

**Submission by Master Grocers Australia,
Trading as MGA Independent Retailers**

to the

**Select Committee on Personal Choice and
Community Safety.**

Inquiry

Western Australia

October 2018

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Introduction

About MGA Independent Retailers

MGA Independent Retailers is a National Registered Employer Industry Association representing Independent Grocery and Liquor Supermarkets in Victoria, New South Wales, ACT, Western Australia, Tasmania, Queensland and the Northern Territory.

Independent Supermarkets play a major role in the retail industry and make a substantial contribution to the communities in which they trade. In Australia there are 2700 independently owned branded supermarkets employing over 115,000 full time, part time and casual staff, representing \$13.8 billion in retail sales.

In Western Australia, MGA's members trade under a variety of different brand names including; Farmer Jacks, FoodWorks, Supa IGA, IGA, IGA Xpress, Eziway, Cellarbrations, The Bottle O and Mitre 10 Hardware. We currently have 491 Western Australian members, who employ over 20,000 staff with a sales turnover of \$2.8b per annum. The independent grocery sector makes a significant contribution to the Western Australian economy and the communities in which they trade.

Many MGA Independent Retailers members are small family businesses, employing 25 or fewer staff. MGA believes that whilst independent supermarket retailers in the Western Australia should be protected against the introduction of any stringent restrictions that may affect their businesses, they will of course support legislation that is intended to safeguard their customers and the community.

It is noted that the legislative Council has ordered the Select Committee to inquire into and report on the economic and social impact of measures introduced in Western Australia to restrict personal choice for 'the individuals own good,' with reference to:

1. risk reduction products such as e cigarettes, e-liquids and heat not burn tobacco products, including any impact on the well-being, enjoyment and finances of users and non-users.
2. outdoor recreation such as cycling and aquatic leisure, including any impact on the well-being, enjoyment and finances of users and non; users; and
3. any other measures introduced to restrict personal choice for individuals as a means of preventing harm to themselves.

MGA/LRA thanks the Western Australian Government for providing this opportunity to comment on matters related to personal choice and community safety in Western Australia.

1. Comments on the restrictions on personal choice for 'the individuals own good'

- a) The law is established to protect and maintain the safety of the community and to enable the public to prosper in an economically stable environment. MGA supports any endeavors on the part of government to protect the health and well being of all Australians. However, whilst all individuals must obey the law to establish a safe community they must also have the freedom of choice to make their own decisions about their health and well- being.
- b) Denying an adult, the right to smoke or consume alcohol or to participate or restrict certain activities, even though the motivation may be to protect the health of that person, could be seen as a breach

of the person's freedom to choose for themselves. It is entirely understandable that a Government should restrict sales of legal products if there is any threat to the security of the community or the need to safeguard private and public property but it is not the place of any Government to make paternalistic judgments about a person's right to make their own choices or for 'their own good'.

MGA appreciates that children particularly may be vulnerable in certain circumstances to the smoking habit and this is where the government needs to direct its influence. Targeting schools and community groups and encouraging sport amongst young people are all positive and beneficial ways for example to reduce or avoid smoking. Helping people to quit the smoking habit has been a positive feature of many organizations and publicity around "quit smoking campaigns" are commendable and projects such as these which carry weight in the community. However, the individual should be allowed to make his or her own decisions and MGA submits that patronizing and condescending proposals to impose restrictions on freedom of choice may not find favour in the community.

2. Comments on the terms of reference

- i. *Risk reduction products such as e cigarettes, e-liquids and heat not burn tobacco products, including any impact on the well-being, enjoyment and finances of users and non- users.*

In Western Australia Electronic cigarettes (e-cigarettes) may not contain nicotine under the provisions of the Tobacco Products Control Act 2006 and the Medicines and Poisons Act 2014. Any products that resemble tobacco products regardless of whether they contain nicotine or not may not be sold in Western Australia.

It is questionable whether the strict ban in respect of the use of e- cigarettes in Western Australia is in the best interests of the wellbeing, enjoyment and finances of users and non-users.

The legal use of personal vaporizers in the UK, Europe and the USA are relatively widespread and even in these areas there is still debate on their general use, particularly the impact on individuals who use these products in the community generally. After considering the differing views of medical practitioners and academics¹, and without serious consideration of the research both overseas and in Australia it may still be premature to draw definite conclusions of the potential damage or dangers of the use of personal vaporizers.

There is a plethora of information and opinions as to whether the use of personal vaporizers may be harmful to the user and/or to the community. Worldwide there are various regulations controlling the sale and availability of personal vaporizers and the possible harm that they can have on their users and those around them.

Although sales of personal vaporizers in many European countries has been available for some time there is still some conjecture about the need to control the availability of these products. Earlier this year the European Parliament issued a Directive relating to laws for the manufacture and sale of tobacco and related products² and at paragraphs 37 to 50 of the Directive issued strong guidance on the promotion and sales of electronic cigarettes in the European community. The World Health

¹ The "Action on Smoking and Health" group (ASH) Great Britain has conducted many surveys in relation to the use of personal vaporizers

² Directive 2014/40/EU 3rd April 2014

Organization has called for strict regulation around the use of nicotine- based vaporizers because it is felt that there needs to be much more research done before endorsing their use as an aid to stop the smoking of tobacco products.

In the United Kingdom the sales of personal vaporizers have grown considerably, and it is estimated that there are currently 2.1 million adults in Great Britain using them. The United Kingdom has adopted guidelines for the sale of personal vaporizers in the interests of consumer protection.³

The United States has federal regulations as from April 2014, which require the disclosure of ingredients used in personal vaporizers, including the type of liquids and proof of their safety and the use of devices to vaporize and deliver the liquid. However, many States in the USA also have their own regulations, which require information as to the ingredients in personal vaporizers and many are also aimed at restricting the use of electronic cigarettes for young persons under the age of 18 years.

Whilst other countries have generally been willing to adopt the use of nicotine based personal vaporizers, Australia is less willing to adopt them for widespread sales presently. The Australian Government, Department of Health is of the same opinion as the World Health Organization that greater research is needed into the safety of personal vaporizers for all parties, users and non- users, before their widespread use can be fully condoned.

In November 2014, the Queensland Government passed legislation to regulate the use of personal vaporizers in public and a ban was introduced with respect to sales to minors, Victoria has a ban on the sales of vaporizers that contain nicotine. In the recent case decision in Western Australia,⁴ an electronic e-cigarette seller was prosecuted for sales of personal vaporizers and he was found to have breached the Tobacco Products Control Act 2006 (WA) on the basis that he sold a product that looked like a cigarette, was shaped like a cigarette and the steam or vapor looked like smoke. It is likely that after the decision in WA, other States may be affected because the sale of any model of a personal vaporizer that resembles a cigarette may be illegal. Currently, in Tasmania and the ACT the prohibition on the sale of a product that resembles a smoking product only applies to toys or confectionery. Western Australia has also introduced a ban on the sale of non- nicotine based personal vaporizers due to the internet availability of liquid nicotine.

There appears to be a range of various regulations appearing in different states and territories which has prompted Mr. Stephen Jenkins from the company, British American Tobacco to say that he was hoping that all state and federal governments would harmonize laws that permitted the sales of nicotine using devices.⁵ The differing reactions from State and Territory governments indicate that there is a need for greater clarity on their effects on the health and welfare of users of personal vaporizers. Whilst there are still reservations both overseas and in Australia about tackling the issues around the use of personal vaporizers it would seem to be appropriate to proceed cautiously in the interests of anyone who may be affected by using personal vaporizers.

The question that arises from the research that has been done to date into the use of personal vaporizers is that if the product is declared non-poisonous, as in the United Kingdom or parts of

³ www.mhr.gov.uk/safetyinformation and advice /nicotineproducts

⁴ Department of Health WA v. Heavenly Vapours 2011 (appeal 2014)

⁵ Extracted from article in the Sydney Morning Herald-“ Opposition calls for inquiry into e- cigarettes”- Nov 39 2014 SMH

Europe, is whether personal e-vaporizers should be available for sale under specified controls in Australia. Unless there is an increased interest in a unified approach to the control of personal vaporizers and regulations for their use, there is danger of the product ‘going underground,’ and providing an opportunity for sales of nicotine-based vaporizers on the black market. It is submitted that any adult should have the ability to purchase an item that is legal.

However, there is scope to deter the public from endangering their health by using advertising that shows the dangers associated with any product. This is not dissimilar to the introduction of plain packaging and the use of graphic health warnings which were implemented as part of community awareness in the use of tobacco products. These advertisements may have successfully deterred individuals from the smoking habit. It may well be that there is an opportunity to pursue similar warning processes for personal vaporizers. No matter what form such deterrents take, the use of personal vaporizers could be a significant step forward in helping individuals to overcome the smoking habit. If it is proven that personal vaporizers are less personally dangerous than tobacco products or their effect on the public is minimal then these benefits should be considered as a means of assisting smokers who genuinely want to ditch the tobacco –smoking habit. Nevertheless, subject to personal vaporizers being sold under control it should remain the choice of the consumer to make the ultimate decision on what to purchase or not purchase.

Whether or not an individual wants to use a personal vaporizer simply for personal enjoyment, there is still a strong awareness of the worth of personal vaporizers amongst adults in the United Kingdom from a therapeutic perspective. Research indicates that there is a value in the use of personal vaporizers as an aid to stopping smoking. Of the current users of personal vaporizers in Great Britain 56% said that it was “to help me stop smoking entirely” and to “help me keep off tobacco” and 32% said that it was “to help me reduce the amount of tobacco I smoke, but not stop completely”⁶ If the use of personal vaporizers contribute to the reduction in the use of tobacco products then their value in this respect cannot be underestimated. There will of course always remain many consumers who simply wish to smoke, whether it be tobacco products or personal vaporizers.

It is a well-established practice that persons may not smoke tobacco products in public places, including outdoor eating and drinking areas and in motor vehicles with children. The research shows that personal vaporizers emit a vapor and not smoke. Therefore, they do not contain the same harmful smoke to the public that is coincidental with a tobacco product. That is not to say that the vapor itself is entirely safe for the user.⁷

MGA submits that based on the current research to date it appears unlikely that the personal use of a e-vaporizer would be considered a danger to any person in the immediate vicinity of the user. If the controlled use of personal vaporizers is proposed for the future, then further research needs to be conducted to fully determine the possibility of the impact on other persons in the vicinity. Until that research is completed it is too early to make recommendations as to the appropriate course of action in respect of the use of personal vaporizers, and their possible impact, in public places.

⁶ A.S.H. Fact sheet- Use of electronic cigarettes in Great Britain “October 2014

⁷ Laura Crotty, Assistant Professor, University of California –“Vapour from e –cigarettes makes MRSA bacteria more aggressive”

issues that have been raised in relation to the availability of e-cigarettes and it should be noted that although there is information available regarding their use there does not appear to be any definitive, conclusive evidence either, in support or against, their use.

Based on the above information MGA recognizes the need to protect vulnerable sectors of the community from potential harm, although it is reiterated that at this stage there is no absolute proof that e-cigarettes are likely to adversely damage public health. MGA believes e-cigarettes should continue to be subject to monitoring to ensure that they are safe for the user and any person who may be associated with the user.

MGA supports extending the restrictions on the sale of tobacco products to children to include e-cigarettes. The fact that the restrictions on the sale of tobacco products is already firmly entrenched in the legislation and consequently in the community is unlikely to incur costs or risks to anyone.

MGA believes prohibiting flavored e-liquids is appropriate, as the attractiveness of the e- cigarettes is palatable to young people in this form.

ii outdoor recreation such as cycling and aquatic leisure, including any impact on the well- being, enjoyment and finances of users and non- users;

MGA supports emphasis being placed on the provision of outdoor recreation for the members of the public which would contribute to their well-being and enjoyment.

All forms of outdoor recreation contribute to the physical health and emotional well being of the community. It is a responsibility of Government to design and contribute to the establishment of outdoor recreation for the enjoyment of the population of Western Australia.

There is already a heavy cost to the health system due to the growth of inactivity in both children and adults. Obesity rates have increased in Australia⁸ and this growth can only be halted if there is greater emphasis on increasing more outdoor activities and providing more education in schools of the benefits of healthy exercise.

In 2017 the WA Department of Local Government, Sport and Cultural Industries⁹ stated that around 8 in 10 Western Australians believe it's important for sport and active recreation to help us feel good about ourselves. More than 8 in 10 felt that sport and active recreation creates close friendships and more than 8 in 10 Western Australians felt that it's important that sport and active recreation involve people like coaches who can have a positive impact on children's lives.

In 2017 the Western Australian Government released a Framework for Physical Activity in Western Australia called 'Active Living for All 2017- 2019'¹⁰ wherein the premier of WA the Hon Mark McGowan referred in the foreword to the aims of the program for Active Living which is "To improve the overall health and quality of the life of individuals and communities in Western Australia and deliver positive economic ,environmental, health and social outcomes."

MGA submits that there is obviously a wide support for an emphasis to be placed on all sporting and recreational activities that contribute to the well being of Western Australians.

⁸ Australian Institute of health and welfare – Australia's health 2018 -: in brief

⁹ DSR 2017 Community Perceptions Survey

¹⁰ DSR 2017 Community Perceptions Survey Active Living for All 2017- 2019 Government of Western Australia

Conclusion

MGA thanks the Western Australian Government for providing this opportunity to comment on matters related to personal choice and community safety in Western Australia.

Jos de Bruin

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Master Grocers Australia – MGA Independent Retailers

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