

Master Grocers Australia Ltd

Trading as:
MGA Independent Retailers

**Response to the Therapeutic Goods Administration
(TGA)**

**Consultation on the Proposed Reforms to the
Regulation of Nicotine Vaping Products (NVPs).**

Submission Paper

January 2023

Overview

Master Grocers Australia (MGA) wishes to thank the Therapeutic Goods Administration (TGA) for the opportunity to contribute to the consultation on the proposed reforms to the regulation of nicotine vaping products (NVPs).

MGA Independent Retailers is a national, registered, not for profit employer organisation, that only represents family enterprises and private businesses, particularly in grocery and liquor and other retail businesses nationally.

These businesses range in size from small, to medium and large, and make a significant contribution to the retail industry, employing 120,000 people and accounting for approximately \$16 billion in sales.

There are 2,700 branded independent grocery stores, trading under brand names such as Foodworks, Foodland (SA), Friendly Grocers, Supa IGA, IGA, IGA Xpress, Drakes, SPAR and Farmer Jacks (WA) with a further approximately 1,300 independent food and grocery businesses trading under their own local brand names.

MGA supports the Minister for Health and Aged Care’s view that the current vaping laws ‘fall short’. A key focus for the Australian Government in 2023 should be on effectively controlling the market for nicotine vaping products (NVPs).

Many MGA members in the independent supermarket and liquor sector have been adversely affected by the current regulatory model which has resulted in a vast illegal black-market trade in NVPs that is exploiting Australia’s youth, harming lawful businesses, and enriching black market operators.

To end the black-market trade of NVPs the Australian Government must ensure adult consumers are able to purchase products in a responsible and regulated way. This means introducing clear laws for labelling, ingredient quality, youth access prevention and the responsible retailing of vaping products.

MGA thanks the TGA for this opportunity to make this submission.

Scope of Consultation

In announcing this consultation process, the Minister for Health and Aged Care stated that “*there are now more people we think vaping in Australia than are smoking cigarettes*”¹ and that “*I don’t want to see anything off the table*”². Reflecting these comments, MGA submits the TGA’s scope of the consultation – which excludes consideration of the classification of NVPs as a prescription medicine – does not meet the Minister’s stated intent for all options to be considered or the real-world success Australia has had in reducing youth smoking rates to historic lows through effective tobacco control mechanisms.

Acknowledging the assessment of an adult consumer regulatory framework will not be considered by the TGA, MGA recommends the Australian Government undertake a further review process that evaluates the successful regulatory models in force in New Zealand, the United Kingdom, the European Union, Canada, and the United States.

Regulatory Failure

Based upon the latest Australian Institute of Health and Welfare (AIHW) data, the Minister’s statement that there are more people vaping in Australia than smoking indicates there are as many as 2.9 million NVP consumers in Australia³. Noting The Australian newspaper has reported 88% of all NVP consumers are buying products from the black-market, MGA submits that under the current regulatory framework there may be over 2 million Australians who are unlawfully consuming unregulated NVPs supplied by the black-market. Based upon these numbers, it is apparent the current regulatory framework has completely failed to effectively control the NVP market and as a result it has allowed black-market suppliers to readily sell to minors.

¹ Radio interview with Minister Butler and Raf Epstein, ABC Melbourne - 30 November 2022

² Minister Butler doorstep in Canberra - 30 November 2022

³ AIHW National Drug Strategy Household Survey 2019

Controlling the NVP Market

All States and Territories have implemented strict tobacco compliance regulations such as, one point of sale in stores, tobacco service staff training, in store advertising price boards restrictions, minimum purchase age of 18 years and strict proof of age requirements. The current regulatory framework in all States and Territories have all the “checks and balances” in place to allow for NVPs to be effectively sold in a controlled and regulated retail environment, giving existing lawful retailers the ability to sell regulated products.

Regulating NVPs under the same control framework will significantly reduce the demand for the black-market by allowing adults to purchase products from lawful retailers. By re-directing adult demand from the black-market to lawful sales, the Australian Government will be put back in control of the NVP market, pushing black-market operators out of business and allowing effective regulations to be enforced on product standards and measures to reduce youth access.

Recommendations

1. MGA recommends the Australian Government exempt NVPs from the Poisons Standard and strictly regulate the category under a similar control framework that is currently in place for tobacco products. This would allow adult consumers to purchase NVPs from lawful retailers, as is currently permitted for other non-tobacco nicotine products (gums, patches, and inhalers). This would allow law-abiding retailers to sell nicotine vaping products responsibly to adult consumers upon age verification and enable adult consumers to legally purchase nicotine vape products without having to resort to the black-market.
2. MGA recommends that Australia aligns with the New Zealand, the United Kingdom, the European Union, Canada, and the United States where NVPs are legally sold as a controlled adult consumer product and allow Australian retailers to sell NVPs.
3. MGA recommends the Australian Government undertake a further review process that evaluates the successful regulatory models in force in New Zealand, the United Kingdom, the European Union, Canada, and the United States.

Summary

MGA members are currently responsible sellers of tobacco and alcohol, which requires them to adhere and comply with very strict regulatory conditions. Our members have proven over time that they are best positioned to sell NVPs, adhering to any regulatory requirements.

MGA submits that it makes no practical sense to continue to regulate NVPs as a prescription medicine when over two million Australians are unlawfully consuming unregulated products supplied by the black-market and bypassing all health controls.

By adopting an adult consumer regulatory framework that puts the Australian Government back in control, it will enable the government to regulate lawful retailers and ensure measures are introduced and enforced for:

- Youth access prevention to stop underage sales;
- Adult-targeted product design and packaging;
- Clear labelling to address the widespread nicotine mislabelling of unregulated products; and
- Adult consumer protections under Australian Consumer Law to ensure vaping products are of acceptable quality.

In addition to being able to effectively control the NVP market, an adult consumer regulatory framework will raise significant government taxation revenue through GST receipts, corporate tax receipts and import duties. This additional revenue could be used to fund tobacco and NVP control awareness, cessation and diversion programs which have proved successful in reducing Australia’s youth smoking rates to record lows.

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Yours sincerely,



David Inall
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