



# Personal choice and community impacts inquiry submission

*a) The sale and use of tobacco, tobacco products, nicotine products, and e-cigarettes, including any impact on the health, enjoyment and finances of users and non-users;*

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The Eros Association is a membership based organisation, consisting of businesses which provide goods and services to Australian adults.

Our members are mostly small businesses, who are passionate about providing quality goods and services to adult consumers, including sex toys and entertainment, erotic enhancement products, herbal remedies and enhancement products, personal vaporisers, various adult services and products relating to adult cultures, such as products relating to cannabis culture (t-shirts, books, magazines, etc.).

Regulating personal vaporisers, including the sale of nicotine-containing liquids will give current users of personal vaporisers confidence that the market is properly regulated. It will also allow those who wish to use personal vaporisers to lower or cease their use of combustible tobacco products to enter the market. Finally, it will stop the wide-spread practice of importing nicotine without a prescription, which sends business overseas, leaves Australian consumers with product of dubious quality and which is against the law, but widely unknown.

Regulating personal vaporisers will have many benefits for the Australian community:

- Product quality controls
- Manufacturing standards
- New business for Australians
- Clear and consistent regulatory system for nicotine products
- Competitive alternative to combustible tobacco

### **Product quality controls**

There is currently no regulation for vaporiser liquid contents, other than a ban on nicotine-containing liquids.

The European Union has been investigating a range of ways to regulate personal vaporisers and the liquids, including nicotine-containing liquids.

They have recommended that the sale of nicotine-containing liquids with a concentration lower than 5ng/ml of nicotine could be sold as adult-restricted products, while those from 6-20ng/ml would require prescription in order to purchase.

They are also looking at restricting which flavours can be made available to consumers, in order to ensure that flavours do not appeal to children.

Scientific journal Therapeutic Advances in Chronic Disease's article, '*Achieving appropriate regulations for electronic cigarettes*' made the point that personal vaporisers are competitive products to smoked tobacco and that

any regulation of the market should be careful to avoid over-regulating personal vaporisers which would favour the tobacco market.

*Overall, the restrictions that some stakeholders wish to impose on e-cigarettes appear to be most often disguised in the form of the same regulations used for medicinal products. Excessive and ill-conceived regulation will marginalize these products by making them unattractive to smokers and less competitively priced compared with tobacco products by preventing clear communication about reduced risks or by making them hard to access.<sup>1</sup>*

Regulating the supply and manufacture of nicotine-containing liquids is a vital step in the overall regulation of personal vaporisers, as these particular liquids are those which give consumers a direct competitive alternative to combustible tobacco. The current status quo of prohibiting the sale of nicotine-containing liquids unless one has a prescription effectively provides a market advantage to tobacco companies.

### **Manufacturing Standards**

Though rare, there have been examples of poorly manufactured personal vaporisers exploding or catching fire. The U.S. Fire Administration released a document, acknowledging the rare problems and providing some advice on how to avoid these problems.

The danger is very minimal. There are 2.5 million users of personal vaporisers in the United States and only 25 separate incidents of explosion or fire were reported between 2009-2014.<sup>2</sup>

Australian consumers have a right to be protected from dangerous products. Implementing basic manufacturing and testing standards for personal vaporisers would help ensure the market is standardised for safety.

### **New business for Australians**

There are a small number of personal vaporiser vendors who have opened up in Australia, but their business is limited due to the inability to sell nicotine-containing liquids.

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1 Saitta, D., Ferro, G. A., & Polosa, R. (2014). Achieving appropriate regulations for electronic cigarettes. *Therapeutic Advances in Chronic Disease*, 5(2), 50 - 61.  
<http://doi.org/10.1177/2040622314521271>

2 U.S. Fire Administration, *Electronic Cigarette Fires and Explosions*, October 2014  
<[https://www.usfa.fema.gov/downloads/pdf/publications/electronic\\_cigarettes.pdf](https://www.usfa.fema.gov/downloads/pdf/publications/electronic_cigarettes.pdf)>

Whether consumers and suppliers are being willfully naïve or purposefully misleading is unclear, but it has become vape folklore<sup>3</sup> to believe that it is legal for a person to import up to 3 months personal supply of nicotine-containing liquids. This is only a half truth, as consumers still require a prescription from their doctor to be legally allowed to import any nicotine-containing liquids.

This represents a failure of the current regulatory system, maintained by the TGA and a market failure for Australian businesses and government, who are missing out on profit and tax revenue from the sale of nicotine-containing liquids.

Allowing the sale of nicotine-containing liquids will ensure that personal vaporisers can compete directly with combustible tobacco products.

### **Clear and consistent regulatory system for nicotine products**

Personal vaporisers are a direct competitive product to combustible tobacco products. World leading expert in addiction, Wayne Hall has made this point in an article in The Conversation and the journal Addiction.

*“The ban on e-cigarettes is ethically questionable. It's a paternalistic policy that denies adult smokers the right to use a less harmful form of nicotine.”<sup>4</sup>*

Regulation of personal vaporisers needs to take into consideration two important points:

1. *Personal vaporisers (with nicotine) are a direct competitor to combustible tobacco products.*
2. *Personal vaporisers do not pose the same risks as combustible tobacco products.*

Each state and territory has chosen to regulate personal vaporisers differently, often with heavy burdens being threatened or placed onto the industry for personal vaporisers. The inconsistent regulatory environment makes it very difficult for businesses to enter the market or stay in the market.

Without consistency of regulation between personal vaporisers and combustible tobacco products, the status quo of combustible tobacco will be maintained, leaving consumers without a viable and potentially far less harmful alternative.

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3 Question 13, Vaper Empire FAQ, <<http://www.vaperempire.com.au/frequently-asked-questions/>>

4 W. Hall, The Conversation, “Don't ban e-cigarettes, sell them under tight regulation” 05/06/2015 <<https://theconversation.com/dont-ban-e-cigarettes-sell-them-under-tight-regulation-42608>> accessed 22/07/15