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Submission relating to the Discussion Paper ‘Options to protect the community from potential harms associated with personal vaporisers (e-cigarettes)’

Thank you for providing an opportunity to respond to the Discussion Paper and for granting us an extension to make a submission. ATODA shares the ACT Government’s goal to reduce alcohol, tobacco and other drug related harms. ATODA also continues to support the ACT Government when challenging, evidence-based policy decisions are required.

The Alcohol Tobacco and Other Drug Association ACT (ATODA) is the peak body representing and supporting the alcohol, tobacco and other drug sector in the ACT. Our vision is an ACT community with the lowest possible levels of ATOD-related harm, as a result of the ATOD and related sectors evidence-informed prevention, treatment and harm reduction policies and services.

ATODA works collaboratively to provide services, expertise and leadership in the areas of social policy, sector and workforce development, research, coordination, partnerships, communication, education, information and resources. ATODA is an evidence-informed organisation.

Structural bias in the consultation process

ATODA is disappointed and concerned about the overall framing of the Discussion Paper, along with the text on the website and the associated questionnaire. This is because it is significantly biasing the community consultation owing to its focus on ‘protecting the community from potential harms associated with personal vaporisers’.

A more legitimate approach would be one that involves a consultation discussing the potential harms **and** potential benefits of personal vaporisers. This is highlighted by the text in the first paragraph of page 5 which, in setting out the purpose of the discussion paper, states that “The ACT Government is keen to ensure that any harms to the community associated with personal vapouriser use are minimised, *while retaining access to the devices to support quit attempts*” (our emphasis).

Unfortunately, the balance of the paper ignores the second part of the purpose, meaning that the process is biased and does not elicit community inputs about how to retain access to the devices to support quit attempts.

That said, ATODA supports the ACT Government's commitments to ensuring (so far as possible) that:

- Non-smokers, including young people, are not encouraged to experiment with or use personal vaporisers;
- Former smokers are not encouraged to take up use of personal vaporisers;
- The public use of personal vaporisers does not contribute to the renormalisation of cigarette smoking; and
- Non-smokers are protected from possible harms from exposure to second-hand vapour.

The following comments respond to the options set out in the Discussion Paper.

Section 1: options to prevent the uptake of personal vaporisers

As noted above, the single focus on preventing the uptake of personal vaporisers seems to be premised on an assumption, not supported through research, that these products are problematic. This lack of balance is concerning to ATODA.

ATODA does not support Option 1 'Continue the current level of government intervention (status quo)', this is because people who use personal vaporisers, people selling personal vaporisers, the operators of venues, etc., are operating within a policy and legislative vacuum regarding these products. A high degree of certainty about their legal status is required, along with more public information about the potential benefits and potential harms of personal vaporisers.

ATODA supports Option 2 'Implement community education and awareness raising activities'. In response to question (e) ATODA acknowledges that access to evidence based community information is often an essential component of more comprehensive approaches to drug related harm; however, ATODA does not think that community education and awareness activities alone will be sufficient to prevent personal vaporiser uptake, particularly by non-smokers, former smokers and young people. Very few examples exist where social marketing, alone, is able to create significant behavioural change.¹ Should the emerging evidence base show that these products are likely to produce sound health outcomes, it will be necessary to make nicotine-containing personal vaporisers available and to engage in community education and awareness raising activities that will promote the use of these products as smoking cessation aids.²

ATODA supports Option 3 'Introduce restrictions on the sale and promotion of personal vaporisers in the ACT'. Although the personal vaporisers available through retail outlets in the ACT cannot legally contain nicotine nor tobacco, and are therefore in no sense tobacco products, ATODA believes that regulatory provisions need to be in place to manage personal vaporisers as consumer products. In this regard, ATODA supports the options presented in the Discussion Paper of:

- Prohibiting the sale of personal vaporisers to people under 18 years of age;
- Restricting in-store and point-of-sale advertisements and displays;
- Prohibiting the sale of these products by vending machine; and

¹ Abrams, LC & Maibach, EW 2008, 'The effectiveness of mass communication to change public behavior', *Annual Review of Public Health*, vol. 29, pp. 219-34.

² Robbie, H, Bullen, C, Hartmann-Boyce, J & Hajek, P 2014, 'Electronic cigarettes for smoking cessation and reduction', *Cochrane Database Syst Rev*, vol. 2, no. 12, p. CD010216.

- Banning personal vaporiser promotions.

This reflects the fact that many personal vaporisers available for sale in the ACT mimic the appearance of tobacco cigarettes, people use them with hand to mouth movements similar to those of cigarette smoking, and most of them emit what looks to some people like tobacco smoke.

ATODA continues to support the goal of eliminating the sale of tobacco products, and in the shorter term, in reducing the number and geographical density of licensed tobacco retailers. ATODA does not support, however, the proposal that only licensed tobacco retailers would be permitted to sell personal vaporisers (this perhaps makes an assumption that personal vaporisers are as harmful as tobacco products). If it is shown that these products support tobacco smoking cessation, limiting the sale of personal vaporisers to these outlets would mean that they would become increasingly unavailable which would militate against the widespread use of these products as smoking cessation aids (and their ability to fill a role similar to nicotine replacement therapy (NRT) such as patches, gum, etc if they are legally able to be sold containing nicotine).

Any regulations should include guidelines and mechanisms that enable distinctions to be made on how we treat different types of nicotine-containing electronic or vaporiser products that may come onto the market in the future. A number of products are coming onto overseas markets that heat rather than burn tobacco (as opposed to liquid). Cigarette companies are referring to these as “reduced risk” products, and media surrounding their launches draw clear parallels with electronic cigarettes/personal vaporisers. While these products are different to the personal vaporisers under discussion in this paper, should they become available in Australia, there could be confusion over how they are dealt with under ACT’s personal vaporiser regulations (such as where they are sold). Other new electronic or vaporising technologies may be developed that cause similar confusions.

We would encourage regulations to be accompanied by the development of guidelines and mechanisms that anticipate the likelihood of new technologies and allow for electronic/vaporiser products to be explicitly ruled in and out of regulations on a case-by-case basis where necessary. This will be particularly important if personal vaporisers are approved as smoking cessation aids. Where appropriate, community education and awareness raising activities should also include information on the differences between personal vaporisers and these other electronic/vaporising products.

ATODA does not support Option 4 ‘Ban the sale of flavoured personal vaporisers in the ACT’, this is because the option confuses flavouring with the potential harms and potential benefits of using personal vaporisers as such. In our view, the regulatory regime proposed under Option 3 is sufficient to achieve valued public and individual health goals regarding the products as they are at present. Banning flavouring goes too far, ignoring the responsibility of governments to minimise the impositions on the public that their regulations constitute.

Section 2: Options to prevent the renormalisation of smoking and protect the public from second-hand vapour

It should be pointed out that no sound evidence exists that even nicotine-containing personal vaporisers sold abroad (let alone the ACT type that cannot legally contain nicotine) have gone any way towards re-normalising cigarette smoking. Perhaps the best evidence for this is the fact that cigarette smoking among young people in the USA has not risen in recent years, a period in which the availability and use of personal vaporisers has increased

markedly in that nation.³ Given the lack of evidence relating to re-normalising cigarette smoking, the assumptions underpinning this section are questionable.

ATODA does not support Option 1 'Continue with the current level of government intervention (status quo)' other approaches are needed to deal with the contemporary realities of personal vaporisers in the ACT.

ATODA supports Option 2 'Amend ACT smoke-free legislation to directly capture personal vaporisers and prohibit their use in smoke-free areas' for two reasons. First, it is highly desirable to give greater certainty to people who use personal vaporisers and venue managers about where these products can be lawfully used. Secondly, despite the fact that they are not tobacco products, ATODA believes that personal vaporisers should not be used in smoke-free areas as many of them mimic tobacco cigarettes (as mentioned above).

ATODA does not support Option 3 'Amend ACT smoke-free legislation to directly capture personal vaporisers and permit their use in smoke-free areas' for the reasons set out in our responses in the previous paragraph.

Conclusion

ATODA reiterates our concern about the structural bias in this consultation process that starts with assumptions, not supported by scientific research, about the actual or potential harms of personal vaporisers, and its failure to address one of the two stated purposes of the consultation, namely '... retaining access to the devices to support quit attempts'.

In ATODA's view, the ACT Government should be active in working with colleagues from the States, the Northern Territory and the Commonwealth Governments to implement a careful policy analysis relating to the strengths and weaknesses of nicotine-containing personal vaporisers as a less unhealthy alternative to smoking of tobacco cigarettes. This is particularly the case considering the emerging evidence, from well-designed and conducted randomised controlled trials, about their efficacy and effectiveness as smoking cessation aids, and the virtual absence of negative health consequences from their use.

Such a policy analysis was flagged in the *National Tobacco Strategy 2012-18* which states, at page 31, that "The Australian Government has commissioned a regulatory impact assessment in relation to electronic nicotine delivery systems and smokeless tobacco products, which is due to report in early 2013".

So far as ATODA is aware, the regulatory impact assessment has not been promulgated which is highly problematic considering the importance of the issue and the fact that different Australian jurisdictions are taking quite different approaches with regard to personal vaporisers. Furthermore, we understand that some selected research bodies have been invited, by the Commonwealth Department of Health, to tender to undertake a study of personal vaporiser regulation in Australia, with an unacceptably short timeframe for completion of the study. Given this potential policy disarray, ATODA urges the ACT Government to facilitate the conducting of sound national evidence-informed policy work about personal vaporisers as smoking cessation devices.

³ US teen smoking rates falling despite massive availability and use of ecigs: National Institute on Drug Abuse (USA) 2014, Monitoring the Future: trends in prevalence of various drugs, NIDA, <http://www.drugabuse.gov/trends-statistics/monitoring-future/monitoring-future-study-trends-in-prevalence-various-drugs>

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ATODA would also like to acknowledge the contributions of the presenters and participants at the personal vaporiser session held during the 7th Annual ACT ATOD Sector Conference in September 2014 in Canberra, including the contributions of an ACT-specific consumer case study regarding the use of personal vaporisers.

Please don't hesitate to contact ATODA if we can provide further information or support.

Yours sincerely,



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