



Therapeutic Goods Administration

Via survey response at: [Proposed reforms to the regulation of nicotine vaping products - Therapeutic Goods Administration - Citizen Space \(tga.gov.au\)](#)

Response to Consultation Paper: Potential reforms to the regulation of nicotine vaping products

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Introduction

The Alcohol, Tobacco and Other Drug Association ACT (ATODA) represents the alcohol, tobacco and other drug (ATOD) sector in the ACT. Members include specialist alcohol and other drug treatment organisations; distinguished drug experts with deep knowledge of the criminal justice system and population health; the group representing families and friends who have lost loved ones to drugs; and the peer-based organisation for people with lived experience of drug use in the ACT.

ATODA welcomes the Therapeutic Goods Administration's (TGA) Consultation Paper regarding potential reforms to the regulation of nicotine e-cigarette products (referred to as NVPs in the TGA Consultation Paper). Given ATODA's remit, this submission is specific to the perspective of the ATOD sector in the ACT. As such, ATODA is not directly impacted by any of the proposed options. ATODA appreciates the level of detail regarding harms and current issues set out in the Consultation Paper, and does not duplicate that information or related arguments in this submission.

For context, ATODA's urges policymakers to consider making the manufacture, importation and sale of all e-cigarettes (nicotine- or allegedly non-nicotine- containing) and e-liquids in or into Australia illegal, with the exception of nicotine-containing e-cigarettes used as a cessation tool. ATODA opposes the criminalization of the personal purchase or personal use of e-cigarettes.

Overarching observation regarding terminology

The tobacco industry has intentionally glamourised the use of e-cigarettes through various terminologies such as "vape", "vaping" and "e-cigs", to appeal to consumers. For this reason, ATODA urges the TGA to avoid using terminology like "vapes" and "vaping" to prevent further glamourisation of the use of e-cigarettes. The term "e-cigarette products" is used in place of "vaping products" in this submission, except where quoting the TGA Consultation Paper or in headings drawn from the TGA Consultation Paper.

Border controls

ATODA is not the appropriate body to comment fulsomely on the issue of border controls. However ATODA is convinced by the argument that Option 5 (Options 2 and 3) combined is an appropriate option. In relation to Option 2, ATODA reiterates the importance of appropriate transition arrangements to ensure that individuals who currently access nicotine e-cigarette products for the purposes of cessation through the Personal Importation Scheme exemption do not have a period where they are unable to lawfully obtain these products.

ATODA would urge that Option 4 also be considered in tandem to reduce the black-market supply of nicotine e-cigarette products, recognising that this would be limited to imported products. While a range of more comprehensive methods of regulating non-nicotine containing e-cigarettes are possible, at this stage it is unclear which, if any, will be implemented or the timing of such implementation. Some potential regulatory solutions would be bolstered by parallel controls on the importation of all e-cigarette products.

Capacity to test all imported e-cigarette products for the presence of nicotine is essential given the high proportion of nicotine containing e-cigarettes which are not labelled as containing nicotine. Use of consumer protection laws may be a difficult mechanism for enforcement – indeed, to date they have not been used to substantially limit the number of undeclared nicotine containing e-cigarette products. Consumer protection laws might be especially ineffective when products are imported. It could be relatively easy for importation

companies which do not manufacture e-cigarettes to engage in phoenix activity should consumer protection laws be used against them. To the extent that the implementation of Option 4 incentivised domestic production of non-nicotine containing e-cigarettes rather than importation, it would enhance effective regulation of their content through consumer protection or other legal mechanisms.

Pre-market TGA Assessment of NVPs

ATODA has a strong preference for Option 3, whereby there is a regulated source of nicotine e-cigarette products registered in the Australian Register of Therapeutic Goods (the ARTG). This would give prescribers and pharmacists more confidence to prescribe and stock these products, as noted in the Consultation Paper.

However, ATODA acknowledges the difficulty in achieving this in the short to medium term. Given that, ATODA agrees with Option 4 (Options 2 and 3 combined) being the most appropriate option at this time, however urges the TGA to prioritise the establishment of a regulated source registered in the ARTG.

In relation to a fee for pre-market assessment, ATODA recommends that government does not bear that cost but that it is charged to the applicant. There are strong reservations amongst public health advocates and the broader Australian community regarding any perceived subsidisation of the tobacco industry. Additionally, a fee structure whereby the applicant is charged for each different formulation and set of ingredients could act as an incentive to reduce the number of harmful ingredients in a nicotine e-cigarette product.

Minimum quality and safety standards for NVPs

ATODA endorses Option 7 (Options 2, 3, 4, 5 and 6 combined) as the most appropriate Option to reduce harm and to maximise safety and quality requirements. This submission does not reiterate the persuasive argument for these options as already detailed in the Consultation Paper.

However ATODA proposes an amendment to Option 2, whereby all flavours, including tobacco flavour, be prohibited, to support cessation and reduce potential loopholes for e-cigarette manufacturers.

ATODA's preference regarding packaging is for plain packaging requirements similar to other prescription-only medicines.

Clarifying the status of NVPs as 'therapeutic goods'

ATODA understands that listing nicotine e-cigarettes as 'therapeutic goods' will not necessarily increase the number of people subject to criminal prosecution for possessing nicotine e-cigarettes. On this basis, ATODA supports the TGA regulating nicotine e-cigarette products, regardless of whether they are labelled as containing nicotine.

ATODA reiterates its position that no individual should face prosecution for possessing e-cigarettes for personal use. With reference to the above comments against each of the consultation areas, ATODA urges the TGA to consider any possible impacts of reform on the potential for prosecution of individuals for personal possession and to minimise these to fullest extent.

Conclusion

ATODA appreciates the efforts of the TGA to reduce harms associated with the use of nicotine e-cigarette products, and the opportunity to provide this submission. ATODA is available to provide any additional detail that may be required.

About ATODA

ATODA is the peak body for the alcohol, tobacco and other drug (ATOD) sector in the ACT. Its purpose is to lead and influence positive outcomes in policy, practice and research by providing collaborative leadership for intersectoral action on the social determinants of harmful drug use, and on societal responses to drug use and to people who use drugs.

ATODA's vision is a healthy, well and safe ACT community with the lowest possible levels of alcohol, tobacco and other drug related harms. Underpinning ATODA's work is a commitment to health equity, the social and cultural determinants of health, and the values of collaboration, participation, diversity, respect for human rights, social justice and reconciliation between Aboriginal and Torres Strait Islander people and other Australians.

Note: While the term AOD (alcohol and other drug) is commonly used to refer to the alcohol, tobacco and other drug sector, ATODA's preference is to use the term ATOD. This acknowledges the role that specialist service providers in this sector play in providing tobacco cessation support, and because tobacco use is the leading preventable cause of the burden of disease in Australia.