

**Our ref:** PRJ1002700  
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18 September 2023

Interdepartmental Committee on Tobacco Control Secretariat  
Department of Health and Aged Care

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Dear Sir/Madam

### **ACCC submission to the public consultation on the Proposed reforms to the regulation of vapes**

The Australian Competition and Consumer Commission (ACCC) welcomes the opportunity to comment on the Therapeutic Goods Administration's (TGA) proposed vaping reforms, as detailed in the consultation paper, Proposed reforms to the regulation of vapes, published on 8 September 2023 (the consultation paper).

The ACCC continues to hold the views expressed in the agency's previous submissions, as detailed in the TGA's consultation on vaporiser nicotine products<sup>1</sup>, the Senate Select Committee on Tobacco Harm Reduction<sup>2</sup>, the Department of Health and Aged Care's (DHAC) Review of Tobacco Control Legislation<sup>3</sup>, the Parliamentary inquiry into the Use and Marketing of Electronic Cigarettes and Personal Vaporisers in Australia<sup>4</sup> and DHAC's Public Health (Tobacco and Other Products) Bill and Regulations 2023<sup>5</sup>.

The ACCC consider the use of nicotine and non-nicotine vaping products to be an important and urgent public health issue, particularly amongst young people. The safety risks and harms posed by all vaping products, including ingredients and device components, can only be successfully addressed by a specialist health regulator or agency, such as the TGA.

### **Overview**

The ACCC is an independent Commonwealth statutory agency that promotes competition, fair trading and product safety for the benefit of consumers, businesses and the Australian community. The primary responsibilities of the ACCC are to enforce compliance with the competition, consumer protection, fair trading and product safety provisions of the *Competition and Consumer Act 2010* (CCA), regulate national infrastructure and undertake market studies.

The Australian Consumer Law (ACL) forms part of the CCA, and through the ACL's application the ACCC aims to minimise the risk posed by unsafe general consumer goods,

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<sup>1</sup> [ACCC submission to the Therapeutic Goods Administration public consultation on vaporiser nicotine products \(March 2021\)](#)

<sup>2</sup> [ACCC submission to the Senate Select Committee on Tobacco Harm Reduction inquiry into tobacco reduction strategies \(November 2020\)](#)

<sup>3</sup> [ACCC submission to the DHAC's Review of Tobacco Control Legislation \(April 2019\)](#)

<sup>4</sup> [ACCC submission to the Parliamentary inquiry into the Use and Marketing of Electronic Cigarettes and Personal Vaporisers in Australia \(July 2017\)](#)

<sup>5</sup> [ACCC submission to the public consultation on the exposure draft package Public Health \(Tobacco and Other Products\) Bill and Regulations \(July 2023\)](#)

ensure consumers are informed about safety risks, and prevent misleading behaviour and unconscionable conduct.

The general provision of the ACL also applies, and suppliers of consumer goods (including vaping and tobacco products) must not mislead the public or misrepresent features, contents or the suitability of their products.

The ACCC's consumer product safety role does not extend to the development of health policy for vaping products. The ACCC has responsibility for administering three specific instruments related to tobacco products:

- Consumer Protection Notice No.10 of 1991 (Smokeless Tobacco)
- Trade Practices (Consumer Product Safety Standard) (Reduced Fire Risk Cigarettes) Regulations 2008 No.195
- Competition and Consumer (Tobacco) Information Standard 2011

All three instruments no longer align with the ACCC's general consumer product safety role.

In our July 2023 submission to the Public Health (Tobacco and Other Products) Bill and Regulations 2023, we supported the proposal by the DHAC to consolidate these instruments for regulatory efficiency into its proposed Public Health (Tobacco and Other Products) Bill 2023.

In relation to the proposals outlined in the consultation paper, the ACCC makes the following general comments. The ACCC notes that, given its role and responsibilities, it is not able to comment on all of the questions contained in the consultation paper and associated survey.

### **Proposal 1 – Restrictions on importation, manufacture and supply of all vapes**

The ACCC supports the expansion of existing federal and cooperative legislative interventions for all vaping products, irrespective of nicotine content, and including e-liquid and device components under the *Therapeutic Goods Act 1989* (TG Act) and Customs Prohibited Import Regulations (PI Regulations).

Stricter importation, manufacture and supply controls for all vaping products, irrespective of nicotine content or therapeutic claims (unless registered in the Australian Register of Therapeutic Goods) will improve health outcomes for all Australians particularly children and adolescents.

The prohibition on the importation, manufacture and supply of all vaping products will address the regulatory gap for non-nicotine-containing vaping products. These products contain flavouring that can be mixed with nicotine concentrates by consumers<sup>6</sup> and has been found to be unsafe by the Australian Industrial Chemicals Introduction Scheme, frequently containing ingredients prohibited in TGO 110. In these circumstances TGO 110 does not apply because these products do not contain nicotine.

The ACCC also notes and supports the minor exceptions relating to clinical trials and scientific research and the prohibition on domestic manufacture and supply of all vaping products that would result from the proposed reforms.

### **Proposals 2 and 3 – Better regulation of device components and quality standards for unapproved (unregistered) vapes**

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<sup>6</sup> [Guidance for the Therapeutic Goods \(Standard for Nicotine Vaping Products\) \(TGO 110\) Order 2021 and related matters](#)

The ACCC also welcomes the expansion of TGO 110 to address quality and safety risks associated with vaping devices and device components (such as the housing unit, battery, liquid cartridge, reservoir and sensors) which have been known to cause serious burns, injuries, death, disfigurement and disability.

The ACCC believes the safety of vaping devices is an issue of public health policy and is best coupled with vaping-related health issues to avoid regulatory fragmentation. We note and support the proposal to require manufacturers of vaping devices to comply with internationally recognised ISO safety and labelling standards to protect consumers.

#### **Proposal 4 – Strengthening domestic compliance and enforcement mechanisms**

The ACCC does not have any specific comments in relation to this proposal, however, notes that robust and supported compliance and enforcement mechanisms are critical to effective implementation of regulatory frameworks.

#### **Next steps**

If you would like to discuss the ACCC's submission, please contact Amanda Dadd, Acting General Manager, Risk Management and Policy Branch, on [REDACTED] or at [REDACTED].

Yours sincerely



Timothy Grimwade  
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