

pressure of pharmaceutical companies) should not allow us to forget that treatment of the patient—in this case a child—and not a disease remains the main principle of the art of medicine.

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Should Australia reconsider its ban on the sale of electronic nicotine delivery systems?



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In the past 30 years, steep increases in tobacco taxes, advertising bans, and bans on smoking in public places have reduced the daily smoking rate in Australian adults from 35% in 1983 to 13% in 2013.^{1,2} Australia was an early adopter of graphic health warnings on cigarette packs and mandatory plain packaging of cigarettes.² In 2011, Australia joined Brazil, Canada, and several European countries in banning the sale of e-cigarettes or electronic nicotine delivery systems.³

By contrast with other areas of substance use, harm reduction strategies have never had a role in Australian tobacco policy. These strategies aim to reduce tobacco-related toxicity by encouraging smokers to use less harmful ways to obtain nicotine, such as smokeless tobacco or electronic nicotine delivery systems. Australia's national tobacco strategy includes major legal and regulatory obstacles to tobacco harm reduction,⁴ including a ban on the sale of smokeless tobacco since 1991.⁵

The Australian laws covering electronic nicotine delivery systems are complex and vary between the different states but they effectively ban their sale. Since 2011, personal importation of electronic nicotine delivery systems as an unapproved cessation aid has only been allowed on medical prescription. State drugs and poisons legislations prevent the retail sale, possession, or use of non-therapeutic nicotine preparations without a licence, approval, or permit.⁶

Some states have also banned the sale of vaporising devices that do not contain nicotine. They have extended laws that were originally designed to prevent the sale of cigarette-like confectionary and toys to children to prohibit the sale of any products that resemble tobacco products.⁶ The national tobacco control strategy indicates that consideration is being given to “whether there is a need to increase restrictions on their availability and use”.⁴

Despite these laws, the percentage of Australian smokers who have ever tried electronic nicotine delivery

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systems increased from 2.0% in 2010 to 16.8% in 2013.⁷ These rates of use are lower than those in the UK, where such products can still legally be sold as general consumer products and where ever-use by smokers increased from 9.6% in 2010 to 38.8% in 2013.^{7,8}

The Cancer Council,⁶ the National Heart Foundation,⁶ and many leading tobacco control advocates in Australia support the ban on the sale of electronic nicotine delivery systems;⁹⁻¹² the panel below summarises their reasons. They argue that the ban prevents the tobacco industry (which now owns some electronic nicotine delivery systems products¹⁰) from undermining smoke-free policies by promoting dual use (ie, encouraging smokers to keep smoking and to use electronic nicotine delivery systems only when smoking is prohibited); prevents the widespread use of electronic nicotine delivery systems from renormalising smoking by increasing the visibility of a behaviour that resembles smoking; and prevents electronic nicotine delivery systems being used to promote cigarette smoking by adolescents and young adults.

The ban has received very little criticism within the Australian public health community. Nonetheless, it can be criticised on ethical and other grounds (panel). It is paternalistic because it denies adult smokers the right to use a less harmful form of nicotine. It is also an incoherent form of risk regulation in banning a less harmful product while allowing more harmful tobacco cigarettes to be freely sold. It disadvantages smokers who are heavily addicted and want to reduce the risks of their smoking. And it has created a black market in nicotine sold over the internet and under the counter. Moreover, it precludes any regulation of electronic nicotine delivery systems and nicotine refills to reduce risks to consumers and others.

The public health harms feared by those who support a ban on electronic nicotine delivery systems are most likely to occur if the sale and promotion of these products is unregulated. This has arguably been the case by default in parts of Europe, the UK, and the USA for the past few years while different models of regulation have been debated.³

We do not have to choose between banning electronic nicotine delivery systems sales and allowing their unregulated sale. We can regulate sales in ways that address the legitimate concerns of those who support a ban, while still allowing smokers to buy electronic

nicotine delivery systems.¹³ For example, adult smokers could be allowed to buy approved products from a few licensed sales outlets. These sales could be regulated in ways that help research to inform future decisions about how to regulate these products.

Advertising of electronic nicotine delivery systems products could be banned and consumer law could be used to ensure their safety to users and others (eg, to children by requiring child-resistant containers for nicotine). At the point of sale, purchasers could be advised to avoid dual use (except as a time-limited pathway to quitting) and clearly told that we do not have definitive evidence about the health effects of the use of electronic nicotine delivery systems as a long-term alternative to cigarette smoking.

This type of regulation would facilitate research on the uptake and use of electronic nicotine delivery systems. Regulations could, for example, make reporting of sales data and user characteristics (eg, age,

Panel: Competing perspectives on a ban on electronic nicotine delivery systems and allowing their limited sales

View of those who oppose sales

A ban on electronic nicotine delivery systems avoids:

- Dual use
- Renormalising smoking
- New young recruits to electronic nicotine delivery systems and smoking
- Adverse health effects of long-term electronic nicotine delivery systems use

Allowing restricted sales will:

- Deter quitting smoking
- Encourage dual use
- Renormalise smoking
- Recruit new smokers
- Recruit new young non-smoking electronic nicotine delivery systems users

View of those who would allow sales

A ban on electronic nicotine delivery systems would:

- Create paternalistic policy
- Be unfair to smokers
- Lead to incoherent risk management
- Create a black market
- Have no consumer regulation

Allowing restricted sales will:

- Reduce cigarette smoking
- Respect smoker autonomy
- Enable more coherent risk management
- Minimise the black market
- Provide consumer protection

sex, and smoker status) a condition of being licensed to sell electronic nicotine delivery systems. Researchers could be funded and facilitated to undertake long-term follow up studies of purchasers of these products to find out: who uses them and for how long; how many users stop smoking, engage in dual use, and cease all nicotine use; and the medium-term health effects of the use of electronic nicotine delivery systems, either alone or in combination with tobacco smoking (dual use).

This type of regulation could also be readily reversed if electronic nicotine delivery systems prove to be as disappointing as their critics predict. If, however, the products help smokers to quit and are much safer substitutes for combustible cigarettes, as their advocates claim, then these restrictions could be relaxed. This could be done while also increasing restrictions on the sale of cigarettes, such as by reducing the number of outlets in which cigarettes can be sold; by allowing electronic nicotine delivery systems to be sold in the same places so that they can compete with combustible cigarettes among current smokers; and through reducing young people's access to both products to minimise new young recruits to electronic nicotine delivery systems and smoking among adolescents and young adults.

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