

# Interview

## Tony Smith, Assistant Commissioner Customs Compliance, Enforcement and Targeting – Australian Border Force

The Australian Border Force (ABF) is committed to working in collaboration with industry and other whole-of-government partners to realise the intent of the health-led reforms associated with vaping products.

As recently announced by the Minister for Health and Aged Care, over 5.2 million illicit vapes and vaping products have now been seized since the import prohibitions commenced in January 2024. The ABF and the Therapeutic Goods Administration (TGA) have led the majority of these seizures, with assistance from state and territory law enforcement and health agencies. We expect these numbers to grow as targeted activities mature and collaboration with partners, including industry, increases.

The ABF has seen many international vaping suppliers change the way they

send products to Australia in response to the phased import prohibition. Whilst some suppliers have ceased exporting to Australia, others continue with a focus on circumventing Australia's border-related laws.

Transport operators and licensed Customs brokers play a pivotal role in the supply chain and can assist by ensuring they are aware of the strict controls around who can import vaping goods. There are certain circumstances where vaping goods can be supplied. These include:

- A wholesaler, pharmacist, medical practitioner, or nurse practitioner who is authorised under a state or territory law to supply a Schedule 4 or Schedule 3 substance
- An importer (who holds a licence and permission to import vaping goods)
- A manufacturer (who holds a licence from the TGA to manufacture vaping goods, or conformity assessment documents that apply to vaping goods)

**Sal Milici, General Manager Trade Policy & Operations – Freight & Trade Alliance (FTA)** recently sat down with the Assistant Commissioner to give us an exclusive insight into how the ABF is working in collaboration with partners to support this important Government initiative.

### 1. Sal Milici - How is the ABF enforcing new legislation restricting the import of vapes?

On 1 January 2024, all single-use disposable vapes became prohibited imports.

From 1 March 2024, this expanded to all other types of vaping goods. In this period, the ABF and TGA have seized more than 5 million vapes and vaping accessories preventing them from entering the Australian community.

Prior to the legislative reforms introduced this year, only vapes containing nicotine were prohibited. However, many vapes containing nicotine were not correctly labelled and every product suspected to contain nicotine required specialised testing by the TGA. This was onerous and placed significant strain on both the Government and compliant industry members who were required to store goods awaiting testing or destruction. The new laws have now made it easier to detect, seize and destroy all vaping goods imported without the necessary licences and permits.

We are disrupting large volumes of these prohibited imports crossing Australia's border every week. Our efforts are having an effect but reducing the amount of vapes in the community requires partnerships with industry and a multi-faceted approach across all levels and jurisdictions of government, including health authorities, law enforcement and community education about the harms of vaping.

### 2. Sal Milici - How many vape seizures have taken place since the vaping reforms were introduced?

Since 1 January 2024, over 5.2 million vaping products, with an estimated street value of \$155.8 million, have been seized by ABF and the TGA.

### 3. Sal Milici - What methods are you seeing illegal importers use to get vapes into Australia?

Organised crime groups are highly adaptive and will seek to take advantage

of legitimate supply chains and entities. They are always looking for ways to avoid detection, circumvent controls and operate outside of the boundaries of lawful business practices. We know some groups profiting from the import and sale of illicit tobacco are now diversifying into the distribution of unlawfully imported vaping products.

We are seeing high levels of mis-declaration and mis-description of goods, in an attempt to remain undetected by the ABF and circumvent border controls.

The ABF is well attuned to these methodologies and has the tools in place to detect and disrupt these attempts. We remain agile as opportunistic importers and criminal groups change their approach to avoid detection.

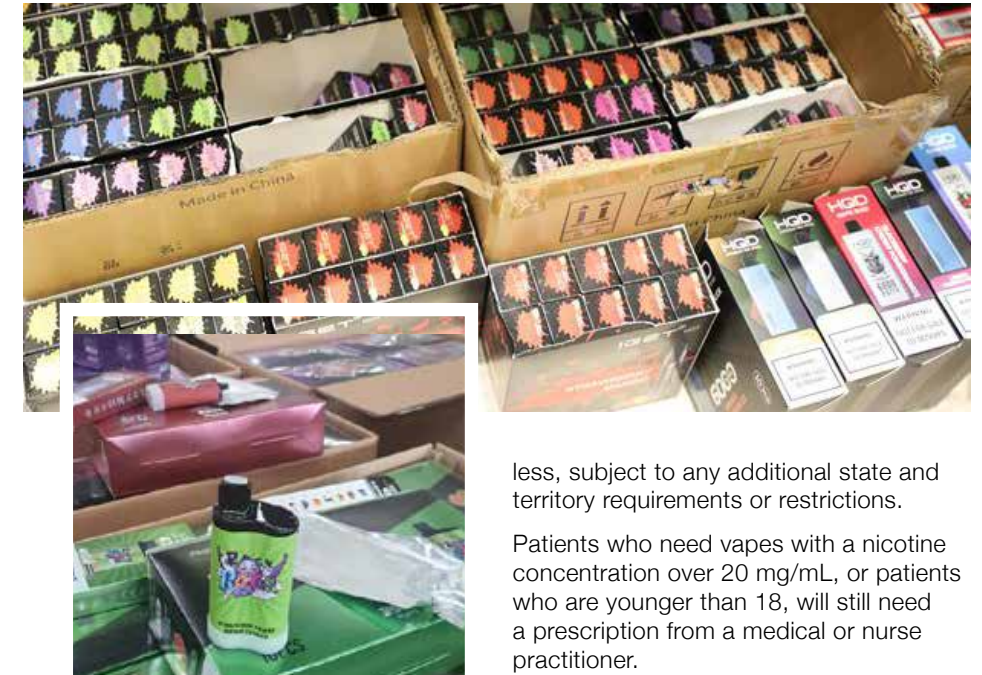
We seek support and assistance from industry to speak up if there are anomalies or unusual behaviour identified by importers. For example, lithium battery indicators for consignments described as something that wouldn't need batteries could be an indication of mis-described products. If there are signs that the goods being imported are likely unlawful shipments of vapes, please refer your concerns to Border Watch.

### 4. Sal Milici - What are the penalties if someone is caught?

Tough new penalties for the unlawful importation, manufacture, advertising, supply and commercial possession of vaping goods now apply.

The ABF has a range of enforcement options available to deter those who seek to circumvent border controls. The ABF will seize and destroy any illegal vaping products, however further penalties may also apply.

To avoid penalties and sanctions, licensed Customs brokers should take additional precautions where relevant and conduct the required due diligence on import documentation, description of goods and addresses provided by the importer. This may extend to ensuring the credentials of the importer are true and accurate. In addition, if licensed Customs depot operators, through the course of their duties, suspect consignments are unlawful imported vapes, it is encouraged that they seek assurances to verify the goods or flag it with Border Watch for ABF intervention.



### 5. Sal Milici - How do you work with international partners, given vaping isn't banned in other countries?

Our strong international network allows us to work with partners at the source to disrupt the supply of vapes, before they hit our shores. We have been working closely and proactively with a number of countries, including China and New Zealand to prevent the export of vapes to Australia, to the extent it is permissible under each country's domestic laws. There is a strong commitment from our international partners to work with us pre-border.

### 6. Sal Milici - How does the ABF work with the TGA and other partners on enforcement?

The ABF and TGA have a very close working relationship. We partner in both multi-agency forums and directly across our two agencies, actively sharing information and meeting regularly.

This work is underpinned by a National Vaping Enforcement Framework, which has been agreed between health and law enforcement agencies, including state and territory police and the Australian Federal Police, and sets out a united approach to enforcing the laws for vaping products.

State and territory health departments are supported by their policing agencies, particularly in relation to organised crime.

### 7. Sal Milici - What changes occurred on 1 October?

From 1 October 2024, pharmacists can supply vapes without a prescription to a patient who is 18 years or older, if the nicotine concentration is 20 mg/mL or

less, subject to any additional state and territory requirements or restrictions.

Patients who need vapes with a nicotine concentration over 20 mg/mL, or patients who are younger than 18, will still need a prescription from a medical or nurse practitioner.

State and territory requirements also apply.

With this change, FTA members should expect legitimate importations of vapes to be consigned to or delivered to licensed importers or pharmacies with the appropriate permits. In particular and if warranted, licensed customs brokers and depot operators should seek further assurances or flag consignments that are addressed or consigned to unusual places or people. An example would be a large shipment of vapes consigned to tobacco stores, residential addresses or grocery/convenience stores.

### 8. Sal Milici - Do you have a message for our readers?

Freight & Trade Alliance members play a key role in protecting our border and community from unlawful activities. You are considered partners in securing Australia's borders and hold a valuable position as a liaison between importers/exporters and Government authorities. Customs brokers in particular hold a privileged role of trust and play a significant role in the protection of Australia's borders. Customs brokers should, to comply with their licence obligations, exercise due diligence by seeking information from importers relating to the importation. If something doesn't look right, Customs brokers should seek additional information or verification.

If you see something that doesn't feel right, flag it with Border Watch. By reporting suspicious activities, you help protect Australia's border and our community. One small observation could help stop a large border crime. Reports can be made anonymously at <http://www.abf.gov.au/borderwatch>

