



IMPERIAL BRANDS AUSTRALASIA
ABN 46 088 148 681
PO Box 7800, Norwest NSW 2153
Tel:
Fax:

12 April 2024

Committee Secretary
Senate Standing Committees on Community Affairs
PO Box 6100
Parliament House
Canberra ACT 2600
community.affairs.sen@aph.gov.au

**RE: THERAPEUTIC GOODS AND OTHER LEGISLATION AMENDMENT (VAPING REFORMS) BILL
2024 [PROVISIONS]**

EXECUTIVE SUMMARY

- Next generation products such as electronic cigarettes represent a significant public health opportunity, offering adult smokers the potential to drastically reduce the health risks associated with smoking.
- Australia's prohibitory approach to tobacco harm reduction has predictably led to a significant and growing illicit vape market. The large majority of current electronic cigarette users in Australia are purchasing illicit product that has been illegally imported into the country. There are over one and a half million adult e-cigarette users in Australia¹, with evidence suggesting approximately 90% of whom are purchasing illicit product.
- Restricting the availability of electronic vapor products (EVPs) for adult smokers will discourage use and potentially drive consumers back to smoking or to illicit vaping products. Responsible regulation should provide adult smokers with better access to EVPs while preventing underage use.
- The illicit market for nicotine e-cigarettes is estimated to be a multi-billion dollar enterprise with legitimate manufacturers, retailers and the Government deprived of what could be legitimate revenue.
- The establishment of an Illicit Tobacco and E-cigarette Commissioner is a positive step towards addressing the illegal nicotine market. Imperial strongly recommends the Government swiftly appoint and empower the Commissioner by providing the necessary funding, resourcing and attention required for prompt and effective action.

¹ Roy Morgan Vaping Incidence September 2023



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INTRODUCTION

Imperial Brands Australasia (“Imperial”) welcomes the opportunity to participate in the Community Affairs Legislation Committee (“Committee”) Inquiry into the provisions of the *Therapeutic Goods and Other Legislation Amendment (Vaping Reforms) Bill 2024*. We note the Committee’s reference to Article 5.3 of the Framework Convention on Tobacco Control (“FCTC”). Imperial participates in a range of government consultations that are relevant to our business. We do this on the basis that our views will be considered in an objective manner and that the evidence and views we provide will be properly evaluated, with due regard given to relevant legal and legislative requirements and the principles of best practice regulation.

Imperial is a trading subsidiary in the Imperial Brands PLC group of companies, an international fast-moving consumer goods business specialising in tobacco and other nicotine products. Imperial entered the Australian market in September 1999 following the global merger between British American Tobacco (BAT) and Rothmans International.

Imperial does not market or sell any EVPs in Australia. We recognise the role of Governments and Public Health Authorities in the regulation of tobacco and non-tobacco nicotine products and support those measures that are reasonable, proportionate and evidence based. Of paramount importance to us, is that our products are sold only to adult smokers who exercise free choice to use them. We support strong regulation to prohibit supply or use of nicotine products by those underaged.

The remainder of this document will address key topics relevant to the regulation of EVPs in Australia.

Regulatory Status of Vaping Products

Vaping products are consumer products and should be regulated as such. Harm reduction without consumer appeal provides little in the way of public health benefits. Restricting the availability of EVPs for adult smokers will discourage use and potentially drive consumers back to smoking or to illicit vaping products. Responsible regulation should provide adult smokers with better access to EVPs while preventing underage use.

Adult smokers are less likely to transition to potentially less harmful products if they perceive them as more expensive, less appealing, or more difficult to buy and use. The option to purchase a vaping product should be available to adult smokers wherever combustible cigarettes are sold. Restricting EVP sales to pharmacies, or requiring smokers to obtain prescriptions, will discourage smokers from quitting smoking.

Despite Australia’s prohibitory approach to tobacco harm reduction, adult smokers continue to seek out, and transition to, potentially reduced risk products such as EVP. Recent estimates put the number of Australian vapers at over one and a half million with evidence suggesting close to 90% of whom are purchasing illicit product.



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Many public health bodies and scientific organisations are clear: encouraging and assisting smokers who aren't interested or willing to quit smoking to transition to potentially harm reduced alternatives such as electronic cigarettes is a valid public health goal.

While the introduction of the TGA prescription model was de facto acknowledgement of the harm reduction potential of EVPs, the restrictive process has contributed to the significant and growing illicit vape market. The current prescription model has failed to provide adult smokers with an effective transition path away from combustible cigarettes. The burgeoning illicit disposal vape market highlights the urgent need for more effective regulation which strikes a better balance, encouraging NGP uptake by adult smokers and limiting the ability of minors to access nicotine products. There is a pressing need for stronger enforcement to prevent unregulated, illicit vapes from being sold in the market.

Effective regulation should support EVPs being made more accessible to adult smokers. Without improved accessibility to these products, the black-market trade will inevitably continue to flourish to the detriment of legitimate Australian businesses, the Government and the wider Australian community.

Unfortunately, the current reforms to the regulation of vapes do not support adult smokers looking to transition away from combustible cigarettes or provide a more accessible, legal pathway to smoking cessation for current adult EVP consumers. Without a meaningful liberalisation of the regulatory framework, Australia will continue to see a proliferation of the illicit vape market.

The Nicotine Black Market

Australia's prohibitory approach to tobacco harm reduction has predictably led to a significant and growing illicit vape market. The large majority of current EVP users in Australia are purchasing illicit product that has been illegally imported into the country. There are over one and a half million adult EVP users in Australia, with evidence suggesting approximately 90% of whom are purchasing illicit product.

The illicit market for nicotine e-cigarettes is estimated to be a multi-billion dollar criminal enterprise with responsible manufacturers, retailers and the Government deprived of what could be legitimate revenue. The Government must take steps to address the illicit vape market, including more effective enforcement at the retail level and stronger border controls to prevent the unregulated importation and sale of illicit products.

It is vital that any EVP use by youth is eliminated. EVPs are for adult smokers and adult nicotine users only. The nicotine black market, which has surged in Australia, wholly disregards product safety and criminal organisations have no concerns with selling product to under-age users. We are in favour of effective EVP regulation and support the implementation of a regulatory framework that encourages EVP uptake by adult smokers and limits the ability of minors to access nicotine products.

The Federal Health Minister's vaping reform announcement on 28 November 2023 highlighted the scope and seriousness of this issue. Commenting on the reforms, Minister Butler said;



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“Organised crime is already involved. I had a meeting with all of the police commissioners last week along with police minister colleagues. We had a briefing from them about the fact that outlaw motorcycle gangs, other organised crime gangs are already very heavily involved in the vape market. It’s a big source of revenue for them.”²

Imperial was encouraged by the inclusion of Chapter 6A in the *Public Health (Tobacco and Other Products) Act 2023* establishing an Illicit Tobacco and E-cigarette Commissioner as we believe a coordinated Government effort is urgently required to address the continued proliferation of illegal tobacco and vaping products. The amendment establishes the Illicit Tobacco and E-cigarette Commissioner within the Australian Border Force with responsibility for supporting the development and implementation of strategies for addressing illicit tobacco and e-cigarettes and enforcing existing regulations.

The appointment of a Commissioner will be a positive step towards addressing this serious issue but will not materially impact the illegal market without a continued and concerted focus from the Government. Imperial strongly requests the Government swiftly establish and empower the Commissioner by providing the necessary funding, resourcing and attention required for prompt and effective action.

CONCLUSION

The vaping reforms which commenced on 1 January 2024 do not support adult smokers looking to transition away from combustible cigarettes or provide a more accessible, legal pathway to smoking cessation for current adult e-cigarette consumers. Without a meaningful liberalisation of the regulatory framework, Australia will continue to see a proliferation of the illicit vape market.

The burgeoning illicit disposable vape market highlights the urgent need for more effective regulation which strikes a better balance, encouraging EVP uptake by adult smokers and limiting the ability of minors to access nicotine products. There is a pressing need for stronger enforcement to prevent unregulated, illicit vapes from being sold in the market.

Imperial Brands Australasia

April 2024

² Radio interview, Triple J Hack, Tuesday 28 November 2023