



Australian Government
Department of Home Affairs

Department of Home Affairs submission to the Inquiry into the Therapeutic Goods and Other Legislation Amendment (Vaping Reforms) Bill 2024 [Provisions]

Community Affairs Legislation Committee

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Introduction

The Department of Home Affairs (Department) and the Australian Border Force (ABF) work together with the trust of our partners and community to keep Australia safe and secure, and support a cohesive and united Australia open for global engagement.

The ABF is Australia's frontline border law enforcement agency and customs service. As an operationally independent body within the Department, the ABF delivers operational activities across the border continuum. As Australia's customs service, the ABF works to enhance economic growth through streamlined trade and traveller processes, while targeting trade enforcement activities to protect government revenue and ensuring compliance with Australia's customs laws.

The Department welcomes the opportunity to provide a submission to the Community Affairs Legislation Committee Inquiry into the Therapeutic Goods and Other Legislation Amendment (Vaping Reforms) Bill 2024 [Provisions] (the Bill).

The customs regulatory framework

The Department is responsible for the targeting, detection, seizure, storage, and related enforcement activity for prohibited and restricted goods that are being imported and exported, while facilitating the movement of legitimate trade and travel. It works closely with internal stakeholders and external entities nationally and internationally to share knowledge, information, and expertise, in order to protect the Australian community by detecting, deterring, and disrupting the trade of prohibited goods.

The Department administers Australia's framework of import and export controls for prohibited goods. Australia prohibits a broad range of goods from import or export that pose health or safety risks to the Australian community or environment from entering or leaving the country. Commonwealth policy agencies initiate import and/or export prohibitions to give effect to Australia's health policies, such as vaping, or in response to public safety concerns, such as firearms.

The policy agency for the recently imposed import control on vaping goods is the Department of Health and Aged Care. The Therapeutic Goods Administration¹ and the ABF worked closely to implement the Government's first phase of vaping controls, which included the introduction of an import control on vaping goods (see: [Australian Customs Notice - Vaping goods \(abf.gov.au\)](https://www.abf.gov.au) for further information).

Prohibited goods are controlled at the border upon import under Commonwealth legislation, including the *Customs Act 1901* (Customs Act), the *Customs Regulation 2015* and the *Customs (Prohibited Imports) Regulations 1956* (Prohibited Imports Regulations).

Border controlled goods specified in the Prohibited Imports Regulations may be considered to fall into two categories: the first are goods that are prohibited absolutely; the second are restricted goods, which are prohibited unless written permission or a licence has been granted and used in accordance with any specified conditions or requirements or there is an exemption or exception. The import control for vaping goods falls into the second category.

In assisting them to perform their role, ABF officers use intelligence, data and border screening to identify goods that may be at risk of breaching an Australian import prohibition. Where an ABF officer suspects on reasonable grounds that a good is in breach of an import prohibition, the ABF may seize the offending good.

¹ The Therapeutic Goods Administration is part of the Australian Government Department of Health and Aged Care, and is responsible for regulating therapeutic goods including prescription medicines, vaccines, sunscreens, vitamins and minerals, medical devices, blood and blood products.

Schedule 2 of the Bill

As included in the Explanatory Memorandum to the Bill, Schedule 2 of the Bill seeks amendment to section 206 of the Customs Act to allow for the immediate destruction of vaping goods. This is the same process applied to goods that are a prohibited psychoactive substance, tobacco products or a prohibited serious drug alternative. For goods to fall under this provision they have to be seized under a relevant provision of the Customs Act, and the Comptroller-General must be satisfied that the goods are one of those types of goods. Then the Comptroller-General may cause the goods to be dealt with in a manner they consider appropriate. This can include the immediate destruction of the goods which provides streamlined administrative processes and reduced storage time.

The ABF strongly supports this provision of the Bill, as the ability to seize and immediately destroy vaping goods would significantly enhance the ABF's ability to effectively deal with imported vaping goods and would significantly reduce the operational burden of implementing the vaping goods reforms.

There is an existing provision within section 206 of the Customs Act which provides an option for owners of vaping goods that have been destroyed to recover the market value of the goods, if they can establish that the circumstances required to trigger the destruction did not exist. There is also a notification process associated with the immediate destruction which identifies the goods, provides details of the manner in which the goods have been dealt with and the reasons for doing so, and sets out the owner's right to seek recovery of the market value.

Complementary import controls

The Bill contains import controls in relation to unlawful vaping goods which complement the import controls for vaping goods in the Prohibited Imports Regulations. The ABF supports having both sets of controls to provide a strong deterrence against unlawful imports of vaping goods.

National Vaping Enforcement Framework

At a joint meeting on 23 November 2023, Health and Police Ministers agreed to task officials with developing a national vaping enforcement framework to stamp out unlawful vapes in the community and prevent illegal makers from emerging. It was agreed that a multi-agency National Vaping Working Group (NVWG) would be established to oversee development and implementation of a National Vaping Enforcement Framework.

The NVWG was established in December 2023 and is co-chaired by the ABF Commissioner and Secretary of the NSW Ministry of Health with representation at senior levels from Commonwealth, state and territory law enforcement agencies and health agencies.

The focus of the NVWG is to:

- Develop and implement a National Vaping Enforcement Framework
- Develop collaborative enforcement approached to underpin the vape regulatory reforms
- Examine issues from across the supply chain, including, for example, diversion, storage and safety issues.

The intent of the Bill will support the strong collaborative compliance and enforcement approach being undertaken by the NVWG to deliver an end-to-end compliance model that closes regulatory and legislative gaps. This will be achieved by preventing the importation, domestic manufacture, supply, commercial possession and advertisement of non-therapeutic and disposable vaping goods, irrespective of nicotine content or therapeutic claims, across all levels of the supply chain. The appointment of Australia's first Illicit Tobacco and E-cigarette Commissioner will also complement these efforts.

Conclusion

The Department supports the Bill and thanks the committee for the opportunity to provide a submission. Departmental representatives are available should the committee wish to discuss this further.