

Canadian Lung Association

B R E A T H E

Association pulmonaire du Canada

R E S P I R E Z

# Written Submission for the Third Legislative Review of the Tobacco and Vaping Products Act

By: The Canadian Lung Association

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The Canadian Lung Association has no conflicts of interest to declare.

## Introduction

The Canadian Lung Association (CLA) welcomes the opportunity to participate in the third review of the Tobacco and Vaping Products Act (TVPA). We understand that this third review will focus primarily on compliance and enforcement objectives of the act. CLA is supportive of the review process and, as has been included in previous submissions, continues to **recommend that a comprehensive nicotine strategy is considered to view these products in tandem rather than separate to capture a fulsome understanding of tobacco and vaping products in Canada.**

The Canadian Lung Association is also a member of the Canadian Coalition for Action on Tobacco as well as the Alliance for a Tobacco Free Ontario and endorses those submissions in addition to our own submission.

This third review of this legislation seeks to understand the success of the Act against three themes:

- Changing market;
- Regulating in a digital era;
- Facilitating collaboration through the legislative framework of the TVPA

In the section that follows CLA has provided responses to most discussion questions within the capacity for us to fully comment within each theme.

## About The Canadian Lung Association

The Canadian Lung Association is the leading organization in Canada helping Canadians breathe. We work to save lives, prevent lung disease and improve lung health through research, advocacy, education and support. As a non-profit and volunteer-based health charity, we depend on donations from the public to support our mission to lead nationwide and international lung health initiatives, prevent lung disease, help people manage lung disease and promote lung health.

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## Theme 1: Changing Market

### *Discussion Paper Questions:*

- *How could the Government of Canada improve monitoring/oversight of the tobacco and vaping product markets considering these products are widely available?*
- *Should the Government of Canada consider additional enforcement tools to effectively address non-compliance? If so, which ones?*
- *Are there other measures the Government of Canada could take to increase compliance with the TVPA and its regulations?*

### **Recommendations**

1. Ensure access to real-time data where possible to improve monitoring and enable evidence-based decision making

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While Canada has several reporting surveys there is a need for a more integrated system that would ensure there is comparable data across the country that reflects the current state of tobacco and nicotine consumption and the efforts to control it. This should also be integrated into a fulsome nicotine strategy so that trends of product use and total nicotine prevalence can be captured without significant lag times. The cannabis website is an example of how this could be achieved<sup>1</sup> where data and reports can be made publicly accessible in a timely and user-friendly format.

A strengthened surveillance system would enable and inform both policy direction as well as effectiveness of those measures once implemented. It would allow for a sounder understanding of the tobacco and nicotine evolving market as well as the illicit market and inform efforts to address the illicit market. It would also allow public health to better adapt to use trends and develop guidance to Canadians reflective of this information. The need to enhance surveillance and reporting has been identified repeatedly as an opportunity for federal action by the Chief Medical Officers of Health in their public statements in 2020 and most recently in 2025.<sup>2,3</sup>

## Theme 2: Regulating in a Digital Era

### *Discussion Paper Questions:*

- *Which measures, technologies or tools would be useful to better monitor/have better oversight of internet and social media?*
- *How can the Government of Canada improve the monitoring and enforcement of the TVPA and its regulations in digital and social media spaces where traditional enforcement tools such as seizure of products may not apply?*
- *Are there enforcement tools to effectively address non-compliance with the TVPA and its regulations in the online context? Should additional tools be considered, and why? Please provide examples and supporting data.*

### **Recommendations**

1. Implement measures to reduce exposure to onscreen impressions of tobacco and nicotine inducements including by paid influencers
2. Implement accountability measures for platforms to effectively ensure compliance with measures to reduce onscreen exposure
3. Ban online sales

1. Implement measures to reduce exposure to onscreen impressions of tobacco and nicotine inducements including by paid influencers

Smoke-free media has been a long-neglected area of tobacco impressions for young people. On-screen, young people are exposed to millions of tobacco impressions; tobacco continues to be portrayed as glamorous and appeals to lifestyles that are targeted to young generations<sup>4-5</sup>. It also serves as a trigger for individuals who previously smoked. Calls for smoke free media have urged for greater restrictions through rating changes, policies for streaming platforms, PSAs demonstrating danger, end of government subsidies, and warnings<sup>4-5</sup>. With the emergence of e-cigarettes, we have seen a rise in vaping on-screen and so efforts to address tobacco impressions should also apply to the glamourization of e-cigarettes on-screen.

In fact, a 2020 study found that exposure to tobacco imagery in episodic programming could increase a young person's chance of starting to vape by 3 times<sup>3</sup>. This is concerning given that approximately 60% of shows that are popular amongst young people contain some form of tobacco imagery<sup>5</sup>.

One study that examined the promotion by influencers found that young people may be unwittingly exposed to tobacco and e-cigarette promotion by influencers who cross promote<sup>6</sup>. This referred to a large portion of influencers who post on a variety of topics rather than having a

specific tobacco/e-cigarette focus. Therefore, a young person interested in fashion, music, gaming, or sport may at the same time be exposed to tobacco and nicotine promotion <sup>6</sup>.

## 2. Implement accountability measures for platforms to effectively ensure compliance with measures to reduce onscreen exposure

Online exposure to tobacco and e-cigarette impressions, through social media, is associated with an increased risk of e-cigarette use <sup>6</sup>. Despite some restrictions that are already in place through social media platform protocols there remains widespread exposure through these platforms. In fact, one study found that the hashtag (#vape) on Instagram had over 30 million posts, making it the most prevalent tobacco-related post type <sup>7</sup>.

In their study, Vassey et al <sup>7</sup> demonstrated that when trained and validated, these models have high accuracy to identify promotional e-cigarette use content. While measures should be put in place to reduce online exposure to tobacco and nicotine inducements, the burden of compliance should not fall solely to the government. Instead, measures could be implemented to ensure that the platforms exposing the public to these inducements have a responsibility to comply with measures to reduce exposure by young people. This may include the utilization of machine learning approaches to detect tobacco and e-cigarette content and flag its removal or review.

## 3. Ban Online Sales

Measures noted in recommendations 1 and 2 above are important as part of comprehensive measures to regulate in the digital era. However, they are complex and challenging to regulate and are imperfect solutions requiring ongoing compliance and enforcement commitments to make them most effective.

Tobacco and nicotine products remain easy to access for all Canadians including young people. The ability to purchase tobacco products online compromises existing mechanisms that are in place to protect young people from inducements. Banning online sales would also increase the ability to manage, oversee, and enforce the products that are being sold to ensure they fall in line with current regulations.

In addition, while age-gating measures are in place, they are not sufficient to protect youth and can be easily overridden. The Council of Chief Medical Officers of health has called for a ban on online sales to prevent underage access <sup>2</sup>. CLA and other organizations have similarly advocated for this measure. This ban should extend to all nicotine-based products not currently approved as smoking cessation aids.

This measure is gaining momentum with some provinces exploring the potential to implement it and Quebec having moved forward<sup>8</sup>. A ban at a federal level would reduce loopholes and provide equitable protection for youth access across Canada. Additionally, an internet/online ban not only

protects minors from accessing these products, but it also addresses efforts to undermine Canada's taxation system and other existing regulatory measures.

### Theme 3: Facilitating Collaboration through the legislative framework of the TVPA

#### *Discussion Questions:*

- *How can federal, provincial, territorial and local governments collaborate further to strengthen compliance and enforcement of the TVPA?*
- *Would it be useful to explore transparency initiatives of compliance & enforcement findings? If yes, how would this be useful?*
- *Is there additional compliance promotion measures the Government of Canada could take to increase compliance with the TVPA and its regulations? Please provide examples and supporting data.*

#### **Recommendations**

1. Cross appoint inspectors at all levels of government to enhance capacity and increase effectiveness of enforcement and compliance measures

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Cross-appointment serves as a practical mechanism for a fragmented system. This approach would leverage existing infrastructure to amplify the reach and effectiveness of federal tobacco control policies. For example, inspectors trained under the Canada Revenue Agency who are tasked with enforcing the Excise Act could be cross appointed to enforce measures under the TVPA. This could also be extended to jurisdictional areas including the Food and Drugs Act as well as to the level provincial/territorial or even municipal bylaw legislation. This approach would allow for a standard protocol applying across jurisdictions and provided opportunities for shared capacity building and training amongst enforcement teams. Many of these measures were emphasized as part of the report stemming from the second review of the TVPA and offered by NGOs and regional health authorities<sup>9</sup>.

## Theme 4: Conclusion

### *Discussion Paper Questions:*

- *Is there anything else that you would like to add as it relates to any of the topics covered in this discussion paper? If so, please include your comments, with supporting data/evidence where possible.*
- *What key issues remain that, if successfully addressed, would result in further strengthening compliance and enforcement of the TVPA and its regulations?*
- *How can the federal government support the needs of First Nations, Inuit and Metis communities with regards to tobacco and vaping compliance and enforcement?*

### **Recommendations**

1. Move forward with comprehensive restrictions on flavoured vaping products
2. Ensure that phase 2 of the tobacco cost recovery fee apply to vaping products
3. Increase access to cessation to help Canadians quit including approved cessation products as part of National Pharmacare program

In addition to the elements listed in the prior section, several initiatives focused on prevention and cessation efforts in Canada would strengthen compliance and enforcement efforts, close loopholes, and address access.

Despite gains in tobacco more needs to be done to prevent a future generation from addiction to nicotine, as Canada has some of the highest teen vaping rates in the world. Evidence continues to demonstrate that these products should not be used by young people and/or those who do not smoke. Vaping has caused irreversible lung damage, acute pulmonary lung disease and most recently an Oxford University study demonstrated that vaping doubled the risk of serious lung disease, even in individuals without a smoking history. CLA has long advocated for measures that reduce the appeal and access of nicotine products by young people including in our 2019 position statement with the Canadian Thoracic Society. Since then, the evidence has only been strengthened and further validated that position.

1. *Move forward with comprehensive restrictions on flavoured vaping products*

Flavours play a large role in youth vaping. Previous reports have indicated that more than half of all youth vaped reporting using flavours including fruit whereas this was less than half amongst adult users<sup>10-15</sup>. While restrictions have been put in place to regulate some flavours they have left large loopholes which have been exploited by the industry<sup>16</sup>. As a result, thousands of flavours are currently available and are marketed and promoted in a way that is appealing to young people<sup>16</sup>. CLA and other health organizations have repeatedly called for a comprehensive flavour ban to reduce the inducement for young people to use these products<sup>17</sup>.

Of primary concern is the rise in a new generation addicted to nicotine products, the potential for a transition to tobacco products, and the short and long-term potential harm from inhaled aerosol-based products. To date, vaping has caused irreversible lung damage and acute pulmonary lung disease, in some cases, has resulted in death<sup>18-23</sup>.

While Canada has some limited restrictions to flavours available in vape products, this remains a compliance and enforcement loophole that is widely exploited. Current restrictions limit the 'promotion of certain flavours appealing to youth (e.g., confectionary, dessert, cannabis, soft drink and energy drink).' Yet, online websites boast their wide variety of available flavours. One website boasts: "indulge in the sweet world of dessert flavour disposables!...popular desserts like cakes, pastries, ice cream and more...perfect for those who enjoy sweet and dessert-like flavour profiles"; another says "our dessert e-juice are perfect for vapers who enjoy a sweet and satisfying taste."<sup>16</sup>

In June 2021 – more than three years ago – Health Canada announced its intention to adopt a three-pronged approach to restricting flavours through the Order Amending Schedules 2 and 3 to the Tobacco and Vaping Products Act (Flavours)<sup>10</sup>. This approach would eliminate flavours with the exception of tobacco, mint, and menthol; prohibit sugars, sweeteners and most flavouring agents; and prescribe sensory standards<sup>10</sup>. These changes would be robust and effectively reduce the flavours available to Canadian youth from the thousands that are currently available, down to a limited number.

However, these restrictions on flavours have not yet moved to final adoption and publication in Part 2 of the Canada Gazette. Not only has it now been over three years since the proposed restrictions were first published in the Canada Gazette, Part I, it has been even longer-- since 2019 – when the consultation process first began.

Six Canadian provinces and territories have moved forward with flavoured vaping restrictions on their own. A federal restriction would strengthen the ability for provinces to enforce such measures and would improve the current patchwork of provincial restrictions.

Other measures to reduce the appeal of e-cigarettes amongst young generations should include a ban on disposable vape products, measures to implement plain and standardized packaging as well as enhanced warnings.



*2. Ensure that phase 2 of the tobacco cost recovery fee includes vaping products.*

The CLA has applauded the Government of Canada for its bold move in adopting a tobacco cost recovery fee<sup>24</sup>. The cost recovery fee relieves the burden of the regulation of the tobacco industry on taxpayers.

Given the current landscape of nicotine use in this country, CLA encourages the government to move forward with plans to include vaping products in future phases of the framework. Vaping-related expenditures, including fees or charges for vaping manufacturers would recover a significant amount of money that could be reinvested to fund measures to implement a broader tobacco and nicotine strategy, of which compliance and enforcement should be key pillars.

*3. Increase access to cessation to help Canadians quit including approved cessation products as part of National Pharmacare program*

While not explicitly an issue related to compliance and enforcement, it is critical to reiterate that while we regulate access to products we must at the same time support Canadians who continue to smoke, to quit. Furthermore, we must increase our ability to support those with nicotine addiction, including those who have transitioned to vaping, to ultimately quit nicotine products all together.

Approximately 3.5 million Canadians still smoke, the majority of whom want to quit but may not have access to support or information about the best way(s) to quit<sup>3</sup>. This may include the reintroduction of broader mass media campaigns and targeted approaches to address the nuances to the subpopulations who continue to smoke and are at greatest risk.

Finally enhanced access to nicotine replacement therapies, other pharmacological and behavioural supports should be available to Canadians. As Canada works toward its national pharmacare program they should consider including these cessation aides to ensure that cost is not a barrier to quitting. Ensuring Canadians have access to quit smoking products will result in health care savings in the long term.

## Summary recommendations

The Canadian Lung Association is pleased to see this third review of the TVPA and to have the opportunity to provide comment. Canada has made general progress in its tobacco goals particularly in some populations. For instance, younger Canadians (under 15) have historic low rates of tobacco use while other subpopulations noted above remain well over the Canadian average. More needs to be done.

At the same time innovative and bold measures must be taken to reduce the overall nicotine addiction currently experienced by Canadians. This requires aggressive and bold approaches to cessation support. It also requires that Canada consider creating a nicotine strategy that looks to better understand the burden of nicotine addiction overall. This will be increasingly important as a growing number of Canadians take up vaping who have never smoked. The TVPA review should be a comprehensive report on these impacts rather than siloed reviews. Our feedback in this report reflects specific challenges with respect to compliance and enforcement. Our submissions to the first and second review provide additional perspectives related to ongoing challenges as part of the TVPA.

A summary of the recommendations noted above include:

### Recommendations

1. Ensure access to real-time data where possible to improve monitoring and enable evidence-based decision making
2. Implement measures to reduce exposure to onscreen impressions of tobacco and nicotine inducements including by paid influencers
3. Implement accountability measures for platforms to effectively ensure compliance with measures to reduce onscreen exposure
4. Ban online sales
5. Cross appoint inspectors at all levels of government to enhance capacity and increase effectiveness of enforcement and compliance measures
6. Move forward with comprehensive restrictions on flavoured vaping products
7. Ensure that phase 2 of the tobacco cost recovery fee apply to vaping products
8. Increase access to cessation to help Canadians quit including approved cessation products as part of National Pharmacare program

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