

Vaping - An inquiry into reducing rates of e-cigarette use in Queensland

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Submission by BB Labs Pty Ltd ACN 655 590 300 trading as JuiceFreak against the Proposed Reforms to the Regulation of Nicotine Vaping Products

We provide the below submissions for the Queensland vaping inquiry. The Submissions are a copy of the submissions we provided to the TGA Consultation. They equally apply to the Queensland vaping inquiry.

Overview

The aim of the laws which have been implemented to date in relation to NVPs is expressed to *"prevent children and adolescents from accessing NVPs, whilst allowing smokers to access these products for smoking cessation with a doctor's prescription"*.¹

Therefore there are two limbs that need to be met in order for the laws to effectively achieve their aim. The first limb is that steps be taken to restrict the use of NVPs in adolescents and children under the age of 18. The second limb is that consenting adults over the age of 18 ought to be provided with access to NVPs to be used as a smoking cessation device.

The current laws have failed to achieved that outcome in part or at all; in fact, the current laws have led to a thriving black market trade in NVPs to children (and others) and have impeded the access to lawful NVPs by adults seeking to use the NVP's as a smoking cessation device. Further, the proposed "reforms" similarly do not achieve this outcome. They focus on further prohibition which will only drive the black market and continue to put illegal vapes in the hands of Youths.

At present, the TGA Consultation Paper and the Queensland inquiry focuses largely on implementing reforms aimed at reducing the availability of NVPs to adolescents and children under the age of 18. However, it fails to address the fact that:

1. the current laws fail to provide proper and easy accessibility to NVPs to assist Australian adults in their smoking cessation journey;
2. the proposed reforms will make it significantly more difficult for adults to access NVPs for smoking cessation; and
3. the proposed reforms are likely to encourage the continuation of the black market which will only increase the availability of NVPs to children via the black market.

As with past reforms (including the 1 October 2021 reforms), the restrictive approach the Government is seeking to take will have one result – to solidify and strengthen the black market which has experienced exponential growth over the past 12 months since the 1 October 2021 reforms.

¹ Page 4 of the Consultation paper.

The purpose of this submission is to present an industry perspective on the proposed reforms contained in the TGA Consultation Paper in addition to highlighting the need for a more permanent reform.

Background

JuiceFreak is an Australian manufacturer and wholesaler of e-liquids which do not contain nicotine. The products manufactured and sold by JuiceFreak are for use by adults either without nicotine or in conjunction with the adult customer's nicotine prescription (by nicotine being added to the e-liquid by the adult customer after sale). JuiceFreak manufactures the e-liquids in a clean room using state of the art practices and high-quality ingredients (sourced locally and internationally) to achieve a high quality safe product for adult consumers.

I am the director of JuiceFreak. My career in the vaping industry began in 2018 working as a retail assistant in a Vape Store on the Gold Coast, Queensland. Later in 2018, I designed and produced my own e-liquid brand "Beedles Juice". I continued working for one of the largest vape retailers in Australia until 2021 when I, as a director of BB Labs Pty Ltd, purchased JuiceFreak.

Additionally, my experience with vaping extends beyond my professional experience. After having smoked cigarettes for 15 years (beginning when I was just 13 years old), in 2016 I used NVPs to quit smoking cigarettes. As such, my opinions which are contained in this submission offers both a personal and professional perspective on the reforms proposed by the TGA.

Addressing the evidence contained in the TGA Consultation Paper

It is firstly important to address the research and evidence which has been included in the TGA Consultation Paper. The TGA Consultation paper focuses on several Australian research papers, most of which are unpublished and not subject of peer review. These papers fail to properly take into account the more recent research which has been conducted in overseas jurisdictions in which NVPs are legal and encouraged as a smoking cessation device.

For example, on page 8 of the TGA Consultation Paper, it is said that there is evidence to suggest that NVP use by young people can be a gateway to smoking and nicotine addiction. However, the research conducted in Australia regarding this connection is extremely weak given that the researchers were unable to contact large numbers of participants². Additionally, the "vaping use" referred to in this research does not specify whether or not the participants used nicotine vapes.³

Further, this statement is unsupported by recent studies conducted overseas including in the United Kingdom. A report commissioned by the Office for Health Improvement and Disparities in London published on 29 September 2022, found that whilst has been a slight increase in the number of youths vaping over the past few years:

² "Can prohibition work? The battle over the government's tough new vaping ban", Mr Warwick Jones quoting Professor Wayne Hall of the University of Queensland; 9 October 2021:

<https://thenewdaily.com.au/news/national/2021/10/09/vaping-laws-import-ban/>.

³ Ibid.

1. the percentage of youths who had never tried smoking has increased steadily;
2. the percentage of youths who had tried smoking has decreased steadily; and
3. for the years 2015 to 2020, the percentage of youths currently smoking has remained significantly higher than the percentage of youths currently vaping. However, in 2021 and 2022, that percentage has shifted such that, as the percentage of youths vaping has increased slightly the percentage of youths smoking has decreased.

The above findings demonstrate that there is no evidence that youths have a tendency to take up smoking after being exposed to vaping. In fact, the evidence suggests that youths who would have otherwise chosen to smoke are choosing to vape which has been proven in numerous studies to be a healthier alternative (by approximately 95%).

Point 1 – Changes to Border Controls for NVPs

Addressing the main issue

The main issue which has arisen in the vaping industry in relation to border controls is the ability for individuals and businesses to import NVPs for illegal sale through the black market. Based on feedback from JuiceFreak's wholesale customers, we understand that the majority of illegal NVPs are being sold by convenience stores throughout Australia, with certain dedicated vaping stores also succumbing to the black market out of desperation (although the percentage of vaping stores partaking in the black market are significantly lower than convenience stores). The lack of regulation, licensing and monitoring of the sale of such products makes it easier for youths to obtain. Further, the sale of the products through the black market:

1. enables the reseller to avoid paying taxes on the products such that the products can be sold for a cheaper price making them even more accessible to youths; and
2. removes the accountability of the black market supplier for the supply of a black market product that is inferior in quality or defective or otherwise contains dangerous substances.

The main form of NVPs which are being illegally imported is disposable vapes containing nicotine – these are the vapes being found on playgrounds and being used by children. I have not received any feedback from within the industry that bottles of e-liquids containing nicotine are being imported for sale on the black market. Most (if not all) importation of e-liquids containing nicotine are for personal use as a smoking cessation device⁴.

The difficulty with detecting nicotine in disposable vapes are that:

1. most of the disposable vapes are being imported from China and are intentionally being mislabeled to avoid detection; and

⁴ This statement is made based on personal experience and feedback through the industry.

2. the nicotine e-liquid is contained in a chamber within the disposable vape meaning that, in order for border security to test the vape for nicotine, the entire device will need to be deconstructed.

The importation of disposable vapes containing nicotine (either legally or illegally) limits the oversight from the regulator or accountability of the supplier in respect of dangerous ingredients that can be found in disposable nicotine vapes imported from China.

TGA Consultation's Questions

The four options proposed by the TGA Consultation paper will have little to no effect on the importation of disposable vapes containing nicotine as:

1. there are limited options for increased enforcement action to assess and detect the nicotine in disposable vapes for the reasons detailed above;
2. the current enforcement action has had no impact on the importation of disposable vapes containing nicotine which is demonstrated by the exponential growth of the black market. As such, an increase in enforcement is more likely to result in the implementation of different methods of importation or different strategies for evading detection as opposed to effectively controlling the importation;
3. the removal of the importation scheme will make NVPs more difficult and costly to obtain by Australian adults who are genuinely using the products as a smoking cessation device and force these adults back towards smoking cigarettes or purchasing NVPs through the black market as these products will be more attainable which is inconsistent with the aims of the proposed laws. For example, it will be cheaper and easier for an adult Australian to purchase cigarettes than to purchase an NVP which has been proven to be 95% less harmful and twice as effective as a smoking cessation device than other options such as Nicorette⁵;
4. the imposition of a permit will have the same effect as detailed in points 2 and 3 above. Further, it relies upon the products being correctly labelled as NVPs which is impractical given the current black market and the approach to the importation of NVPs; and
5. the introduction of controls on the importation of all vaping products needs to be a part of a complete solution to ensure that Australian adults are not unnecessarily deprived of the ability to access NVPs for smoking cessation purposes. Additionally, introducing requirements to obtain laboratory testing certificates to accompany all non-nicotine vaping products will only harm those Australian businesses who are genuinely complying with the law and encourage other businesses to partake in the black market as:

⁵ Above n 2.

- (a) it will become more difficult for Australian vaping businesses to obtain products from overseas suppliers as they will need to obtain the testing certificates overseas before the products can be imported into Australia. Further, this additional requirement will likely deter overseas suppliers from dealing with the Australian market; and
- (b) creating additional costs for the legitimate Australian vaping businesses associated with the laboratory testing will result in the prices of these products being increased for Australian consumers. This is likely to encourage the consumers to look for a more affordable and accessible alternative such as smoking or the black market.

Proposed Solution

The proposed controls on the importation of products adopts the same prohibitive approach as the laws introduced on 1 October 2021. This approach has failed to achieve the aims outlined by the TGA and has instead resulted in:

1. an exponential increase in black market sales of NVPs (namely disposable vapes containing nicotine);
2. an increase in the accessibility of illegal NVPs to youths due to lack of regulation and control on the sale of these products through the black market; and
3. a decrease in legal sales of vaping products manufactured domestically as most consumers are preferring to purchase the black market NVPs as they are:
 - (a) quicker and easier to use as the nicotine is already contained in the device; and
 - (b) are a cheaper upfront investment as they are being sold mostly on a cash basis which enables the reseller to avoid taxation liabilities on the products.

An alternative solution that would achieve the aims of the laws is to:

1. maintain the personal importation scheme to enable Australian adults to access NVPs for the purpose of smoking cessation (whether under the prescription regime or with the removal of the prescription regime); and
2. ban the importation and sale of disposable vapes in Australia or limit the sale of disposable vapes to those products which are manufactured in Australia.

The above would:

1. enable Australian adults to access and benefit from vaping products for smoking cessation purposes by enabling adults to continue to use the importation scheme to import NVP products that are more easily tested and monitored for personal use (such as nicotine liquid);

2. eliminate most of the difficulties that arise with enforcement at the Australian border in addition to avoiding increased costs of enforcement as testing would not need to be conducted on any of the disposables vapes which are attempting to be imported as all disposable vapes (whether they contain nicotine or not) would be banned and able to be immediately seized by customs;
3. decrease the black market in Australia significantly as the black market is made up entirely of the sale of disposable vapes containing nicotine;
4. avoid the detrimental environmental effects of disposable vapes which end up in landfill. A device and e-liquid are reusable and much more environmentally friendly;
5. ensure that consumers are purchasing NVPs from legitimate businesses that are personally accountable to the regulator for defective devices, ingredients contained within the products and (of course) taxation;
6. help to reduce rates of NVP use in youth as:
 - (a) the attraction of nicotine disposable vapes are that they are:
 - (i) easy to access via the black market and cheaper;
 - (ii) they require no additional devices, parts or accessories to be used as they already contain the e-liquid and nicotine;
 - (iii) they are inconspicuous as they can be easily hidden and are then thrown away once used; and
 - (iv) they contain higher amounts of nicotine than what is ordinarily found in nicotine e-liquids for use in vaping devices;
 - (b) the banning of disposable nicotine vapes would remove these attractions by:
 - (i) significantly reducing the black market making it more difficult and expensive for youths to obtain the products;
 - (ii) limiting the access to NVPs as youths would have to purchase a vaping device, e-liquid and then obtain the nicotine separately through the personal importation scheme in order for youths to vape nicotine products which would be significantly more difficult as:
 - (A) they would not be able to purchase each of these items from convenience stores and the like as easily as they are currently able to purchase disposable vapes containing nicotine;

- (B) to obtain nicotine the youths would need to order the nicotine or e-liquids containing nicotine separately online and arrange for delivery to their homes making it easier for parents to detect and intervene. Additionally, most online stores which sell nicotine now require proof of age and/or prescription when selling to Australia which would make it harder for youths to obtain the nicotine products;
- (C) to use the nicotine products youths would also need to obtain a vape device online or from vaping stores and/or tobacconists most of which make it hard for youths to make a purchase due to ID requirements;
- (D) there are significantly more items that would need to be stored correctly and looked after making it harder for youths to hide the use of vapes from their parents, guardians and/or teachers and less convenient for youths to start vaping in the first place; and
- (E) the costs of the products would be significantly higher which would discourage youths (and adults) from sharing the products with other youths.

It is recommended that the above solution be implemented in conjunction with the proposed reforms contained under the heading "*Overall Proposed Reform*" below as to do so under the current regime may result in consumers reverting back to smoking as opposed to actively obtaining a prescription. However, on the short term, the above approach would have a significant positive impact on the current state of the vaping market in Australia and path the way for the reforms proposed below to be implemented as a long term solution.

Conclusion

I do not support the proposals in relation to the importation of NVPs. I believe that an overall ban of disposable vapes would achieve the aims more effectively and at a lower cost to the Government and the industry.

Point 2 – Premarket TGA assessment of NVPs against minimum quality and safety standards

Addressing the Issue

The TGA consultation paper suggests that conducting either a pre-market assessment of NVPs or establishing a regulated source of NVPs by requiring registration of the products to the ARTG may:

1. increase the confidence of medical practitioners to prescribe NVPs and dispensing pharmacies to stock and dispense NVPs; and

2. deter consumers from the black market by providing them with products that have been quality tested by the TGA.

TGA Consultation Questions

Whilst options 2 and/or 3 *may* instill more confidence in medical practitioners in terms of prescribing NVPs, it is unlikely to have any effect on the black market or encourage consumers to purchase the approved NVPs.

Consumers are purchasing from the black market because of the ease of accessibility, lower up front cost and constant availability. Introducing further regulations on the sale of NVPs in Australian only stands to cause further harm to complying businesses and push more consumers towards the black market as:

1. there will be a delay in determining the standards required by the TGA, conducting the assessments and approving products which will result in the NVPs becoming less accessible to consumers;
2. the standards and/or testing of products is likely to reduce the availability of products in Australia as some overseas manufacturers and suppliers may be unwilling to deal with the testing requirements;
3. the imposition of an application fee will cause financial strain on legitimate businesses and force the price of NVPs to be increased which will likely result in NVPs being sold legally at a higher price than the NVPs which are being sold illegally; and
4. at present, the media and the Government has been focusing vaping campaigns on deterring consumers from vaping all together without differentiating between on the one hand the benefits of legitimised, quality controlled NVPs and on the other hand the illegitimate NVPs being sold on the black market. The former being a beneficial smoking cessation tool. As these differences are not being articulated to consumers, the introduction of TGA approved NVPs are unlikely to have any effect on the consumers decision of what NVP products the consumer elects to purchase, especially in circumstances where the illegal NVPs will be more accessible at a lower cost.

By reason of the above:

1. My preference is option 1 so that the TGA can focus on implementing laws to mitigate the black market and reduce the sale of vaping products to youths whilst reviewing the laws surrounding the sale of e-liquids containing nicotine in Australia without a prescription. In isolation, the quality assessment of NVPs and/or the imposition of a register with the current state of the laws in Australia is:
 - (a) not sufficient to have any significant effect on the vaping industry;
 - (b) will not mitigate the issues Australia is currently experiencing in relation to the black market and the increase in youth vaping; and

- (c) will only cause unnecessary loss and damage to legitimate vaping businesses by making NVPs harder to access and pushing consumers further towards the black market.

If nicotine was to be legalised in Australia in a similar manner to the legalisation of nicotine in New Zealand and the United Kingdom, further quality assurance procedures could effectively be put in place to ensure that all NVPs manufactured and sold in Australia would be TGA approved quality. Such procedures could include licensing, imposition of industry standards, labelling requirements and manufacturing standards such as the use of a clean room and/or the prohibition on the use of dangerous ingredients such as diacetyl. These procedures would be cheaper and easier for the TGA to implement and monitor and would be more effective in achieving the aims of the current laws.

2. If the TGA was to proceed with option 2 and/or 3, further consultation ought to be had with the industry to identify what products would be subject to assessment and/or approval and how such standards and/or approvals would be implemented. It would take a significant amount of time for these procedures to be properly implemented and cause significant loss and damage to businesses such as mine as we would be unable to sell any products until all products had either been tested or registered. As such, it is not a practical solution.

Point 3 – Minimum quality and safety standards for NVPs

The TGA Consultation paper proposes the following options in relation to the implementation of minimum quality and safety standards for NVPs:

1. prohibit all flavours (except tobacco) and additional ingredients;
2. modify labelling or packaging requirements, including to require pharmaceutical-like plain packaging and/or additional warning statements;
3. reduce the maximum nicotine concentration for both freebase nicotine and nicotine salt products to 20mg;
4. limit the maximum volume of liquid NVPs; or
5. remove access to disposable NVPs.

The Main Issues

The above proposals will not have a positive effect on the main issues at hand which are the increase in the black market and the availability of vaping products to youth.

Flavour Bans

Flavours

Firstly, the TGA consultation papers state that flavours have been found to be an important factor in the attractiveness of vaping in young adults and adolescents. No proper evidence is produced or identified to support this statement. In any event, flavours are one of the important aspects which assist adults in transitioning from smoking to vaping.

Further, other industries have demonstrated throughout Australia that it is not necessary to ban the use of flavours which may be attractive to young adults as a means of regulation. An example is the liquor industry. Bottle shops, liquor stores and bars all stock and sell alcoholic products which have flavours that could be seen as being attractive to young adults. For example; vodka cruisers are sold in flavours such as "Ripe Strawberry, Juicy Watermelon and Sunny Orange Passionfruit", Bilson's Vodka is sold in flavours such as "Fruit Tingle, Grape Bubblegum, Berry Jelly, Rainbow Sherbet and Fairy Floss". No restrictions are put in place to reduce the rates of youth alcohol use. This is instead achieved through proper regulation, licensing and the imposition of serious fines and other penalties (all of which could be successfully adopted and applied to the vaping industry). Further, the negative health effects of alcohol are well-known throughout Australia and the world. As such, it seems unnecessary to impose such restrictive bans on the vaping industry where the "*effects of inhaling flavours are unknown*" when other industries which sell products proven to cause serious health issues are permitted to operate unrestricted.

Further, imposing a flavour ban will only result in an increase in the black market as access to flavoured NVPs will be restricted through all other avenues. Additionally, removing the flavours from NVPs may result in more consumers reverting back to smoking as smoking products will be more accessible under the current laws and will have similar flavours to the flavourless or tobacco NVPs that will be permitted to be sold under the proposed new laws.

Finally, as it stands, it is unlikely that an individual (either an adult or a youth) would convert to smoking after vaping based solely on the flavour alone as one of the main reasons people convert to vaping is to avoid the taste of tobacco (this has been expressly conveyed to me through my professional career in addition to my personal experience with vaping). However, if all NVPs are restricted to tobacco flavours, the possibility of someone transitioning from vaping to smoking may increase given that there will be little to no differentiation between the flavours of vapes and smoking products and other factors may make smoking products more desirable such as availability and accessibility (for example, an individual can purchase a packet of cigarettes from any grocery store without the need for a prescription whereas it is more difficult and time consuming to obtain an NVP).

Cooling Agents

In respect of cooling agents, such agents are beneficial with assisting consumers to quit smoking as the cooling agent can mimic the feeling in the back of the throat that a consumer would usually obtain from the high nicotine contained in cigarettes making the vaping product feel as satisfying as a cigarette resulting in the reduction of cravings.

This means that a consumer can vape a lower nicotine concentration NVP but still receive a placebo like effect with the use of a cooling agent. There is no evidence to suggest that cooling agents are more attractive to youths. The only reason cooling agents are becoming prevalent in the Australian vaping market is because most of the nicotine disposable vapes which are

being sold through the black market contain cooling agents. However, as they are being sold through the black market, it is impossible to know if those cooling agents are the same products in the same quantities as the cooling agents which would ordinarily be added to an e-liquid by a reputable manufacturer.

As such, the restriction of cooling agents is unlikely to have any significant effect on the black market or the use of vapes by youths. Further, it may cause harm to the Australian adults who use this effect as a means to reduce the amount of nicotine they are inhaling when giving up smoking.

Colouring agents

Based on my experience, colouring agents are not widely used in Australia in vaping products. There is no evidence that the use or ban of a colouring agent would have any impact on the rate of youth vaping, especially in circumstances where most youths are using nicotine disposable vapes and cannot actually see the colour of the e-liquid.

Conclusion

Based on the above, I do not support the restriction of flavours. It is an unnecessary restriction to impose on the vaping industry when consideration is given to the other comparable industries such as the liquor industry. Further, it will cause significant and unjustified harm to Australian businesses who design, manufacture and sell flavoured e-liquids and it is likely to result in more negative consequences than positive consequences in that it will push more consumers towards the black market.

The TGA should reconsider taking a prohibitive approach given how the most recent prohibitive approach implemented on 1 October 2021 has only resulted in a booming black market. If any restrictions on flavours are to be imposed, then such restrictions should mirror the New Zealand restrictions being that, flavoured e-liquids and NVPs can only be sold via specialist vaping stores. This will enable the Government to properly regulate the sale of flavoured e-liquids and adopt the same licensing regime as is imposed upon the liquor industry to reduce the sale of flavoured vapes to youth.

Plain Packaging

As with the flavour ban, plain packaging will not achieve the aims of these laws. It will not restrict the access of youths and children to NVPs as those children are not purchasing the black market vape from legitimate retailers which would be subject to that regime. Further, it is likely to only increase the costs to Australian manufacturers and businesses, in addition to reducing access to NVPs as a lot of overseas suppliers will cease supplying to Australia as they will be required to incur the costs of using separate labels for stock shipped to Australia. This will result in an increase in the black market.

Further, as stated above, other comparable industries which sell products that have been proven to be more harmful than vaping (such as the liquor industry) are not subjected to such restrictions. The packaging of numerous alcoholic products are very similar to NVPs in that they are bright, colourful and can contain imagery of cartoon characters. If alcoholic products

are permitted to be marketed in such a manner, then there is no justification for the TGA to restrict the packaging of NVPs or any other vaping products, especially in circumstances where the vaping industry is subject to strict marketing laws meaning that the imagery from the branding is not widely advertised to youths.

Further, the use of plain packaging suggests to consumers that smoking products and NVPs are equally as bad for them which may deter consumers from making the switch from smoking to vaping (especially in circumstances where smoking products will be more accessible than NVPs) which will have a negative effect on the overall health of Australian citizens as vaping has been proven to be 95% less harmful than smoking.

Conclusion

I do not support the use of plain packaging for the reasons stated above.

Additional Warning Statements

The use of additional warning statements on NVPs may be beneficial in ensuring that consumers properly understand the risks of the product – especially if the product contains nicotine. However, these additional requirements will have little to no effect on the industry if they are implemented alongside the current laws regarding nicotine.

Most NVPs are imported from overseas under the prescription model or illegally via the black market. All e-liquids manufactured and sold in Australia do not contain nicotine when sold. As such, the imposition of additional labelling requirements will only put pressure on overseas suppliers which may discourage supply to Australia and reduce availability to consumers. Further, the black market suppliers are unlikely to comply with such requirements.

Conclusion

Based on the above, additional warnings would be beneficial on labels if the sale of nicotine e-liquids and vaping products were legalised and regulated in Australia without the need for a prescription in a manner that aligns with the current laws of the United Kingdom and New Zealand.

Reducing Nicotine Concentration

Reducing nicotine concentration to 20mg in Australia will not be a beneficial or practical solution with the current laws that are in place surrounding the sale of nicotine. In the United Kingdom, nicotine concentrations are limited to 20mg in circumstances where NVPs are accessible from vaping stores and consumers are purchasing either nicotine disposable vapes, nicotine containing e-liquid or a shot of 20mg nicotine accompanied by an e-liquid for the shot to be mixed into.

In Australia, the current prescription model enables Australian adults to either:

1. purchase a bottle of nicotine and then mix that nicotine with non-nicotine e-liquids;

2. order in pre-mixed e-liquids containing nicotine; or
3. purchase a disposable vape which already contains nicotine.

Based on my experience in the industry, most consumers are using either option 1 or option 3 above. This means that, if Australian adults are restricted to only buying 20mg strength nicotine, it will be impractical to order a bottle of 20mg nicotine to mix with non-nicotine e-liquids as most consumers will require a new bottle of nicotine for every bottle of e-liquid.

Further, whilst restricting the nicotine concentration in disposable vapes to 20mg will be beneficial for consumers, it will be difficult and costly to monitor as the disposable vapes which are imported from overseas are often mislabeled such that, testing will need to occur on all disposables imported from overseas to determine the nicotine concentration. As such, this is also an impractical solution.

Conclusion

I do not support the restriction of nicotine concentration under the current regime as it is impractical and likely to result in reduced accessibility to NVPs for Australian adults. Such a restriction may be beneficial to consumers if the sale of NVPs becomes legalised and regulated in a way that aligns with the approach adopted in the United Kingdom and New Zealand.

Limiting Volume of Liquid NVPs

Similar to the above, limiting the volume of NVPs is unlikely to achieve any resolution in the current market. Additionally, it will be difficult to monitor as vapes which deliver a certain number of "puffs" are disposable vapes which are frequently mislabeled and are mostly imported for sale via the black market. As such, it would be more beneficial for controls to be put in place to reduce the black market as opposed to attempting to limit the volume of NVPs.

Conclusion

For the reasons stated above, I do not agree with the limiting of the volume of NVPs and I believe that the costs and time can be better spent in reducing the black market.

Preventing Access to Disposable NVPs

Nicotine disposable vapes are the main product being sold through the black market, making them more accessible to youths. For the reasons stated above, preventing access to disposable vapes would be the most efficient and beneficial means to reduce (if not eliminate) the black market and significantly reduce the rate of vaping amongst youths. Or alternatively, restriction nicotine disposable vapes to those manufactured in Australia and then regulating the sale of those NVPs. This is not a difficult task – adopting a similar approach to New Zealand and other jurisdictions (and the way adults obtain liquor in Australia) is by legislating that the NVPs are only to be sold upon production of an 18+ card. Further, restricting the nicotine disposable vapes to those manufactured in Australia would give the regulator control and accountability from the manufacturers and resellers.

The issues identified by the TGA consultation paper associated with restricting these products can easily be overcome by adopting a similar approach as adopted in the jurisdictions mentioned above in relation to the regulation and control of nicotine. There are alternative products that are available in these two countries which would be suitable for individuals who stand to benefit from disposable NVPs (such as people with disabilities) without the risks (such as poisoning from the dilution of nicotine). For example, small "pod" devices can be purchased accompanied by e-liquids which have been pre-mixed with nicotine in a clean room facility or alternatively, these pod devices can be used with pre-filled pods containing e-liquid and nicotine. If such products were to become available in Australia under proper regulation, then the availability of these products to youths would be reduced without depriving Australian adults of the benefits of such products.

Conclusion

I support the banning of disposable vapes both containing nicotine and not containing nicotine. However, I believe further changes need to be made to the regulation of vaping as a whole to prevent some Australians (such as people with disabilities) from being deprived of the ability to use vaping products as a means to quit smoking.

Point 4 – Clarifying the status of NVPs as therapeutic goods

At present, state health officials are empowered with the ability to impose fines on individuals and companies selling products containing nicotine whether or not they are correctly labelled. However, such powers are not being utilised properly and are having no effect on the reduction of the black market. On that basis, I do not consider the clarification of the status of NVPs to be of any benefit in achieving the aims of the legislation.

Further, this approach will require the TGA to undertake testing of products to determine whether products have in fact been mislabeled and whether a fine can be issued. This will be time-consuming and costly to the Government or the businesses whose products are being tested and may result in delays to the supply of legitimate products to the Australian market.

Conclusion

For the reasons above, I do not support this proposal.

Overall Proposed Reform

The best way forward for Australia to achieve the aims of the legislation is to impose a more permanent solution in respect of the manufacture, supply, sale and use of vaping products in Australia. Such a solution should mirror the approach adopted by the United Kingdom and New Zealand as these approaches have been in place for some time now and have proven to be successful in reducing tobacco smoking rates across the country.

A permanent solution should entail:

1. legalising the sale of e-liquids containing nicotine within Australia to enable Australian manufacturers to manufacture and supply Australian vape stores with e-liquids containing nicotine and removing the prescription model;

2. banning the sale of disposable vapes in Australia unless such vapes have been manufactured in Australia so as to enable the TGA to properly regulate the ingredients which are being used in the disposable vapes and reduce the black market and availability of vapes to youths;
3. (if required) imposing restrictions on the concentration of nicotine which can be contained in vaping products sold within Australia (similar to the United Kingdom and New Zealand);
4. imposing proper regulation across the Australian vaping industry including:
 - (a) licensing requirements similar to the liquor licensing laws on manufacturers and retailers of vaping products; and
 - (b) increased fines upon individuals and organisations who fail to comply with the laws akin to the penalties imposed in relation to the sale of alcohol;
5. establishing truthful and accurate marketing campaigns to properly warn the Australian public (including youths) of the risks of vaping without diminishing the benefits of vaping for individuals who are trying to quite smoking.

The above strategy will create a clear and workable regulation of the vaping industry and achieve the aims of the legislation. Vaping products will be readily available to Australian adults who wish to use them as a smoking cessation device whilst proper regulation and marketing campaigns will work to reduce the black market and the sale of vaping products to youths.

Ensuring that consumers are able to easily and legally access NVPs through licensed retailers is the only way to kill the black market trade of NVPs. If the TGA implements further obstacles to the access of NVPs by adults from legitimate retailers of NVPs it will only promote the black market further.

Conclusion

In conclusion, most of the proposals made by the TGA in the consultation paper do not rationally focus on the true issues facing Australia in relation to vaping – being that:

1. the current prescription model has failed and has resulted in an exponential growth of the black market in which nicotine containing disposable vapes are being sold unregulated; and
2. the black market is enabling youths to obtain easy access to NVPs which may be increasing the rate of nicotine vaping amongst youths.

Additionally, the reforms address the use of nicotine vaping products, but are unclear on how those reforms would impact the sale of vaping products which do not contain nicotine upon sale. This will result in confusion throughout the industry which will cause significant loss and

damage to Australian businesses as the State Health Officials attempt to enforce the new reforms. An example was the attempted enforcement of the 1 October 2021 reforms in Western Australia which resulted in the loss of business and forceable closure of multiple vaping stores across the State in circumstances where those vaping stores were not selling any NVPs, were only selling non-nicotine products and were not in breach of the law. The confusion in how those laws operated resulted in Australian families being left without a source of income.

Further, the proposals in the consultation paper take a further prohibitive approach similar to the approach taken on 1 October 2021 which will demonstrably fail and has only resulted in increasing the black market. The proposed reforms will reduce accessibility to NVPs and increase the costs of the importation and sale of legal NVPs. For example, flavour bans and plain packaging will only operate to push consumers to either continue to smoke as the flavours will be similar to cigarettes and cigarettes will be more accessible or partake in the black market as that will be the only means by which consumers can obtain flavoured vapes (which is one of the main factors attracting consumers from smoking to vaping).

On a short-term basis, the reform should focus on the restriction and control of disposable vapes as disposable vapes are the main NVPs being sold through the black market and being used by youths. However, a more rational, considered and permanent solution needs to be implemented which adopts a similar approach as the United Kingdom and New Zealand to ensure that NVPs are an accessible option for Australian adults to quit smoking whilst also minimising the use of NVPs amongst Australian youth through proper regulation.

Research has proven that:

1. vaping is significantly less harmful than smoking; and
2. vaping is the most effective smoking cessation method.

The Australian people have a right to have access to the benefits of vaping for the health of themselves and the health of their families. Any reforms implemented by the TGA must ensure that the Australian people's right to access products which are less harmful than smoking is prioritised.

Mr Bede Tansley

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5 May 2023.