



Submission to the
*Therapeutic Goods and Other
Legislation Amendment
(Vaping Reforms) Bill 2024*

April 2024

This submission has been prepared by the Queensland Network of Alcohol and Other Drug Agencies (QNADA). Its content is informed by consultation with QNADA member organisations providing treatment and harm reduction services across Queensland, as well as a review of relevant research and reports.

It focuses predominantly on issues identified within the *Therapeutic Goods and Other Legislation Amendment (Vaping Reforms) Bill 2024* and touches on the importance of:

- ensuring protections are in place to prevent enforcement action against people in possession of vapes/vaping goods for personal use, given the current prevalence of use in the community.
- recognising that criminalising and overly restrictive regulation of substances leads to adverse consequences for individuals and communities.
- Recognising that the proposed approach is inconsistent with the regulation of nicotine and will add additional pressure to the primary health care system.

We are pleased to see that the bill includes an exception for personal use or possession on behalf of other person relating to the possession of less than a 'commercial quantity' with the introduction of criminal offences and civil penalties. This allows for express protections to prevent enforcement action against people in possession of these products, particularly given the current prevalence of use in the community. As outlined in our updated policy position paper on [Decriminalisation](#), there is strong evidence that law enforcement strategies are ineffective in reducing both rates of use and intentions to use for people who use substances.

The use of threshold quantities to distinguish between possession for the purpose of personal use and possession for the purpose of supply of illicit substances is problematic as they frequently do not reflect usage patterns in the community or account for factors such as an individual's desire to minimise contact with illicit markets and reduce risk of engagement with law enforcement.¹ Without applicable personal use exceptions for larger quantities – nor an onus for there to be evidence that a person has intent to supply vaping goods – the draft Bill risks placing significant criminal penalties and long lasting, negative impacts on people who use vaping goods.

We do not support the prohibiting of disposable single use vapes and all other vaping goods. Research has consistently shown that attempts to prohibit, criminalise and restrictively regulate access to substances leads to a range of adverse consequences and increases harm for individuals and communities¹. For example, while there have been significant public health benefits, continued tightening of tobacco supply, and increased costs, has resulted in the emergence of an unregulated (illicit) tobacco market and the increased use of vaping products.

Many of the documented harms from vaping use are associated with a poorly regulated market, and a lack of quality testing, with evidence showing that risks increase:

- when products have a high nicotine concentration or greater volume
- where e-liquids have been adulterated or are an 'at-home' preparation
- if products are inadequately labelled or child-resistant packaging is not used
- with the promotion and marketing of some products, including with flavourings
- in situations where products have been personally imported².

¹ Hughes, C., Ritter, A., Cowdrey, N., & Phillips, N. (2014). *Australian threshold quantities for 'drug trafficking': Are they placing drug users at risk of unjustified sanction?*. *Trends & issues in crime and criminal justice* no. 467. Canberra: Australian Institute of Criminology.

Improved regulation and quality and safety monitoring is key to addressing these harms. However, attempts to ban products outright are likely to heighten current risks, increase the profitability of an unregulated market and have limited impact on actual use in the community. Experience shows that an absolute or partial ban on vaping products encourages the involvement of organised criminal entities because of perceived profit margins (as has occurred with the illicit tobacco market) and is likely to have a limited impact on product availability. For example, Australian Taxation Office (ATO) data shows that while increasing excise rates have driven up the amount of tobacco duty collected, seizures of unregulated tobacco in 2020-21 were the highest ever recorded. With respect to cross-agency enforcement activities by the Illicit Tobacco Taskforce, the ATO have also noted that ‘despite these efforts and in contrast to a shrinking market, illicit tobacco is increasing and has doubled to over 10% of the market’².

In this respect, an appropriate balance needs to be achieved to ensure that there is sufficient regulation in place to support the safety and quality of vaping products in Australia to meet the current market demand, but that this is not so restrictive that it supports the continued growth of an unregulated market or a shift back to smoking tobacco.

The approach proposed is also inconsistent with the regulation of other nicotine containing products in the community, with cigarettes available to those over the age of 18 years and nicotine replacement products readily available without prescription (with associated restrictions on advertisement and plain packaging). This is the preferred approach, as it would help mitigate the harms associated with poor quality products and ensure appropriate restrictions are in place, while not inadvertently causing harm to the community via civil or criminal penalties.

Any regulatory or enforcement action that is focused on personal possession and use is not supported because evidence shows that it is largely ineffective and has a range of adverse consequences. In addition, the removal of this exception appears to primarily be for the purpose of simplifying enforcement activities, with limited other justification about the actual risks to the community (comparative to other therapeutic goods that are able to be imported through this scheme).

²Australian Taxation Office, 2022