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AMA Submission to Senate Community Affairs Legislation Committee Inquiry into the Vaporised Nicotine Products Bill 2017

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As the peak professional organisation representing medical practitioners in Australia, the Australian Medical Association (AMA) welcomes the opportunity to make a submission to the Senate Community Affairs Legislation Committee Inquiry into the Vaporised Nicotine Products Bill 2017.

In 2015 the AMA affirmed the view that significant caution must be exercised in relation to e-cigarettes, particularly given Australia's world leading role in tobacco control. Specifically, the AMA's policy argues that e-cigarettes should not be allowed to become a socially acceptable alternative to smoking given that their safety and efficacy as cessation aids has not been established (and is not recognised by the relevant authorities). Further, the AMA's policy also states:

- E-cigarettes and the related products should only be available to those people aged 18 years and over;
- The marketing and advertising of e-cigarettes should be subject to the same restrictions as cigarettes; and
- E-cigarettes must not be marketed as cessation aids as such claims are not supported by evidence at this time.

The current inquiry is concerned with the Vaporised Nicotine Products Bill 2017. The Bill seeks to exclude e-cigarettes from regulation by the Therapeutic Goods Administration, allow for e-cigarettes to be used at airports, and also ensure that e-cigarettes are not subject to the same advertising restrictions as tobacco cigarettes.

It is perplexing that this Bill appears to argue in the one instance that e-cigarettes should be treated in the same way as tobacco products (that they should not be subject to Therapeutic Goods Administration oversight) but then also argues that e-cigarettes should be treated distinctly from tobacco cigarettes in terms of where they can be used and how they are advertised. Given that the efficacy and safety of e-cigarettes has not been established, the proposals contained in this Bill are premature.

The Bill this inquiry is concerned with refers to e-cigarettes and 'Vaporised Nicotine Products'. The AMA's submission will refer to these devices collectively as e-cigarettes. The terms

vaporised or vaporiser are easily confused with a medical product that produces steam to loosen congestion in infants and children who have colds, upper respiratory tract infections or other breathing problems. There should be no confusion between these products and those that mimic tobacco smoking

Proposed amendments to the *Airports Act 1996*

Airports in Australia have been smoke-free for some time. A small number of International Airports do provide access to ‘smoking rooms’ where long-haul travellers are able to smoke cigarettes without leaving the airport. The Bill and the Explanatory Memorandum contain no clear argument around why these facilities are not suitable for those who wish to use e-cigarettes at airports.

Airports are confined spaces and given that the safety of second-hand exposure to the vapour produced by e-cigarettes has not been well established, it is not appropriate to expect travellers, airline and airport employees to be exposed to this second-hand vapour. A recent review confirmed that exposure to second-hand or passive vapour does carry the potential for adverse health effects.ⁱ

This amendment also fails to recognise the range of evidence-backed cessation products that are already available to tobacco smokers who are travelling and that do not impact on other travellers. These products are also suitable for e-cigarette users who are concerned about nicotine withdrawal during their travels. These products are subsidised if a prescription is obtained, making them significantly cheaper and more accessible than e-cigarettes.

Safety at airports is paramount. All travellers agree to forgo certain combustible products in order to guarantee their own safety as well as the safety of others. Injuries due to e-cigarettes have been reported in a number of medical journals.ⁱⁱ It is understood that the burn or shrapnel related injuries are caused by an explosion relating to the lithium ion battery malfunction. Recognising that safety at airports, and on airplanes, is sacrosanct and that there is a range of other nicotine replacement products that do not involve any safety risk, the AMA does not see any reason to amend the *Airports Act 1996* to allow e-cigarettes to be used at airports.

Should legislation covering airports be amended to allow for the use of e-cigarettes in airports, it is likely that proponents will advocate for an expansion of spaces where e-cigarettes may be used. The AMA does not believe that there is sufficient protections in place to ensure that advocates will not argue that e-cigarettes be exempt from laws that ban smoking in schools, hospitals and restaurants. Years of tobacco control advocacy has resulted in tobacco smoking being outlawed in a range of settings in order to protect non-smokers from exposure to second hand smoke. These moves have meant that smoking is no longer considered a ‘social norm’. Efforts to introduce e-cigarette use to these settings will be detrimental to the ‘social norm’ and may undermine years of tobacco control advocacy.

Proposed amendments to the *Therapeutic Goods Act 1989*

The Vaporised Nicotine Products Bill 2017 seeks to exempt the nicotine containing solutions that are used in e-cigarettes from the Poisons Standards administered by the Therapeutic Goods Administration. The rationale for this proposal is that e-cigarettes should be considered in the same way as tobacco cigarettes. This is despite simultaneously arguing that e-cigarettes should be considered as substantially different from tobacco cigarettes.

Research into e-cigarette solutions has revealed considerable variation in the amount of nicotine contained in these solutions, and has also identified the presence of nicotine in solutions that claim to be nicotine free.ⁱⁱⁱ This variation makes the concentration guidelines contained in the Vaporised Nicotine Products Bill 2017 of little use.

This proposal also fails to recognise that nicotine is widely recognised as a dangerous poison. Nicotine poisoning can occur through ingestion, and also via inhalation. Nicotine containing solutions that are used in e-cigarettes pose a very real poisoning risk to small children. Sales of e-cigarettes in the United States have been complemented by a substantial increase in the incidence of nicotine poisoning according to reports from the Centre for Disease Control.^{iv} Nicotine containing solutions are undoubtedly appealing to young children; they are commonly fruit or confectionary flavoured, and are presented in colourful containers that are not required to be childproof. Given the risk associated with nicotine poisoning, the AMA does not support proposals to exempt e-cigarettes and the related nicotine containing solutions from the *Therapeutic Goods Act 1989*.

Proposed amendments to the *Tobacco Advertising Prohibition Act 1992*

As stated in the AMA's position statement, [Tobacco smoking and E-cigarettes - 2015](#), the AMA has called for e-cigarettes to be subject to the same marketing and advertising restrictions as tobacco cigarettes, and therefore does not support the proposal to amend the definition of smoking in the *Tobacco Advertising Prohibition Act 1992*. In fact, the AMA would like to see the legislation strengthened to explicitly include e-cigarettes.

The *Tobacco Advertising Prohibition Act 1992*, and later the graphic health warnings and plain tobacco packaging laws were introduced because it was recognised that tobacco advertising and marketing was being used to convey positive social messages about smoking with the intention of sustaining smoking and to encourage its uptake in those who don't smoke. E-cigarettes are largely marketed online, but they use similar marketing strategies to entice young consumers to their products. The flavourings used in the e-cigarette solutions, such as sweet caramel, old fashioned donut and grape and lychee, are very similar to the sweet flavourings used in alcohol pops, and will clearly appeal to children and young people.

The AMA is concerned that the proliferation of this sophisticated and targeted marketing of e-cigarettes has the potential to entice young, non-smokers, to initiate use of e-cigarettes. Establishing a nicotine addiction in a young non-smoker carries a very real risk that users will graduate to tobacco smoking. Research from the US confirms that young people using e-cigarettes often progress to tobacco smoking.^v

E-cigarette retailers have a history of making questionable claims about their products. The Australian Competition and Consumer Commission successfully pursued online retailers for claims that their products do not contain any harmful carcinogens and toxins. Analysis by the National Measurement Institute confirmed the presence of at least one Group 1A (well-established) carcinogen, as well as other possibly carcinogenic substances. Many online e-cigarette retailers continue to make claims that their products are proven cessation aids, despite the fact that the relevant Australian authorities agree that this claim has not been substantiated. This conduct leads to serious questions about the credibility of e-cigarette retailers. The AMA will continue to advocate that e-cigarettes be subject to the same marketing and advertising regulations as tobacco cigarettes.

In summary, the AMA believes the Vaporised Nicotine Products Bill 2017 is misguided and potentially very harmful. It is unfortunate that resources continue to be misused by a small number of Parliamentarians to pursue an ideological agenda that seeks to remove well established protections and undermine Australia's world leading role in tobacco control. The AMA does not support any of the proposals contained in the Bill and would be overtly disappointed should they gain any real traction.

The safety and efficacy of e-cigarettes has not been established in the Australian context. It is widely known that the National Health and Medical Research Council has funded \$6.5 million worth of research into e-cigarette use and efficacy which when released (progressively from 2018) should provide a much better indication of whether e-cigarettes are in fact a legitimate cessation option for the small number of remaining tobacco smokers. Should convincing evidence emerge in support of e-cigarettes as cessation aids, as well as the safety of the second hand exposure to e-cigarette vapour, it may be appropriate reconsider some of the proposals contained within the Bill.

3 August 2017

ⁱ Hess IMR, Lachireddy K, Capon A. A systematic review of the health risks from passive exposure to electronic cigarette vapour. *Public Health Res Pract.* 2016;26(2):e2621617. Available from: <http://www.phrp.com.au/issues/april-2016-volume-26-issue-2/a-systematic-review-of-the-health-risks-from-passive-exposure-to-electronic-cigarette-vapour/>

ⁱⁱ See for example, Toy, J., Dong, F., Lee, C., Zappa, D., Le, T., Archambeau, B., Culhane, J.T., neeki, M.M. (2017). Alarming increase in nicotine delivery systems-related burns injuries: A serious unregulated public health issue. *American Journal of Emergency Medicine*; Harrison R, Hicklin D. (2017). Electronic cigarette explosions involving the oral cavity. *The Journal of the American Dental Association*, 147 (11): 891-896.

ⁱⁱⁱ Cheng T Chemical evaluation of electronic cigarettes *Tobacco Control* 2014;23:ii11-ii17.

^{iv} See: <https://www.cdc.gov/media/releases/2014/p0403-e-cigarette-poison.html>

^v For example see, Primack, BA., Soneji, S., Stoolmiller, M, Fine, MJ & Sargent, D. (2015). Progression to traditional cigarette smoking after electronic cigarette use among US adolescents and young adults. *JAMA Pediatr.* and Bunnell RE, Agaku IT, Arrazola R, Apelberg BJ, Caraballo RS, Corey CG, Coleman B, Dube SR, King BA.(2014). Intentions to smoke cigarettes among never-smoking U.S. middle and high school electronic cigarette users, National Youth Tobacco Survey, 2011-2013. *Nicotine and Tobacco Research.* 2014.