Research, vol. 20, no. 5, 2014, pp. 218-225.

⁶ Nutt, D, et al. "E-Cigarettes Are Less Harmful than Smoking." *The Lancet*, vol. 387, no. 10024, 2016, pp. 1160-1162.

invalid⁷. The '95% safer' estimate is a "'factoid': unreliable information repeated so often that it becomes accepted as fact"⁸. The World Health Organization has publicly dismissed the 95% claim as "not based on evidence".

The Thoracic Society of Australia and New Zealand (TSANZ) have noted that "drawing conclusions about absolute exposure levels and associated risk based on comparisons between e-cigarettes and combustible tobacco use **is not possible**. There are thousands of e-liquid solution variants and a range of devices with different settings⁹."

Health impacts

E-cigarettes have been demonstrated to cause short-term adverse health effects including nausea, vomiting, mouth and airway irritation, chest pain and palpitations. The long-term health impacts of e-cigarettes remain largely unknown, but emerging evidence suggests that e-cigarettes increase the risk of respiratory diseases, cardiovascular diseases, cancer; cause slower wound healing, gum diseases, and eye irritation; and adversely impact the central nervous system.

Smoking cessation

E-cigarettes are not approved, nor are they allowed to be promoted in Australia, as a smoking cessation method. At any time, the companies that make and promote e-cigarettes can make an application to the Therapeutic Goods Administration (TGA) to have e-cigarettes listed as a smoking cessation method. To date, no e-cigarette manufacturer has made such an application.

In 2016, PMI made an application to sell e-cigarettes alongside conventional cigarettes, rather than as a smoking cessation method. The TGA rejected this application, stating that "there is a risk of nicotine dependence associated with use of Electronic Nicotine Delivery System (ENDS) – e-cigarettes. There is little evidence regarding the safety of long-term nicotine exposure via ENDS. Exposure to nicotine in adolescents may have long-term consequences for brain development, potentially leading to learning and anxiety disorders. The toxicity of long-term exposure to nicotine delivered by ENDS is unknown. Long-term exposure to excipients [other ingredients] via the ENDS route of exposure is uncertain."

At the population level there is no strong evidence that e-cigarettes assist smoking cessation and some evidence suggests the opposite effect.

Regulatory responsibility

The TGA have responsibility for determining whether and under what circumstances products containing nicotine are made available for use or consumption in Australia. The TGA is comprised of experts with significant experience in public health, medicine, toxicology, chemistry, law, agriculture, and occupational health and safety. The TGA is independent of the Australian Government and bases its decisions on well-established evidence. Australia is a signatory to the WHO Framework Convention on Tobacco Control, and all levels of Government, including the elected representatives of Australians must when setting and implementing public health policies with respect to tobacco control, act to protect these policies from commercial and other vested interests of the tobacco industry¹⁰.

⁷ Eisenberg T, Bhatnagar A, Chapman S, Jordt S, Shihadeh A, Soule E. "Invalidity of an Oft-Cited Estimate of the Relative Harms of Electronic Cigarettes." *AJPH*. 110(2), pp. 161–162

⁸ *Ibid.*

⁹ McDonald, CF, Jones, S, Beckert, L, et al. Electronic cigarettes: A position statement from the Thoracic Society of Australia and New Zealand*. *Respirology*. 2020; 1–8. <https://doi.org/10.1111/resp.13904>

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