



**Submission to the Select Committee on  
Personal Choice and Community Safety**



Hon. Aaron Stonehouse MLC  
Chair, Select Committee on Personal Choice and Community Safety  
Parliament of Western Australia

Dear Mr. Stonehouse and members of the Select Committee on Personal Choice and Community Safety,

Australian Vaping Advocacy, Trade and Research Incorporated (AVATAR) is Australia's electronic cigarette industry peak body. We represent the interests of vendors, manufacturers and consumers of electronic cigarettes and e-liquids. We are the only registered industry body of our type in Australia. Our membership includes the largest and most widely distributed vapouriser and e-liquid vendors in Australia.

As an industry body, we set guidelines for the professional conduct of our members. We are presently working with state and territory governments and other agencies across Australia to provide guidance in establishing regulatory frameworks with the ultimate aim of reducing the associated harms from traditional combustible tobacco. We have taken the initiative to create an industry-first set of standards for the sale, advertising and distribution of vapourisers and peripherals aimed at ensuring the safe use and distribution of our products.

We recognise that tobacco harm reduction and minimisation requires complex multi-faceted approaches and mechanisms as laid out in the National Drug Strategy and National Tobacco Strategy. We also recognise that current nicotine delivery systems with market penetration (i.e., tobacco) are the only drug delivery mechanism in the world that is more dangerous to the consumer than the drug itself. To that aim, our evidence-based belief is that vapourisers are a significant and important paradigm shift in the reduction of harm from tobacco.

In conducting this inquiry, we strongly urge the Committee to look to the regulatory models introduced in the United Kingdom and New Zealand, where vapourisers are rightly regarded as one of the greatest public health opportunities in recent decades.

I would like to thank you for the opportunity to make this submission to the Committee, and I respectfully request the right to give oral testimony before the Committee on behalf of AVATAR.

Savvas Dimitriou  
Chair, Australian Vaping Advocacy, Trade and Research Incorporated



### Harm Minimisation

The standards for harm reduction within the Australian National Drug Strategy call for supply reduction, demand reduction and harm reduction.<sup>1</sup> This is supported by the National Tobacco Strategy 2012 - 2018 (NTS). It is important to note that AVATAR supports all three pillars within the National Drug Strategy with regards to tobacco harm reduction. We contend that vapourisers meet all three of the standards and in some respects exceed current interventions within the NTS.

### Harm Reduction

The Royal College of Physicians contends that vapourisers are 95% less harmful than traditional combustible tobacco. Public Health agencies in England and New Zealand universally consider nicotine to be a drug of least concern where the delivery method does not involve combustion of traditional tobacco.<sup>2 3 4</sup> There is a distinction, from AVATAR's perspective, between claims that vapourisers are healthier or less harmful. Our industry position is that vapourisers are '*less harmful*' rather than '*healthier*' due to implications and/or misrepresentations around the use of the latter term.

### Reducing Supply and Demand for Traditional Cigarettes

Vapourisers exist to displace and ultimately eliminate combustible tobacco products and, to a certain extent, the business model is to put itself out of business. In South Australia, the burgeoning vapouriser industry has created market conditions that has led the state's largest retailer of tobacco products, Smokemart, to rebrand many of their Smokemart Giftbox stores in order to retain or regain the market share lost to independent businesses. Tobacco companies such as Philip Morris, who are likewise experiencing a rapid decline in consumer demand for their product, have attempted to enter the market with various "smoke-free" devices. Significant local and online communities have been built around the use of vapourisers and there exists a level of in community, and more broadly public, resistance to tobacco companies or large corporations reliant on tobacco sales entering the market.

The Australian Institute of Health and Welfare reports that demand for cigarettes is now at an all time low, the population of smokers having fallen to below 13%<sup>5</sup>. While causal evidence of the impact vapourisers have had on the decline in smoking rates over the past three years are thin, correlations between the largest drop in smoking rates since 2007, South Australia's largest tobacco retail business shifting its business model

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<sup>1</sup> Ministerial Council on Drug Strategy, 'National Drug Strategy 2010 - 2015', *National Drug Strategy*, <[http://nationaldrugstrategy.gov.au/internet/drugstrategy/publishing.nsf/Content/DB4076D49F13309FCA257854007BAF30/\\$File/nds2015.pdf](http://nationaldrugstrategy.gov.au/internet/drugstrategy/publishing.nsf/Content/DB4076D49F13309FCA257854007BAF30/$File/nds2015.pdf)> [Accessed 30 June 2017]

<sup>2</sup> Royal College of Physicians, 'Nicotine without smoke: Tobacco harm reduction', London: RCP, 2016, pp 1 -7, 135 - 140

<sup>3</sup> Ministry of Health, 'E-Cigarettes', New Zealand Ministry of Health Website, <<http://www.health.govt.nz/our-work/preventative-health-wellness/tobacco-control/e-cigarettes>> [Date Accessed 15 June 2017]

<sup>4</sup> Levy, David T., K. Michael Cummings, Andrea C. Villanti, Ray Niaura, David B. Abrams, Geoffrey T. Fong, and Ron Borland. "A framework for evaluating the public health impact of e-cigarettes and other vaporized nicotine products." *Addiction* 112, no. 1 (2017): 8-17.

<[http://vapit.it/wp-content/uploads/2016/05/Levy\\_et\\_al-2016-Addiction.pdf](http://vapit.it/wp-content/uploads/2016/05/Levy_et_al-2016-Addiction.pdf)> [Date Accessed: 30 May 2017]

<sup>5</sup> Australian Institute of Health and Welfare, '4.7 Tobacco Smoking', Australia's Health 2016, <<http://www.aihw.gov.au/WorkArea/DownloadAsset.aspx?id=60129556763>> [Date Accessed 30 June 2017]



toward vapourisers, and the entry of large international tobacco companies into the smoke-free marketplace should be taken into account from a supply and demand reduction point of view.

### **Vapourisers as Harm Reduction**

There is a growing body of evidence that suggests that vapourisers are significantly less harmful than traditional tobacco products. The aforementioned Royal College of Physicians study suggests that they are 95% less harmful, and suggests that vapourisers be promoted widely as a substitute for smoking.<sup>6</sup> This study and others like it currently guide the United Kingdom's approach to the regulation and marketing of vapourisers. It is common to find public health organisations in the UK promoting vapourisers as a key method for never-quitters to dramatically decrease the risks associated with smoking.<sup>7</sup>

Similarly, the New Zealand government, relying on research conducted in New Zealand and overseas, has recently introduced and passed legislation that will allow vapourisers to be used as an alternative method of using recreational nicotine.<sup>8</sup> Ongoing efforts to harmonise trade relations between Australia and New Zealand also come into focus with New Zealand set to legalise the sale and distribution of liquid nicotine in 2018. Some Australian companies have already taken advantage of the friendlier regulatory, export and handling terms in New Zealand in order to ensure that Australian vapouriser users have access to liquid nicotine in safe strengths.

While we could submit countless studies about the harm reducing benefits of vapourisers, we as an industry group defer to the expertise of tobacco treatment specialists as Dr. Colin Mendelsohn (Conjoint Associate Professor at the University of New South Wales School of Public Health and Community Medicine), and international experts such as Mr. Clive Bates (former director of the UK's Action on Smoking Health) and Professor Riccardo Polosa (Director of the Institute of Internal Medicine and Clinical Immunology, University of Catania.)

We are also aware that evidence counter to the experience, evidence, and belief of those experts (and 100+ public health organisations in the UK such as the Royal College of General Practitioners, Cancer Research UK, and the British Lung Foundation, among many others) will be provided by bodies such as the Cancer Council and the Australian Medical Association. As an industry body that places our consumers first we do not begrudge fair and reasoned debate. We would, however, like to point out that at this juncture what is often overlooked by many authorities: that outside of Australia, there are practically no scientific or public health bodies anywhere in the world that disagree with the notion that vapourisers are orders of magnitude less harmful than traditional combustible cigarettes.

### **Liquid Nicotine and Therapeutic Goods Administration Scheduling**

Due to a lack of general education on the subject, nicotine has inaccurately become synonymous with all

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<sup>6</sup> Royal College of Physicians

<sup>7</sup> Royal College of Physicians

<sup>8</sup> Ministry of Health



that is bad with regards to tobacco. Smokers, politicians, the public and even academics find it hard to disentangle the two.

In reality, nicotine is not classified as a carcinogen, and nor has it been established as dangerous to adults<sup>9</sup> other than among certain vulnerable groups such as unborn children. Indeed, smoking cessation products containing nicotine are widely available across the counter at every pharmacy in Australia, with no prescription required, indicating the general safety of low-level nicotine concentrations.

The current Therapeutic Goods Administration (TGA) scheduling of liquid nicotine has become a major issue from a harm reduction standpoint. As the Committee is certainly aware, the TGA's current schedule prevents the sale and supply of e-liquids containing liquid nicotine within Australia. As a result, many tens of thousands of consumers in Australia currently import liquid nicotine from international sources for personal use. In many of these cases, liquid nicotine is imported in concentrations far higher than is safe for an untrained person to handle. Consumers risk accidentally exposing themselves to high concentrations capable of causing injury or even death.

AVATAR firmly believes that the TGA decision to maintain the status quo regarding the scheduling of liquid nicotine is not merely wrong, but is actively creating a dangerous situation that will eventually kill someone.

Conversely, if the sale and distribution of liquid nicotine were made legal in Australia, vendors would immediately begin to supply pre-mixed e-liquids containing nicotine concentrations below a dangerous threshold to effectively minimise the risk of accidental poisoning. Consumers would no longer need to handle high concentration liquid nicotine to mix their own e-liquids.

### **Youth Uptake**

The media and peak bodies often point to the risk of youth uptake as a reason to regulate the vapouriser industry. AVATAR unequivocally agrees that minors under the age of 18 should be prevented from accessing the devices; however, it is important to note that while youth uptake has naturally increased due to the entry of the devices into the marketplace, recent CDC reports suggest that the number of young people under the age of 18 regularly using the devices has peaked in the US and is now decreasing, and youth uptake of vapourisers was almost unilaterally among social demographics predisposed towards tobacco smoking.<sup>10</sup>

Since its inception, the AVATAR membership code of conduct has prohibited the sale of vapourisers and e-liquids to people under the age of 18, long before state governments codified this requirement through legislation. For our members and vendors it was a simple moral and ethical decision to self-regulate in this fashion.

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<sup>9</sup> Dinakar C, O'Connor GT (2016). "The Health Effects of Electronic Cigarettes". NEJM. 375: 1372–1381.

<sup>10</sup> Center for Disease Control, 'Youth and Tobacco Use', CDC 2016, <[https://www.cdc.gov/tobacco/data\\_statistics/fact\\_sheets/youth\\_data/tobacco\\_use/index.htm](https://www.cdc.gov/tobacco/data_statistics/fact_sheets/youth_data/tobacco_use/index.htm)> [Date Accessed 30 June 2016]



### **Economic Benefits**

As identified in the NTS, smoking is causally linked to social inequality. This is in part due to smoking rates being disproportionately higher in the bottom two economic quintiles.<sup>11</sup> In these quintiles, individuals go without other more productive needs-based or recreational activities in order to smoke.

Unlike other organisations and individuals, AVATAR does not subscribe to the erroneous notion that the Australian Federal Government is addicted to the 'sin tax' on cigarettes. We know that the velocity of money spent on cigarettes is essentially zero and that individuals who stop smoking spend their money elsewhere in the economy, generating more economic activity that produces a higher return to government coffers.

To that end, the consumer cost of vapouriser use over 7 days is approximately 70% to 90% lower than that of smoking. E-liquids produced in Australia return significant amounts of money to local economies as most e-liquids sold in Australia are manufactured in Australia by local Australian businesses. This is in contrast to tobacco, which is imported into Australia in ready-to-use formats by multinational tobacco companies.

In South Australia alone, vapouriser and e-liquid businesses generate over \$60,000,000 AUD in revenue annually, employing over 100 people. As an industry, we have experienced a growth rate of over 200% year-on-year for the last three years.

However, the looming imposition of overly strict, poorly constructed legislation in South Australia has already driven Australia's largest independent vapouriser retail to take steps to leave South Australia, taking with it nearly 30 jobs and over ten million dollars in revenue.

### **Prohibitionist Attitudes**

Prohibitionist regulatory frameworks in Australia would drive, and in the case of Queensland and Western Australia have already driven, much of the local market overseas or into a grey market. In the absence of sensible regulation that permits safe and legal access to these products, consumers are absolutely undeterred: they simply order products from grey market vendors or international vendors who are perfectly willing to ignore whatever regulations exist in the recipient's state or country.

### **Our Members and the Industry**

We believe it is important to note, for the sake of context, that every single AVATAR member is a recovering smoker. Further, no AVATAR member sells even a single product that is produced, or so much as peripherally affiliated with, the tobacco industry. Ultimately, each member's business started because they finally managed to quit an expensive and dangerous habit through the use of a vapouriser, and found themselves in a position to help others.

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<sup>11</sup> Greenhalgh, EM, Scollo, MM, & Pearce, M. 9.1 Socio-economic position and disparities in tobacco exposure and use. In Scollo, MM and Winstanley, MH [editors]. *Tobacco in Australia: Facts and issues*. Melbourne: Cancer Council Victoria; 2016. <<http://www.tobaccoinaustralia.org.au/chapter-9-disadvantage/9-1-socioeconomic-position-and-disparities-in-toba>> [ Date Accessed 20 June 2017]



## Regulations

AVATAR proposes five regulatory areas of immediate concern, which will likely reveal more policy silences on the issue of vapourisers:

1. Altering the current scheduling of liquid nicotine in concentrations 20mg/ml or less to allow for retail sales for recreational and therapeutic use, and ensuring that a standard of manufacturing is in place so that e-liquid manufacturers are held accountable for what they are putting in their bottles. 20mg/ml concentrations of nicotine currently fall within comparable international standards, specifically the European Unions Tobacco Product Directives.<sup>12</sup>
2. Standardisation of the national online marketplace. The different rules regarding online sales between the states impact the ability of some people in rural and regional areas to access vapourisers. Unlike traditional tobacco products, vapourisers do not have broad physical market penetration. Differing regulations also unfairly benefit vendors in judiciaries with less restrictive regulations around the sale and distribution of these devices.
3. National licensing provisions as a proof of concept. Currently, governments at all levels are ill-equipped to deal with the online marketplace because it, the marketplace, doesn't pay attention to arbitrarily defined state or international borders. By bringing vapouriser retailers under a single national license, consistency across all States and Territories is ensured, a reality that does not currently exist within the tobacco or alcohol sales industries. Using an emerging industry such as the vapouriser industry to provide a practical proof of concept and testing ground for national regulation has benefits far beyond this industry.
4. Appropriate training for vapouriser industry workers. One of the major issues that AVATAR has identified internally is the proliferation of businesses with little to no expertise in the safe handling of devices and e-liquids. All AVATAR businesses know the correct calculations to provide customers with knowledge around safe use of vapourisers, including calculations on how customers can safely mix their own imported liquid nicotine and how to safely handle the high-drain batteries used in vapourisers.
5. That appropriate steps are undertaken to fund independent studies into the impacts of vaping on the health of consumers so that the Australian Government can make its own evidence based decisions.

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<sup>12</sup> The European Parliament 'DIRECTIVE 2014/40/EU OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL', Official Journal of the European Union, April 2014, [http://ec.europa.eu/health/sites/health/files/tobacco/docs/dir\\_201440\\_en.pdf](http://ec.europa.eu/health/sites/health/files/tobacco/docs/dir_201440_en.pdf) [Date Accessed 23 June 2017]



## Summary

In brief, AVATAR supports proportionate regulation of electronic cigarettes and liquid nicotine in Australia, in line with the regulatory frameworks that exist in the United Kingdom and New Zealand.

Vapourisers should be restricted for sale to people below the age of 18. They should not be considered a tobacco product, or a tobacco analogue. Regulation should encourage their use by adult smokers to assist them to reduce or cease smoking, and to prevent relapse to smoking.

Electronic cigarette regulation must be approached in a considered, thoughtful manner. Certainty about the legislative landscape surrounding electronic cigarettes will encourage more retail stores to open and directly compete with toxic combustible tobacco products.

The economic benefit to the country comes in the form of the creation of hundreds of small businesses and thousands of jobs for Australian workers, greater GST revenue, access to enormous export markets, fewer demands on the public purse for anti-smoking initiatives, and a reduction of the burden of smoking-related illness on our public health system.

We would like to thank the Committee for their time in considering our submission and would like to reaffirm our commitment to fair regulation and consumer safety. Our aim as an association is to work with government at any level, rather than against it, to achieve the best possible regulatory and safety outcomes for Australian consumers.

As we have stated in this submission our fight is not with government, rather it is against traditional sources of combustible tobacco and the harm they cause. As such we respectfully request that representatives of AVATAR be granted the privilege of meeting with representatives of the Committee at their earliest convenience and are allowed to be active participants in any subsequent or concurrent proceedings around the inquiry.

This document was prepared by Australian Vaping Advocacy, Trade and Research Incorporated, a registered not-for-profit association headquartered in South Australia, incorporation number A43313.

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