Ethical issues for e-cigarette control policies in Australia

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# Abstract

Although tobacco smoking in Australia is at a historical low, e-cigarette use, especially in the youth is increasing. Policies around e-cigarette control in Australia are currently evolving, even during the pandemic thus demonstrating its priority status. The current article discusses ethical issues for e-cigarette control policies in Australia using a public health ethics framework. The article is structured using domains of WHO-MPOWER framework of tobacco control to enable a comprehensive coverage of all elements of e-cigarette control policies in Australia. It highlights several ethical issues, from different stakeholder perspectives and indicates moral tensions to reflect on possible public health actions that need to be considered by the Australian government from an ethical perspective.

Keywords

Electronic Nicotine Delivery Systems, Australia, Ethics, Public Policy, Smoke-Free Policy, Vaping, Public Health Ethics

# Introduction

Australia has often been dubbed as the “world’s darkest market" (1) for the tobacco industry. Australia has been successful in implementing a comprehensive multi-level strategy for tobacco control which has led to a sustained decreased in smoking for many decades (2). The proportion of Australians who smoke tobacco daily (current smokers) has decreased from 24% in 1991 to 12.2% in 2016 and 11.0% in 2019(3). However, it is seen that proportion of Australians who has ever used electronic cigarettes (e-cigarettes) have increased from 8.8% in 2016 to 11.3% in 2019 (3). The policy and regulatory space around e-cigarette are currently evolving in Australia, even amidst the COVID-19 pandemic, demonstrating the priority status accorded by the issue. Policy critique and analysis of evidence is aplenty, but analysis of ethical issues around e-cigarette control in Australia is scant.

Previous analysis of ethical issues for policies to control e-cigarettes in Australia has been either based on principlism (the ethical principles of autonomy, beneficence, non-maleficence, and justice) (4, 5) or through the prism of harm reduction (5-7). Principlism is not well suited for analysing ethical issues around public health policies. Public health decision making is inherently more complex, involves large number of stakeholders with different value systems, and are contextual in nature. Harm reduction, though a key tenet to guide e-cigarette policies, has its roots in libertarianism, a value system which might fundamentally not align with moralities of many stakeholders. As such, using a singular philosophical lens for analysing public policy is not desirable.

The current article, analyses ethical issues around all aspects of e-cigarette control in Australia using a three-steps public health ethics framework (8) . The three-steps framework does not presume superiority of any set of moral norms over another and helps clarify ethical issues contextually and comprehensively. The approach in brief consists of analysing ethics and contexts around the issue at hand, analysing ethical dimensions (utility, equity, justice, respect of individual and community interests or other moral considerations) of alternative courses of action and a final stage of justification (based on effectiveness, proportionality, necessity, least infringement and public justification) for a particular public health decision.

The need for a comprehensive policy framework to tackle e-cigarette has been identified (9) , and as such, an ethical analysis around all aspects of control is opportune as public policies around it are being currently debated . To ensure all aspect of e-cigarette control policies are covered ,the deliberations of the ethical analysis is structured within the WHO -MPOWER framework of tobacco control (10). The WHO-MPOWER (**M**onitor tobacco use and prevention policies, **P**rotect people from tobacco smoke, **O**ffer help to quit tobacco use, **W**arn about the dangers of tobacco, **E**nforce bans on tobacco advertising, promotion and sponsorship, **R**aise taxes on tobacco) is a comprehensive framework to monitor implementation of control policies, which is in alignment with the Framework Convention on Tobacco Control(FCTC)(11).

# Monitoring of use and prevention of e-cigarettes

The Australian Institute of Health & Welfare periodically conducts surveys for monitoring drug and tobacco use which also provides data on e-cigarette use (AIHW, 2020). However, estimates of smoking and e-cigarette use in Aboriginal & Torres Strait Islanders (indigenous) people, and migrant communities is not available from these surveys. Tensions around equity, justice and respect for indigenous people and their cultural practice dominate a large part of the socio-political discourse in Australia. The Australian Bureau of Statistics (ABS), which conducts survey under the Census and Statistics Act, 1905, provided the first government estimate in 2019 and found that the ever-use of e-cigarette was 8% in indigenous adult people(12). A 2020 review commissioned by the Australian Government on however, noted that the entrenching of colonial processes and commercialisation within indigenous communities, together with a diverse and evolving range of e-cigarette products means, indigenous people in Australia have a unique risk around its use (13). Having a contextually fit equity-focussed monitoring framework, which looks at monitoring of use and prevention of e-cigarettes in indigenous and migrant communities with further disaggregation by gender and region(rural/urban) might be considered by the Australian government. As such Australia, has an opportunity to go above and beyond international commitments under the WHO FCTC (11) by considering equity within its tobacco control related surveys. It is expected that this will incur costs as larger sample size surveys will be required to get reliable estimates. A distributive justice framework would justify the additional investments required for this purpose.

# Protect people from e-cigarette smoke

The deleterious effect of second-hand smoke emanating from e-cigarettes, and the consequent need to protect people is intensely debated. Proponents of e-cigarettes (manufacturers, retailers, trade associations, hospitality industry and a section of researchers and liberal politicians) cite data on e-cigarettes smoke having lesser nicotine than cigarette (or none for non-nicotine varieties), and on the uncertainty around harms from vapour emanating from second-hand e-cigarette smoke (14). A key ethical principle invoked is the liberal tenet of Mill’s harm principle (15). The Mill’s harm principle broadly states that people’s autonomy should be preserved unless it causes harm to others. Those opposing e-cigarettes (tobacco and cancer control activists and peak medical bodies[[1]](#footnote-2) ) cite emerging data on the harms form second-harm smoke , and calls for invoking the precautionary principle and ban e-cigarette use in public spaces , in a manner similar to that of cigarette smoking(16). The “gateway effect”, i.e. e-cigarette use leading to smoking initiation in non-smokers (discussed subsequently) and the renormalisation of the culture of smoking has also been cited as harm which needs to be considered (5, 7). As such, the Mill’s harm principle has been challenged on moral grounds citing the harms for future prospective smokers. It has been retorted by proponents of e-cigarette that interests of a hypothetical future smoker cannot triumph the autonomy of current smokers (4). It is illegal to use e-cigarettes (irrespective of whether they contain nicotine) in places where smoking is banned in almost all states and territories of Australia currently. There is not much policy debate around the issue, seemingly implying changing laws in public space around e-cigarette is not a priority area of public discourse for proponents of e-cigarette use.

# Offer help to smoking cessation through smoking cessation

Those intended quit smoking are offered advice and counselling and nicotine replacement therapy (NRT, as a harm reduction approach). E-cigarettes is the newest contender in the tobacco harm reduction space. There has been significant uncertainty about the evidence for the benefits and harms of e-cigarettes for smoking cessation since the last decade. Current Australian guidelines, do not recommend e-cigarettes as either first-line or second line therapy for smoking cessation noting the lack of evidence on effectiveness and safety for smoking cessation (17). However, the October 2020 Cochrane review (18), found that quit rates were higher(moderate certainty evidence) and there was no difference in adverse events (low-certainty evidence) in people who used nicotine containing e-cigarettes in comparison to those who used other NRT and between those who use non-nicotine containing e-cigarettes. The changed conclusion of the updated 2020 Cochrane review as such, lays down the pathway for a possible change in medical guidelines around its use as a harm-reduction approach.

Away from the clinical debates, around the effectiveness, it has also been argued that use of nicotine containing e-cigarettes for smoking cessations makes smoking cessation messages confusing for the public(4, 19). The public might possibly interpret it as evidence for a safe level of smoking. The additive nature of harm owing to dual use of cigarette and e-cigarette and the potential of them acting as a deterrent to quitting tobacco altogether has also been a major cause of concern around it. The objections, however, are not specific to e-cigarette and broadly true for any harm reduction approach including NRT. As such, biased moral reasoning to justify pre-existing bias against e-cigarettes (19) might be plausible for such arguments put forward by many peak medical bodies .

Selling nicotine containing e-cigarettes is already banned throughout Australia since it is classified as a “dangerous poison” under the National Poisons Standard. In September 2020, the Therapeutic Goods Administration (TGA), Department of Health made an interim decision to reclassify e-cigarettes containing nicotine in the Poisons Standard to make it a prescription only-product (for those needing it for smoking cessation)(20). This follows a decision in June 2020, wherein importing e-cigarettes containing nicotine (or their refills) is banned in Australia from 1 January 2021 (21). This implies that unlike now, individuals can no longer order online and bring nicotine containing e-cigarettes by international surface or airmail services. Medical practitioners will also have to seek a register themselves separately in order to prescribe nicotine containing e-cigarette. The process is thought to be a significant barrier for prescription use of e-cigarette especially in lieu of contrary recommendations in guidelines (17). Non-nicotine containing e-cigarettes, however, continue to be available for local purchase, without little restrictions in most Australian states and territory, although these contain several other substances with potentially deleterious health effects.

In Australia, smoking is currently more prevalent in socio-economically disadvantaged group (3) . Many proponents for e-cigarettes argue that the barriers being put forth for provision of e-cigarette for smoking cessation reflects the lack of equity focus in public policy. It has also been argued that not allowing access to e-cigarette is “unfair to addicted smokers who are denied access to a safer nicotine product and forced to continue to smoke cigarettes”(4). Evidence from several observational studies show that e-cigarettes led to reduction of cigarette smokers who are not motivated to quit otherwise (14). The group of those not motivated to quit smoking, is a key group from a tobacco endgame perspective. It has even been claimed by politicians, that those against e-cigarette were the ones who “were in the pocket of tobacco companies” (22) and not those proposing it. The argument is on the lines of tobacco industry losing business due to people quitting smoking through e-cigarette use but there has been no substantiation of such claims. On the other hand the influence and interest of tobacco industry in promoting e-cigarette use globally has been documented (discussed in a subsequent section).

Considering the evidence from recent Cochrane review(18), there seems to be a greater therapeutic role for e-cigarettes in smoking cessation necessitating the need for improving access to them for smoking cessation. Retailers and of convenience store owners in general object to e-cigarette regulation being more harsher than that of cigarettes (principle of justice) and also cite the economic need to depend on e-cigarette(non-nicotine) sales to make-up for decreasing cigarette sales and the loss due to COVID-19 pandemic (23). There are substantial ethical tensions between key stakeholder group. Policy stances around the issue, both between and within stakeholder groups, is likely to remain fluid as emerging evidence and economic impact of the pandemic changes unfolds.

# Warnings about the dangers of e-cigarettes

E-cigarettes which do not contain nicotine is sold with minimal to no retail restrictions in most Australian states. The ambiguity around safety of, and long-term implications of e-cigarette use is not communicated to e-cigarette users as there are no standardised warnings on the issue. Several peak medical bodies in their submission to a government enquiry on e-cigarettes in 2017 have called for legal requirements in packing and labelling such that all ingredients, associated health harms and warnings are listed (24). The Cancer Council and the National Heart Foundation recommends the ban of retail sale of non-nicotine e-cigarettes(16). Industry and supply-chain stakeholder objections citing economic cause and lack of data are on similar lines as for other domains. Considerations of respect for autonomy, self-determination as well as consumer rights imply necessity for making way for provision of risk information through labelling is a necessity in a liberal democracy like Australia. Effective labelling together with mass-media and social marketing interventions for warning about dangers of e-cigarette is the least infringing public health intervention which needs to be considered. This would fill an important policy gap and can be implemented in Australia, which has demonstrated its success in the space through successful implementation of plain packaging standards. It is also important to stress that warning alone, as many proponents of libertarianism might argue, is unlikely to have major influence on usage of e-cigarettes. However, provision of information to citizens, through labelling is an ethical imperative for the government. This however, might be challenging considering the wide variety of e-cigarette products, and the consequent lack of certainty on its harms in short and long-term for users.

# Enforcing bans on e- advertising, promotion and sponsorship of e-cigarettes

Advertisements and marketing for tobacco products, including restrictions on internet advertising is enforced through Tobacco Advertising Prohibition Act 1992(25). E-cigarettes without nicotine do not come under the purview of this act and as such their marketing and advertising largely unregulated and industry employing tactics of former tobacco marketing campaigns. The marketing objective is to associate e-cigarettes with glamour and desirable lifestyles. Analysis on e-cigarette promotion on social media highlights most aim to show them as health-conducive devices, and many circumvented Australian tobacco control laws(26-28). Regulating social media however is challenging considering the borderless nature of internet.

However, a bigger issue in the space is the targeting of youth. E-cigarettes are available in several flavours and are being specifically targeted to adolescents and young adults who finding these flavours attractive(29). There is an increased concern around their ingestion by children with reports of death from USA being reported (14) . Children, lack autonomy in decision making and there is a need for instituting public health action to protect them. Apart from vulnerability, there are also concerns around long term harms for e-cigarette use in children and younger people. Proponents of e-cigarettes have for long claimed that there is no credence to the “gateway effect” but a recent meta-analysis of longitudinal studies with data from 17,389 adolescents and young adults, found that those who used e-cigarette were more likely to initiate and use cigarettes(past 30-day use) than those who do not (30, 31). In Australia, current e-cigarette use have increased between 2016 and 2019(3). Most of the increase is in younger people - from 6.8% to 18.7% in 18-24 year olds, and from 3.6% to 13.7% in 25-29-year olds (AIHW, 2020). As such the utility of a complete ban on e-cigarette for protecting the public good of low tobacco consumption in Australia might be considered necessary to serve an utilitarian purpose (7) .

# Raising taxes on e-cigarettes

The e-cigarette industry has in last few years consolidated through mergers and acquisitions by tobacco companies(32). As such, “Big Tobacco” benefits from the dual use as well as promoting themselves as agents of harm reduction. Such moral positioning has become imperative for the tobacco industry owing to the changed cultural discourse around tobacco use wherein it is no longer glamorised. As such, the industry discourse has been to show interest to collaborate with government to help achieve “public health gains” while it can continue to contribute to the economy through tobacco taxes. Critics argue that it is immoral to contribute to profits of tobacco industries which will continue to use the monies for promoting their products and harm more people(14). A “levelling-up” approach has been suggested wherein e-cigarette sales are allowed to be sold with similar restrictions as that of cigarette and is taxed either at the same rate or a lower rate (since they are less harmful)(4). Proponents of e-cigarette consider that this is the most appropriate approach as taxation makes e-cigarette users liable for their behaviour, but not the outcomes of this and enables distributive justice.

# Conclusion

The comprehensive analysis across the spectrum, instead of a piecemeal ethical analysis, allowed understanding of the ethical tensions. The objection by peak medical bodies around e-cigarettes for smoking cessations will be challenges owing to the changes evidence around it. There seems to be an opportunity for addition of nicotine-containing e-cigarette along with other NRTs. Further randomised controlled trials in the Australian context might also be mandated not only for the cause of science, but also to inform the ethical conundrum around long-term safety and in comparison, to other non-nicotine containing smoking cessation approach. The prescription-only model will add a significant barrier to its availability and equity concerns seem to be valid. The Chair of the Senate Select committee which will held its first public hearing of e-cigarette on November 2020 has revealed that majority of the 8000 public submissions received are against the prescription-only model of e-cigarettes (22). Better monitoring mechanisms would provide granularity for equity purposes. However, the additional cost that needs to be incurred for the same, especially in the economic scenario around COVID-19 is a critical factor. Distributive justice does come with a cost. Economic considerations along with ethical issues discussed, would influence decisions around revision of taxation structures, as well as legislation around packing and labelling of e-cigarettes. While the report does not aim to be prescriptive, further dialogue on banning non-nicotine containing e-cigarette which only serve to normalise and glamourize a smoking culture is necessitated. At the core, however, lies the need for Australia to sustain and further its historic low in smoking prevalence. It is a public good that needs to be preserved and understanding ethical issues around it can only make the endgame strategy stronger.

# Disclaimer

The opinions expressed in this article is of the author and might not represent those of their university or employer.

# Conflict of interest

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1. A peak body in Australian parlance implies an association of industries or trade unions with allied interests. In this case, it implies key medical associations in Australia. [↑](#footnote-ref-2)