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

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

Summary

Smoking has been on a declining trend for at least 60 years. This is attributable to many factors, including health concerns and the progressively higher taxes imposed on tobacco.

The downward trend has flattened over recent years as the remaining smokers have a greater degree of addiction. People who continue to smoke are especially concentrated among those with lower income and facing the greatest social disadvantage. People with mental illnesses appear to find comfort in the use of nicotine and, compared to the smoking incidence of around 12 per cent for Australians 14 years and older, over 80 per cent of people with schizophrenia or bipolar disorder are smokers.

E-cigarette and personal vaporisers are presently illegal in Australia, although their use is increasing. There is evidence that these products are a bridge to quitting smoking. Irrespective of this evidence, the cigarette replacement products are clearly less harmful to users' health.

The illegal status of e-cigarette and personal vaporisers is likely to be restraining their use as cigarette substitutes. As these products do not appear to encourage smoking, their illegality is harmful to health as well as being costly to poorer people and the mentally disturbed whose smoking rate is far in excess of that of the general population.

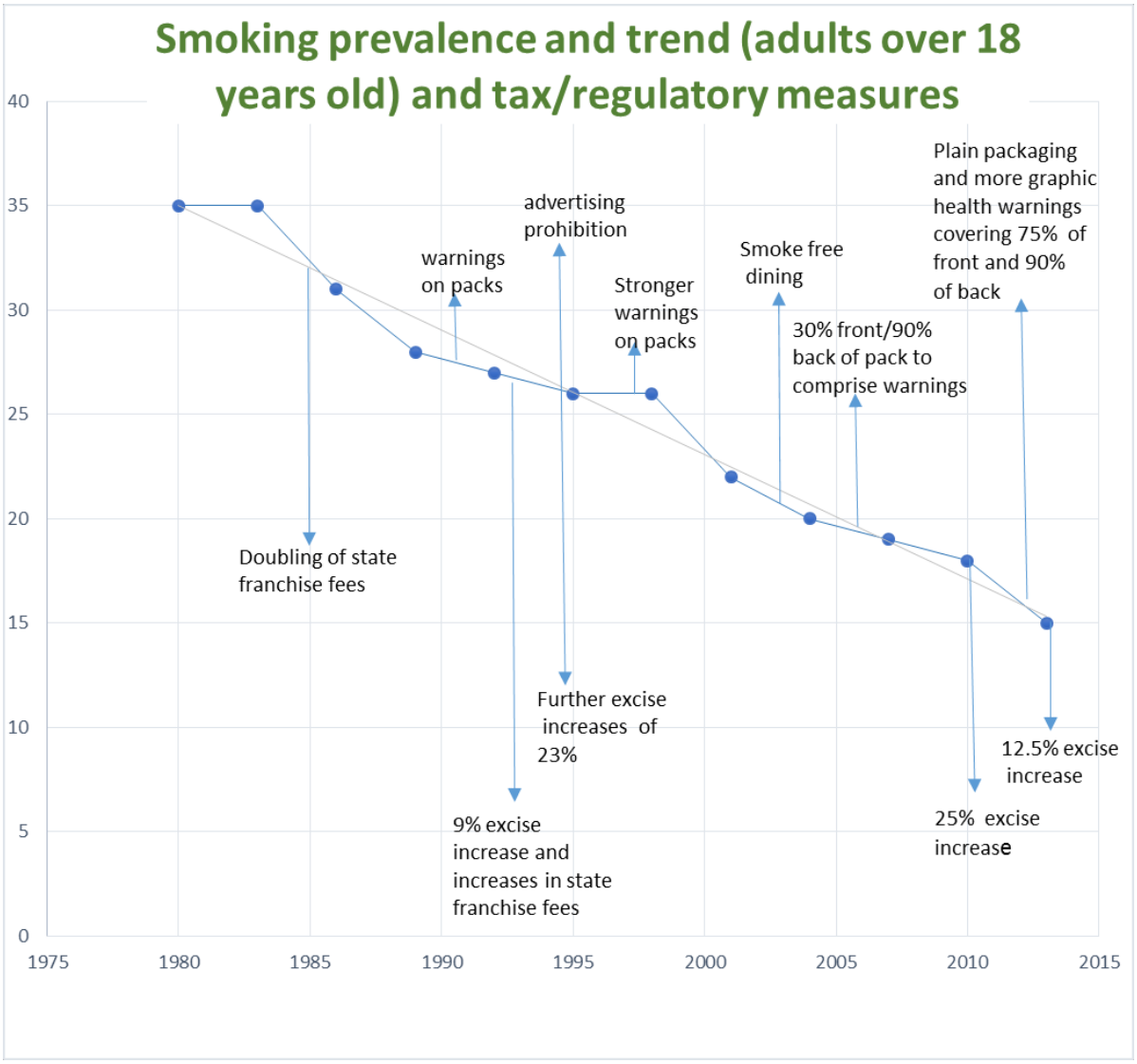
Accordingly, we favour implementing a regime of deregulating the sale and use of e-cigarettes and personal vaporisers. Moreover, as these products cause far less harm than smoking, those replacing cigarettes with them actually experience harm reduction. Hence the products should not incur tobacco products' punitive taxation levels.

Smoking, health and government measures

Smoking is unquestionably harmful to the smoker's health. Among men, smoking has been in decline for some 70 years; for women the decline is more recent. Though modern anti-smoking measures in the form of high taxes and restrictions on use and promotion would have contributed to this trend, lower prevalence of smoking in response to health considerations was underway before such measures were put in place.

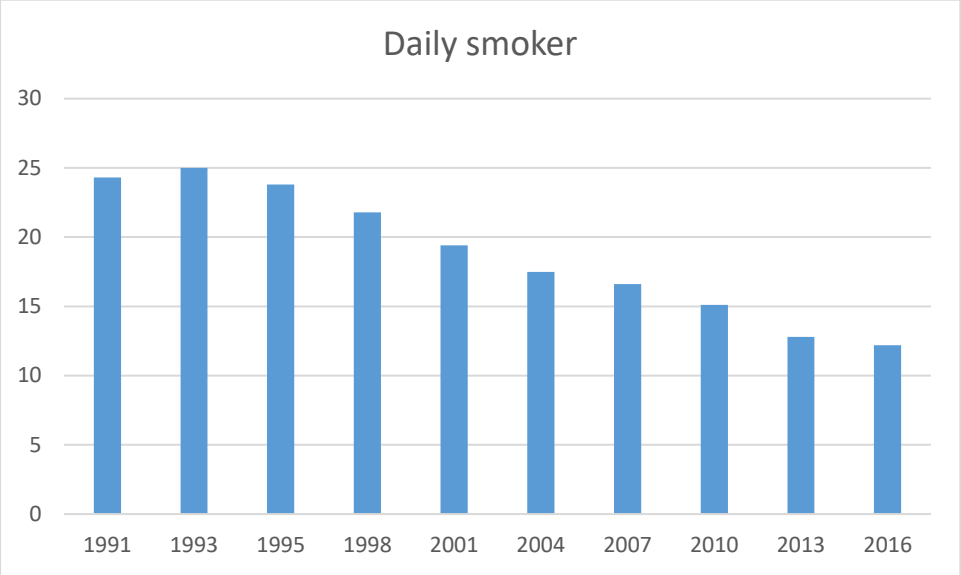
Over recent years the trend decline has flattened. As Figure 1 shows, this, is masked in the data covering the past 30 years or so because, superimposed upon the trend, are increasingly restrictive regulatory measures and increased taxes. Although smoking is, at the least, habit forming and smokers therefore have a strong wish to consume the product, price, marketing and promotional activity together with increasing restraints on the areas where smoking is permitted would have reinforced the underlying trend.

FIGURE 1



According to AIHW data for those over 14 years of age the falling trend of daily smokers has flattened out.

FIGURE 2



AIHW June 2017

Such an outcome is predictable. Smoking is addictive but the degree of addiction clearly varies – some people have found it very easy to quit while for others it has taken a great effort, an effort reinforced by the tax and regulatory impositions put in place.

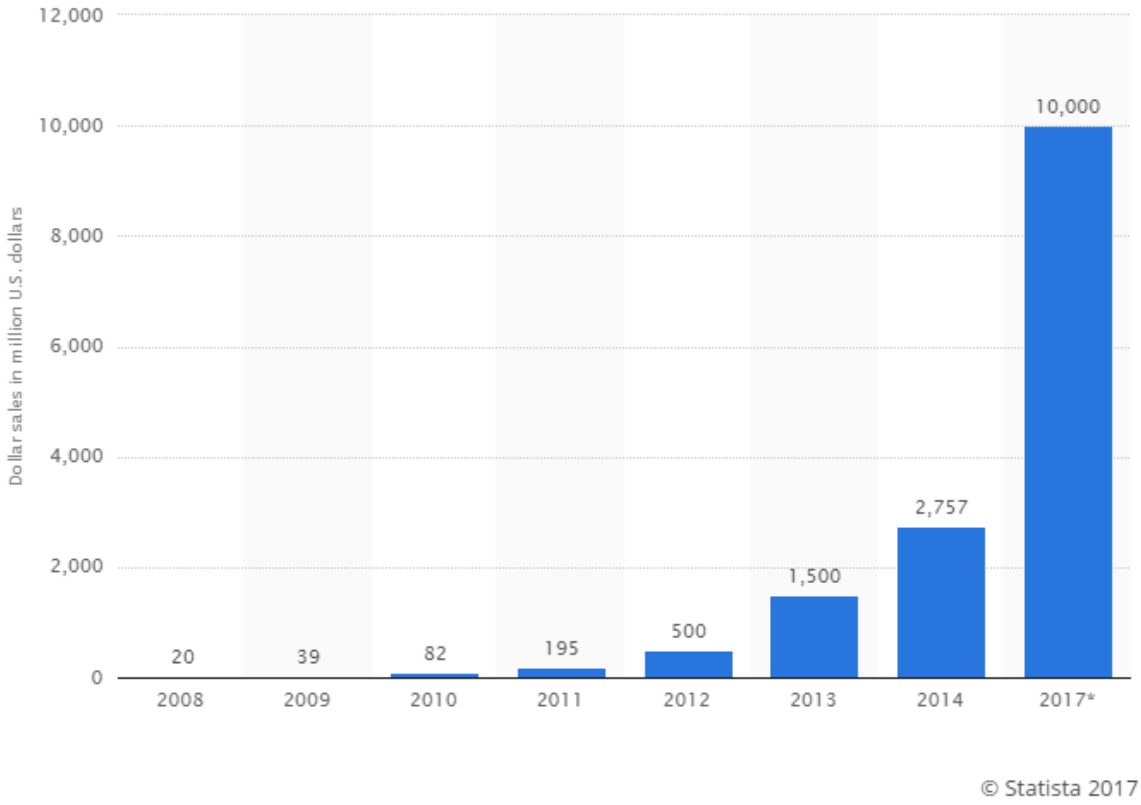
Those that find it more difficult to quit would require increasing levels of incentives to do so. Hence, an asymptotic trend is to be expected and additional regulatory measures are likely to have diminishing returns. In the case of tax increases the risk is that this will trigger mass evasion like that which took place in response to draconian taxation of tea in England in the 18th Century. With a tariff of 119 per cent in 1784, smuggled product (in spite of heavy smuggling penalties) comprised an estimated 60 per cent market share. The tariff was dropped to 12.5 per cent and smuggling abruptly ceased[1].

With tobacco there is evidence of an increase, in response to higher taxes, in illegal procurement of untaxed tobacco, though this is not confirmed by data from NDSHS[2]. What is incontestable is an increase in the illegal or quasi-illegal use of e-cigarettes in Australia and elsewhere. Statista records the very rapid increase in global sales of e-cigarettes illustrated in Figure 3.

[1] https://www.tea.co.uk/tea-a-brief-history

[2] See AIHW June 2017 Table 12: Proportion of smokers(a) and total population, aged 14 or older, that have seen tobacco products without graphic health warnings and number of packets purchased, 2013 and 2016 (per cent)

FIGURE 3



E-cigarettes are presently illegal in Australia under the Poison Standard of the Therapeutic Goods Administration, which prohibits the sale of products containing nicotine other than those exempted under Schedule 7 including tobacco "prepared and packed for smoking".

Composition of smokers within the community

It would appear from socio-economic data that those at greatest risk of harm from smoking are poorer people, who as illustrated in Table 1 below are far more likely to smoke.

TABLE 1

Proportion of smokers by relative social disadvantage
Total Australia

	Male	female	Total
First quintile	27.4	18.9	23.0
Second quintile	22.3	19.4	20.8
Third quintile	18.0	14.1	16.0
Fourth quintile	15.4	11.3	13.4
Fifth quintile	11.5	8.4	9.9
Total	18.3	14.1	16.1
Total	100.0	100.0	100.0

Source: http://www.tobaccoinaustralia.org.au/1-7-trends-in-the-prevalence-of-smoking-by-socioec

The taxation impost also falls most markedly on the poor.

TABLE 2

Household Income and tax from tobacco ($per week)

	Mean Income	Tax Paid	Per cent of income
Lowest quintile	520	11	2.1
Second quintile	754	10	1.3
Third quintile	910	10	1.1
Fourth quintile	1100	7	0.6
Highest quintile	1775	6	0.3
All	1012	9	0.9

Source: ABS 6537
http://www.ausstats.abs.gov.au/Ausstats/subscriber.nsf/0/FA33862EE0D34EEECA257A750014E5DF/$File/65370_2009-10.pdf

There is also evidence to associate smoking with mental illness – though this is not of course to suggest mental incapacity on the part of the vast majority of smokers, who would, notwithstanding the addictive nature of nicotine, be acting in response to their preferences[3]. Schroeder and Morris[4] estimated that 44 per cent of cigarettes are consumed by people with mental illness who die 25 years earlier than the general population. Up to 88% of people with schizophrenia[5] and 82.5 % of people with bipolar disorder[6] smoke.

It is most regrettable that this group of people are ill-served by punitive government tax policies. Imposing high taxes on what they clearly consider to be a palliative is exacerbated by denying them an alternative far less harmful means of comfort from the distressful effects of their illness. Vaping and e-cigarettes have variable outcomes in allowing people to quit smoking, with some claims of a 70 per cent success. They also reduce the ingestion of toxic products that accompany the inhalation of tobacco for their nicotine content.

There may be fears that allowing a less harmful form of nicotine consumption to be more freely available may encourage its use. Most smokers commence the habit at an early age and the data demonstrates the initiation has fallen with the "never smoked" category of those aged 18-24 having risen from 58 per cent to 79 per cent between 2001 and 2016.

[3] Greenhalgh et al report, "In Australia, while the prevalence of smoking is declining in the general community, it remains high among people with mental illness." Greenhalgh, EM., Stillman, S., & Ford, C. 7.12 Smoking and mental health. In Scollo, MM and Winstanley, MH [editors]. *Tobacco in Australia: Facts and issues.* Melbourne: Cancer Council Victoria; 2016.

[4] http://annualreviews.org/doi/abs/10.1146/annurev.publhealth.012809.103701

[5] Els, E., Kunyk., D., McColl, L. (2009). Benefits and Risks of Smoking Cessation: The Fundamental Importance of Cessation Must be Recognized. Smoking Cessation Rounds, 3(4) Retrieved May 9, 2011 from

[6] Lasser, K., et al. (2000, Nov.). Smoking and Mental Illness: A Population-Based Prevalence Study. The Journal of the American Medical Association, 284 (20), 2606- 2610.

TABLE 3
Tobacco smoking status, people aged 12 years or older, by age, 2001 to 2016 (per cent)

Smoking status	2001	2004	2007	2010	2013	2016
12–17						
Daily	n.a.	5.2	3.2	2.5	3.4	1.5
Occasional[(a)]	n.a.	1.5	0.9	1.3	1.6	0.6
Ex-smokers[(b)]	n.a.	1.7	0.9	1.6	0.3	0.4
Never smoked[(c)]	n.a.	91.6	95.0	94.6	94.7	7.6
18–24						
Daily	24.0	20.2	16.5	15.7	13.4	11.6
Occasional[(a)]	8.1	5.3	4.9	4.9	5.1	4.3
Ex-smokers[(b)]	10.2	9.5	8.3	7.3	4.7	5.0
Never smoked[(c)]	57.7	65.1	70.3	72.1	76.8	79.0

Source. http://www.aihw.gov.au/alcohol-and-other-drugs/data-sources/ndshs-2016/data/ Tobacco smoking Table 3.

Recently released data from the UK[7] showed that last year, British smoking prevalence fell by 1.4 per cent, having fallen 0.9 in the previous year. Younger adults (who have the highest rates of vaping) have seen the largest reduction in smoking.

Recommendations

Regulation Economics is averse to all regulations that prevent people acting on their own preferences even if this means self-harm. In the event of collateral harm to others from one's own actions - externalities - some taxes or limitations to people's actions are warranted. However, the health externalities in cigarette smoking –second hand smoke – are not significant[8], while the externalities in terms of displeasure at the odour of cigarettes are easily accommodated by private actions of owners and hosts of activities conducted in public places where non-smokers may be confronted with cigarette odours. It is sometimes argued that health costs are another externality from smoking but smokers more than pay the costs, in terms of tobacco-specific taxes, for any of the additional health care their habit engenders.

Many promote a more active role for Governments than that offered above in combatting harmful activities that individuals' willingly engage in. Even so, it should be common ground that Governments should avoid actions that enhance the opportunities for self-harm, whether or not these are inadvertent. Hence, unless there is compelling evidence that a liberalisation of the regulations on e-cigarettes and vaping will both bring a resurgence in nicotine use and a net increase in harm from that use, it follows that these products should not be illegal, nor should there be administrative impediments placed in the way of their marketability. In the absence of such evidence, denying current smokers' access to the products brings perverse outcomes and especially on the less well off and on those with mental illnesses.

7 https://www.ons.gov.uk/peoplepopulationandcommunity/healthandsocialcare/drugusealcoholandsmoking/datasets/ecigaretteuseingreatbritain

8 Although there are many suggestions of a link between health problems and passive smoking, a recent one being an association of passive smoking by children with rheumatoid arthritis in later years https://www.sciencedaily.com/releases/2017/06/170616102121.htm

We are not aware of any data substantiating a case that new e-cigarettes or vaporiser products will bring about a harmful resurgence in nicotine consumption. Accordingly, we recommend that the law be changed so that e-cigarettes and other products like personal vaporisers that allow nicotine or nicotine substitutes to be inhaled should be made legal under the same provisions of Schedule 7 of the Poisons Standard that allow the sale of cigarettes. As with cigarettes, we consider that such provisions should apply to all products and, to avoid unnecessary costs to the government and consumers, should not require the paperburden of individual approvals.

With regard to tax, our view is that all products should generally be taxed similarly. In the case of tobacco products the very high rate of tax is rationalised on the basis that this is to deter self-harming consumption.

To allow equity between competing products while ensuring that the taxation is in proportion to their relative harm, if a product specific tax is to be placed on these goods, strong consideration should be given to recommending this be at a lower rate than the tax on general tobacco smoking products. Indeed, if research finds the tobacco-substituting smoking products offer health advantages, this would warrant a zero level of taxation on them. Indeed, logically, for those tobacco consumers who use the product to alleviate symptoms of suffering, consideration should be given to providing the product at no cost.