**Consultation submission 211 – Food and Grocery Council**

12 September 2016

Ministry of Health   
PO Box 5013   
Wellington 6140   
NEW ZEALAND

Email: ecigarettes@moh.govt.nz

Dear Sir/Madam

Attached are the comments that the New Zealand Food & Grocery Council wishes to present on *Policy Options for the Regulation of Electronic Cigarettes: A consultation document****.***

Yours sincerely

[redacted]

*Policy Options for the Regulation of Electronic Cigarettes: A consultation document*

## Submission by the New Zealand Food & Grocery Council

12 September 2016

### NEW ZEALAND FOOD & GROCERY COUNCIL

1. The New Zealand Food & Grocery Council (“NZFGC”) welcomes the opportunity to comment on *Policy Options for the Regulation of Electronic Cigarettes: A consultation document*.
2. NZFGC represents the major manufacturers and suppliers of food, beverage and grocery products in New Zealand. This sector generates over $34 billion in the New Zealand domestic retail food, beverage and grocery products market, and over $31 billion in export revenue from exports to 195 countries – some 72% of total merchandise exports. Food and beverage manufacturing is the largest manufacturing sector in New Zealand, representing 44% of total manufacturing income. Our members directly or indirectly employ more than 400,000 people – one in five of the workforce.

### OVERARCHING COMMENTS

1. NZFGC supports the sale and supply of nicotine vapour products (e-cigarettes) and nicotine liquids on the local market. There appear to be good reasons for allowing the sale and supply of these products to those who are wanting to quit smoking and there are other health benefits from their availability. As a result, we consider the controls should reflect their reduced negative impacts.
2. Nonetheless, we support the extension of age restrictions to both nicotine and non-nicotine vapour products on the basis that adults should be making the decision on personal use. NZFGC also supports some labelling provisions but does not support annual testing or discount conditions. We consider that consumers should be protected in relation to product quality to the same extent as for other products. To this end we support a range of safety measures (such as childproof containers, safe disposal arrangements etc) and quality measures (such as Good manufacturing practice, purity and grade of nicotine, etc).
3. There are health advantages associated with nicotine and non-nicotine vapour products as substitutes for more harmful tobacco products. These benefits should be able to be communicated to consumers by government and industry. NZFGC suggests that arrangements applying to ‘quit smoking products’ should apply to nicotine and non-nicotine vapour products.
4. NZFGC opposes graphic health warnings for e-cigarettes as these present no or significantly reduced health risks. Graphic health warnings on these products diminishes their prospects as alternatives to tobacco products and also dilutes the impact of health warnings by sending mixed messages to the consumer. For this reason also NZFGC opposes the use of standardised packaging for e-cigarettes. We consider that retail display engages retailers to encourage the switch by tobacco users to less harmful products. For all the foregoing reasons, NZFGC does not support a prohibition on advertising and sponsorship of nicotine and non-nicotine vapour products. Communicating alternatives to harmful tobacco products should be encouraged.
5. NZFGC suggests that excise should not apply to e-cigarettes. Excise is fundamentally applied to discourage the consumption of certain products and e-cigarettes are an effective alternative to quitting tobacco products. Not applying excise permits more healthful alternatives to tobacco products to compete more favourably than tobacco in the market. However, if excise is to proceed, then NZFGC suggests a reasonable threshold be set above which consumption is not considered a reasonable alternative. Ideally all the products on the market should currently be within this threshold and the measure would be for future proofing against high nicotine products.

### SPECIFIC COMMENTS

***Proposals***

1. The sale and supply of nicotine electronic cigarettes (e-cigarettes) e-cigarettes are prohibited, while smoked tobacco, which is more harmful for users, can be sold legally. Users obtain nicotine e-cigarettes through importation and illegal local sales. The existing provisions for the regulation of e-cigarettes, found primarily in the Smoke-free Environments Act 1990 and the Medicines Act 1981, are not adequate. The legal status of e-cigarettes is currently confusing and, as a consequence, the laws are not routinely enforced.
2. According to MoH, “there is emerging evidence that, if smokers switch completely to e-cigarettes, these products pose less health risks to them than smoked tobacco …”[[1]](#footnote-1)

***Regulatory Framework***

*Principal controls*

*Q1 Do you agree that the sale and supply of nicotine e-cigarettes and nicotine liquids should be allowed on the local market, with appropriate controls?*

1. NZFGC considers there are no reasons to prohibit the sale and supply of nicotine vapour products (e-cigarettes) and nicotine liquids to adults on the local market. There are good reasons for allowing the sale and supply of these products to those who are wanting to quit smoking and there are other benefits such as reduced health impacts and passive smoking. Because of these benefits, we consider the controls should reflect the reduced negative impacts. Permitting the sale and supply of nicotine vapour products would align with many countries including the UK, EU, USA and Canada. We note some countries have prohibited sale and supply of nicotine vapour products such as Singapore, Argentina, Brazil, Hong Kong and the UAE.

*Q2 Are there other (existing or potential) nicotine-delivery products that should be included in these controls at the same time? If so, what are they?*

1. NZFGC is not aware of any other nicotine-delivery products that should be included under any controls applied to nicotine vapour products.

*Age controls*

*Q3 Do you think it is important for legislation to prohibit the sale and supply of e-cigarettes to young people under 18 years of age in the same way as it prohibits the sale and supply of smoked tobacco products to young people?*

1. Yes, NZFGC supports the extension of age restrictions to both nicotine and non-nicotine vapour products on the basis that adults should be making the decision on personal use.

*Advertising controls*

*Q4 Do you think it is important for legislation to control advertising of e-cigarettes in the same way as it controls advertising of smoked tobacco products?*

1. No, NZFGC considers that there are benefits associated with nicotine and non-nicotine vapour products as substitutes for more harmful tobacco products and that these benefits should be able to be communicated to consumers by government and industry. NZFGC suggests that restrictions that apply to ‘quit smoking products’ should apply to nicotine and non-nicotine vapour products.

*Environmental controls*

*Q5 Do you think it is important for the SFEA to prohibit vaping in designated smokefree areas in the same way as it prohibits smoking in such areas?*

1. NZFGC considers that government should not regulate on where vaping should be conducted. This matter should be left up to businesses and agencies. NZFGC notes that some businesses and agencies have already determined their position such as Air New Zealand.

*Other controls*

*Q6 Do you agree that other controls in the SFEA for smoked tobacco products should apply to e-cigarettes? For example: Requirement for graphic health warnings, Prohibition on displaying products in sales outlets, Restriction on use of vending machines, Requirement to provide annual returns on sales data, Requirement to disclose product content and composition, Regulations concerning ingredients (eg, nicotine content and/or flavours), Requirement for annual testing of product composition, Prohibition on free distribution and awards associated with sales, Prohibition on discounting, Prohibition on advertising and sponsorship, Requirement for standardised packaging.*

1. NZFGC considers the following in relation to each proposed controls:

* *Requirement for graphic health warnings:* NZFGC opposes graphic health warnings for e-cigarettes.
* *Prohibition on displaying products in sales outlets*: NZFGC considers that if tobacco-smokers are to be encouraged to change their habits and quit smoking then such products should be very visible. There should be no prohibitions on displaying such products
* *Restriction on use of vending machines*: NZFGC does not support the use of vending machines for e-cigarettes in order for age restrictions and verification to apply.
* *Requirement to disclose product content and composition*: NZFGC supports the disclosure of product content and composition
* *Requirement to provide annual returns on sales data*: NZFGC supports the provision of annual returns on sales data.
* *Regulations concerning ingredients (eg, nicotine content and/or flavours)*: As with many other products, provisions around ingredients, developed in consultation with industry, are supported.
* *Requirement for annual testing of product composition:* NZFGC does not support annual testing of product composition on the basis that such activity could simply be a part of the compliance strategy on a needs basis. NZFGC does not support nor constraints around discounting.
* *Prohibition on discounting*: NZFGC does not support constraints around discounting. Such provisions are not necessary for products that are alternatives to tobacco products.
* *Prohibition on free distribution and awards associated with sales*: NZFGC does not support this prohibition. Engaging retailers to encourage the switch by tobacco users to less harmful products would be supported by providing sales incentives such as free distribution and awards.
* *Prohibition on advertising and sponsorship*: As noted above in response to Q4, NZFGC does not support a prohibition on advertising and sponsorship of nicotine and non-nicotine vapour products. Encouraging the switch by tobacco users to less harmful products should be supported and communication permitted to tobacco users.
* *Requirement for standardised packaging:* NZFGC opposes the use of standardised packaging for e-cigarettes. There is evidence that these products are significantly less
* harmful than tobacco products and standardised packaging would otherwise confuse consumers as to their benefit.

*Excise*

*Q7 Do you think it is important for legislation to impose some form of excise or excise-equivalent duty on nicotine e-liquid, as it does on tobacco products?*

1. NZFGC suggests that excise should not apply to e-cigarettes. Excise is fundamentally applied to discourage the consumption of certain products and e-cigarettes are an effective alternative to quitting tobacco products. Not applying excise permits more healthful alternatives to tobacco products to compete more favourably than tobacco in the market. However, if excise is to proceed, then NZFGC suggests a reasonable threshold be set above which consumption is not considered a reasonable alternative. Ideally all the products on the market should currently be within this threshold and the measure would be for future proofing against high nicotine products.

*Quality controls*

*Q8 Do you think quality control of and safety standards for e-cigarettes are needed?*

1. Yes, NZFGC considers consumers should be protected to the same extent as for other products.

*Q8 Specific Quality controls include: Childproof containers, Safe disposal of e-cigarette devices and liquids, Ability of device to prevent accidents, Good manufacturing practice, Purity and grade of nicotine, Registration of products, A testing regime to confirm product safety and contents purity, Maximum allowable volume of e-liquid in retail sales, Maximum concentration of nicotine e-liquid, Mixing of e-liquids at (or before) point of sale.*

1. NZFGC considers the following in relation to each proposed controls:

* *Childproof containers, Safe disposal of e-cigarette devices and liquids, Ability of device to prevent accidents, Good manufacturing practice, Purity and grade of nicotine, Registration of products:* NZFGC considers these protections should be extended to e-cigarettes.
* *A testing regime to confirm product safety and contents purity:* NZFGC considers that the quality and safety requirements described above, which will require due diligence and demonstration, should be adequate for assuring safety and quality without the addition of a high cost testing regime. A mandated testing regime could significantly limit the entry to the market of products that are alternatives for the more harmful tobacco products.
* *Maximum allowable volume of e-liquid in retail sales:* NZFGC considers this requirement is not required if concentration and maximum nicotine content is restricted.
* *Maximum concentration of nicotine e-liquid:* NZFGC supports controls on maximum concentration of nicotine e-liquid.
* *Mixing of e-liquids at (or before) point of sale:* NZFGC does not support the mixing of e-liquids at retail level as this would require considerable training and other safety measures to be in place. Alternatively safety requirements could be set which might limit the activity in any case.

*Q9 Are there any other comments you would like to make?*

1. NZFGC has no other comments to make.

*Additional information on sales and use*

*Q10 Can you assist us by providing information on the sale of e-cigarettes in New Zealand (for example, size of sales or range of products for sale on the local market)?*

1. NZFGC does not hold such information.

*Q11 Would the Ministry of Health’s proposed amendments have any impact on your business? If so, please quantify/explain that impact.*

1. N/A

*Q12 If you are using nicotine e-cigarettes: how long have you been using them, how often do you use them, how much do you spend on them per week and where do you buy them?*

1. N/A

**Consultation submission 212 – Pfizer NZ**

**Policy Options for the Regulation of Electronic Cigarettes: Consultation Response**

12 September 2016

For questions regarding this response, please contact:

[redacted]  
**Pfizer New Zealand**   
[redacted]  
8 Nugent Street, Grafton, Auckland 1023   
PO Box 3998, Shortland Street, Auckland 1140   
E: [redacted]

**Policy Options for the Regulation of Electronic Cigarettes: Consultation Response**

Pfizer New Zealand (Pfizer) welcomes the opportunity to provide feedback on proposals to change the way electronic cigarettes (e-cigarettes) are regulated.

Pfizer supports clarifying of the regulatory framework for nicotine e-cigarettes (ECs) in New Zealand, and the introduction of measures to ensure responsible sale and supply, prevent harm and promote quality and safety of these products.

Pfizer’s response to the consultation is framed in terms of the three policy objectives identified by the Ministry of Health (the Ministry):

* reduction of harm from tobacco
* prevention of harm from e-cigarettes; and
* product safety.

**Objective 1: Reduction of harm from tobacco**

Pfizer shares the goal of Smokefree 2025, and is proud to contribute to the collective efforts needed to make this a reality. We recognise that Smokefree 2025 is an ambitious objective, and note that the current rate of progress means bold approaches may be necessary.

Pfizer’s response to this consultation is guided by our responsibilities as a research-based company. Our commitment is to evidence-based developments in public health, and in this context, to interventions and support that have proven effectiveness in helping smokers quit.

Whilst we recognise that reducing tobacco consumption may have a role as a step towards smoking cessationi, policymakers must not lose sight of the fact that a safe level of tobacco cigarette smoking has not been establishedii. The best way to reduce smoking-related illnesses and death is to stop smoking tobacco cigarettes entirelyiii.

Pfizer is concerned by the current evidence that suggests that many EC users continue to smoke tobacco cigarettes and may not achieve complete tobacco abstinenceiv,vvi. Until such time as more consistent evidence exists regarding the efficacy of e-cigarettes as a smoking cessation tool, including their relative merits compared to proven therapies, the Ministry must remain vigilant to the risk that ECs become a distraction (or a hindrance) to developing and executing an effective Smokefree 2025 strategy.

In the meantime, there is a pressing need for research to evaluate the impact of ECs on tobacco control efforts. Pfizer supports the recommendation of the ASPIRE groupvii that the Ministry develop a framework for monitoring and evaluating emerging evidence on ECs, and for evaluating the impact of ECs on smoking prevalence in New Zealand.

**Objective 2: Preventing harm from e-cigarettes**

Pfizer is concerned about the potential for harm from ECs, particularly the uncertain long-term effects of e-cigarettes on the lung health of individuals and population groups.

We note the evidence that the use of ECs has been increasing rapidly in New Zealand, as in many countries, regardless of the current restrictionsviii. Pfizer agrees that a robust policy framework, which allows the sale and supply of these products, with appropriate controls, is more likely than the status quo to be effective in preventing harm from e-cigarettes.

Pfizer has the following specific comments on the proposals to prevent harm:

* We strongly support legislation to prohibit the sale and supply of e-cigarettes to young people under the age of 18 years of age in the same way as the sale of smoked tobacco products to young people is prohibited.
* Pfizer supports regulation that limits the commercial marketing of nicotine containing ECs and e-liquids to avoid exposure to children and young people.
* Pfizer agrees that packaging requirements for EC and e-liquids products sold within NZ (if permitted) should include minimum standards of child safety, safety warnings, health warnings and Quitline information, and a list of product ingredients.
* Pfizer supports prohibition of vaping in all indoor workplaces and public places (consistent with the SFEA), in schools, cars and selected outdoor locations (e.g. where children predominate or large crowds are present). This is to prevent, as much as possible, exposure to children and young people, and is in the interests of the lung health of the community.

**Objective 3: Product safety**

Pfizer supports the introduction of quality and safety controls related to both the devices and ingredients of e-cigarettes, to ensure consistent standards and safeguard consumers. We also believe that further work is needed in this area to identify best practice, and recommend that New Zealand be aligned with developments internationally.

i McNeil, A, Brose, L.S. Calder, R. & Hitchman, S.C (2015). *E-cigarettes: an evidence update*. Public Health England https://www.gov.uk/government/publications/e-cigarettes-an-evidence-update [Accessed 16 August 2016]

ii Oberg, M., Jaakkola, M.S., Woodward, A., Peruga, A. & Pruss-Ustun, A. (2011). Worldwide burden of disease from exposure to second-hand smoke: A retrospective analysis of data from 192 countries. *Lancet, 377,* 139-146

iii US Department of Health and Human Services. *The Health Consequences of Smoking – 50 Years of Progress: A Report of the Surgeon General.* Atlanta: U.S. Department of Health and Human Services, Centres for Disease Control and Prevention, National Center for Chronic Disease Prevention and Health Promotion, Office on Smoking and Health.

iv ASH UK (2016). *ASH factsheet on the use of electronic cigarettes among adults in Great Britain*. London: Action on Smoking and Health (England).

v Wael K. Al Delaimy et al., (2015) E-Cigarette Use in the Past and Quitting Behavior in the Future: A Population-Based Study. Available: http://ajph.aphapublications.org/doi/abs/10.2105/AJPH.2014.302482 (date accessed: September 2016)

vi Kalkhoran, S. & Glantz, S.A. (2016). E-cigarettes and smoking cessation in real-world and clinical settings: a systematic review and meta-analysis. *Lancet Respiratory Medicine, 4*, 116-28

vii Edwards, R; Bullen, C., Walker, N., Hoek, J. & Beaglehole, R. (2016). *Background Paper: E-cigarettes and their potential contribution to achieving the 2025 goal – Prepared for the National Smokefree Working Group*. https://aspire2025.files.wordpress.com/2016/08/nsfwg-e-cig-and-their-potential-contribution-to-acheiving-smokefree-2025.pdf [Accessed 29 August 2015]

viii White, J., Li, J., Newcombe, R., & Walton, D. (2015). Tripling use of electronic cigarettes among New Zealand adolescents between 2012 and 2014. *Journal of Adolescent Health, 56,* 522-8.

**Consultation submission 213 – Cancer Society South Canterbury**

|  |  |
| --- | --- |
| **Your details**  This submission was completed by: *(name)* | [redacted] |
| Address: *(street/box number)* | [redacted] |
| *(town/city)* | [redacted] |
| Email: | [redacted] |
| Organisation *(if applicable)*: | Cancer Society South Canterbury Centre on behalf of the Cancer Society South Canterbury Centre and the Heart Foundation South Canterbury |
| Position *(if applicable)*: | [redacted] |

*(Tick one box only in this section)*

Are you submitting this:

as an individual or individuals (not on behalf of an organisation)?

on behalf of a group, organisation(s) or business?

*(You may tick more than one box in this section)*

Please indicate which sector(s) your submission represents:

Commercial interests, including e‑cigarette manufacturer, importer, distributor and/or retailer

Tobacco control non-government organisation

Academic/research

Cessation support service provider

Health professional

Māori provider

Pacific provider

Other sector(s) *(please specify)*:

*(You may tick more than one box in this section)*

Please indicate your e‑cigarette use status:

I am using nicotine e‑cigarettes.

I am using nicotine-free e‑cigarettes.

I currently smoke as well as use e‑cigarettes.

I am not an e‑cigarette user.

I have tried e‑cigarettes.

**Privacy**

We intend to publish all submissions on the Ministry’s website. If you are submitting as an individual, we will automatically remove your personal details and any identifiable information.

If you do not want your submission published on the Ministry’s website, please tick this box:

Do not publish this submission.

Your submission will be subject to requests made under the Official Information Act. If you want your personal details removed from your submission, please tick this box:

Remove my personal details from responses to Official Information Act requests.

If your submission contains commercially sensitive information, please tick this box:

This submission contains commercially sensitive information.

**Declaration of tobacco industry links or vested interest**

As a party to the global tobacco control treaty, the World Health Organization Framework Convention on Tobacco Control, New Zealand has an obligation to protect the development of public health policy from the vested interests of the tobacco industry. To help meet this obligation, the Ministry of Health asks all respondents to disclose whether they have any direct or indirect links to, or receive funding from, the tobacco industry. The Ministry will still carefully consider responses from the tobacco industry, and from respondents with links to the tobacco industry, alongside all other submissions. Please provide details of any tobacco company links or vested interests below.

|  |
| --- |
| The Cancer Society South Canterbury and the Heart Foundation South Canterbury have enjoyed a long association working collaboratively on a wide range of tobacco control initiatives in South Canterbury. As well as supporting advocacy strategies to both central and local government, the two organisations have been active in community Smokefree initiatives such as World Smokefree Day, smokefree family events and smokefree cars. Both the Cancer Society and the Heart Foundation endorse the goal of a smokefree Aotearoa by 2025. We are committed to developing a local strategy that promotes wider public understanding of this goal and identifying practical steps that contribute to reducing the impact of tobacco on our community  **Our submission endorses the National Cancer Society submission.** |

Please return this form by email to:

**ecigarettes**[**@moh.govt.nz**](mailto:tobacco@moh.govt.nz) by **5 pm, Monday 12 September 2016**.

If you are sending your submission in PDF format, please also send us the Word document.

**Consultation questions**

Although this form provides blank spaces for your answers to questions, there is no limit to the length of your responses; you should take as much space as you need to answer or comment. Feel free to enlarge the boxes or attach additional pages.

**Q1 Do you agree that the sale and supply of nicotine e‑cigarettes and nicotine liquids should be allowed on the local market, with appropriate controls?**

Yes  No

Reasons/additional comments:

|  |
| --- |
| The Cancer Society South Canterbury Centre and The Heart Foundation South Canterbury believes that at present the position with regard to use of E.cigarettes needs to be clarified  In the event that the sale and supply of nicotine E-cigarettes is introduced to New Zealand, we feel a cautious approach should be adopted and regulation is required. Although there is evidence that they may be as a potential cessation tool, this remains an evolving issue. [[2]](#footnote-2)  Our position is consistent with the wider Smokefree sector in New Zealand. |

**Q2 Are there other (existing or potential) nicotine-delivery products that should be included in these controls at the same time? If so, what are they?**

Yes  No

Reasons/additional comments:

|  |
| --- |
| Controls should be extended to cover any nicotine device unless provided via Medsafe for purposes of cessation. |

**Q3 Do you think it is important for legislation to prohibit the sale and supply of e‑cigarettes to young people under 18 years of age in the same way as it prohibits the sale and supply of smoked tobacco products to young people?**

Yes  No

Reasons/additional comments:

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| --- |
| There is potential for E.cigarettes to have what researchers call a “gateway” effect whereby these devices may lead to an eventual increase initiation rates for tobacco smoking. Nicotine is addictive and we recommend that those aged under 18 should be protected from unregulated supplies. In addition there is concern that the glamorous way in which nicotine E.cigarettes are marketed overseas, could encourage younger people to try these products. [[3]](#footnote-3)[[4]](#footnote-4) |

**Q4 Do you think it is important for legislation to control advertising of e‑cigarettes in the same way as it controls advertising of smoked tobacco products?**

Yes  No

Reasons/additional comments:

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| --- |
| As noted above there is also considerable evidence from overseas that E.cigarettes are marketed in ways that are reflective of how tobacco used to be advertised in New Zealand with the aim of making products glamorous, attractive and desirable. Without advertising control, there is the potential for the tobacco industry with interests in E.cigarettes to exploit this “window of opportunity” as tobacco products and E.cigarettes have the potential to be confused by the public. We believe in these circumstances our international reputation for controls on tobacco advertising will be undermined along with the aims of the 2025 goal. |

**Q5 Do you think it is important for the SFEA to prohibit vaping in designated smokefree areas in the same way as it prohibits smoking in such areas?**

Yes  No

Reasons/additional comments:

|  |
| --- |
| Smokefree outdoor areas are becoming well established in South Canterbury through partnerships with local councils and the hospitality industry. Advocacy is based on the importance of reducing the visibility of smoking in public open spaces, denormalising the act of smoking and reducing the impact of second hand smoke. Policies promoting smokefree outdoor areas whether voluntary or enforceable through by laws rest on clear signage and promotion requesting smokers to refraining from smoking. Unless E-cigarettes are prohibited in smokefree outdoor areas, the look, use and appearance of “smoke clouds” created by such devices will undermine smokefree outdoor polices and create confusion amongst both smokers and non-smokers. Clarity is essential, especially with regard creating completely smokefree outdoor areas for the next generation. |

**Q6 Do you agree that other controls in the SFEA for smoked tobacco products should apply to e‑cigarettes? For example:**

|  |  |  |  |
| --- | --- | --- | --- |
| **Control** | **Yes** | **No** | **Reasons/ additional comments** |
| Requirement for graphic health warnings |  |  | The longer term effects of E.cigarettes as noted above remain unknown. As a result graphic health warnings have the potential to convey any key messages e.g. keep away from children. If regulated for , these messages could be updated as new evidence emerges |
| Prohibition on displaying products in sales outlets |  |  | The tobacco control sector advocated long and hard to see the introduction of tobacco display bans. E.Cigarettes, if sold openly have the potential to undermine this clear position given their ability to “mimic” tobacco products. |
| Restriction on use of vending machines |  |  | Yes. In line with current legislation for tobacco products |
| Requirement to provide annual returns on sales data |  |  | In order to understand trends in use of E.Cigarettes, the tobacco control sector must have robust data. |
| Requirement to disclose product content and composition |  |  | All users should be aware of what their product contains. |
| Regulations concerning ingredients (e.g., nicotine content and/or flavours) |  |  | Ingredients should be regulated to reduce risks of harm to users. It is known that ingredients can be added to increase the addictiveness of nicotine and these should be banned from E.cigarettes. Use of flavouring should also be regulated to avoid use of those that can appeal to children [ e.g. sweet tasting] |
| Requirement for annual testing of product composition |  |  | Checking would ensure consistency in products |
| Prohibition on free distribution and awards associated with sales |  |  | In line with current tobacco control legislation |
| Prohibition on discounting |  |  | As above |
| Prohibition on advertising and sponsorship |  |  | As above |
| Requirement for standardised packaging |  |  | This should be consistent with the current legislation to prevent products being perceived as glamorous and attractive. If not regulated in the same manner as tobacco, again the potential to undermine tobacco control messages is a real concern |
| Other |  |  |  |

**Q7 Do you think it is important for legislation to impose some form of excise or excise-equivalent duty on nicotine e-liquid, as it does on tobacco products?**

Yes  No

Reasons/additional comments:

|  |
| --- |
| We believes that E.cigarettes should be “cheaper” than tobacco products to encourage smokers to quit. Unlike tobacco products where tax increases have been shown to be effective in encouraging quitting, we believe that tax should not be levied on these new devices to ensure a pricing differential. We do however believe that E.Cigarettes should be zero rated rather than exempt from tax in order to provide for future regulation in the event that controls on consumption were seen as desirable [ i.e. evidence suggesting long term health effects becomes widely accepted] |

**Q8 Do you think quality control of and safety standards for e‑cigarettes are needed?**

Yes  No

Additional comments:

|  |  |  |  |
| --- | --- | --- | --- |
| **Area of concern** | **Yes** | **No** | **Reasons/additional comments** |
| Childproof containers |  |  | Child protection from harmful ingestion of products must be considered [[5]](#footnote-5) [[6]](#footnote-6) |
| Safe disposal of e‑cigarette devices and liquids |  |  | The environment should be considered and the impact of waste and risks to waterway pollution mitigated |
| Ability of device to prevent accidents |  |  | Products sold need to be safe for the user to store and use |
| Good manufacturing practice |  |  | In line with all other products on NZ markets , there needs to be manufacturing standards |
| Purity and grade of nicotine |  |  | As above |
| Registration of products |  |  | As above |
| A testing regime to confirm product safety and contents purity |  |  | Required for consumer protection [[7]](#footnote-7)[[8]](#footnote-8)[[9]](#footnote-9) |
| Maximum allowable volume of e-liquid in retail sales |  |  | Limited to personal use to prevent bulk purchase and resale to others |
| Maximum concentration of nicotine e-liquid |  |  | Expert advice should be sought on setting this. |
| Mixing of e-liquids at (or before) point of sale |  |  | If products were mixed there is the risk of invalidating product content information |
| Other |  |  |  |

**Q9 Are there any other comments you would like to make?**

|  |
| --- |
| New Zealand has an international reputation for tobacco control and one of only a handful of countries with a clearly stated “end game” for the impact of tobacco on the population. At present the use of E.Cigarettes is concerning, with water based products being available for sale here in New Zealand and nicotine based products only obtainable via overseas on line ordering. Whilst closely identified with tobacco either as an alternative or as a cessation aid, use of E.Cigarettes is ambiguous. Advertising and product packaging may be misconstrued with tobacco ; their use in public places sends mixed messages about “smokefree areas” ; they have the potential to encourage youth to experiment; act as a gateway to future tobacco use and their efficacy in cessation remains open to debate. With the long term health effects unknown, there is a need to be cautious and to ensure that they are regulated in line with tobacco products. Unless this is the case, New Zealand’s goal to be Smokefree by 2025 will be undermined. |

**Additional information on sales and use**

**Q10 Can you assist us by providing information on the sale of e‑cigarettes in New Zealand (for example, size of sales or range of products for sale on the local market)?**

|  |
| --- |
| No |

**Q11 Would the Ministry of Health’s proposed amendments have any impact on your business? If so, please quantify/explain that impact.**

|  |
| --- |
| Potentially. If cessation rates were to increase and tobacco consumption rates declined at a faster rate than at present, this would contribute to the long term population health in Canterbury and in particular amongst low income, Maori and Pacific peoples, where rates of tobacco consumption are well above national or regional averages. |

**Q12 If you are using nicotine e‑cigarettes: how long have you been using them, how often do you use them, how much do you spend on them per week and where do you buy them?**

|  |  |  |  |
| --- | --- | --- | --- |
| **How long have you been using them?** | **How often do you use them?** | **How much do you spend on them per week?** | **Where do you buy them?** |
| NA |  |  |  |

**References**

ASH Scotland. (2015). *E-Cigaretts briefing* . Retrieved from Ash Scotland

<http://www.ashscotland.org.uk/media/492933/e-cigarettes-nov-2015.pdf>

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**Consultation submission 214 – Pharmaceutical Society of NZ (Inc.)**

12 September 2016

Ministry of Health

PO Box 5013

Wellington 6140

via email: [ecigarettes@moh.govt.nz](mailto:ecigarettes@moh.govt.nz)

Dear Sir/Madam,

**RE: Policy Options for the Regulation of Electronic Cigarettes**

Thank you for the opportunity to submit comments to the above consultation.

The Pharmaceutical Society of New Zealand Inc. (the Society) is the professional association representing over 3,000 pharmacists, from all sectors of pharmacy practice. We provide to pharmacists professional support and representation, training for continuing professional development, and assistance to enable them to deliver to all New Zealanders the best pharmaceutical practice and professional services in relation to medicines. The Society focuses on the important role pharmacists have in medicines management and in the safe and quality use of medicines.

**General Comment**

The Society agrees in principle to the sale and supply of nicotine e-cigarettes in New Zealand, subject to appropriate regulatory controls. We note that the evidence around the risks and potential benefits of e-cigarette use is still emerging, however these devices appear to provide less risk of adverse health consequences compared to tobacco smoking. The Society is supportive of the principles of harm minimisation, therefore the regulated and controlled availability of e-cigarettes provides may provide a “safer” alternative to smoking, acknowledging e-cigarettes to not appear to be absent of risk.

**Regulatory Aspects**

*Nicotine as “medicine” and having a therapeutic purpose*

We note the classification of nicotine as a medicines under the Medicines Act 1981 means currently that any nicotine-containing e-cigarette cartridges must be approved by Medsafe for sale. However, due to the classification as a ‘General Sale’ medicine, individuals are permitted to import e-cigarettes for their personal use. The definition of a medicine under Section 3 of the Medicines Act also describes a substance sold or supplied for a therapeutic purpose. As there is currently insufficient evidence to support the use of e-cigarettes for the therapeutic purpose of smoking cessation, these products do not quite fall under this definition. We would also ask whether the vaping kits used for the “administration” of nicotine cartridges could fall under the definition of a medical device under the Act, or whether the quality and safety controls for these devices would be covered by the proposed regulations.

The regulation of e-cigarettes presents a unique gap in regulations, where the active ingredient is classified as a medicine, yet the use of that product is not therapeutic. Evidence exists that point towards e-cigarettes as having a lesser risk of health-related harm compared to smoking. Therefore making these products available could support the aims of reducing the burden of smoking–related illness, and could be considered a preferred alternative to smoking. However, as these products are not regulated, the manufacturing quality and standardisation of contents varies widely. Therefore the application of current evidence around e-cigarettes is also difficult to interpret.

Many studies related to the potential “benefit” of e-cigarettes and the potential for supporting reduction or cessation in smoking. However these studies do not often acknowledge the purchase and use of e-cigarettes as a straight alternative to smoking, without an intention for smoking cessation. Their use may be perceived as more socially acceptable or perhaps ‘trendy’, particularly when the products are formulated with different flavourings. Therefore they differ in ‘purpose of use’ to nicotine replacement therapy, which are often used in the therapeutic beneficial process of smoking cessation.

The Society has considered how aspects of the Ministry’s proposed regulation of natural health and supplementary products may apply to the regulation of e-cigarettes. Relevant aims include trying to regulate quality, therapeutic claims, labelling, use and advertising of products that may have a potential therapeutic use that is less proven than more highly regulated medicines.

Promoting the use of e-cigarettes provides an ethical challenge for health professionals, where there does seem to be less risk of harm compared to smoking, but not an absence of harm. Acknowledging the limitation of current evidence, e-Cigarettes appear to fall below smoking in risk, but above nicotine replacement and smoking cessation.

In response to the consultation questions:

**Q1 Do you agree that the sale and supply of nicotine e cigarettes and nicotine liquids should be allowed on the local market, with appropriate controls**?

Yes.

The Society considers that regulations governing the safe sale and supply of smoke-free nicotine products could benefit smokers by reducing harm. The harm caused by tobacco smoking and the subsequent burden of disease on the health budget is well known. People smoke because they are addicted to nicotine, but nicotine itself is not especially hazardous; it is the other constituents of tobacco smoke that cause most of the harm.

Regulations would provide controls to monitor the effect of long-term use of e-cigarettes and as they are a relatively new product longitudinal studies are required.

**Q2 Are there other (existing or potential) nicotine-delivery products that should be included in these controls at the same time? If so, what are they?**

Yes

In New Zealand, the legislation/regulations will need to be broad enough to control future developments in non-combustible nicotine products and not restrictive to those currently available. Since their emergence in 2004, the number of e-cigarette brands is large and has been increasing.

**Q3 Do you think it is important for legislation to prohibit the sale and supply of e cigarettes to young people under 18 years of age in the same way as it prohibits the sale and supply of smoked tobacco products to young people?**

Yes

Considering the limited information regarding the potential risks associated with e-cigarette use, and the potential toxicity of the non-nicotine ingredients being released and inhaled.,

**Q4 Do you think it is important for legislation to control advertising of e cigarettes in the same way as it controls advertising of smoked tobacco products?**

Yes

Regulations governing the safe sale and supply of smoke-free nicotine products/e-cigarettes should strive for a reduction of the prevalence of smoking. Any advertising or public health information should educate the public of the risks of combustible tobacco in any form and promote non-combustible tobacco as it is less harmful. E-cigarettes differ greatly in disease risks compared to cigarettes, and science-based, comprehensible, and actionable health information (consistent with health literacy principles) on differential risks should be available to the public and only reconsidered if it is established that this information is causing losses to population health overall. Existing smokers would benefit from information about the effective use, risks, and benefits of e-cigarettes, as this might encourage the use of e-cigarettes to reduce the use of combustible tobacco and improve public health.

Flavour options may be perceived to be attractive, particularly to youth. Flavouring enhances the rewarding and reinforcing value of e-cigarettes with nicotine and may increase the abuse liability of e-cigarettes with nicotine in smokers. The absence of flavouring in e-cigarettes with nicotine may result in decreased use.

In America, e-cigarettes were promoted as an individual’s right to defying the smoking ban. A balance is required to promote the reduced harm from using non-combustible tobacco whilst not encouraging youth to try, and become addicted to, nicotine.

**Q5 Do you think it is important for the SFEA to prohibit vaping in designated smokefree areas in the same way as it prohibits smoking in such areas?**

Yes

Although inhalation of second-hand vapour from an e-cigarette may be safer than inhaling second or third-hand smoke, it is not without risk and so e-cigarettes should be banned from indoor / smoke free areas. E-cigarette aerosols may include harmful and potentially harmful constituents. Prohibiting vaping in smoke free areas could help to protect the anti-smoking social norms, to discourage people from taking up any form of smoking and protect non-smokers from any potential harm. Many e-cigarette websites advertise their products as a way of getting around existing second-hand smoke policies, a message that could have a detrimental effect on the current tobacco control norm.

**Q6 Do you agree that other controls in the SFEA for smoked tobacco products should apply to e‑cigarettes? For example:**

|  |  |  |  |
| --- | --- | --- | --- |
| **Control** | **Yes** | **No** | **Reasons/ additional comments** |
| Requirement for graphic health warnings |  |  | Unsure of requirement considering risks of harms of smoking are greater, however the addiction potential of nicotine remains. |
| Prohibition on displaying products in sales outlets | √ |  | Avoid promotion to non-smokers.  Not make attractive to try for curiosity. |
| Restriction on use of vending machines | √ |  | Regulated supply though approved suppliers |
| Requirement to provide annual returns on sales data | √ |  | To monitor effect on smoking rates |
| Requirement to disclose product content and composition | √ |  | List ingredients, and follow good manufacturing  practices to ensure the safety of their products and avoid adulteration and misbranding.(6)  Reduce product impurities and standardise information on nicotine  content.(6) |
| Regulations concerning ingredients (eg, nicotine content and/or flavours) | √ |  | List and nicotine strengths.(6)  VOCs, TSNAs, heavy metals, flavouring, and additives: Fewer constituents at much lower levels than in cigarette smoke but higher in poor quality products. (6)  E-cigarette aerosols may include harmful and potentially harmful constituents. (16) |
| Requirement for annual testing of product composition | √ |  | Follow good manufacturing practices to ensure the safety of their products and avoid adulteration and misbranding. (6) |
| Prohibition on free distribution and awards associated with sales | √ |  | Avoid promotion to non-smokers / youth. |
| Prohibition on discounting | √ |  | Support a reduction of nicotine levels / not incentivise more use. |
| Prohibition on advertising and sponsorship | √ |  | Not make vaping attractive to youth. Support a reduction of tobacco message. Promote smoke free public health message. |
| Requirement for standardised packaging | √ |  | Plain packaging. Not attractive to youth. Safety messages. |
| Other |  |  |  |

**Q7 Do you think it is important for legislation to impose some form of excise or excise-equivalent duty on nicotine e-liquid, as it does on tobacco products?**

Yes

The Society supports the key objective of regulation should be to support a reduction of smoking prevalence. Taxing e-cigarettes could provide greater support to the NZ public health system in managing the care of people who develop smoking-related diseases. However, conversely we would acknowledge the risk of adverse health effects is not as great as smoking, therefore any use of excise taxation as a deterrent to use should reflect this “preference” of use – of sorts.

**Q8 Do you think quality control of and safety standards for e‑cigarettes are needed?**

Yes

Additional comments:

Regulations are needed to safeguard product quality.

|  |  |  |  |
| --- | --- | --- | --- |
| **Area of concern** | **Yes** | **No** | **Reasons/additional comments** |
| Childproof containers | √ |  | Ensure that children are unable to swallow large doses of nicotine-containing liquids.(6)  The risks of exposure to the e-liquid (especially for children) are also a concern(16). |
| Safe disposal of e‑cigarette devices and liquids | √ |  | Minimise harm. Assure safety and quality. |
| Ability of device to prevent accidents | √ |  | Minimise harm. Assure safety and quality. |
| Good manufacturing practice | √ |  | Minimise harm. Assure safety and quality. |
| Purity and grade of nicotine | √ |  | Minimise harm. Assure safety and quality.. |
| Registration of products | √ |  | Minimise harm. Assure safety and quality. |
| A testing regime to confirm product safety and contents purity | √ |  | Minimise harm. Assure safety and quality. |
| Maximum allowable volume of e-liquid in retail sales | √ |  | Minimise harm. Assure safety and quality. Support reduction message. |
| Maximum concentration of nicotine e-liquid | √ |  | Minimise harm. Assure safety and quality. Support reduction message. |
| Mixing of e-liquids at (or before) point of sale | √ |  | Minimise harm. Assure safety and quality. Avoid risk of contamination with other products. |
| Other | √ |  | As a precaution, electronic nicotine delivery devices should be restricted until more information about their safety is available.  They should be closely regulated as medicines or tobacco products.(16) |
|  | √ |  | Battery explosions are also a concern.(16) |

Thank you for consideration of this submission. I would be happy to discuss any aspect of this submission further, if required.

Yours sincerely,

[redacted]

[redacted]

**Policy Options for the Regulation of Electronic Cigarettes**

Consultation submission

|  |  |
| --- | --- |
| **Your details**  This submission was completed by: *(name)* | [redacted] |
| Address: *(street/box number)* | [redacted] |
| *(town/city)* | [redacted] |
| Email: | [redacted] |
| Organisation *(if applicable)*: | Pharmaceutical Society of New Zealand |
| Position *(if applicable)*: | [redacted] |

*(Tick one box only in this section)*

Are you submitting this:

√on behalf of a group, organisation(s) or business?

*(You may tick more than one box in this section)*

Please indicate which sector(s) your submission represents:

√ Health professional

*(You may tick more than one box in this section)*

Please indicate your e‑cigarette use status:

√ I am not an e‑cigarette user.

**Privacy**

We intend to publish all submissions on the Ministry’s website. If you are submitting as an individual, we will automatically remove your personal details and any identifiable information.

If you do not want your submission published on the Ministry’s website, please tick this box:

Do not publish this submission.

Your submission will be subject to requests made under the Official Information Act. If you want your personal details removed from your submission, please tick this box:

Remove my personal details from responses to Official Information Act requests.

If your submission contains commercially sensitive information, please tick this box:

This submission contains commercially sensitive information.

**Declaration of tobacco industry links or vested interest**

As a party to the global tobacco control treaty, the World Health Organization Framework Convention on Tobacco Control, New Zealand has an obligation to protect the development of public health policy from the vested interests of the tobacco industry. To help meet this obligation, the Ministry of Health asks all respondents to disclose whether they have any direct or indirect links to, or receive funding from, the tobacco industry. The Ministry will still carefully consider responses from the tobacco industry, and from respondents with links to the tobacco industry, alongside all other submissions. Please provide details of any tobacco company links or vested interests below.

|  |
| --- |
| No tobacco industry links or vested interests. |

**Consultation submission 215 – The Royal NZ Plunket Society (Inc.)**

|  |  |
| --- | --- |
| **Your details**  This submission was completed by: *(name)* | [redacted] |
| Address: *(street/box number)* | [redacted] |
| *(town/city)* | [redacted] |
| Email: | [redacted] |
| Organisation *(if applicable)*: | The Royal New Zealand Plunket Society (Inc.) |
| Position *(if applicable)*: | [redacted] |

*(Tick one box only in this section)*

Are you submitting this:

as an individual or individuals (not on behalf of an organisation)?

🗹 on behalf of a group, organisation(s) or business?

*(You may tick more than one box in this section)*

Please indicate which sector(s) your submission represents:

Commercial interests, including e‑cigarette manufacturer, importer, distributor and/or retailer

Tobacco control non-government organisation

Academic/research

Cessation support service provider

🗹 Health professional

Māori provider

Pacific provider

Other sector(s) *(please specify)*:

*(You may tick more than one box in this section)*

Please indicate your e‑cigarette use status:

I am using nicotine e‑cigarettes.

I am using nicotine-free e‑cigarettes.

I currently smoke as well as use e‑cigarettes.

I am not an e‑cigarette user.

I have tried e‑cigarettes.

**Privacy**

We intend to publish all submissions on the Ministry’s website. If you are submitting as an individual, we will automatically remove your personal details and any identifiable information.

If you do not want your submission published on the Ministry’s website, please tick this box:

Do not publish this submission.

Your submission will be subject to requests made under the Official Information Act. If you want your personal details removed from your submission, please tick this box:

Remove my personal details from responses to Official Information Act requests.

If your submission contains commercially sensitive information, please tick this box:

This submission contains commercially sensitive information.

**Declaration of tobacco industry links or vested interest**

As a party to the global tobacco control treaty, the World Health Organization Framework Convention on Tobacco Control, New Zealand has an obligation to protect the development of public health policy from the vested interests of the tobacco industry. To help meet this obligation, the Ministry of Health asks all respondents to disclose whether they have any direct or indirect links to, or receive funding from, the tobacco industry. The Ministry will still carefully consider responses from the tobacco industry, and from respondents with links to the tobacco industry, alongside all other submissions. Please provide details of any tobacco company links or vested interests below.

|  |
| --- |
| Nil |

Please return this form by email to:

**ecigarettes**[**@moh.govt.nz**](mailto:tobacco@moh.govt.nz) by **5 pm, Monday 12 September 2016**.

If you are sending your submission in PDF format, please also send us the Word document.

**Consultation questions**

Although this form provides blank spaces for your answers to questions, there is no limit to the length of your responses; you should take as much space as you need to answer or comment. Feel free to enlarge the boxes or attach additional pages.

**Q1 Do you agree that the sale and supply of nicotine e‑cigarettes and nicotine liquids should be allowed on the local market, with appropriate controls?**

Yes 🗹 No

Reasons/additional comments:

|  |
| --- |
|  |

**Q2 Are there other (existing or potential) nicotine-delivery products that should be included in these controls at the same time? If so, what are they?**

Yes 🗹 No

Reasons/additional comments:

|  |
| --- |
| Include a statement that says this includes all nicotine delivery products ie: e-hookah (narghile, shisha or goza) due to health risks.  Reference: Comparison of nicotine and carcinogen exposure with water pipe and cigarette smoking; Jacob P 3rd et al. Cancer Epidemiol Biomarkers Prev, 2013;22(5):765-72 http://cebp.aacrjournals.org/content/22/5/765.abstract |

**Q3 Do you think it is important for legislation to prohibit the sale and supply of e‑cigarettes to young people under 18 years of age in the same way as it prohibits the sale and supply of smoked tobacco products to young people?**

Yes 🗹 No

Reasons/additional comments:

|  |
| --- |
|  |

**Q4 Do you think it is important for legislation to control advertising of e‑cigarettes in the same way as it controls advertising of smoked tobacco products?**

Yes 🗹 No

Reasons/additional comments:

|  |
| --- |
|  |

**Q5 Do you think it is important for the SFEA to prohibit vaping in designated smokefree areas in the same way as it prohibits smoking in such areas?**

Yes 🗹 No

Reasons/additional comments:

|  |
| --- |
| Yes we support banning the use of e-cigarettes in places where smoking is prohibited. If individual organisations were to develop, implement and enforce their own policy, variation would result in confusion and inconsistency for staff and members of the public. |

**Q6 Do you agree that other controls in the SFEA for smoked tobacco products should apply to e‑cigarettes? For example:**

|  |  |  |  |
| --- | --- | --- | --- |
| **Control** | **Yes** | **No** | **Reasons/ additional comments** |
| Requirement for graphic health warnings | 🗹 |  |  |
| Prohibition on displaying products in sales outlets | 🗹 |  |  |
| Restriction on use of vending machines | 🗹 |  |  |
| Requirement to provide annual returns on sales data | 🗹 |  |  |
| Requirement to disclose product content and composition | 🗹 |  |  |
| Regulations concerning ingredients (eg, nicotine content and/or flavours) | 🗹 |  |  |
| Requirement for annual testing of product composition | 🗹 |  |  |
| Prohibition on free distribution and awards associated with sales | 🗹 |  |  |
| Prohibition on discounting | 🗹 |  |  |
| Prohibition on advertising and sponsorship | 🗹 |  |  |
| Requirement for standardised packaging | 🗹 |  |  |
| Other | 🗹 |  | Child resistant packaging |

**Q7 Do you think it is important for legislation to impose some form of excise or excise-equivalent duty on nicotine e-liquid, as it does on tobacco products?**

Yes 🗹 No

Reasons/additional comments:

|  |
| --- |
|  |

**Q8 Do you think quality control of and safety standards for e‑cigarettes are needed?**

Yes  No

Additional comments:

|  |  |  |  |
| --- | --- | --- | --- |
| **Area of concern** | **Yes** | **No** | **Reasons/additional comments** |
| Childproof containers | 🗹 |  | We would suggest replacing the terminology childproof with child resistant.  Information is that hospitals internationally are reporting growing numbers of children accidentally swallowing liquid nicotine from e-cigarette refills creating a risk of poisoning.  The ingestion of batteries also poses a serious risk to children and should be contained within a child resistant container and packaging.    Higher concentrations of nicotine and the ability to mix high concentration nicotine solutions in larger quantities for home dilution also pose risks for children.  References   * Forrester. M. (2015). *Pediatric Exposures to Electronic Cigarettes Reported to Texas Poison Centers.* J Emerg Med. Aug;49(2):136-42. doi:10.1016/j.jemermed.2014.12.073. Epub 2015 Mar 21 * <http://www.capt.org.uk/safety-advice/e-cigarettes-and-risks-young-children> * Vakkalanka J., Hardison, L., Holstege, C. (2014). *Epidemiological trends in electronic cigarette exposures reported to U.S. Poison Centers* Clin Toxicol (Phila). Jun;52(5):542-8.   doi: 10.3109/15563650.2014.913176. Epub 2014 May 5.   * McNeill A., Hajek, P. (2015). *E-cigarettes: an evidence update. A report commissioned by Public Health England. Public Health England.* <http://www.eciginfo.us/uploads/2/5/1/1/25116158/ecigarettes_an_evidence_update_a_report_commissioned_by_public_health_england_final.pdf> |
| Safe disposal of e‑cigarette devices and liquids | 🗹 |  | As above |
| Ability of device to prevent accidents | 🗹 |  | There are reported incidents of death of an infant after choking on an e-cigarette cartridge and burn injuries resulting from fire caused by e-cigarettes exploding during charging.  Please see comment above re the importance of child resistant packaging.  Reference  McNeill A., Hajek, P. (2015). *E-cigarettes: an evidence update. A report commissioned by Public Health England. Public Health England.* <http://www.eciginfo.us/uploads/2/5/1/1/25116158/ecigarettes_an_evidence_update_a_report_commissioned_by_public_health_england_final.pdf> |
| Good manufacturing practice | 🗹 |  |  |
| Purity and grade of nicotine | 🗹 |  |  |
| Registration of products | 🗹 |  |  |
| A testing regime to confirm product safety and contents purity | 🗹 |  |  |
| Maximum allowable volume of e-liquid in retail sales | 🗹 |  | Higher concentrations of nicotine and the ability to mix high concentration nicotine solutions in larger quantities for home dilution also pose risks for children.  References:  [Durmowicz](http://tobaccocontrol.bmj.com/search?author1=Elizabeth+L+Durmowicz&sortspec=date&submit=Submit), E. (2014). *The impact of electronic cigarettes on the paediatric population. Tob Control* 2014;**23**:ii41-ii46  doi:10.1136/tobaccocontrol-2013-051468  McNeill A., Hajek, P. (2015). *E-cigarettes: an evidence update. A report commissioned by Public Health England. Public Health England.* <http://www.eciginfo.us/uploads/2/5/1/1/25116158/ecigarettes_an_evidence_update_a_report_commissioned_by_public_health_england_final.pdf> |
| Maximum concentration of nicotine e-liquid | 🗹 |  | As above |
| Mixing of e-liquids at (or before) point of sale | 🗹 |  | As above |
| Other | 🗹 |  | Supporting information must contain advice regarding safe storage of replacement batteries and safe disposal of used batteries. |

**Q9 Are there any other comments you would like to make?**

|  |
| --- |
| 1. To reduce risk for childhood injury and poisoning we support regulations requiring standardization and quality control for liquids and vaporizers, disclosure of ingredients in liquids, and child resistant(we would suggest replacing child proof with child resistant in all instances), and tamper-proofing for liquid packaging. 2. Additionally we would support all packaging to contain warnings to keep out of reach of children. 3. We would also recommend poisons information with regard to first aid and the Poisons helpline 0800 number to be included in all accompanying information. |

**Additional information on sales and use**

**Q10 Can you assist us by providing information on the sale of e‑cigarettes in New Zealand (for example, size of sales or range of products for sale on the local market)?**

|  |
| --- |
|  |

**Q11 Would the Ministry of Health’s proposed amendments have any impact on your business? If so, please quantify/explain that impact.**

|  |
| --- |
|  |

**Q12 If you are using nicotine e‑cigarettes: how long have you been using them, how often do you use them, how much do you spend on them per week and where do you buy them?**

|  |  |  |  |
| --- | --- | --- | --- |
| **How long have you been using them?** | **How often do you use them?** | **How much do you spend on them per week?** | **Where do you buy them?** |
|  |  |  |  |

**Consultation submission 216 – Cosmic**

MINISTRY OF HEALTH CONSULATION SUBMISSION

PERTAINING TO GOVERNMENT E-CIGARETTE REGULATION IN NEW ZEALAND

MINISTRY OF HEALTH CONSULTATION SUBMISSION

PERTAINING TO GOVERNMENT E-CIGARETTE REGULATION IN NEW ZEALAND

CONTENTS

1. CONTENTS
2. COVER LETTER

5 CONSULTATION SUBMISSION

15 COVER LETTER FOOTNOTES



**MINISTRY OF HEALTH SUBMISSION PERTAINING TO E-CIGARETTE REGULATION IN N.Z.**

Cosmic believes that the responsible sale and use of e-cigarettes represents the quickest and most effective way for government to reach its target of achieving Smokefree Aotearoa by 2025.

Former smokers typically report that vaping helped them quit cigarettes.i Because the device simulates the physical act of traditional smoking, many smokers report that e-cigarettes are more effective as a cessation tool than nicotine patches and gum. It is

estimated that more than six million former smokers in the European Union already attribute giving up smoking, or cutting down on cigarettes, to this new, much healthier technology.ii

New Zealand’s leading retailer of e-cigarettes and e-liquids, Cosmic is an ethical company with many years’ experience working with health and law enforcement authorities on issues where a new product has entered the country and needs to be dealt with responsibly.

Cosmic therefore supports the Ministry of Health in its concern regarding the importation and marketing of e-cigarettes and nicotine liquid. We welcome the opportunity to work closely with the Government on appropriate regulations that will ensure public safety and support those wishing to give up traditional smoking.

E-cigarettes use new technology that allows smokers to simulate the action of smoking without the harmful effects of tobacco smoke. As a result, in some countries the devices are increasingly viewed as one of the most effective smoking cessation tools available, with doctors prescribing e-cigarette as a smoking cessation tool. In the BBC’s recent Horizon

‘E-Cigarettes: Miracle or Menace’ documentary, health experts commented on the ***potential to “save millions of lives over the next 20-30 years.”*** E-cigarettes have even been touted by some public health officials in the UK as ***“a public health game-changer”.***iii

Contrary to widespread public opinion, ***nicotine itself is not a known carcinogen.***

Our experience is also that the public is unaware that, unlike traditional cigarettes,

e-cigarettes or ‘vapes’ don’t involve any burning or combustion. Instead they heat liquid to the point where it ‘vaporises’. Because of this, ‘vaping’ is **95% less harmful than smoking**.iv

While e-cigarettes use nicotine liquid, the concentration absorbed during vaping is lower than that from traditional cigarettes. What’s more, research shows nicotine itself is only **mildly addictive** – about the same as caffeine.v

In contrast, smoking a cigarette involves the physical burning of tobacco and other additives, and it is this aspect which is **highly toxic and addictive**. Cigarette smoke is proven to

be carcinogenic and includes 4000 chemical by-products such as carbon monoxide and cyanide. Almost half of all cigarette smokers die from health-related complications of their cigarette addiction.vi

Medical opinion is unequivocal that vaping nicotine is significantly healthier than smoking cigarettes.

Based on experience, Cosmic recommends that liquid containing more than 20 mg of nicotine should be prohibited – it’s simply not required.

Vaping is significantly cheaper for the consumer and guarantees a GST return for the Government if regulated to only be purchased in-country, unlike online imported product, which is exempt.

Cosmic is in favour of the British system where the sale of vapes is regulated, ensuring they are kept out of the hands of young people. Also supporting regulation is that our experience shows it typically takes 15 minutes to complete a sale, as the process involves quite a lot of customer education. We do not believe this will occur if the devices are sold in corner dairies or even some pharmacies, particularly if sales staff have no personal experience of vaping.

As New Zealand’s largest retailer of e-cigarettes, with seven retail stores nationally plus an online sales business, we are very aware of the propaganda circulated by tobacco companies against e-cigarettes. This includes that vaping is a ‘gateway to smoking cigarettes’. Not only is there no reliable evidence of this internationally, it is also not our experience. Regular e-cigarette use in adults and young people is almost exclusively by current or former smokers.vii

Globally, e-cigarettes sales total $6-7 billion and the sector is growing rapidly. The tobacco industry is worth more than $1 trillion, so it’s currently not viable for tobacco companies

to convert. This is why regulation NOW is so important. Tobacco companies are naturally keeping a close eye on the way e-cigarette technology is going to impact negatively on their market, so we expect they will try to influence the process by seeking a total ban and/or other ways to ‘keep their foot in the door’.

Greece, Brazil and Portugal have banned e-cigarettes completely, but have some of the highest smoking rates in the world plus the associated health costs.

COSMIC RECOMMENDS THAT LEGISLATION BE DRAFTED THAT:

* regulates the sale of e-cigarettes and liquid nicotine by MEDSAFE / MoH-approved retailers only
* prevents liquid being sold containing more than 20mg of nicotine
* prohibits importation of product, or by obtaining it online, where the liquid exceeds the concentration of 20mg of nicotine per mL
* expands the Smoke Free Environment Act to include the use of e-cigarettes
* ensure e-cigarettes continue to be an R18 product unless on prescription from a registered medical professional.

i [https://www](http://www.gov.uk/government/uploads/system/uploads/attachment_data/file/454517/Ecigarettes_a_firm_foundation_for_evidence_based_policy_and_practice.pdf).gov[.uk/government/uploads/system/uploads/attachment\_data/file/454517/Ecigarettes\_a\_firm\_foundation\_for\_evidence\_based\_policy\_and\_practice.pdf](http://www.gov.uk/government/uploads/system/uploads/attachment_data/file/454517/Ecigarettes_a_firm_foundation_for_evidence_based_policy_and_practice.pdf)

ii [http://onlinelibrary.wiley.com/doi/10.1111/add.13506/abstract;jsessionid=B5F05BAAEDEBFFD76E6412BDA1BE50E1.f03t01](http://onlinelibrary.wiley.com/doi/10.1111/add.13506/abstract%3Bjsessionid%3DB5F05BAAEDEBFFD76E6412BDA1BE50E1.f03t01)

iii [https://www](http://www.gov.uk/government/uploads/system/uploads/attachment_data/file/454517/Ecigarettes_a_firm_foundation_for_evidence_based_policy_and_practice.pdf).gov[.uk/government/uploads/system/uploads/attachment\_data/file/454517/Ecigarettes\_a\_firm\_foundation\_for\_evidence\_based\_policy\_and\_practice.pdf](http://www.gov.uk/government/uploads/system/uploads/attachment_data/file/454517/Ecigarettes_a_firm_foundation_for_evidence_based_policy_and_practice.pdf)

iv [https://www](http://www.gov.uk/government/uploads/system/uploads/attachment_data/file/457102/Ecigarettes_an_evidence_update_A_report_commissioned_by_Public_Health_).gov[.uk/government/uploads/system/uploads/attachment\_data/file/457102/Ecigarettes\_an\_evidence\_update\_A\_report\_commissioned\_by\_Public\_Health\_](http://www.gov.uk/government/uploads/system/uploads/attachment_data/file/457102/Ecigarettes_an_evidence_update_A_report_commissioned_by_Public_Health_) England\_FINAL.pdf

v [https://www.rsph.org.uk/about-us/news/nicotine--no-more-harmful-to-health-than-caffeine-.html](http://www.rsph.org.uk/about-us/news/nicotine--no-more-harmful-to-health-than-caffeine-.html)

vi <http://www.who.int/mediacentre/factsheets/fs339/en/>

vii <http://blog.euromonitor.com/2015/06/vapor-devices-and-e-cigarettes-in-the-global-tobacco-market.html>

Footnotes are supplied in full on following pages...

COSMIC - CONSULATION SUBMISSION



MINISTRY OF HEALTH CONSULTATION SUBMISSION

PERTAINING TO GOVERNMENT E-CIGARETTE REGULATION IN NEW ZEALAND



**Policy Options for the Regulation of Electronic Cigarettes**

Consultation submission

|  |  |
| --- | --- |
| Your details  This submission was completed by: *(name)* | [redacted] |
| Address: *(street/box number)* | [redacted] |
| *(town/city)* | [redacted] |
| Email: | [redacted] |
| Organisation *(if applicable)*: | Cosmic |
| Position *(if applicable)*: | [redacted] |

*(Tick one box only in this section)*

Are you submitting this:

as an individual or individuals (not on behalf of an organisation)?

on behalf of a group, organisation(s) or business?

*(You may tick more than one box in this section)*

Please indicate which sector(s) your submission represents:

Commercial interests, including e‑cigarette manufacturer, importer, distributor and/or retailer

Tobacco control non-government organisation

Academic/research

Cessation support service provider

Health professional

Māori provider

Pacific provider

Other sector(s) *(please specify)*:

*(You may tick more than one box in this section)*

Please indicate your e‑cigarette use status:

I am using nicotine e‑cigarettes.

I am using nicotine-free e‑cigarettes.

I currently smoke as well as use e‑cigarettes.

I am not an e‑cigarette user.

I have tried e‑cigarettes.

Privacy

We intend to publish all submissions on the Ministry’s website. If you are submitting as an individual, we will automatically remove your personal details and any identifiable information.

If you do not want your submission published on the Ministry’s website, please tick this box:

Do not publish this submission.

Your submission will be subject to requests made under the Official Information Act. If you want your personal details removed from your submission, please tick this box:

Remove my personal details from responses to Official Information Act requests.

If your submission contains commercially sensitive information, please tick this box:

This submission contains commercially sensitive information.

Declaration of tobacco industry links or vested interest

As a party to the global tobacco control treaty, the World Health Organization Framework Convention on Tobacco Control, New Zealand has an obligation to protect the development of public health policy from the vested interests of the tobacco industry. To help meet this obligation, the Ministry of Health asks all respondents to disclose whether they have any direct or indirect links to, or receive funding from, the tobacco industry. The Ministry will still carefully consider responses from the tobacco industry, and from respondents with links to the tobacco industry, alongside all other submissions. Please provide details of any tobacco company links or vested interests below.

|  |
| --- |
| N/A |

Please return this form by email to:

**ecigarettes**[**@moh.govt.nz**](mailto:tobacco@moh.govt.nz) by **5 pm, Monday 12 September 2016**.

If you are sending your submission in PDF format, please also send us the Word document.

**Consultation questions**

Although this form provides blank spaces for your answers to questions, there is no limit to the length of your responses; you should take as much space as you need to answer or comment. Feel free to enlarge the boxes or attach additional pages.

Q1 Do you agree that the sale and supply of nicotine e‑cigarettes and nicotine liquids should be allowed on the local market, with appropriate controls?

Yes  No

Reasons/additional comments:

|  |
| --- |
| Yes, and that these products should be available from licensed retailers only. This is to ensure accountability from the licensees, and eliminate the ‘cowboy’ stockists who are unlikely to follow MoH guidelines, such as age restrictions at the point of sale.  The current licensing system applied to alcohol retailers would be a potential guideline to follow for the sale of e-cigarettes and e-liquid.  Pharmacies would be unsuitable retailers due to the product knowledge involved with devices and e-liquids. For example, the average first purchase of an e-cigarette requires 15 minutes of interaction with the customer.  The salesperson ideally uses these products themselves to understand the complexities of the devices and be capable of answering user-related questions.  Salesperson training in this area is a significant investment for any business, and this would be a considerable strain on resources for pharmacists. |

Q2 Are there other (existing or potential) nicotine-delivery products that should be included in these controls at the same time? If so, what are they?

* Yes  No

Reasons/additional comments:

|  |
| --- |
| Tobacco companies have launched products such as Marlboro’s ‘HeatStick’ and RJ Reynolds’ ‘Revo’ which feature loose leaf tobacco inside heating devices. These should be strictly classified as tobacco products and should not be mistakenly grouped with e-cigarettes and e-liquid.  Regulations should be reviewed on an annual basis, as these technologies evolve very quickly. |

Q3 Do you think it is important for legislation to prohibit the sale and supply of e‑cigarettes to young people under 18 years of age in the same way as it prohibits the sale and supply of smoked tobacco products to young people?

Yes  No

Reasons/additional comments:

|  |
| --- |
| The only consumers of e-cigarettes and e-liquid should be smokers looking to quit, and these people currently make up 90%+ of current e-cigarette users.[[10]](#footnote-10)  Having an age restriction is essential to limit the access of nicotine products to young people. As the leading retailer of these purchases, we are on the frontline daily and through talking to customers, we know that young people still have access to tobacco/alcohol through others who do not comply with age restrictions, or through older people purchasing for them. Restriction measures limit this damage, and e-cigarettes should be considered as a product for *adults* looking to quit tobacco. |

Q4 Do you think it is important for legislation to control advertising of e‑cigarettes in the same way as it controls advertising of smoked tobacco products?

Yes  No

Reasons/additional comments:

|  |
| --- |
| Yes and no. Advertising should be restricted to avoid retailers targeting the under 18 market, and making unsubstantiated health claims; however, using the measures currently applied to tobacco advertising would undermine the goal of Smokefree Aotearoa 2025. It could be argued that a complete ban on e-cigarette advertising would inadvertently protect the tobacco sector by inhibiting consumer awareness of a harm reduction tool and how to access it.  If advertising is allowed, it would ideally be limited to basic product descriptions only to avoid the situations described above and should be targeted at current adult smokers only. |

Q5 Do you think it is important for the SFEA to prohibit vaping in designated smokefree areas in the same way as it prohibits smoking in such areas?

Yes  No

Reasons/additional comments:

|  |
| --- |
| Yes. While vaping does not cause harm to bystanders, it can be a nuisance and people are entitled to breathe clean air in public spaces. It can also be difficult to determine from a distance whether someone is vaping or smoking, which would create additional headaches for SFEA enforcers. Applying the same rules would be easier than creating separate policies for vaping.  A situation in which an exemption could apply would be to mental health provider premises. Mental health service providers report that inpatient smoking rates are much higher than that of the general population.[[11]](#footnote-11) There is evidence that tobacco smoke contains MAOIs[[12]](#footnote-12) which potentially makes nicotine more addictive than it would be otherwise, and smoking may enhance addictive responses to psychoactive substances. Additionally, the SFEA causes patient management issues when smokers must leave DHB premises in order to smoke. Vaping has the potential to help these people break the cycle of smoking and addiction, and if a caveat was added to the SFEA to allow vaping on mental health provider premises, this would be a net benefit to these providers in terms of patient management. Local studies in this area have proved promising.[[13]](#footnote-13) |

Q6 Do you agree that other controls in the SFEA for smoked tobacco products should apply to e‑cigarettes? For example:

|  |  |  |  |
| --- | --- | --- | --- |
| **Control** | **Yes** | **No** | **Reasons/ additional comments** |
| Requirement for graphic health warnings |  |  | The health risks of vaping are confirmed to be approximately 95% less than those from smoking tobacco.[[14]](#footnote-14) Graphic health warnings are necessary for tobacco because of the potential to inflict significant harm, which is not a factor when it comes to use of e-cigarettes. |
| Prohibition on displaying products in sales outlets |  |  | Display is necessary for consumers to make an informed purchase, and does not pose a risk to the public. |
| Restriction on use of vending machines |  |  | This would potentially increase access to consumers under 18. |
| Requirement to provide annual returns on sales data |  |  | Annual returns would provide MoH and Statistics NZ valuable data to run comparisons with tobacco returns. |
| Requirement to disclose product content and composition |  |  | This would apply to e-liquid, and should be the importer’s responsibility to provide manufacturer’s safety data sheets.  Using the USA’s Food & Drug Administration regulations on e-liquid would provide a good template in this instance. |
| Regulations concerning ingredients (eg, nicotine content and/or flavours) |  |  | Nicotine content should be limited to 20mg/mL to lower the possibility/severity of poisoning in the case of accidental ingestion.  Flavour regulation is unnecessary at this stage, however we should have policies prepared in the event of scientific evidence of problematic ingredient/s, to allow swift recalls of affected or tampered products. |
| Requirement for annual testing of product composition |  |  | This should be a requirement of the importer on an annual basis to ensure there haven’t been manufacturing changes to previously approved products. |
| Prohibition on free distribution and awards associated with sales |  |  | Yes: free distribution could be seen to encourage non-smokers to try vaping, Awards associated with sales - such as discounts on multiple purchases - could potentially encourage purchase for supply to those under 18. |
| Prohibition on discounting |  |  | The technology in this area changes so quickly that discounting is necessary for retailers to move outdated stock, even though it is still safe to use. |
| Prohibition on advertising and sponsorship |  |  | Yes and no. Advertising should be heavily restricted to avoid retailers targeting the under 18 market, and making unsubstantiated health claims; however, using the measures currently applied to tobacco advertising would undermine the goal of Smokefree Aotearoa 2025. If advertising is allowed, it would ideally be limited to basic product descriptions. |
| Requirement for standardised packaging |  |  | Standardized packaging would be difficult to implement and would create a significant cost to importers, which would need to be passed on to the consumer. An easier solution would be post-importation labelling, similar to imported food products which need to comply with the FSANZ Act (Food Standards Australia New Zealand). |
| Other |  |  |  |

Q7 Do you think it is important for legislation to impose some form of excise or excise-equivalent duty on nicotine e-liquid, as it does on tobacco products?

Yes  No

Reasons/additional comments:

|  |
| --- |
| Excise taxes would be counter-productive, as nicotine e-liquid needs to be accessible to all smokers who want to quit. Disproportionate smoking rates in Māori and Pasifika populations[[15]](#footnote-15) correlate with low incomes, and to apply an excise tax to a product which can help them quit tobacco would be discriminatory. |

Q8 Do you think quality control of and safety standards for e‑cigarettes are needed?

Yes  No

Additional comments:

|  |  |  |  |
| --- | --- | --- | --- |
| **Area of concern** | **Yes** | **No** | **Reasons/additional comments** |
| Childproof containers |  |  | Minimize the risk of accidental ingestion/poisoning of children and pets. |
| Safe disposal of e‑cigarette devices and liquids |  |  | Electronic cigarettes use lithium ion batteries, and these generally last six months before requiring disposal. To limit these batteries ending up in landfills, retailers should provide a service where they take customers’ used batteries and arrange disposal with a dangerous goods waste service. |
| Ability of device to prevent accidents |  |  | There are two basic types of battery devices on the market currently, regulated and unregulated (unregulated devices are also known as ‘mech mods’). Regulated devices will switch themselves off if they sense the battery is about to short, but a mech mod is a battery connected directly to the coil via wire, and has no safety protection features. We recommend that regulated mods be the only battery device available for safety reasons. Loose lithium ion batteries are also potentially dangerous, and consumers need to be made aware of battery safety measures. |
| Good manufacturing practice |  |  | Device manufacturers should prove their products match the following regulations: ISO9001 & ISO14000, GMP, CE, ROHS, FCC. This ensures they are producing high quality electronic devices. |
| Purity and grade of nicotine |  |  | E-liquid manufacturers should provide documentation which covers the origin and grade of nicotine used. |
| Registration of products |  |  | Registration would allow products which have been proven to be of satisfactory quality to have a swift transit through Customs. However, this would only work if it was applied to bulk imports for resale within New Zealand by a registered and approved supplier. Applying this standard to importation for personal use would be too time-consuming for Customs. |
| A testing regime to confirm product safety and contents purity |  |  | This would need time to set up, but a testing facility (perhaps ESR) would provide additional peace of mind that manufacturer documentation is accurate. |
| Maximum allowable volume of e-liquid in retail sales |  |  | Transitioning smokers use a lot more e-liquid when vaping than casual smokers. A limit on volume would potentially discourage heavy smokers as a 60mL bottle will cost less per mL than a 30mL bottle. |
| Maximum concentration of nicotine e-liquid |  |  | 20mg/mL is acceptable for heavy smokers, higher concentrations than this are unnecessary and should be prohibited to limit the risk from accidental ingestion. |
| Mixing of e-liquids at (or before) point of sale |  |  | This could cause potential contamination if hygiene isn’t strictly observed, and people should not be working with pure nicotine outside the laboratory as it is extremely toxic. Approved products should be made in laboratories with strict hygiene and safety standards only. |
| Other |  |  |  |

Q9 Are there any other comments you would like to make?

|  |
| --- |
| This legislation has the potential to allow us to achieve Smokefree Aotearoa 2025. We need to look closely at the measures which the USA[[16]](#footnote-16) and EU[[17]](#footnote-17) have taken and look at how we can take the most workable parts and apply them. Both approaches have pros and cons[[18]](#footnote-18) and learning from these examples could allow us to create a world-leading policy which benefits smokers and minimizes harm.  If carefully crafted, the legislation has the potential to replace tax income from tobacco with the GST from electronic cigarettes and e-liquid. Ministry of Health/DHB budgets would also benefit through lower tobacco-related health costs as more smokers switch to vaping.[[19]](#footnote-19) |

Additional information on sales and use

Q10 Can you assist us by providing information on the sale of e‑cigarettes in New Zealand (for example, size of sales or range of products for sale on the local market)?

|  |
| --- |
| Currently we stock approximately 150 different electronic cigarette related products (this includes devices, tanks, coils and accessories) and sales growth in this area is 60% up from 2015. |

Q11 Would the Ministry of Health’s proposed amendments have any impact on your business? If so, please quantify/explain that impact.

|  |
| --- |
| Yes. There is increasing demand for these products and they are now a significant part of our business. We also appreciate the obligation that places on us to be responsible and ethical retailers. Our experience shows how important it is to educate the consumer with their purchase to ensure the best outcome for them – successfully quitting tobacco – and we hope this submission will help MoH craft a policy which achieves the goal of Smokefree Aotearoa 2025. |

Q12 If you are using nicotine e‑cigarettes: how long have you been using them, how often do you use them, how much do you spend on them per week and where do you buy them?

|  |  |  |  |
| --- | --- | --- | --- |
| **How long have you been using them?** | **How often do you use them?** | **How much do you spend on them per week?** | **Where do you buy them?** |
| N/A | N/A | N/A | N/A |

i ASH UK ‘Use of Electronic Cigarettes Among Adults in Great Britain’ May 2016 <http://www.ash.org.uk/files/documents/ASH_891.pdf>

**Short link: bit.ly/Mpazur**

ii Smokefree Needs Analysis May 2015 CDHB https://[www.health.govt.nz/system/files/documents/pages/canterbury\_dhb\_tobacco\_control\_plan.pdf](http://www.health.govt.nz/system/files/documents/pages/canterbury_dhb_tobacco_control_plan.pdf) **Short link:** [**http://bit.ly/2cH9iB0**](http://bit.ly/2cH9iB0)

iii Penelope Truman (Senior Scientist, ESR Kenepuru Science Centre in Porirua, Senior Lecturer Massey University in Wellington) speaking at New Zealand Symposium on E-Cigarettes March 2015 https://youtu.be/oi6C5ieKyZ0?t=8402

**Short link:** [**http://bit.ly/2clAHqv**](http://bit.ly/2clAHqv)

iv Penelope Truman (Senior Scientist, ESR Kenepuru Science Centre in Porirua, Senior Lecturer Massey University in Wellington) speaking at New Zealand Symposium on E-Cigarettes March 2015 https://youtu.be/oi6C5ieKyZ0?t=8402

**Short link:** [**http://bit.ly/2clAHqv**](http://bit.ly/2clAHqv)

v Public Health England ‘E-Cigarettes: an evidence update’ August 2015 https://[www.gov.uk/government/uploads/system/uploads/attachment\_data/file/457102/Ecigarettes\_a](http://www.gov.uk/government/uploads/system/uploads/attachment_data/file/457102/Ecigarettes_a) n\_evidence\_update\_A\_report\_commissioned\_by\_Public\_Health\_England\_FINAL.pdf

**Short link:** [**http://bit.ly/1Iyp57N**](http://bit.ly/1Iyp57N)

vi Smokefree Needs Analysis May 2015 CDHB https://[www.health.govt.nz/system/files/documents/pages/canterbury\_dhb\_tobacco\_control\_plan.pdf](http://www.health.govt.nz/system/files/documents/pages/canterbury_dhb_tobacco_control_plan.pdf) **Short link:** [**http://bit.ly/2cH9iB0**](http://bit.ly/2cH9iB0)

vii FDA Regulations 2016 <http://www.fda.gov/TobaccoProducts/Labeling/ProductsIngredientsComponents/ucm456610.htm> **Short link:** [**http://bit.ly/1OfTagM**](http://bit.ly/1OfTagM)

viii EU Tobacco Products Directive 2016 <http://ec.europa.eu/health/tobacco/docs/dir_201440_en.pdf> **Short link:** [**http://bit.ly/1BLFPql**](http://bit.ly/1BLFPql)

ix Beth Mole (Arstechnica, May 2016 ) ‘As FDA preps e-cig rules, scientists and Congress rally to support vaping’

<http://arstechnica.com/science/2016/04/congress-experts-spar-over-pros-and-cons-of-e-cigs-ahead-of-> new-fed-regs/

**Short link:** [**http://bit.ly/1BLFPql**](http://bit.ly/1BLFPql)

x Ministry of Health ‘Excise on Tobacco: Proposed Changes’ April 2010 <http://www.health.govt.nz/about-ministry/legislation-and-regulation/regulatory-impact-> statements/excise-tobacco-proposed-changes

**Short link:** [**http://bit.ly/2clAX8M**](http://bit.ly/2clAX8M)

COVER LETTER - FOOTNOTES



MINISTRY OF HEALTH CONSULTATION SUBMISSION

PERTAINING TO GOVERNMENT E-CIGARETTE REGULATION IN NEW ZEALAND

**i & v - Public Health England - E-cigarettes: a new foundation...**

**SHORT LINK** [- http://bit.ly/1gXyPT0](http://bit.ly/1gXyPT0)

**FULL LINK** [https://www](http://www.gov.uk/government/uploads/system/uploads/attachment_data/file/454517/Eciga-).gov[.uk/government/uploads/system/uploads/attachment\_data/file/454517/Eciga](http://www.gov.uk/government/uploads/system/uploads/attachment_data/file/454517/Eciga-)- rettes\_a\_firm\_foundation\_for\_evidence\_based\_policy\_and\_practice.pdf



E-cigarettes: a new foundation for evidence-based policy and practice

Introduction

Smoking rates in England are in long-term decline. However, tobacco use remains

one of the country’s major public health challenges with the harm increasingly concentrated in more disadvantaged communities. Over recent years, e-cigarettes have risen in popularity to become the number one quitting aid used by smokers.1 This consumer-led phenomenon has attracted considerable controversy within public

health and beyond, with the unfortunate consequence of confusion among the general public about the relative risks of nicotine, e-cigarettes and smoked tobacco.

Public Health England (PHE) has a key role in mobilising the evidence base to protect public health and reduce inequalities. Our response to the uncertainty and controversy associated with e-cigarettes has been to establish a sound evidence base. In our first year we commissioned independent evidence reviews from leading

UK researchers Professor John Britton2 and Professor Linda Bauld.3 These were

published in May 2014 to coincide with our national symposium on e-cigarettes and tobacco harm reduction.

Together with Cancer Research UK we have set up the UK Electronic Cigarette Research Forum to discuss new and emerging research, develop knowledge and understanding, enhance collaboration among researchers interested in this topic, and inform policy and practice.

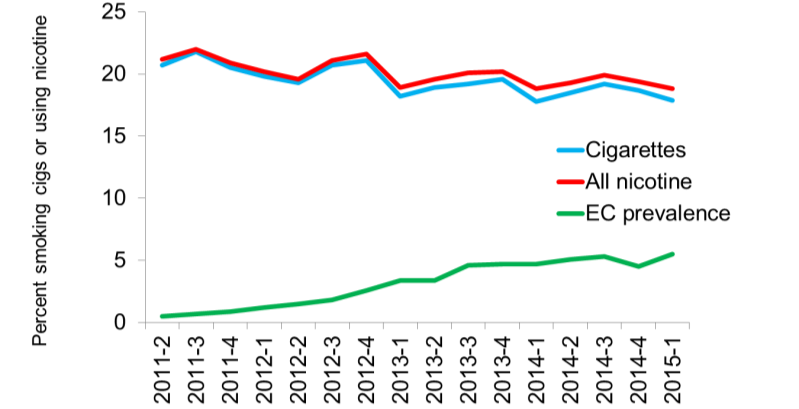
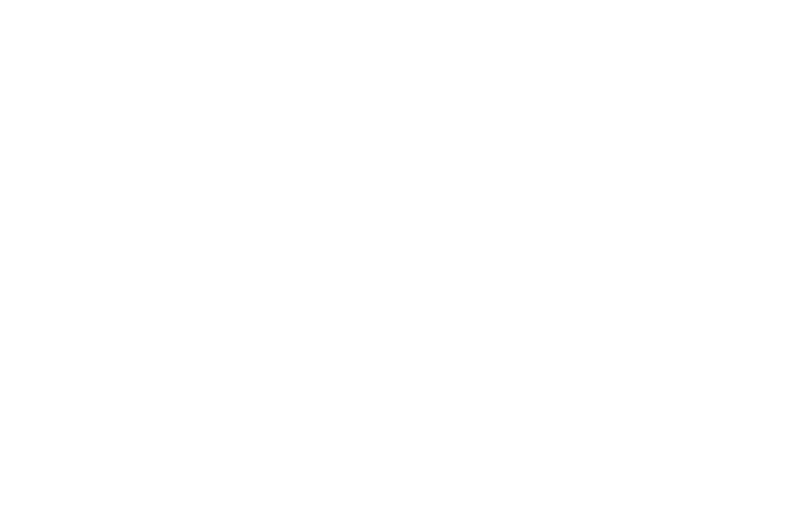
This latest comprehensive review of the up-to-date evidence on e-cigarettes, commissioned from Professor Ann McNeill and Professor Peter Hajek, synthesises what is now a substantial international peer-reviewed evidence base on e-cigarettes. It provides a firm foundation for policy development and public health practice in the context of new regulations for e-cigarettes to be introduced in the UK from May 2016 under the revised EU Tobacco Products Directive (currently under consultation).

Main findings of the evidence review

The report details the steady increase in the use of e-cigarettes in England over recent years (fig 1). This increase has taken place in the context of continued long- term declines in smoking prevalence among adults (fig 2) and youth (fig 3).

E-cigarettes: a new foundation for evidence-based policy and practice

Figure 1



**The rise of e-cigarette use in England**

Figure 2 Figure 3

**Adult smoking in England continues to decline (%) 4**

30

25

20

15

10

5

0

**Youth smoking in England continues to decline5**

15

10

5

0

**Smoking Prevalance (%)**

The authors find that among adults and youth, regular use of e-cigarettes is found almost exclusively among those who have already smoked. The highest rates of e- cigarette use are found among adult smokers. E-cigarettes have rapidly become the most widely used quitting aid in England (fig 4).

2000

2001

2002

2003

2004

2005

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2007

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1986

1990

1993

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1999

2001

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2005

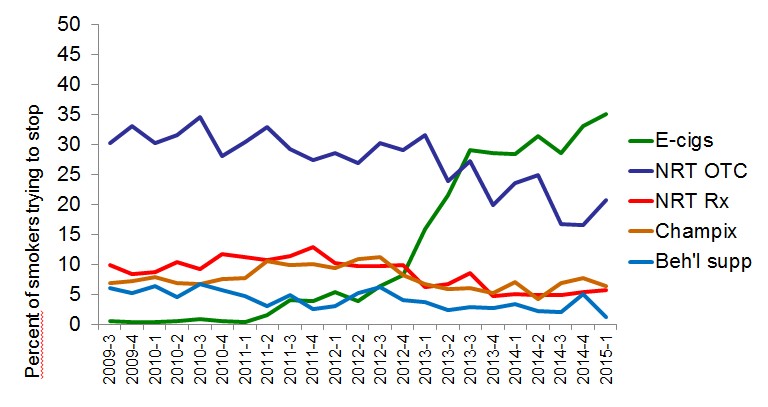
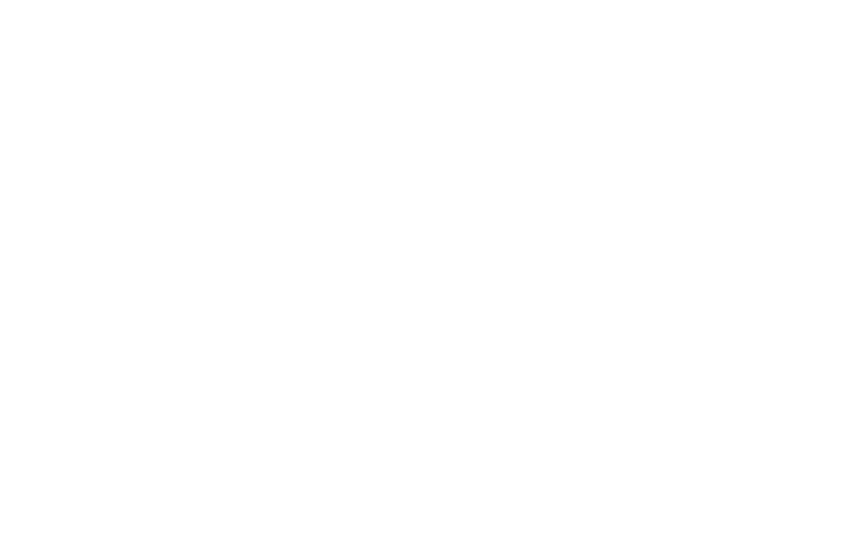
2007

2009

2011

2013

Figure 4

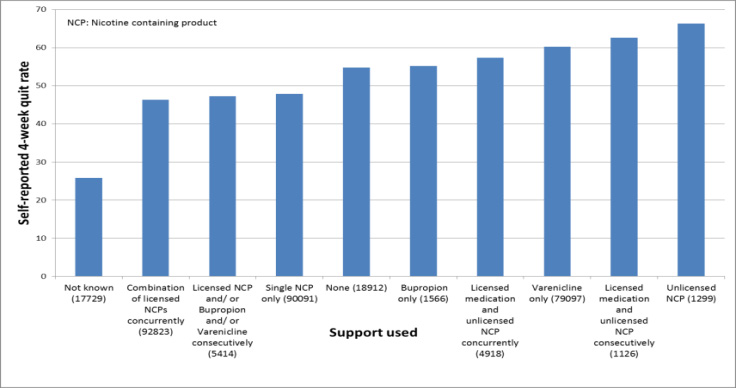
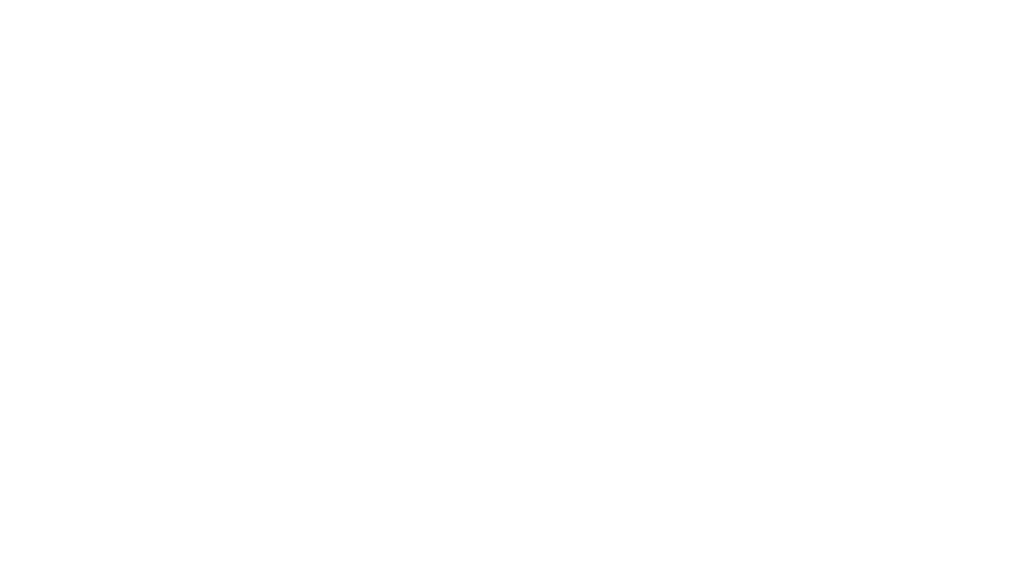


**E-cigarettes have become England’s most**

**popular quitting aid1**

E-cigarettes: a new foundation for evidence-based policy and practice

Figure 5



**Smokers using EC with expert support to quit enjoy high levels of success6**

Recent studies support the Cochrane Review7 findings that e-cigarettes can be effective in helping people to quit smoking. In local stop smoking services across England the relatively small number of smokers who have combined e-cigarettes with expert support have had high rates of success (fig 5).

Under the current regulatory system individual e-cigarette products vary considerably in quality and specification. We also do not yet have data on their long-term safety.

However, the current best estimate by experts is that e-cigarette use represents only a fraction of the risk of smoking (fig 6).

Figure 6

**Experts estimate e-cigarettes carry a fraction of the risk of smoking7**

1. cigarettes: a new foundation for evidence-based policy and practice

Safety and the perception of risks

It is important that the public be provided with balanced information on the risks of e- cigarettes, so that smokers understand the potential benefits of switching and so non-smokers understand the risks that taking up e-cigarettes might entail:

* + when used as intended, e-cigarettes pose no risk of nicotine poisoning to users, but e-liquids should be in ‘childproof’ packaging. The accuracy of nicotine content labelling currently raises no major concerns
  + the conclusion of Professor John Britton’s 2014 review for PHE, that while vaping may not be 100% safe, most of the chemicals causing smoking-related disease are absent and the chemicals present pose limited danger, remains valid. The current best estimate is that e-cigarette use is around 95% less harmful to health than smoking
  + e-cigarettes release negligible levels of nicotine into ambient air with no identified health risks to bystanders
  + over the last year, there has been an overall shift among adults and youth towards the inaccurate perception of e-cigarettes as at least as harmful as cigarettes

Implications of the evidence for policy and practice

Based on the findings of the evidence review PHE also advises that:

* + e-cigarettes have the potential to help smokers quit smoking, and the evidence indicates they carry a fraction of the risk of smoking cigarettes but are not risk free
  + e-cigarettes potentially offer a wide reach, low-cost intervention to reduce smoking in more deprived groups in society where smoking is elevated, and we want to see this potential fully realised
  + there is an opportunity for e-cigarettes to help tackle the high smoking rates among people with mental health problems, particularly in the context of creating smokefree mental health units
  + the potential of e-cigarettes to help improve public health depends on the extent to which they can act as a route out of smoking for the country’s eight million tobacco users, without providing a route into smoking for children and non-smokers. Appropriate and proportionate regulation is essential if this goal is to be achieved

1. cigarettes: a new foundation for evidence-based policy and practice
   * local stop smoking services provide smokers with the best chance of quitting successfully and we want to see them engaging actively with smokers who want to quit with the help of e-cigarettes
   * we want to see all health and social care professionals providing accurate advice on the relative risks of smoking and e-cigarette use, and providing effective referral routes into stop smoking services
   * the best thing smokers can do for their health is to quit smoking completely

and to quit for good. PHE is committed to ensure that smokers have a range of evidence-based, effective tools to help them to quit. We encourage smokers who want to use e-cigarettes as an aid to quit smoking to seek the support of local stop smoking services

* + given the potential benefits as quitting aids, PHE looks forward to the arrival on the market of a choice of medicinally regulated products that can be made available to smokers by the NHS on prescription. This will provide assurance on the safety, quality and effectiveness to consumers who want to use these products as quitting aids
  + the latest evidence will be considered in the development of the next Tobacco Control Plan for England with a view to maximising the potential of e-cigarettes as a route out of smoking and minimising the risk of their acting as a route into smoking

Next steps for PHE

PHE’s ambition is to secure a tobacco-free generation by 2025. Based on the evidence, we believe e-cigarettes have the potential to make a significant contribution to the endgame for tobacco. With opportunity comes risk, and a successful approach will be one that retains vigilance and manages these risks, while enabling a flourishing and innovative market with a range of safe and effective products that smokers want to use to help them quit.

From October this year, new regulations prohibiting the sale of e-cigarettes to under- 18s and purchase by adults on behalf of under-18s will provide additional protection for young people.The government is consulting on a comprehensive array of regulations for e-cigarettes under the revised EU Tobacco Products Directive, for introduction from May 2016.

As part of our ongoing work to build an evidence-based consensus to support policy and practice on e-cigarettes, PHE will:

* + continue to monitor the evidence on uptake of e-cigarettes, health impact at individual and population levels, and effectiveness for smoking cessation as products and technologies develop

1. cigarettes: a new foundation for evidence-based policy and practice
   * hold a second national symposium on e-cigarettes and harm reduction in spring 2016 to present the latest evidence and discuss its implications for policy and practice
   * provide the public with clear and accurate information on the relative harm of nicotine, e-cigarettes and smoked tobacco. Nearly half the population don’t realise e-cigarettes are safer than smoking, and studies have shown that some smokers have avoided switching in the belief that e-cigarettes are too dangerous
   * publish framework advice to support organisations in developing evidence- based policies on use of e-cigarettes in enclosed public places and workplaces. This follows an engagement exercise conducted with public health partners and the wider stakeholder community to discuss the evidence and invite their input on its implications
   * commission the National Centre for Smoking Cessation and Training to provide training and support to stop smoking practitioners to improve their skills and confidence in advising clients on the use of e-cigarettes
   * monitor tobacco industry involvement in the evolving e-cigarettes market and exercise continuing vigilance to ensure we meet our obligations under Article

5.3 of the Framework Convention on Tobacco Control to protect public health policy from commercial and other vested interests of the tobacco industry

1 Smoking Toolkit Study [www.smokinginengland.info](http://www.smokinginengland.info/)

2 [www.gov.uk/government/uploads/system/uploads/attachment\_data/file/311887/Ecigarettes\_report.pdf](http://www.gov.uk/government/uploads/system/uploads/attachment_data/file/311887/Ecigarettes_report.pdf)

3 [www.gov.uk/government/uploads/system/uploads/attachment\_data/file/311491/Ecigarette\_uptake\_and\_marketing.pdf](http://www.gov.uk/government/uploads/system/uploads/attachment_data/file/311491/Ecigarette_uptake_and_marketing.pdf)

4 Statistics on Smoking, England 2015 HSCIC [www.hscic.gov.uk/catalogue/PUB17526/stat-smok-eng-2015-rep.pdf](http://www.hscic.gov.uk/catalogue/PUB17526/stat-smok-eng-2015-rep.pdf)

5 Smoking drinking and drug use among young people in England 2014, HSCIC, [www.hscic.gov.uk/pubs/sdd14](http://www.hscic.gov.uk/pubs/sdd14)

6 Stop Smoking Service Quarterly Returns 2014-5, HSCIC, [www.hscic.gov.uk/stopsmoking](http://www.hscic.gov.uk/stopsmoking)

7 McRobbie H, Bullen C, Hartmann-Boyce J, Hajek P. Electronic cigarettes for smoking cessation and reduction. Cochrane Database of Systematic Reviews 2014, Issue 12. Art. No.: CD010216. DOI: 10.1002/14651858.CD010216.pub2

Produced by the Health & Wellbeing Directorate, Public Health England Public Health England

Wellington House

133-155 Waterloo Road London SE1 8UG [www.gov.uk/phe](http://www.gov.uk/phe) Twitter: @PHE\_uk

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**iii - Royal Society for Public Health - Addressing public confusion over nicotine**

**SHORT LINK** <http://bit.ly/2c97fm1>

**FULL LINK** [https://www.rsph.org.uk/about-us/news/nicotine--no-more-harmful-to-health-](http://www.rsph.org.uk/about-us/news/nicotine--no-more-harmful-to-health-than-caffeine-.html)than-caf[feine-.html](http://www.rsph.org.uk/about-us/news/nicotine--no-more-harmful-to-health-than-caffeine-.html)

**Public confusion reigns with 9 in 10 believing nicotine is harmful to health**

RSPH is calling for public confusion over nicotine to be addressed as a way of encouraging smokers to use safer forms of the substance. Tobacco contains nicotine along with many oth- er chemicals, but nicotine by itself is fairly harmless. Nicotine is harmful in cigarettes large-

ly because it is combined with other damaging chemicals such as tar and arsenic, and as a highly addictive substance getting hooked on nicotine is one of the prime reasons why people become dependent on cigarettes. Electronic cigarettes and Nicotine Replacement Therapy (gum, lozenges, and patches) contain nicotine but don’t contain the harmful substances found in cigarettes.

Alarmingly RSPH research reveals that 90% of the public still regard nicotine itself as harmful and the organisation is now calling for measures to promote safer forms of nicotine products to smokers and make it harder to use tobacco. Among the measures which are being called for in its report: **"Stopping smoking by using other sources of nicotine”:**

* Introduction of a smoking exclusion zone around pubs, bars and schools – allowing use of e-cigarettes but not allowing cigarette smoking. If smoking was banned from outside pubs and bars 50% of adults would be more likely to use these areas, and roughly one third of smokers would be more likely to use alternatives to cigarettes such as e-cigarettes or NRT;

•

* Greater utilisation of e-cigarettes by smoking cessation services; only 3 out of 134 stores selling tobacco also sold NRT products;

•

* Mandatory sale of Nicotine Replacement Therapy in shops selling cigarettes. In one study fewer than 0.5% of retailers sold Nicotine Replacement Therapy; almost three quarters of the public (70%) support mandatory sales of such products;

•

* Licensing of all purveyors of cigarettes so that Local Authorities can remove the license of any retailers found not to be acting in accordance with tobacco legislation, such as age restrictions and the display ban;

•

* Renaming e-cigarettes nicotine sticks or vapourisers to distance them from cigarettes

Shirley Cramer CBE, Chief Executive of RSPH “Over 100,000 people die from smoking-related disease every year in the UK. While we have made good progress to reduce smoking rates, 1 in 5 of us still does. Most people smoke through habit and to get their nicotine hit. Clearly we would rather people didn’t smoke, but in line with NICE guidance on reducing the harm from tobacco, using safer forms of nicotine such as NRT and e-cigarettes are effective in helping people quit. Getting people onto nicotine rather than using tobacco would make a big differ- ence to the public’s health – clearly there are issues in terms of having smokers addicted to nicotine, but this would move us on from having a serious and costly public health issue from smoking related disease to instead address the issue of addiction to a substance which in and of itself is not too dissimilar to caffeine addiction.”

Ends

For more information or for interviews please contact: Duncan Stephenson, Director of External Affairs, RSPH [dstephenson@rsph.org.uk](mailto:dstephenson@rsph.org.uk) 07557 229 774

**iv - World Health Organisation - Tobacco Fact Sheet SHORT LINK** [- http://bit.ly/1eVcEat](http://bit.ly/1eVcEat)

**FULL LINK** - <http://www.who.int/mediacentre/factsheets/fs339/en/>

**WORLD HEALTH ORGANISATION - Tobacco Fact Sheet**

Updated June 2016

Key facts

Tobacco kills up to half of its users.

Tobacco kills around 6 million people each year. More than 5 million of those deaths are the result of direct tobacco use while more than 600 000 are the result of non-smokers being exposed to second-hand smoke. Nearly 80% of the world’s 1 billion smokers live in low- and middle-income countries.

Leading cause of death, illness and impoverishment

The tobacco epidemic is one of the biggest public health threats the world has ever faced, killing around 6 million people a year. More than 5 million of those deaths are the result of direct tobacco use while more than 600 000 are the result of non-smokers being exposed to second-hand smoke.

Nearly 80% of the more than 1 billion smokers worldwide live in low- and middle-income countries, where the burden of tobacco-related illness and death is heaviest.

Tobacco users who die prematurely deprive their families of income, raise the cost of health care and hinder economic development.

In some countries, children from poor households are frequently employed in tobacco farming to provide family income. These children are especially vulnerable to “green tobacco sickness”, which is caused by the nicotine that is absorbed through the skin from the handling of wet tobacco leaves.

Surveillance is key

Good monitoring tracks the extent and character of the tobacco epidemic and indicates how best to tailor pol- icies. Only 1 in 3 countries, representing one third of the world’s population, monitors tobacco use by repeat- ing nationally representative youth and adult surveys at least once every 5 years.

Second-hand smoke kills

Second-hand smoke is the smoke that fills restaurants, offices or other enclosed spaces when people burn tobacco products such as cigarettes, bidis and water-pipes. There are more than 4000 chemicals in tobacco smoke, of which at least 250 are known to be harmful and more than 50 are known to cause cancer.

There is no safe level of exposure to second-hand tobacco smoke.

In adults, second-hand smoke causes serious cardiovascular and respiratory diseases, including coronary heart disease and lung cancer. In infants, it causes sudden death. In pregnant women, it causes low birth weight.

Almost half of children regularly breathe air polluted by tobacco smoke in public places. Second-hand smoke causes more than 600 000 premature deaths per year.

In 2004, children accounted for 28% of the deaths attributable to second-hand smoke.

Every person should be able to breathe tobacco-smoke-free air. Smoke-free laws protect the health of non-smokers, are popular, do not harm business and encourage smokers to quit.

Over 1.3 billion people, or 18% of the world’s population, are protected by comprehensive national smoke- free laws.

Tobacco users need help to quit

Studies show that few people understand the specific health risks of tobacco use. For example, a 2009 sur- vey in China revealed that only 38% of smokers knew that smoking causes coronary heart disease and only 27% knew that it causes stroke.

Among smokers who are aware of the dangers of tobacco, most want to quit. Counselling and medication can more than double the chance that a smoker who tries to quit will succeed.

National comprehensive cessation services with full or partial cost-coverage are available to assist tobacco users to quit in only 24 countries, representing 15% of the world’s population.

There is no cessation assistance of any kind in one quarter of low-income countries.

Picture warnings work

Hard-hitting anti-tobacco advertisements and graphic pack warnings – especially those that include pictures

– reduce the number of children who begin smoking and increase the number of smokers who quit.

Graphic warnings can persuade smokers to protect the health of non-smokers by smoking less inside the home and avoiding smoking near children. Studies carried out after the implementation of pictorial package warnings in Brazil, Canada, Singapore and Thailand consistently show that pictorial warnings significantly increase people’s awareness of the harms of tobacco use.

Only 42 countries, representing 19% of the world’s population, meet the best practice for pictorial warnings, which includes the warnings in the local language and cover an average of at least half of the front and back of cigarette packs. Most of these countries are low- or middle-income countries.

Mass media campaigns can also reduce tobacco consumption by influencing people to protect non-smokers and convincing youths to stop using tobacco.

Over half of the world’s population live in the 39 countries that have aired at least 1 strong anti-tobacco mass media campaign within the last 2 years.

Ad bans lower consumption

Bans on tobacco advertising, promotion and sponsorship can reduce tobacco consumption.

A comprehensive ban on all tobacco advertising, promotion and sponsorship could decrease tobacco con- sumption by an average of about 7%, with some countries experiencing a decline in consumption of up to 16%.

Only 29 countries, representing 12% of the world’s population, have completely banned all forms of tobacco advertising, promotion and sponsorship.

Around 1 country in 3 has minimal or no restrictions at all on tobacco advertising, promotion and sponsor- ship.

Taxes discourage tobacco use

Tobacco taxes are the most cost-effective way to reduce tobacco use, especially among young and poor people. A tax increase that increases tobacco prices by 10% decreases tobacco consumption by about 4% in high-income countries and about 5% in low- and middle-income countries.

Even so, high tobacco taxes is a measure that is rarely implemented. Only 33 countries, with 10% of the world’s population, have introduced taxes on tobacco products so that more than 75% of the retail price is tax. Tobacco tax revenues are on average 269 times higher than spending on tobacco control, based on available data.

Illicit trade of tobacco products must be stopped

The illicit trade in tobacco products poses major health, economic and security concerns around the world. It is estimated that 1 in every 10 cigarettes and tobacco products consumed globally is illicit. The illicit market is supported by various players, ranging from petty peddlers to organized criminal networks involved in arms and human trafficking.

Eliminating illicit trade in tobacco will reduce the harmful consumption of tobacco by restricting availability of cheap, unregulated alternatives and increasing overall tobacco prices. Critically, this will reduce premature deaths from tobacco use and raise tax revenue for governments. Stopping illicit trade in tobacco products is a health priority, and is achievable. But to do so requires improvement of national and sub-national tax ad- ministration systems and international collaboration, such as ratification and implementation of the Protocol to Eliminate the Illicit Trade in Tobacco Products, an international treaty in its own right, negotiated by parties to the WHO Framework Convention on Tobacco Control (WHO FCTC).

While publicly stating its support for action against the illicit trade, the tobacco industry’s behind-the-scenes behaviour has been very different. Internal industry documents released as a result of court cases demon- strate that the tobacco industry has actively fostered the illicit trade globally. It also works to block imple- mentation of tobacco control measures, such as tax increases and pictorial health warnings, by misleadingly arguing they will fuel the illicit trade.

WHO response

WHO is committed to fighting the global tobacco epidemic. The WHO Framework Convention on Tobacco Control entered into force in February 2005. Since then, it has become one of the most widely embraced treaties in the history of the United Nations with 180 Parties covering 90% of the world’s population.

The WHO Framework Convention is WHO’s most important tobacco control tool and a milestone in the promotion of public health. It is an evidence-based treaty that reaffirms the right of people to the highest standard of health, provides legal dimensions for international health cooperation and sets high standards for compliance.

In 2008, WHO introduced a practical, cost-effective way to scale up implementation of provisions of the WHO Framework Convention on the ground: MPOWER. Each MPOWER measure corresponds to at least 1 provi- sion of the WHO Framework Convention on Tobacco Control.

The 6 MPOWER measures are:

Monitor tobacco use and prevention policies Protect people from tobacco use

Offer help to quit tobacco use

Warn about the dangers of tobacco

Enforce bans on tobacco advertising, promotion and sponsorship Raise taxes on tobacco.

For more details on progress made for tobacco control at global, regional and country level, please refer to the series of WHO reports on the global tobacco epidemic.

The WHO FCTC Protocol to Eliminate the Illicit Trade in Tobacco Products requires a wide range of meas- ures relating to the tobacco supply chain, including the licensing of imports, exports and manufacture of tobacco products; the establishment of tracking and tracing systems and the imposition of penal sanctions on those responsible for illicit trade. It would also criminalize illicit production and cross-border smuggling.

For more information contact: WHO Media centre Telephone: +41 22 791 2222

[E-mail: mediainquiries@who.int](mailto:mediainquiries@who.int)

**vi - Society for the study of addiction - E-cigarette Research Report SHORT LINK** [- http://onlinelibrary.wiley.com/doi/10.1111/add.13506/abstract](http://onlinelibrary.wiley.com/doi/10.1111/add.13506/abstract)

**FULL LINK** - <http://bit.ly/2buYmAo>



**RESEARCH REPORT - SOCIETY FOR THE STUDY OF ADDICTION**

**Electronic cigarette use in the European Union: analysis of a repesentative sample of 27 460 Eurpoerans from 28 countries (Abstract)**

**Aims**

To assess prevalence of electronic cigarette (e-cigarette) use, reported changes in smoking status due to e-cigarette use and correlates of e-cigarette use in the European Union (EU) member states in 2014.

**Design**

Cross-sectional survey of EU citizens representative of the population (Special Eurobarometer 429).

Setting

All 28 Member States of the EU.

**Participants**

A total of 27 460 EU citizens aged ≥ 15 years (after excluding those who responded ‘Do not know’ to the questions about smoking status and e-cigarette use).

**Measurements**

Descriptive analysis [%, 95% confidence interval (CI)] of e-cigarette use prevalence (current use, past use and past experimentation) according to smoking status, self-reported changes in smoking status according to patterns of e-cigarette use and logistic regression analysis to examine corre- lates of e-cigarette use, especially socio-demographic factors and smoking status.

**continues over page...**

**Findings**

Ever e-cigarette use was reported by 31.1% (95% CI = 30.0–32.2%) of current smokers, 10.8% (95% CI = 10.0–11.7%) of former smokers and 2.3% (95% CI = 2.1–2.6%) of never smokers.

Past experimentation [7.2% (95% CI = 6.9–7.5%)] was more common than current [1.8% (95% CI = 1.6–1.9%)] and past use [2.6% (95% CI = 2.4–2.8%)]. Extrapolated to the whole population,

approximately 48.5 million EU citizens were ever e-cigarette users, with 76.8% using nicotine-con- taining e-cigarettes. An estimated 6.1 and 9.2 million EU citizens had quit and reduced smoking with the help of e-cigarettes, respectively. Initiation with e-cigarettes was reported by 0.8% (95% CI = 0.6–0.9%) of participants who reported ever use of any tobacco-related product. Only 1.3% (95% CI = 1.1–1.5%) of never smokers used nicotine-containing e-cigarettes, with 0.09% (95% CI

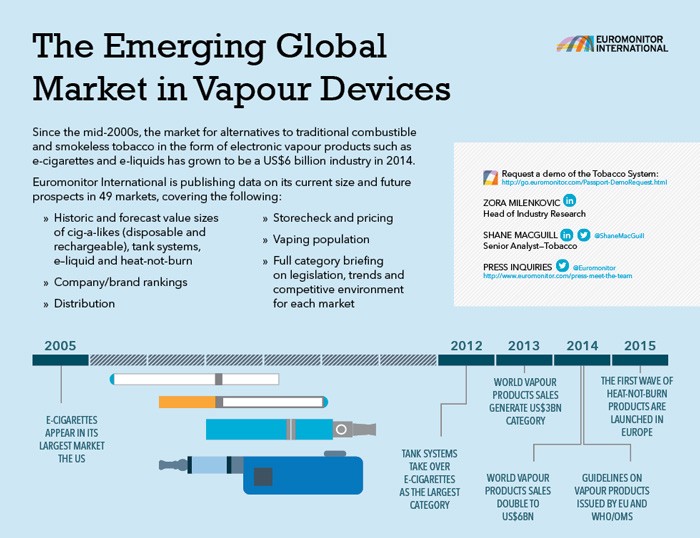
= 0.04–0.14%) reporting daily nicotine use. Smoking cessation with the help of e-cigarettes was reported by 35.1% (95% CI = 30.7–39.5%) of current e-cigarette users, while a further 32.2% (95% CI = 29.9–36.5%) reported smoking reduction. Being current [odds ratio (OR) = 21.23, 95% CI = 18.32–24.59) or former smokers (OR = 6.49, 95% CI = 5.49–7.67) were the strongest correlates of ever e-cigarette use.

**Conclusions**

1. cigarette use in the European Union appears to be largely confined to current or former smokers, while current use and nicotine use by people who have never smoked is rare. More than one-third of current e-cigarette users polled reported smoking cessation and reduction.

**vii - Euromonitor International - The Emerging Global Market in Vapor... SHORT LINK** [- http://bit.ly/2c6gO2G](http://bit.ly/2c6gO2G)

**FULL LINK** - <http://blog.euromonitor.com/2015/06/vapor-devices-and-e-cigarettes-in-the-global-tobacco-mar-> ket.html



**continued next page...**

v.uioua PRODUCT$

BIGGER THAN NRT

At SUS6 billion wortd s,al•sin 2014, the tocal market size has eclipsed that of Nicotine Replacement Therapy products and is equal in size to Fruit/Herbal Tea Globally,more is spent on vapour products that'I on Otoul fl0$S,Uquid soap or C.nned soup.

 **US6**

VAPOUR POPULATION

>13 MN GLOBALLY

The number of sole *0t* dual users of vapour dovioes surged to 13million globally in 2014,with the majotity based in the USA and Europe.Virtually all vapour usors are currot'lt or former aduh smokers. Dual use (consumption

of both vapour and traditional tobacco products) remains prevalent.

CATECORY

TRENDS

**BILLION**

SHIFT FROM CIG-A-LIKES

TO TANK SYSTEMS

Consumer vapour preferences have (hanged rapidly over time. Since 2009, there has been a shift from cig.alilce vapour products

WORLD

SALES IN

**2014**

to open t.ank systems enabling adult consumers to customise their

* + liqutd intak.o. HOWO'JOr, regulation and the in<:teascd involvement of the tobacco industry in this product area is likely to moderate this trend upto2019.

Vapour Products Sales by Cat.gory (% Value)

2019

2014

2009 •••••••••••

0% 100%

* + - Cig-a-likes •Tank Systems

CONSUMAI TRI.NOS

OVER 1,000 E-LIQUID FLAVOURS AVAILABLE

There are 1000s of e-liquid flavours, from traditional tobacco to pina colada. The e-liquid categOf)' in 2019 will be the same size asthe total vapour martcet is worth in 2014.

T'HE TIME FOR HlATN Ol IUIN

HEAT-NOT-BURN

MAY BE ABOUT TO SIZZLE

42%

COMPANY/IRAND RAN.JCIJll GS

LACK OF INTERNATIONAL BRANDS

In ZD14, 1llemarket fOf ViipOUr devices was highly fragmented and devoid of any lntemational broincb, with products largely made up of genericdevices manufactured in China, though thi.s is changing with, in r1ieular, the provenance of consumables (i.e. e-liquid versus the hardware) beoomlng inc:reasingly importa.nt.

lfYON D NICOTINE

Heat-not Burn products

accounted for under 1%

of total vapour products sales •n 2014 but they are

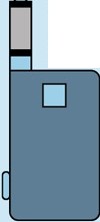
sot to register amongst tho industry'shighest growth upto 2019.wim a CAGR of

42% following a number

of new produ<:t launehos by

the large tobacco companies.

**CAGR**



APPLICATIONS FOR TECIHNOLOGY OUTSIDE NICOTINE DELIVERY

Vapour technology is c.urrently predominantty used for the delivery of nicotine but there are a range

of alternative appltc:ations which may become asor more prevalent analgesics, marijuana, food...

WILL **TOBACCO**

COMPANIES BECOME

HARDWARE PRODUCERS?

G ROWTH

2014-201 9





MINISTRY OF HEALTH CONSULTATION SUBMISSION

PERTAINING TO GOVERNMENT E-CIGARETTE REGULATION IN NEW ZEALAND

**Consultation submission 217 – Individual**

From [redacted]

Email - [redacted]

[redacted]

I am not associated with, nor do I represent, any group or organisation. I have no link to, nor am I paid by, the Tobacco industry – other than having been a former user of tobacco.

I currently use e-cigarettes as a means of my stopping smoking, having tried simple abstinence, nicotine gum & patches in unsuccessful attempts to quit smoking in the past. I had previously been a smoker of tobacco products from the age of 15 to age 46 (31.5 years) and e-cigarettes have allowed me to cease use of all tobacco products successfully.

In the 3 years I’ve been vaping I have noticed a marked and noticeable improvement in my health. This, I believe, is due entirely to my stopping smoking. I have also used e-cigarettes to reduce the nicotine content of the ‘juices’ I use. I started at 18mg/ml, and now use 1mg/ml.

**Privacy**

I am happy to have to my submission published. Please remove my personal details from responses to Official Information Act requests.

**Consultation questions**

**Q1 - Do you agree that the sale and supply of nicotine e‑cigarettes and nicotine liquids should be allowed on the local market, with appropriate controls?**

Yes, I do. Having smoked tobacco products from age 15 until age 46 (31 1/2 years) & having attempted to quit unsuccessfully by several methods (patches, gum, abstinence) e-cigarettes allowed me to cease use of all tobacco products successfully. I strongly believe that these items should be sold legally in NZ. Appropriate controls are a must also.

**Q2 - Are there other (existing or potential) nicotine-delivery products that should be included in these controls at the same time? If so, what are they?**

Yes. Any nicotine delivery products should be assessed and included in these controls - my personal interest is only in e-cigarettes.

**Q3 - Do you think it is important for legislation to prohibit the sale and supply of e‑cigarettes to young people under 18 years of age in the same way as it prohibits the sale and supply of smoked tobacco products to young people?**

Yes. Simply because young people (U18) have not physically grown and it could be hazardous to their health - further research required,

**Q4 - Do you think it is important for legislation to control advertising of e‑cigarettes in the same way as it controls advertising of smoked tobacco products?**

No. Purely because I have seen the benefits both personally and in others who are using e-cigarettes, enabling cessation of use of tobacco products. Those wanting to stop smoking should be made aware of the potential benefits of e-cigarettes

**Q5 - Do you think it is important for the SFEA to prohibit vaping in designated smokefree areas in the same way as it prohibits smoking in such areas?**

Yes. Common courtesy - if I choose to vape that is my choice and should not impinge on others' rights.

**Q6 - Do you agree that other controls in the SFEA for smoked tobacco products should apply to e‑cigarettes? For example:**

**Requirement for graphic health warnings –** No. If vaping presents a significantly better option, healthwise, to smoking then surely smokers must be encouraged to make the change. Graphic health warnings will not help this.

**Prohibition on displaying products in sales outlets** - No

**Restriction on use of vending machines** - Yes R18

**Requirement to provide annual returns on sales data** - Unsure

**Requirement to disclose product content and composition** - Yes - to ensure standards are met

**Regulations concerning ingredients (eg, nicotine content and/or flavours)** - Yes - to ensure standards are met.

**Requirement for annual testing of product composition** - Yes- to ensure standards are met and maintained.

**Prohibition on free distribution and awards associated with sales -** Yes, but only as far products that actually contain nicotine.

**Prohibition on discounting** – No, free market

**Prohibition on advertising and sponsorship** – No, free market

**Requirement for standardised packaging** – No

**Q7 - Do you think it is important for legislation to impose some form of excise or excise-equivalent duty on nicotine e-liquid, as it does on tobacco products?**

No. I strongly believe that the only tax that should be applied to ANY tobacco product (aside from GST) is the amount required to meet the public health needs of nicotine users, full stop.

**Q8 - Do you think quality control of and safety standards for e‑cigarettes are needed?**

Yes

**Childproof containers** – Yes

**Safe disposal of e‑cigarette devices and liquids** – Yes

**Ability of device to prevent accidents –** No. All e-cigs present some danger, and the user must inform themselves as to how to correctly use any given device. Also, e-cig retailers go to significant lengths to point out devices that require caution.

**Good manufacturing practice –** No, this is fairly self regulating (poor manufacturers won’t remain manufacturers for long), and we already have considerable consumer protection in any case.

**Purity and grade of nicotine –** No, strength and accurate product ingredient listings already deal with this issue.

**Registration of products –** No

**A testing regime to confirm product safety and contents purity** – Yes, but this should not be made an expensive impediment to new products & product development . As per Q6.

**Maximum allowable volume of e-liquid in retail sales** – No

**Maximum concentration of nicotine e-liquid –** No, every user has different requirements.

**Mixing of e-liquids at (or before) point of sale –** Yes

**Q9 –** No

**Q10 - I** have not had much to do with the local e-cig market, however have noticed that most are overpriced compared to those available from overseas. A lot tend to be of the pen or stick variety, eg. from chemists etc, that are underpowered and are more likely to discourage those wanting to try them, more frustrating than successful as a smoking cessation device.

**Q11 –** N/A

**Q12 –** Using e-cigarettes for 3 - 3.5years

Daily - anywhere from 6 to 20 times daily, anywhere from 2 puffs a time to 12 puffs

Cost - approximately $8-$15 per week

Sourced from - China & USA

**Consultation submission 218 – Smokefree Murihiku**

|  |  |
| --- | --- |
| **Your details**  This submission was completed by: *(name)* | [redacted] |
| Address: *(street/box number)* | [redacted] |
| *(town/city)* | [redacted] |
| Email: | [redacted] |
| Organisation *(if applicable)*: | Smokefree Murihiku |
| Position *(if applicable)*: | [redacted] |

*(Tick one box only in this section)*

Are you submitting this:

as an individual or individuals (not on behalf of an organisation)?

on behalf of a group, organisation(s) or business?

*(You may tick more than one box in this section)*

Please indicate which sector(s) your submission represents:

Commercial interests, including e‑cigarette manufacturer, importer, distributor and/or retailer

Tobacco control non-government organisation

Academic/research

Cessation support service provider

Health professional

Māori provider

Pacific provider

Other sector(s) *(please specify)*:

*(You may tick more than one box in this section)*

Please indicate your e‑cigarette use status:

I am using nicotine e‑cigarettes.

I am using nicotine-free e‑cigarettes.

I currently smoke as well as use e‑cigarettes.

I am not an e‑cigarette user.

I have tried e‑cigarettes.

**Privacy**

We intend to publish all submissions on the Ministry’s website. If you are submitting as an individual, we will automatically remove your personal details and any identifiable information.

If you do not want your submission published on the Ministry’s website, please tick this box:

Do not publish this submission.

Your submission will be subject to requests made under the Official Information Act. If you want your personal details removed from your submission, please tick this box:

Remove my personal details from responses to Official Information Act requests.

If your submission contains commercially sensitive information, please tick this box:

This submission contains commercially sensitive information.

**Declaration of tobacco industry links or vested interest**

As a party to the global tobacco control treaty, the World Health Organization Framework Convention on Tobacco Control, New Zealand has an obligation to protect the development of public health policy from the vested interests of the tobacco industry. To help meet this obligation, the Ministry of Health asks all respondents to disclose whether they have any direct or indirect links to, or receive funding from, the tobacco industry. The Ministry will still carefully consider responses from the tobacco industry, and from respondents with links to the tobacco industry, alongside all other submissions. Please provide details of any tobacco company links or vested interests below.

|  |
| --- |
| No member of Smokefree Murihiku has any direct or indirect links to nor receives funding from the tobacco industry. |

Smokefree Murihiku is a coalition of community and health promotion agencies who support the Murihiku community to work towards the Smokefree 2025 goal (of a smoking prevalence <5%).

Please return this form by email to:

**ecigarettes**[**@moh.govt.nz**](mailto:tobacco@moh.govt.nz) by **5 pm, Monday 12 September 2016**.

If you are sending your submission in PDF format, please also send us the Word document.

**Consultation questions**

Although this form provides blank spaces for your answers to questions, there is no limit to the length of your responses; you should take as much space as you need to answer or comment. Feel free to enlarge the boxes or attach additional pages.

**Q1 Do you agree that the sale and supply of nicotine e‑cigarettes and nicotine liquids should be allowed on the local market, with appropriate controls?**

Yes  No

Reasons/additional comments:

|  |
| --- |
| Yes. At present the evidence around the safety of e-cigarettes is unclear, however, it is generally agreed to be less harmful than using tobacco prodects1.  Currently nicotine containing e-cigarettes and e-liquids are able to be purchased online for up to 3 months personal use. However, some stockists of e-cigarettes in New Zealand are also selling nicotine containing products. If nicotine containing e-cigarettes & e-liquids are allowed to be introduced with appropriate controls they could potentially help NZ achieve Smokefree 2025 while maintaining the ability to more easily restrict sale & availability should any evidence of long term (or more serious) harm be found.  In addition to the introduction and appropriate legislation for nicotine containing e-cigarettes and e-liquids, tobacco control should be enhanced. In order for e-cigarettes to improve our ability to reach the Smokefree 2025 goal it is essential that the legislation for tobacco products is more stringent than (or at the very least equivalent to) the legislation for e-cigarettes. Therefore, we strongly recommend these areas be looked at;   * Excise tax on tobacco products continue at levels well above inflation e.g. 20%. * Retailers who sell tobacco products require licenses & be restricted if in proximity to school * Legal age to purchase tobacco products be raised to 21. * Packaging standardised & required to contain a list of all constituents in the product. * Nicotine content in tobacco reduced to very low levels to reduce the addictiveness. * Additives to improve the palatability prohibited. * Smoking banned in cars with children in them. * National legislation introduced to ban smoking in outdoor spaces that children frequent e.g. playgrounds, sports fields and parks. Smokefree outdoor areas in cafés, restaurants, and bars provided.   References  1 McEwan, A. and McRobbie, H., Electronic cigarettes: A briefing for stop smoking services, Public Health England: National Centre for Smoking Cessation and Training (NCSCT) Version 2: 2016, p. 38. |

**Q2 Are there other (existing or potential) nicotine-delivery products that should be included in these controls at the same time? If so, what are they?**

Yes  No

Reasons/additional comments:

|  |
| --- |
| All nicotine delivery devices should be included unless they have been through Medsafe for the use as a cessation support device. This will future proof the market if any future innovations in nicotine delivery arise. |

**Q3 Do you think it is important for legislation to prohibit the sale and supply of e‑cigarettes to young people under 18 years of age in the same way as it prohibits the sale and supply of smoked tobacco products to young people?**

Yes  No

Reasons/additional comments:

|  |
| --- |
| Yes. The safety of using e-cigarettes is still unknown. There is evidence to suggest it may be unsafe for pregnant woman, children, and adolescents as it may impact on cognitive (& foetal) development 2, 3. Moreover, nicotine has been shown to be more addictive in adolescence than adulthood 4.  There is also concern that young people who use e-cigarettes will be more likely to start using conventional cigarettes 5. Some models of e-cigarettes look very similar to traditional cigarettes and have been marketed overseas using strategies previously used to market traditional cigarettes 6, 7. E.g.  C:\Users\bridgetf\Pictures\E-cigarettes\Blu-Cigs-XXL-magazine.jpg  However, under special circumstances allowances could be made. For example if a young person under 18 is trying to quit smoking and wants to use e-cigarettes to help them quit a Stop Smoking service could provide an e-cigarette (& e-liquid) alongside behavioural support and in consultation with parents.  References  2 O'Loughlin, J., DiFranza, J., Tyndale, R. F., Meshefedjian, G., McMillan-Davey, E., Clarke, P. B., ... & Paradis, G. (2003). Nicotine-dependence symptoms are associated with smoking frequency in adolescents. *American journal of preventive medicine*, *25*(3), 219-225.  3 General, S. (2014). The health consequences of smoking—50 years of progress: a report of the surgeon general. In *US Department of Health and Human Services*.  4 Doubeni, C. A., Reed, G., & DiFranza, J. R. (2010). Early course of nicotine dependence in adolescent smokers. *Pediatrics*, *125*(6), 1127-1133.  5 Kandel, E. R., & Kandel, D. B. (2014). A molecular basis for nicotine as a gateway drug. *New England Journal of Medicine*, *371*(10), 932-943.  6 De, A. M., Hastings, G., & Angus, K. (2013). Promotion of electronic cigarettes: tobacco marketing reinvented?. *Bmj*, *347*.  7Mantey, D. S., Cooper, M. R., Clendennen, S. L., Pasch, K. E., & Perry, C. L. (2016). E-Cigarette Marketing Exposure Is Associated With E-Cigarette Use Among US Youth. *Journal of Adolescent Health*, *58*(6), 686-690. |

**Q4 Do you think it is important for legislation to control advertising of e‑cigarettes in the same way as it controls advertising of smoked tobacco products?**

Yes  No

Reasons/additional comments:

|  |
| --- |
| Yes. It is essential e-cigarettes are not advertised especially to children. Ideally the only people who buy e-cigarettes should be people who are switching their tobacco use for e-cigarettes. As already mentioned, advertising overseas has used methods similar to earlier tobacco advertising; that is using sex appeal, cool celebrities, and flavours appealing to children 6, 7.. Additionally, in some of these adverts it is difficult to distinguish between the e-cigarettes and traditional cigarettes. This undermines regulations on tobacco advertising currently in place 8.  C:\Users\bridgetf\Pictures\E-cigarettes\Fin-advert.jpg C:\Users\bridgetf\Pictures\E-cigarettes\vapart-620x275.png C:\Users\bridgetf\Pictures\E-cigarettes\tEnfSctj-_s.jpg C:\Users\bridgetf\Pictures\E-cigarettes\toasty vape.jpgC:\Users\bridgetf\Pictures\E-cigarettes\gbearslow_jpg25(1).jpg C:\Users\bridgetf\Pictures\E-cigarettes\2myyb6c.jpg  Some overseas advertising has also emphasised using e-cigarettes where smoking is prohibited and for long-term use rather than as a method for stopping smoking 6, 7.    With respect to e-cigarettes sold by tobacco companies a potentially useful idea could be to only allow the sale of e-cigarettes/e-liquids by them in New Zealand if no tobacco products are sold. This would either result in the tobacco company continiung to sell tobacco & not e-cigarettes/e-liquids or to stop selling their tobacco products and pursue e-cigarettes/e-liquids sales instead. This first option would help to distance tobacco products from e-cigarettes/e-liquids, the second would reduce the avaivlability of tobacco products.  References  6 De, A. M., Hastings, G., & Angus, K. (2013). Promotion of electronic cigarettes: tobacco marketing reinvented?. *Bmj*, *347*.  7 Mantey, D. S., Cooper, M. R., Clendennen, S. L., Pasch, K. E., & Perry, C. L. (2016). E-Cigarette Marketing Exposure Is Associated With E-Cigarette Use Among US Youth. *Journal of Adolescent Health*, *58*(6), 686-690.  8 Hsu, R., Myers, A. E., Ribisl, K. M., & Marteau, T. M. (2013). An observational study of retail availability and in-store marketing of e-cigarettes in London: potential to undermine recent tobacco control gains?. *BMJ open*, *3*(12), e004085.  9 Trumbo, C. W. (2015). The effect of electronic cigarette advertising on intended use among college students. Addictive behaviors, 46, 77-81. |

**Q5 Do you think it is important for the SFEA to prohibit vaping in designated smokefree areas in the same way as it prohibits smoking in such areas?**

Yes  No

Reasons/additional comments:

|  |
| --- |
| Yes. As the evidence is still unclear around potential harm from vaping we should proceed with caution around the normalisation of this behaviour. Additionally, given some types of e-cigarettes (and their vape clouds) are very difficult to distinguish from traditional cigarettes allowing their use in prohibited areas would undermine the process of denormalisation of smoking. While it may be argued that most 2nd & 3rd generation e-cigarettes do not resemble conventional cigarettes it is still important to keep in mind that we do not want to normalise their use especially to children as we do not know about potential harms of long term use.  Assuming that the majority of people who vape will be ex-smokers some consideration should be given to allowing separate areas for vaping & smoking to reduce any temptation to resume smoking.  In addition to regulations for e-cigarettes, we strongly recommend tobacco control measures should be strengthened by the introduction of legislation to ban smoking in cars with children in them and to ban smoking in outdoor areas children use such as parks, playgrounds, and sports fields. Cafés & restaurants should also be included so outdoor dining can be enjoyed by all. |

**Q6 Do you agree that other controls in the SFEA for smoked tobacco products should apply to e‑cigarettes? For example:**

|  |  |  |  |
| --- | --- | --- | --- |
| **Control** | **Yes** | **No** | **Reasons/ additional comments** |
| Requirement for graphic health warnings |  |  | At this stage graphic health warnings are probably unwarranted; however, basic consumer safety information should be included. E.g. unsafe for children & developing foetuses 10, 11, not for ingestion, nicotine is an addictive substance. Consideration could be given to having pictorial warnings like the ones used on alcohol & various restricted products. |
| References  10 Suter, M. A., Mastrobattista, J., Sachs, M., & Aagaard, K. (2015). Is there evidence for potential harm of electronic cigarette use in pregnancy?. *Birth Defects Research Part A: Clinical and Molecular Teratology*, *103*(3), 186-195.  11 Dwyer, J. B., McQuown, S. C., & Leslie, F. M. (2009). The dynamic effects of nicotine on the developing brain. *Pharmacology & therapeutics*, *122*(2), 125-139. | | | |
| Prohibition on displaying products in sales outlets |  |  | Yes, the similarity to advertising traditional cigarettes seen overseas would undermine tobacco control messages to denormalise smoking. It is important that people who do not use tobacco do not start using e-cigarettes given the paucity of evidence around the harm of using these products, particularly long-term. |
| Restriction on use of vending machines |  |  | Yes. These should only be sold in registered/licensed retailers to minimise availability to avoid normalising e-cigarettes given the unknown risks involved with their use. These retailers should also be trained to offer cessation advice. Likewise retailers should have to be registered/licensed to sell tobacco products so that tobacco control regulations are at least as stringent as those for e-cigarettes. |
| Requirement to provide annual returns on sales data |  |  | Yes. It will be important to monitor the sale of e-cigarettes and will be able to be used in conjunction with tobacco sales data to monitor impacts on tobacco use cessation. |
| Requirement to disclose product content and composition |  |  | Yes. Manufacturers should be required to list content & composition. Currently e-cigarettes/e-liquids vary considerably in content & composition. Therefore, levels of harm may also vary, e.g. menthol flavours. This should be regulated to minimise harm & to assist consumers in making informed decisions about potential risks. Likewise, this should be required for tobacco products. |
| Regulations concerning ingredients (eg, nicotine content and/or flavours) |  |  | Yes. There is no need for flavours when using for cessation. If flavours are allowed consumer protection with minimum quality and safety standards should be implemented. Flavours already known to be harmful should be prohibited e.g. menthol and flavours made with diacetyl to create popcorn and butter flavours. There should also be restrictions on flavours that appeal to children and young people, e.g. chocolate, cotton candy, and fruit flavours 12, 13, 14.  Additives shown to enhance the addictive qualities of nicotine should be prohibited e.g. pyrazines 15.  There should also be maximum levels for nicotine levels e.g. 18mg/ml which is the average level in conventional cigarettes in New Zealand and would also be in line with international best practice 16, 17.  Additionally to be sure tobacco controls are at least as stringent as those for e-cigarettes/e-liquids a maximum nicotine level of 18mg/ml should be introduced for tobacco products. |
| References  12Allen, J. G., Flanigan, S. S., LeBlanc, M., Vallarino, J., MacNaughton, P., Stewart, J. H., & Christiani, D. C. (2016). Flavoring chemicals in e-cigarettes: diacetyl, 2, 3-pentanedione, and acetoin in a sample of 51 products, including fruit-, candy-, and cocktail-flavored e-cigarettes. *Environmental Health Perspectives (Online)*, *124*(6), 733.  13Arnold, C. (2016). On the vapor trail: examining the chemical content of e-cigarette flavorings. *Environmental Health Perspectives*, *124*, A115.  14 Tierney, P. A., Karpinski, C. D., Brown, J. E., Luo, W., & Pankow, J. F. (2015). Flavour chemicals in electronic cigarette fluids. *Tobacco control*, tobaccocontrol-2014.  15Alpert, H. R., Agaku, I. T., & Connolly, G. N. (2015). A study of pyrazines in cigarettes and how additives might be used to enhance tobacco addiction. *Tobacco control*, tobaccocontrol-2014.  16 Ebbert, Jon O.; Agunwamba, Amenah A.; Rutten, Lila J. (2015). "Counseling Patients on the Use of Electronic Cigarettes". Mayo Clinic Proceedings. 90 (1): 128–134. doi:10.1016/j.mayocp.2014.11.004. ISSN 0025-6196. PMID 25572196  17 Laugesen, M. (2012). Modelling a two-tier tobacco excise tax policy to reduce smoking by focusing on the addictive component (nicotine) more than the tobacco weight. The New Zealand Medical Journal (Online), 125(1367). | | | |
| Requirement for annual testing of product composition |  |  | Yes. Although as the technology for testing in New Zealand is not currently available we should work other counties to ensure that for products to be sold here have they must have been approved through a credible, approved international testing regime. |
| Prohibition on free distribution and awards associated with sales |  |  | Yes. It is important not to encourage people to use this if they are not using it as a cessation tool. This should be in line with current tobacco control legislation. |
| Prohibition on discounting |  |  | Yes. This should be in line with current tobacco control legislation. It is important that children, young people, and people who do not smoke are not encouraged to use these products while the evidence around harm is unknown. |
| Prohibition on advertising and sponsorship |  |  | Yes. It is important that marketing is restricted to limit the up-take by non-tobacco users, especially children and young people. As mentioned overseas marketing has been very reminiscent of tobacco advertising from the past. With aspects designed to encourage up-take by children and young people, e.g. candy flavours, and by implying associated coolness. |
| Requirement for standardised packaging |  |  | Yes. This should be in line with tobacco control regulation to minimise attractiveness to children, young people and non-smokers. |
| Other |  |  |  |

**Q7 Do you think it is important for legislation to impose some form of excise or excise-equivalent duty on nicotine e-liquid, as it does on tobacco products?**

Yes  No

Reasons/additional comments:

|  |
| --- |
| No. At this stage it is important that e-cigarettes are a viable alternative to encourage people to switch entirely from tobacco use to using e-cigarettes. However, if use by non-smokers and young people increases having the ability to tax these products to reduce uptake should be considered. This could be achieved by having a 0% excise tax in place so it is easier to increase it in future if need be. |

**Q8 Do you think quality control of and safety standards for e‑cigarettes are needed?**

Yes  No

Additional comments:

|  |  |  |  |
| --- | --- | --- | --- |
| **Area of concern** | **Yes** | **No** | **Reasons/additional comments** |
| Childproof containers |  |  | Yes. Ingestion of e-liquids could lead to nicotine poisoning which can be potentially fatal. Small parts that make up e-cigarettes could also be harmful if swallowed. Containers should also not look appealing to children. Therefore, packaging should meet minimum standards for child safety 18, 19. |
| References  18 Cameron, J. M., Howell, D. N., White, J. R., Andrenyak, D. M., Layton, M. E., & Roll, J. M. (2014). Variable and potentially fatal amounts of nicotine in e-cigarette nicotine solutions. *Tobacco control*, *23*(1), 77-78.  19 England, L. J., Bunnell, R. E., Pechacek, T. F., Tong, V. T., & McAfee, T. A. (2015). Nicotine and the developing human: a neglected element in the electronic cigarette debate. *American journal of preventive medicine*, *49*(2), 286-293. | | | |
| Safe disposal of e‑cigarette devices and liquids |  |  | Yes. This is important for safety of humans, animals, and the environment. International best practice should be used as a basis for safe disposal regulations in New Zealand. Potentially shops registered to sell e-cigarettes/e-liquids could be collection points for safe disposal. |
| Ability of device to prevent accidents |  |  | Yes. To be sold in New Zealand products should be required to meet a set safety standard based on international best practice. |
| Good manufacturing practice |  |  | No. The full technical pharmaceutical industry ‘Good Manufacturing Practice’ standards are unlikely to be achievable for e-cigarettes manufactures (especially independent non-tobacco company ones) in New Zealand or anywhere else. Rather a specific set of standards should be developed which ensure a reasonable standard for manufacturing e-cigarettes/e-liquids while at a realistic level. These should be developed in line with international best practice. |
| Purity and grade of nicotine |  |  | Yes. Standards for purity and grade of nicotine should be developed in line with best international practice. |
| Registration of products |  |  | Yes. Products should be registered and should comply with international standards. |
| A testing regime to confirm product safety and contents purity |  |  | No. Technology for high quality testing is underdeveloped and not easily available in New Zealand. It would be better to work with other countries to develop international tests to confirm contents purity and safety and to only allow products that have been approved through a credible, international testing regime of safety and purity. |
| Maximum allowable volume of e-liquid in retail sales |  |  | Yes. There should be a maximum sale/purchase amount for what is deemed reasonable for personal use. This will minimise incidents of people bulk purchasing to on-sell without adhering to regulations around age restriction & offering cessation support. |
| Maximum concentration of nicotine e-liquid |  |  | Yes. To minimise addictiveness of e-cigarettes/e-liquids there should be a maximum nicotine level of 18mg/ml this should also be introduced for tobacco products to keep them regulated at least as strongly as e-cigarettes/e-liquids. |
| Mixing of e-liquids at (or before) point of sale |  |  | Yes. We should look to best international practice for guidance on regulations around this. |
| Other |  |  | We recommend that retailers selling e-cigarettes/e-liquids should undergo cessation support training and should offer this to people using e-cigarettes to quit smoking. They should also work closely with local Stop Smoking teams to ensure behavioural support is easily accessible. |

**Q9 Are there any other comments you would like to make?**

|  |
| --- |
| As mentioned retailers selling e-cigarettes/e-liquids should undergo cessation support training and should offer this to people using e-cigarettes to quit smoking. They should also work closely with local Stop Smoking teams to ensure behavioural support is easily accessible. |

**Additional information on sales and use**

**Q10 Can you assist us by providing information on the sale of e‑cigarettes in New Zealand (for example, size of sales or range of products for sale on the local market)?**

|  |
| --- |
|  |

**Q11 Would the Ministry of Health’s proposed amendments have any impact on your business? If so, please quantify/explain that impact.**

|  |
| --- |
| Although we are not a business among our coalition are health promoting organisations, the proposed amendments would potentially impact our work to support our communities to reach the Smokefree 2025 goal of smoking prevalence of less than 5%. However, without adequate regulations this could potentially increase our workload if e-cigarettes/e-liquids are found to be harmful and addictive. |

**Q12 If you are using nicotine e‑cigarettes: how long have you been using them, how often do you use them, how much do you spend on them per week and where do you buy them?**

|  |  |  |  |
| --- | --- | --- | --- |
| **How long have you been using them?** | **How often do you use them?** | **How much do you spend on them per week?** | **Where do you buy them?** |
| NA | NA | NA | NA |

**Consultation submission 219 – Foodstuffs NZ Ltd**

|  |  |
| --- | --- |
| **Your details**  This submission was completed by: | [redacted] |
| Address: *(street/box number)* | [redacted] |
| *(town/city)* | [redacted] |
| Email: | [redacted] |
| Organisation *(if applicable)*: | Foodstuffs (NZ) Ltd |
| Position *(if applicable)*: | [redacted] |

Are you submitting this:

as an individual or individuals (not on behalf of an organisation)?

🗹 on behalf of a group, organisation(s) or business?

Please indicate which sector(s) your submission represents:

🗹 Commercial interests, including e‑cigarette manufacturer, importer, distributor and/or retailer

Tobacco control non-government organisation

Academic/research

Cessation support service provider

Health professional

Māori provider

Pacific provider

Other sector(s) *(please specify)*:

Please indicate your e‑cigarette use status:

I am using nicotine e‑cigarettes.

I am using nicotine-free e‑cigarettes.

I currently smoke as well as use e‑cigarettes.

🗹 I am not an e‑cigarette user.

I have tried e‑cigarettes.

**Privacy**

We intend to publish all submissions on the Ministry’s website. If you are submitting as an individual, we will automatically remove your personal details and any identifiable information.

If you do not want your submission published on the Ministry’s website, please tick this box:

Do not publish this submission.

Your submission will be subject to requests made under the Official Information Act. If you want your personal details removed from your submission, please tick this box:

🗹 Remove my personal details from responses to Official Information Act requests.

If your submission contains commercially sensitive information, please tick this box:

This submission contains commercially sensitive information.

**Declaration of tobacco industry links or vested interest**

As a party to the global tobacco control treaty, the World Health Organization Framework Convention on Tobacco Control, New Zealand has an obligation to protect the development of public health policy from the vested interests of the tobacco industry. To help meet this obligation, the Ministry of Health asks all respondents to disclose whether they have any direct or indirect links to, or receive funding from, the tobacco industry. The Ministry will still carefully consider responses from the tobacco industry, and from respondents with links to the tobacco industry, alongside all other submissions. Please provide details of any tobacco company links or vested interests below.

|  |
| --- |
| Foodstuffs is a distributor and retailer of tobacco products. We are not involved in the manufacture of any tobacco or related products. |

Please return this form by email to:

**ecigarettes**[**@moh.govt.nz**](mailto:tobacco@moh.govt.nz) by **5 pm, Monday 12 September 2016**.

If you are sending your submission in PDF format, please also send us the Word document.

**Consultation questions**

Although this form provides blank spaces for your answers to questions, there is no limit to the length of your responses; you should take as much space as you need to answer or comment. Feel free to enlarge the boxes or attach additional pages.

**Q1 Do you agree that the sale and supply of nicotine e‑cigarettes and nicotine liquids should be allowed on the local market, with appropriate controls?**

Yes

Reasons/additional comments:

|  |
| --- |
| Early studies referred to in the consultation document indicate that e-cigarettes and nicotine liquids could play a useful role in reducing consumption of nicotine and related harms. On this basis these products might assist smokers reduce or end their tobacco dependence and thus reduce the health risks arising from smoking tobacco, these products should be able to be legally sold.  We appreciate the evidence on e-cigarettes is formative and on this basis agreed that the products would need to be regulated, at least for a period of time while further evidence is gathered. Accordingly, at this time we favour a regulatory regime that is largely consistent with that which applies to tobacco products. |

**Q2 Are there other (existing or potential) nicotine-delivery products that should be included in these controls at the same time? If so, what are they?**

Unsure

Reasons/additional comments:

|  |
| --- |
| Consideration should be given as to whether nicotine patches should be made more widely available by expanding the permitted sales channels. |

**Q3 Do you think it is important for legislation to prohibit the sale and supply of e‑cigarettes to young people under 18 years of age in the same way as it prohibits the sale and supply of smoked tobacco products to young people?**

Yes

Reasons/additional comments:

|  |
| --- |
| As the health risks associated with using these products are yet to be fully determined, we agree a precautionary approach should be taken.  There has been some concern expressed that e-cigarettes might become gate-way (entry) products for young people to then move on to smoking ordinary tobacco products. A prohibition on purchase by persons under 18 years of age would discourage this.  An age restriction of 18 years would align with age restriction for the purchase of tobacco and other restricted products such as alcohol, and therefore simplify compliance messaging. |

**Q4 Do you think it is important for legislation to control advertising of e‑cigarettes in the same way as it controls advertising of smoked tobacco products?**

Yes

Reasons/additional comments:

|  |
| --- |
| While the early evidence suggests these products could significantly reduce the harm caused by tobacco if smokers switch to them, their use is best promoted directly to smokers through the health system (doctors and other health professionals).  General advertising would be seen by a much wider audience, including young people, and might encourage non-smoking youth to take up smoking.  A prohibition on advertising would be consistent with the ban on advertising of tobacco products. |

**Q5 Do you think it is important for the SFEA to prohibit vaping in designated smoke-free areas in the same way as it prohibits smoking in such areas?**

Yes

Reasons/additional comments:

|  |
| --- |
| Until further evidence is available, a precautionary approach should be taken. This recognises that those in close proximity to someone vaping are likely to have some exposure to vapours.  Greater visibility of smoking, in any form, may increase its acceptability. The regulatory regime should discourage non-smokers taking up smoking of any sort. |

**Q6 Do you agree that other controls in the SFEA for smoked tobacco products should apply to e‑cigarettes? For example:**

|  |  |  |  |
| --- | --- | --- | --- |
| **Control** | **Yes** | **No** | **Reasons/ additional comments** |
| Requirement for graphic health warnings |  |  | Health warnings should not be required for non-nicotine products (because the health risks are uncertain and health warnings could be misleading), but should be required for nicotine-containing ones, perhaps unless below a specified. |
| Prohibition on displaying products in sales outlets | 🗹 |  | This would be consistent |
| Restriction on use of vending machines | 🗹 |  |  |
| Requirement to provide annual returns on sales data | 🗹 |  | This data will be important to assessing the uptake of e-cigarettes and their effect on tobacco sales |
| Requirement to disclose product content and composition | 🗹 |  | This is important to enable consumers to exercise informed choice. |
| Regulations concerning ingredients (eg, nicotine content and/or flavours) | 🗹 |  | This is necessary to manage the safety profile of products e.g. upper limits/prohibited substances etc. |
| Requirement for annual testing of product composition |  |  | Unsure. Should be consistent with regulations for tobacco products. |
| Prohibition on free distribution and awards associated with sales | 🗹 |  | Should be consistent with regulations for tobacco products. |
| Prohibition on discounting | 🗹 |  | Should be consistent with the regime for tobacco products. |
| Prohibition on advertising and sponsorship | 🗹 |  | Should be consistent with the regime for tobacco products. |
| Requirement for standardised packaging | 🗹 |  | Not for non-nicotine product but for nicotine containing ones. |
| Other |  |  |  |

**Q7 Do you think it is important for legislation to impose some form of excise or excise-equivalent duty on nicotine e-liquid, as it does on tobacco products?**

Yes

Reasons/additional comments:

|  |
| --- |
| On nicotine e-liquid yes, however, not on non-nicotine products. Excise on low-nicotine products should reflect their lower health impacts, and incentivise smokers to switch. |

**Q8 Do you think quality control of and safety standards for e‑cigarettes are needed?**

Yes 🗹 No

Additional comments:

|  |  |  |  |
| --- | --- | --- | --- |
| **Area of concern** | **Yes** | **No** | **Reasons/additional comments** |
| Childproof containers |  |  | Unsure. We are not qualified to comment on the toxicity of these products, however childproof packaging would only be necessary if accidental ingestion were to cause illness. |
| Safe disposal of e‑cigarette devices and liquids |  |  | Unsure. We are not qualified to comment on the products’ risk profile. We suggest this requires a proper risk assessment. Appropriate risk management principles should apply. |
| Ability of device to prevent accidents | 🗹 |  | Based on risk assessment. |
| Good manufacturing practice | 🗹 |  | This is a standard requirement for supermarket suppliers. |
| Purity and grade of nicotine |  |  | Unsure. Should be consistent with regime for tobacco. |
| Registration of products |  |  | Approach should be consistent with tobacco regime. |
| A testing regime to confirm product safety and contents purity | 🗹 |  | This could fall into compliance and enforcement activity where testing would be done randomly. |
| Maximum allowable volume of e-liquid in retail sales |  |  | Unsure of what is being asked? Maximum volume of e-liquid in a single device (possibly has some merit), or maximum quantity permitted to be sold in a single sales transaction (impractical to enforce). The topic requires further discussion. |
| Maximum concentration of nicotine e-liquid | 🗹 |  | Approach should be consistent with tobacco regulation |
| Mixing of e-liquids at (or before) point of sale |  | 🗹 | To ensure good manufacturing practice can be adhered to, manufacture should occur in a dedicated facility. |
| Other |  |  |  |

**Q9 Are there any other comments you would like to make?**

|  |
| --- |
| If the products are to be sold, they should be permitted to be sold in all outlets permitted to sell tobacco products. This will ensure wide availability and access for consumers.  While we are recommending a precautionary approach to the sale of these product, in a manner that is consistent with the regime that applies for tobacco products, we would recommend a full review of the regulatory regime in 3-5 years. Should the evidence at that time support greater promotion of these products as a harm reduction measure, it might be appropriate to relax some of the regulatory restrictions e.g. advertising. |

**Additional information on sales and use**

**Q10 Can you assist us by providing information on the sale of e‑cigarettes in New Zealand (for example, size of sales or range of products for sale on the local market)?**

|  |
| --- |
| We do not currently sell these products. |

**Q11 Would the Ministry of Health’s proposed amendments have any impact on your business? If so, please quantify/explain that impact.**

|  |
| --- |
| If the law was to permit the sale of these product in the grocery channel, as for tobacco, it is likely that we would list these products for sale through our various retail outlets. |

**Q12 If you are using nicotine e‑cigarettes: how long have you been using them, how often do you use them, how much do you spend on them per week and where do you buy them?**

N.A

**Consultation submission 220 – Individual**

|  |  |
| --- | --- |
| Your details This submission was completed by: *(name)* | [redacted] |
| Address: *(street/box number)* | [redacted] |
| *(town/city)* | [redacted] |
| Email: | [redacted] |
| Organisation *(if applicable)*: | [redacted] |
| Position *(if applicable)*: | [redacted] |

*(Tick one box only in this section)*

Are you submitting this:

as an individual or individuals (not on behalf of an organisation)?

on behalf of a group, organisation(s) or business?

*(You may tick more than one box in this section)*

Please indicate which sector(s) your submission represents:

Commercial interests, including e‑cigarette manufacturer, importer, distributor and/or retailer

Tobacco control non-government organisation

Academic/research

Cessation support service provider

Health professional

Māori provider

Pacific provider

Other sector(s) *(please specify)*:

*(You may tick more than one box in this section)*

Please indicate your e‑cigarette use status:

I am using nicotine e‑cigarettes.

I am using nicotine-free e‑cigarettes.

I currently smoke as well as use e‑cigarettes.

I am not an e‑cigarette user.

I have tried e‑cigarettes.

Privacy

We intend to publish all submissions on the Ministry’s website. If you are submitting as an individual, we will automatically remove your personal details and any identifiable information.

If you do not want your submission published on the Ministry’s website, please tick this box:

Do not publish this submission.

Your submission will be subject to requests made under the Official Information Act. If you want your personal details removed from your submission, please tick this box:

Remove my personal details from responses to Official Information Act requests.

If your submission contains commercially sensitive information, please tick this box:

This submission contains commercially sensitive information.

Declaration of tobacco industry links or vested interest

As a party to the global tobacco control treaty, the World Health Organization Framework Convention on Tobacco Control, New Zealand has an obligation to protect the development of public health policy from the vested interests of the tobacco industry. To help meet this obligation, the Ministry of Health asks all respondents to disclose whether they have any direct or indirect links to, or receive funding from, the tobacco industry. The Ministry will still carefully consider responses from the tobacco industry, and from respondents with links to the tobacco industry, alongside all other submissions. Please provide details of any tobacco company links or vested interests below.

|  |
| --- |
| Nil. I have no links or interests associated with any tobacco companies or e-cigarette/vaping product companies. |

Please return this form by email to:

**ecigarettes**[**@moh.govt.nz**](mailto:tobacco@moh.govt.nz) by **5 pm, Monday 12 September 2016**.

If you are sending your submission in PDF format, please also send us the Word document.

**Consultation questions**

Although this form provides blank spaces for your answers to questions, there is no limit to the length of your responses; you should take as much space as you need to answer or comment. Feel free to enlarge the boxes or attach additional pages.

Q1 Do you agree that the sale and supply of nicotine e‑cigarettes and nicotine liquids should be allowed on the local market, with appropriate controls?

Yes  No

Reasons/additional comments:

|  |
| --- |
| The New Zealand government should be congratulated for making a pragmatic and sensible step towards regulating nicotine for vaping rather than maintaining the current ban.  A legal market for a less harmful cigarette substitute provides a substantial opportunity to phase out cigarette smoking as a major public health issue in New Zealand. Having an acceptable alternative, lower risk product could be very complementary to existing tobacco control strategies and could increase their effectiveness. For example, my research on smokers intentions when presented with proposed tobacco tax increases with and without a lower priced less harmful alternative available, suggested that more smokers would stop smoking (either quit altogether or switch to a lower harm product) when there was a less harmful, lower priced alternative available than when the price increase was made without the alternative (see Gartner C.E., Jimenez-Soto E.V., Borland R., O'Connor R.J., Hall W.D. Are Australian smokers interested in using low nitrosamine smokeless tobacco for harm reduction? Tobacco Control (2010): 19(6):451-6.).  This is also an ethical policy approach (see Hall W, Gartner C, Forlini C. (2015) Ethical issues raised by a ban on the sale of electronic nicotine devices. Addiction 110: 1061–1067). Banning less harmful alternatives while allowing widespread sale of the most harmful nicotine product (the combustible cigarette) makes no sense. The ultimate impact on public health from these products will depend upon how they and combustible tobacco products are regulated. Close monitoring of both the tobacco and vaping product markets will allow the government to check the regulations are achieving their ultimate goal of moving consumers in the direction of less harmful nicotine products and also becoming nicotine free. |

Q2 Are there other (existing or potential) nicotine-delivery products that should be included in these controls at the same time? If so, what are they?

Yes  No

Reasons/additional comments:

|  |
| --- |
| Consideration should be given to allowing sales of low nitrosamine smokeless tobacco, such as Swedish snus. There is extensive literature supporting snus as a harm reduction option for smokers. Limits on the amount of carcinogens in smokeless tobacco that was allowed to be sold could be imposed. Please see the Royal College of Physicians Reports on Harm reduction for a detailed discussion of the role products, such as snus could play in a comprehensive tobacco control strategy and Gartner C., Hall W., Vos T., Bertram M., Wallace A., Lim S. Assessment of Swedish snus for tobacco harm reduction: an epidemiological modelling study. The Lancet (2007) 369(9578):2010-4. |

Q3 Do you think it is important for legislation to prohibit the sale and supply of e‑cigarettes to young people under 18 years of age in the same way as it prohibits the sale and supply of smoked tobacco products to young people?

Yes  No

Reasons/additional comments:

|  |
| --- |
| Sales of nicotine for vaping should be targeting at adult smokers and not allowed for adolescents/children. |

Q4 Do you think it is important for legislation to control advertising of e‑cigarettes in the same way as it controls advertising of smoked tobacco products?

Yes  No

Reasons/additional comments:

|  |
| --- |
| I have answer 'yes' to this question because strict controls are needed on advertising to prevent young non-smokers from seeing it as glamorous and taking it up. However, there is a good argument for allowing some form of communication with adult smokers to encourage them to switch to vaping. So consideration should be given to allowing some limited advertising via targeted channels. Some examples are point of sale advertising in a specialist tobacconist or an adult store, where exposure to people under 18 shouldn't occur. |

Q5 Do you think it is important for the SFEA to prohibit vaping in designated smokefree areas in the same way as it prohibits smoking in such areas?

Yes  No

Reasons/additional comments:

|  |
| --- |
| I have answered 'no' to this question because I don't think public vaping should be restricted in exactly the same way as public smoking, although I do support some restrictions.  The potential risks posed by secondhand exposure to vapour is much lower than that posed by secondhand smoke. However, there should be some controls on where people may vape in indoor public spaces. Particularly those which include confined spaces, such as public transport, should be kept vape-free because this would be consistent with current public expectations from non-vapers/non-smokers, who make up the majority of the population in New Zealand. Indoor public smoking restrictions are well-accepted and supported by the public, including many smokers, who are now accustomed to smoking outdoors. Extending these restrictions to vaping in most situations shouldn't cause too many problems for vapers who were previously smokers. The exception would be where there are limited suitable outdoor locations for vapers to access where they do not have to stand with smokers who are smoking. Consideration could be given for exempting some specific indoor locations such as dedicated vape shops, to allow customers to sample products, where the possibility of creating a nuisance for non-vapers is likely to be very low/non-existent.  There is far less justification for any restrictions on outdoor vaping. The risks to bystanders in an outdoor environment is likely to be so miniscule as to be completely unquantifiable and dwarfed by other common exposures such as those from passing traffic. Vaping should be explicitly excluded from outdoor smoking bans. Inclusion of vaping in widespread outdoor smoking bans can have unintended consequences. For example a mental health setting may want to go completely smokefree, but are concerned about impact on patients. Allowing outdoor vaping could provide a viable option that will be more accepted by some patients than other forms of nicotine replacement such as patches. |

Q6 Do you agree that other controls in the SFEA for smoked tobacco products should apply to e‑cigarettes? For example:

|  |  |  |  |
| --- | --- | --- | --- |
| **Control** | **Yes** | **No** | **Reasons/ additional comments** |
| Requirement for graphic health warnings |  |  | There is insufficient evidence to produce such graphic health warnings relevant to vaping. More appropriate would be a simple statement advising customers that vaping has not been confirmed as being harmless, but it is less harmful than smoking. Rather than graphic health warnings, there is a need for standardised safe storage and handling instructions (e.g. keep out of the reach of children). |
| Prohibition on displaying products in sales outlets |  |  | Dedicated vape shops and specialist tobacconists should be able to display vaping products within their stores to assist customers to choose an appropriate product. However, products should not be allowed to be displayed in general retailer outlets such as corner stores, petrol service stations etc, alongside confectionary. |
| Restriction on use of vending machines |  |  | There is no good justification for vending machine sales for tobacco cigarettes or vaping products. These products should be sold with opportunity for the customer to ask questions and obtain advice and for appropriate check of age of purchaser. |
| Requirement to provide annual returns on sales data |  |  | Requiring reporting on sales data is a good policy and should be included (See Gartner C.E., Chapman S.F., Hall W.D., Wakefield M.A. Why we need tobacco sales data for good tobacco control [Editorial]. Medical Journal of Australia (2010) 192(1):3-4.). This will allow monitoring that is needed to understand the risks and benefits of access to these products. Similar reporting should be required for tobacco products. This is likely to be more manageable when required at the wholesaler/importer level than the individual retailer level. |
| Requirement to disclose product content and composition |  |  | Consumers require accurate information on the ingredients in vaping products in order to make informed choices. For example, some vapers will want to avoid certain flavouring compounds and so this type of information should be considered mandatory for labelling. Accurate labelling of products with nicotine content is also necessary. |
| Regulations concerning ingredients (eg, nicotine content and/or flavours) |  |  | The evidence base on the level of risk associated with inhaling flavour compounds is growing. It would be prudent to include a mechanism for banning those compounds that are found to pose an unacceptable level of risk via inhalation. |
| Requirement for annual testing of product composition |  |  | A modest license fee on manufacturers, wholesalers and retailers should be imposed which includes an allowance for compliance checking with a set percentage of products on the market randomly selected for a compliance test. Annual testing of products could be overly burdensome. It would seem reasonable to require some basic independent analyses such as nicotine content to be submitted for a sample of products or where there is a change in manufacturing practice to demonstrate the manufacturer has adequate quality control. |
| Prohibition on free distribution and awards associated with sales |  |  | These promotional activities are not appropriate for an addictive substance. |
| Prohibition on discounting |  |  | I support policies that would maintain a lower price on vaping products relative to tobacco cigarettes to provide an incentive to smokers to move to lower risk products. Some allowable level of discounting could provide encouragement for smokers to try vaping. Rather than prohibiting discounting initially, consideration could be given to monitoring the market to determine if policies such as a floor price is needed to deter uptake by non-smoking youth. |
| Prohibition on advertising and sponsorship |  |  | Possibly. There should be a complete ban on any advertising that glamourises vaping or smoking (such as through images that are similar to smoking), which could encourage non-smoking youth to take it up. However, some level of communication with smokers about the risks and benefits of switching to vaping could be beneficial. Text only advertising in print format could be an option to allow some communication with smokers without risk of glamourisation. |
| Requirement for standardised packaging |  |  | Rather than standardised packaging, as on tobacco cigarettes, it would be more appropriate to have some general restrictions on packaging – what can and cannot be included on packaging and some guiding principles such as packaging should not glamourise vaping/smoking. As stated above, standardised safe storage and handling instructions should be mandated. |
| Other |  |  | Manufacturers, wholesalers and retailers should be licensed. This should also be applied to tobacco products. Tobacco retailer licenses should be more expensive than licences for retailers that sell only vaping products. |

Q7 Do you think it is important for legislation to impose some form of excise or excise-equivalent duty on nicotine e-liquid, as it does on tobacco products?

Yes  No

Reasons/additional comments:

|  |
| --- |
| Taxing vaping products at a similar rate as tobacco products would be counter-productive to public health. These products should be lower price to encourage consumers to move to the lower risk product. Indeed having a lower priced acceptable alternative in the market place provides opportunity to raise taxes on tobacco products while providing an option for smokers who find it difficult to stop using nicotine. This could offset some of the equity impacts that very high tobacco taxes have on populations with high smoking prevalence.  Maintaining some differences in how vaping products are sold and taxed will allow them to be used as part of a tobacco control strategy to move smokers to lower risk products.  See:  Chaloupka F, Sweanor D, Warner K. (2015) Differential Taxes for Differential Risks —Toward Reduced Harm from Nicotine-Yielding Products. N Engl J Med 373: 594-597  Gartner C.E., Jimenez-Soto E.V., Borland R., O'Connor R.J., Hall W.D. Are Australian smokers interested in using low nitrosamine smokeless tobacco for harm reduction? Tobacco Control (2010): 19(6):451-6. |

Q8 Do you think quality control of and safety standards for e‑cigarettes are needed?

Yes  No

Additional comments:

|  |  |  |  |
| --- | --- | --- | --- |
| **Area of concern** | **Yes** | **No** | **Reasons/additional comments** |
| Childproof containers |  |  | Refill bottles should be required to have child-resistant closures. |
| Safe disposal of e‑cigarette devices and liquids |  |  | I support policies that reduce the amount of hazardous substances entering landfill, such as Lithium ion batteries. Providing an easy mechanism for the public to recycle these batteries would be good public policy. This should not be restricted to e-cigarette devices, but apply to all electronic products.  Similar policies that apply to disposal of other household chemicals should be applied to these liquids. Consumers should be required to dispose of any unwanted nicotine solution in a responsible manner that does not pose a risk for children or animals. |
| Ability of device to prevent accidents |  |  | Some vaporisers already have a mechanism to provide a barrier to a young child activating the heating mechanism – eg automatic shutoff when not used for a short while and then turning on requiring a sequence of button pushes or a small button that would be difficult for small child to activate. Also some manufacturers have incorporated safety features such as over-heating protection for the battery. These both appear to be reasonable safety features that could be required of manufacturers. |
| Good manufacturing practice |  |  | Quality assurance certification should be required for manufacture, however the level of certification should be less than required for medical devices and medicines, unless they are marketed as medicines or medical devices. |
| Purity and grade of nicotine |  |  | Consumers need to have confidence in what they are purchasing and specifying purity of the nicotine would assist this. |
| Registration of products |  |  | The market for vaping devices is rapidly developing and registering all new products could become burdensome for both the regulator and the marketplace. Requiring wholesalers/importers to provide an annual report on their range of products would assist with monitoring changes in the marketplace. |
| A testing regime to confirm product safety and contents purity |  |  | This should be part of quality assurance processes. |
| Maximum allowable volume of e-liquid in retail sales |  |  | This question is not clear. If it relates to limits on the size of the package (e.g. individual bottle of e-liquid) then some restriction is justifiable as this will limit the risk of a large spill if the package is broken. A 50mL limit is reasonable.  The other way to interpret this question relates to limiting the quantity that can be purchased in one transaction. Where there is a retailer licensing scheme in place, large quantities purchased in one transaction may indicate an attempt to sell outside licensing requirements and so may require a limit to deter such diversion.  The other potential issue could relate to intentional misuse. While extremely rare, there have been some intentional overdoses (suicides) with nicotine e-liquid. However, I am not familiar enough with the literature on limiting sales quantities of other substances (e.g. paracetamol) to comment on whether this is a measure that reduces such misuse. |
| Maximum concentration of nicotine e-liquid |  |  | Limiting the amount |
| Mixing of e-liquids at (or before) point of sale |  |  | If the manufacturer can demonstrate their quality control systems are sufficient to enable this to be done safely and without adversely affecting packaging and labelling of nicotine content accurately, then it may be unnecessary. |
| Other |  |  |  |

Q9 Are there any other comments you would like to make?

|  |
| --- |
| Providing retailers with an incentive to move from tobacco sales to vaping product sales could help reduce the retail availability of tobacco. Ideally, these nicotine products should only be sold in situations where the purchaser can get good advice – such as a dedicated vape shop or a specialist tobacconist with an interest in vaping products. This would result in better quality products on the market that would be sold with advice. These products aren't really appropriate to be sold by non-specialist retailers (e.g. petrol service stations) by staff who do not understand the products and can't offer advice on their use. Similarly, tobacco products are also not appropriate products to be sold by general retailers and serious consideration should be given to phasing out tobacco sales from general retail outlets as they also should not be treated like an everyday commodity.  Please let me know if you require a copy of any of the publications I have cited in this submission. I would be very happy to provide copies of these publications.  Furthermore, I am currently collaborating with colleagues at University of Otago on modelling the potential impact of widening access to nicotine e-cigarettes in New Zealand that we would be happy to share with the New Zealand Ministry of Health once completed. |

Additional information on sales and use

Q10 Can you assist us by providing information on the sale of e‑cigarettes in New Zealand (for example, size of sales or range of products for sale on the local market)?

|  |
| --- |
| Others in New Zealand are more qualified to comment on this. However, I am aware that as in Australia, nicotine-containing e-cigarettes and vaping solutions are available despite current restrictions. |

Q11 Would the Ministry of Health’s proposed amendments have any impact on your business? If so, please quantify/explain that impact.

|  |
| --- |
| N/A |

Q12 If you are using nicotine e‑cigarettes: how long have you been using them, how often do you use them, how much do you spend on them per week and where do you buy them?

|  |  |  |  |
| --- | --- | --- | --- |
| **How long have you been using them?** | **How often do you use them?** | **How much do you spend on them per week?** | **Where do you buy them?** |
|  |  |  |  |

**Consultation submission 221 – Vaping Trade Association of New Zealand**

|  |  |
| --- | --- |
| Your details This submission was completed by: *(name)* | [redacted] |
| Address: *(street/box number)* | [redacted] |
| *(town/city)* | [redacted] |
| Email: | [redacted] |
| Organisation *(if applicable)*: | (VTANZ) Vaping Trade Association of New Zealand |
| Position *(if applicable)*: | [redacted] |

*(Tick one box only in this section)*

Are you submitting this:

☐ as an individual or individuals (not on behalf of an organisation)?

X on behalf of a group, organisation(s) or business?

*(You may tick more than one box in this section)*

Please indicate which sector(s) your submission represents:

X Commercial interests, including e-cigarette manufacturer, importer, distributor and/or retailer

☐ Tobacco control non-government organisation

☐ Academic/research

☐ Cessation support service provider

☐ Health professional

☐ Māori provider

☐ Pacific provider

X Other sector(s) *(please specify)*: Tobacco Harm Reduction Advocates

*(You may tick more than one box in this section)*

Please indicate your e-cigarette use status:

X I am using nicotine e-cigarettes.

X I am using nicotine-free e-cigarettes.

☐ I currently smoke as well as use e-cigarettes.

☐ I am not an e-cigarette user.

☐ I have tried e-cigarettes

Privacy

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☐ Do not publish this submission.

Your submission will be subject to requests made under the Official Information Act. If you want your personal details removed from your submission, please tick this box:

☐ Remove my personal details from responses to Official Information Act requests.

If your submission contains commercially sensitive information, please tick this box:

☐ This submission contains commercially sensitive information.

Declaration of tobacco industry links or vested interest

As a party to the global tobacco control treaty, the World Health Organization Framework Convention on Tobacco Control, New Zealand has an obligation to protect the development of public health policy from the vested interests of the tobacco industry. To help meet this obligation, the Ministry of Health asks all respondents to disclose whether they have any direct or indirect links to, or receive funding from, the tobacco industry. The Ministry will still carefully consider responses from the tobacco industry, and from respondents with links to the tobacco industry, alongside all other submissions. Please provide details of any tobacco company links or vested interests below.

|  |
| --- |
| None of our members have an affiliation or financial stake in a tobacco company. |

Please return this form by email to:

**ecigarettes**[**@moh.govt.nz**](mailto:tobacco@moh.govt.nz) by **5 pm, Monday 12 September 2016**.

If you are sending your submission in PDF format, please also send us the Word document.

|  |
| --- |
| VTANZ, the Vaping Trade Association of New Zealand is an alliance of 11 NZ Vape Vendors and juicemakers which was formed to facilitate self-regulation in the absence of government regulations and to lobby for the rights of vape businesses and consumers in New Zealand  Members: http://vtanz.org.nz/who.php |

**Consultation questions**

Although this form provides blank spaces for your answers to questions, there is no limit to the length of your responses; you should take as much space as you need to answer or comment. Feel free to enlarge the boxes or attach additional pages.

Q1 Do you agree that the sale and supply of nicotine e-cigarettes and nicotine liquids should be allowed on the local market, with appropriate controls?

Yes X No ☐

Reasons/additional comments:

|  |
| --- |
| The use of electronic cigarettes (ENDS) has been shown to be 95% less harmful than tobacco cigarettes (CITE). ENDs have also shown to be an effective nicotine cessation product (CITE). Therefore, they should be made available for purchase for those who wish to utilise them for either cessation or recreation, with or without nicotine. It is simply unethical to deny smokers, as well as those of high likelihood of starting smoking, an effective means to reduce the risk they are exposed due to the illness of tobacco addiction.  Of similar importance is meeting New Zealand’s smoke-free 2025 goals. ENDS are already playing a pivotal role in reducing the prevalence of smoking globally (CITE). Underpinning the capacity of this role is a wide diversity of products, ease of availability, and consumer and public education both pre- and post- point of sale. A number of ‘brick and mortar’ retail outlets are already popping up within New Zealand’s main centers, and this number is likely to expand. These stores typically fall into two groups, ‘head-shops’ or ‘novelty stores’ and ‘vape stores’. VTANZ feel that device sales should be limited to vendors who are competent in educating the consumer on the product and its use. E-juice should be widely available as its use is determined by the end users preference, as is tobacco. . Specialist online outlets also play a major part in the distribution of e-juice and the presence of these outlets needs to be maintained to enable a high level of accessibility to a massively diverse market, discourage brand market dominance and product education. A regulation framework which supports an e-cigarette industry to play a responsible, guiding and adaptive role in deconstructing the current tobacco industry model is therefore the most desirable policy outcome for the health of New Zealanders.  VTANZ already provides [basic regulation guidelines](http://vtanz.org.nz/regulations.php) of which its members adhere to. These guidelines are under continual development aiming to minimise the public risk from improper manufacture of e-liquid and ENDS hardware, as well as improper use. We encourage all hardware retailers and e-juice manufacturers to adhere to these guidelines and actively participate in their development. |

Q2 Are there other (existing or potential) nicotine-delivery products that should be included in these controls at the same time? If so, what are they?

Yes X No ☐

Reasons/additional comments:

|  |
| --- |
| When we are discussing ENDs, we define those such as the first-generation ‘cig-alike’ currently available in pharmacies and chemists as being ineffective for vapers. The experience itself is not conducive to continued used however, not just because of the content level of nicotine but due to the limited variation of how the devices may be configured and adapted for the consumer. These systems often use nicotine cartridges which increase manufacturing costs and unnecessary waste.  The vendors of VTANZ currently sell mostly second and third generation open-tank personal vapouriser systems. These systems are characterised by greater and variable device output, ease of maintenance and greater device lifespan. The reason for prefered sale of these devices comes from a consumer standpoint. That is, “cig-alikes” do not provide consumers the satisfaction in vaping that one gets with open tank systems. This satisfaction is closely associated with variable vapour production and ease and diversity of flavour changing and nicotine strengths. That is not to say that we only support open tank systems, but the currently available closed tank systems here in New Zealand are not saleable from either a business or consumer standpoint.    We also believe there needs to be a clear definition between the personal vapouriser products. E.g. cig-alikes , the open tank systems that we offer for sale and utilise ourselves for use with e-liquid, and the dry herb vaporizers that are used for cannabis and similar illegal products. |

Q3 Do you think it is important for legislation to prohibit the sale and supply of e-cigarettes to young people under 18 years of age in the same way as it prohibits the sale and supply of smoked tobacco products to young people?

Yes ☐ No X

Reasons/additional comments:

|  |
| --- |
| We would like to see the sale of ENDS and associated products handled in the same manner as any other 18+ consumer product. Products should not be promoted or sold to minors, but at the same time, information should not be kept from the adult consumers who may benefit from the use of nicotine containing e-liquid instead of combustible tobacco. However, we do urge that the government consider the patterns of use and risk of current tobacco use to young people and how ENDS and non-nicotine vapourisers may reduce harm in such a complex social ecosystem. For this to occur effectively specific policy addressing the supply of ENDS to minors would need to be considered. |

Q4 Do you think it is important for legislation to control advertising of e-cigarettes in the same way as it controls advertising of smoked tobacco products?

Yes No X

Reasons/additional comments:

|  |
| --- |
| As a consumer 18+ product that is not tobacco, ENDS and associated products should not be treated in the same way as tobacco products. ENDS pose a fraction of the harm that smoking does and specific marketing of them directed towards those adult consumers could be an important way to reach smokers who would otherwise not know about them. Similarly, marketing in some degree is a hugely important tool for the development of both education around products and establishing branding. Being able to market these devices would also effectively reduce the current burden of cost to government in cessation campaigning.   That being said, we believe that as a consumer 18+ product any advertising for e-cigarettes should not be aimed at minors. This would include adhering to guidelines discouraging the use of sexualised images, imitation of child products, and similar standards. |

Q5 Do you think it is important for the SFEA to prohibit vaping in designated smokefree areas in the same way as it prohibits smoking in such areas?

Yes ☐ No X

Reasons/additional comments:

|  |
| --- |
| The evidence shows that second hand smoke is a health hazard. This is why it makes sense for there to be additional taxes and excise on combustible tobacco. These taxes and excises were originally put into place to cover the costs to the health system from the hazards of combustible tobacco and later utilized as a deterrent to make smoking unaffordable and give people motivation to quit using combustible tobacco.  We’re not saying that vaping should be allowed anywhere at any time. We believe that it should be up to the discretion of each establishment as to whether or not vaping is allowed without any undue governmental dictates. Second hand vapour is not a health hazard and should not need to be prohibited in the same manner. The fact of the matter is this: vaping and smoking are two completely different things and should not be grouped together under the same discriminatory label with the same punitive excises, restrictions and taxation. Doing so would likely trigger relapse episodes in ex-smokers, by increasing ENDS cost or exposing ex-smokers to social contexts which promote smoking (i.e. ‘smokers areas’) and limit the ability of vape shops to assist consumers in choosing a product that is suited to them.  As the SFEA relates to protect others from the harms of second-hand smoke, and those harms do not exist with second hand vapour, any inclusion in the SFEA will defeat the legislation’s original purpose of harm reduction and prevention. |

Q6 Do you agree that other controls in the SFEA for smoked tobacco products should apply to e-cigarettes? For example:

|  |  |  |  |
| --- | --- | --- | --- |
| **Control** | **Yes** | **No** | **Reasons/ additional comments** |
| Requirement for graphic health warnings | ☐ | X | Cigarettes pose an enormous risk to people’s health and a huge burden on society. The current use of graphic images depict this risk.  ENDS don’t and thus should not be required to display mentioned warnings. |
| Prohibition on displaying products in sales outlets |  | X | Given the MoH acknowledgement that vaping is safer than smoking, it should not pursue policies that discourage people from switching to vaping from smoking. Any point of sale display prohibition would send the message that vaping is discouraged in the same way that smoking is. Similarly, it would strongly inhibit the ability of sales outlets to demonstrate the diversity of products to consumers. |
| Restriction on use of vending machines |  | X | ENDS should not be sold from vending machines, with the exception of those in an already 18+ environment |
| Requirement to provide annual returns on sales data | ☐ | X | This would constitute an undue and unnecessary burden on e-cigarette businesses. However, were the MoH to propose data collection with a stated purpose, it is likely that VTANZ members would be willing to co-operate if their costs were covered. |
| Requirement to disclose product content and composition | X | ☐ | Labelling on e liquid should be standardised as to what is done in other countries: flavourings, nicotine level, PG/VG ratio and date of manufacture.  We outline such requirements in our guidelines. |
| Regulations concerning ingredients (eg, nicotine content and/or flavours) | X |  | Food grade flavourings, USP/BP grade Glycerol and/or Propylene Glycol and USP/BP grade liquid nicotine should be required.  We outline such requirements in our guidelines. |
| Requirement for annual testing of product composition |  | X | There is no justification given for placing this burden on manufacturers and retailers. |
| Prohibition on free distribution and awards associated with sales | ☐ | X | No justification is given for this restriction of free trade in a product that has not been shown to be harmful |
| Prohibition on discounting | ☐ | X | No justification is given for this restriction of free trade in a product that has not been shown to be harmful |
| Prohibition on advertising and sponsorship | ☐ | X | No justification is given for this restriction of free trade in a product that has not been shown to be harmful |
| Requirement for standardised packaging | X |  | The only standardisation should be that the label includes relevant information, e.g. ingredients and any required warnings. |
| Other | ☐ | ☐ | The regulatory burden placed on the tobacco industry is justified by the great harm done by its products. It is also a burden that is easily borne by the tobacco industry with New Zealand sales exceeding 2 billion dollars in 2013. (http://www.ash.org.nz/wp-content/uploads/2015/03/TOBACCO-RETURNS-ANALYSIS-2013.pdf)  The e-cigarette industry on the other hand, is largely small business, operated with one or two exceptions by businesses with less than 10 employees and total turnovers of less than 10 million dollars.  The tobacco industry has at present no significant presence in the New Zealand E-cigarette market. If the costs of compliance are too high they will be the only ones able to participate. |

Q7 Do you think it is important for legislation to impose some form of excise or excise-equivalent duty on nicotine e-liquid, as it does on tobacco products?

Yes ☐ No X

Reasons/additional comments:

|  |
| --- |
| There should be no additional taxes beyond GST on any e cigarette/personal vapouriser equipment nor e-liquid whether it contains nicotine or not.  The reason it exists on traditional cigarettes is A) to deter people from using them and  B) to pay towards healthcare costs, neither of which apply to vaping as per the research cited in the documentation.  Vaping should be treated as a Consumer Product 18+ (the same as alcohol).   Placing an excise duty on vaping products would create a barrier to vaping for those who would benefit from it most. |

Q8 Do you think quality control of and safety standards for e-cigarettes are needed?

Yes X No

Additional comments: Regulation of ingredients should be required e.g. food grade flavourings and pharmacy grade vegetable glycerin and propylene glycol as noted above.

|  |  |  |  |
| --- | --- | --- | --- |
| **Area of concern** | **Yes** | **No** | **Reasons/additional comments** |
| Childproof containers | X | ☐ | To prevent accidental ingestion if someone leaves their liquid out in reach of children (same as with medicines) |
| Safe disposal of e-cigarette devices and liquids | ☐ | X | The same requirements that apply to  batteries or electrical waste should apply and no further initiative is required. |
| Ability of device to prevent accidents | ☐ | X | Most devices already have lockout systems so no need for additional measures |
| Good manufacturing practice | X | ☐ | We believe that eliquid manufactured in NZ should follow the same guidelines and best practice as the international manufacturers: clean rooms/ commercial kitchens, food grade flavourings, USP/BP grade VG and/or PG and USP/BP grade nicotine liquid. |
| Purity and grade of nicotine | X | ☐ | The use of pharmaceutical grade nicotine, the same as is in nicotine patches, gum and lozenges. |
| Registration of products | ☐ | X | One of the reasons why vaping is an effective smoking cessation tool is that manufacturers are constantly innovating and improving their products. As noted in the submission discussion document the three different generations of devices came in quick succession. Each successive generation of device has been more effective in helping smokers quit.   If there was a required registration of devices this would restrict the sale of future improved devices which may be more effective smoking cessation aids.  In addition, product registration would place an undue burden on e-cigarette retailers and importers which is not placed on cigarette retailers and importers. |
| A testing regime to confirm product safety and contents purity | ☐ | X | Standards of manufacturing would effectively negate this need. |
| Maximum allowable volume of e-liquid in retail sales | ☐ | X | There is no basis for imposing a  limitation on container volume in retail sales. Hazardous liquids are sold in large quantities (e.g. bleach) and the appropriate safeguards are to specify container standards; warn of dangers; and provide information on what to do in the event of an accident. |
| Maximum concentration of nicotine e-liquid | X | ☐ | There should be a maximum concentration of nicotine allowed in eliquid. We suggest that it is 24mg as is followed by international best practice. |
| Mixing of e-liquids at (or before) point of sale |  | X | There is no justification for restrictions on point of sale mixing beyond adherence to food preparation standards. |
| Other | ☐ | ☐ | The government should avoid restrictions on internet sales of ENDS  products. Internet retailing is particularly important in this business because:  •the user population is sparse  •the product is highly diverse  •the rate of innovation is very  high  •in the event of excessive domestic  restrictions, users will buy internationally from internet retailers,  for example, in China |

Q9 Are there any other comments you would like to make?

|  |
| --- |
| We believe New Zealand has an opportunity to lead the way internationally in legislation regarding e-cigarettes. Vaping has consistently been shown to be an effective harm reduction tool for smokers. With our goal of being a smoke-free nation by 2025 we hope that you will recognise that vaping could be a key part of our smoke free 2025 initiative. |

Additional information on sales and use

Q10 Can you assist us by providing information on the sale of e-cigarettes in New Zealand (for example, size of sales or range of products for sale on the local market)?

|  |
| --- |
|  |
|  |

Q11 Would the Ministry of Health’s proposed amendments have any impact on your business? If so, please quantify/explain that impact.

|  |
| --- |
|  |

Q12 If you are using nicotine e-cigarettes: how long have you been using them, how often do you use them, how much do you spend on them per week and where do you buy them?

|  |  |  |  |
| --- | --- | --- | --- |
| **How long have you been using them?** | **How often do you use them?** | **How much do you spend on them per week?** | **Where do you buy them?** |
|  |  |  |  |

**Consultation submission 222 – Smokefree Canterbury**

|  |  |
| --- | --- |
| **Your details**  This submission was completed by: *(name)* | [redacted] |
| Address: *(street/box number)* | [redacted] |
| *(town/city)* | [redacted] |
| Email: | [redacted] |
| Organisation *(if applicable)*: | Cancer Society Canterbury West Coast for Smokefree Canterbury |
| Position *(if applicable)*: | [redacted] |

*(Tick one box only in this section)*

Are you submitting this?

as an individual or individuals (not on behalf of an organisation)?

on behalf of a group, organisation(s) or business?

*(You may tick more than one box in this section)*

Please indicate which sector(s) your submission represents:

Commercial interests, including e‑cigarette manufacturer, importer, distributor and/or retailer

Tobacco control non-government organisation

Academic/research

Cessation support service provider

Health professional

Māori provider

Pacific provider

Other sector(s) *(please specify)*:

*(You may tick more than one box in this section)*

Please indicate your e‑cigarette use status:

I am using nicotine e‑cigarettes.

I am using nicotine-free e‑cigarettes.

I currently smoke as well as use e‑cigarettes.

I am not an e‑cigarette user.

I have tried e‑cigarettes.

**Privacy**

We intend to publish all submissions on the Ministry’s website. If you are submitting as an individual, we will automatically remove your personal details and any identifiable information.

If you do not want your submission published on the Ministry’s website, please tick this box:

Do not publish this submission.

Your submission will be subject to requests made under the Official Information Act. If you want your personal details removed from your submission, please tick this box:

Remove my personal details from responses to Official Information Act requests.

If your submission contains commercially sensitive information, please tick this box:

This submission contains commercially sensitive information.

**Declaration of tobacco industry links or vested interest**

As a party to the global tobacco control treaty, the World Health Organization Framework Convention on Tobacco Control, New Zealand has an obligation to protect the development of public health policy from the vested interests of the tobacco industry. To help meet this obligation, the Ministry of Health asks all respondents to disclose whether they have any direct or indirect links to, or receive funding from, the tobacco industry. The Ministry will still carefully consider responses from the tobacco industry, and from respondents with links to the tobacco industry, alongside all other submissions. Please provide details of any tobacco company links or vested interests below.

|  |
| --- |
| Smokefree Canterbury is a network of health related agencies that work collectively to achieve a Smokefree Aotearoa by 2025. None of the member agencies have any direct or indirect links to the Tobacco industry nor do any members receive any funding or have any interests whatsoever in the Tobacco industry. |

Please return this form by email to:

**ecigarettes**[**@moh.govt.nz**](mailto:tobacco@moh.govt.nz) by **5 pm, Monday 12 September 2016**.

If you are sending your submission in PDF format, please also send us the Word document.

**Consultation questions**

Although this form provides blank spaces for your answers to questions, there is no limit to the length of your responses; you should take as much space as you need to answer or comment. Feel free to enlarge the boxes or attach additional pages.

**Q1 Do you agree that the sale and supply of nicotine e‑cigarettes and nicotine liquids should be allowed on the local market, with appropriate controls?**

Yes  No

Reasons/additional comments:

|  |
| --- |
| Use of E.cigarettes and the efficacy in cessation remains an evolving area within tobacco control. Whilst evidence is emerging that they may play role in supporting smokers who want to quit, it is too early to understand the potential long term health risks from the use of E.cigarettes. Against this, Smokefree Canterbury believes that at present the position with regard to use of E.cigarettes is ambiguous and requires clarity within the context of current tobacco control legislation and the Government’s goal for a Smokefree New Zealand. [[20]](#footnote-20)  In the event that the sale and supply of nicotine E-cigarettes is introduced to New Zealand, Smokefree Canterbury remains cautious about their long term use and their contribution to cessation. Members however feel that should they be introduced they must be regulated and treated as a potential cessation tool and not as an alternative to long term smoking. As such we believe that options to restrict sale to specialist “vaping” outlets /pharmacies should be considered.  Smokefree Canterbury’s position is consistent with the wider Smokefree sector in New Zealand. |

**Q2 Are there other (existing or potential) nicotine-delivery products that should be included in these controls at the same time? If so, what are they?**

Yes  No

Reasons/additional comments:

|  |
| --- |
| Controls should be extended to cover any nicotine device unless provided via Medsafe for purposes of cessation. |

**Q3 Do you think it is important for legislation to prohibit the sale and supply of e‑cigarettes to young people under 18 years of age in the same way as it prohibits the sale and supply of smoked tobacco products to young people?**

Yes  No

Reasons/additional comments:

|  |
| --- |
| There is potential for E.cigarettes to have what researchers call a “gateway” effect whereby these devices may lead to an eventual increase initiation rates for tobacco smoking. Nicotine is addictive and we recommend that those aged under 18 should be protected from unregulated supplies. In addition there is concern that the glamorous way in which nicotine E.cigarettes are marketed overseas, could encourage younger people to try these products[[21]](#footnote-21)[[22]](#footnote-22). |

**Q4 Do you think it is important for legislation to control advertising of e‑cigarettes in the same way as it controls advertising of smoked tobacco products?**

Yes  No

Reasons/additional comments:

|  |
| --- |
| As noted above there is also considerable evidence from overseas that E.cigarettes are marketed in ways that are reflective of how tobacco used to be advertised in New Zealand with the aim of making products glamorous, attractive and desirable. Without advertising control, there is the potential for the tobacco industry with interests in E.cigarettes to exploit this “window of opportunity” as tobacco products and E.cigarettes have the potential to be confused by the public. We believe in these circumstances our international reputation for controls on tobacco advertising will be undermined along with the aims of the 2025 goal. |

**Q5 Do you think it is important for the SFEA to prohibit vaping in designated smokefree areas in the same way as it prohibits smoking in such areas?**

Yes  No

Reasons/additional comments:

|  |
| --- |
| Smokefree outdoor areas are becoming well established in Canterbury through partnerships with local councils and the hospitality industry. Advocacy is based on the importance of reducing the visibility of smoking in public open spaces, denormalising the act of smoking and reducing the impact of second hand smoke. Policies promoting smokefree outdoor areas whether voluntary or enforceable through by laws rest on clear signage and promotion requesting smokers to refraining from smoking. Unless E-cigarettes are prohibited in smokefree outdoor areas, the look, use and appearance of “smoke clouds” created by such devices will undermine smokefree outdoor polices and create confusion amongst both smokers and non-smokers. Clarity is essential, especially with regard creating completely smokefree outdoor areas for the next generation. |

**Q6 Do you agree that other controls in the SFEA for smoked tobacco products should apply to e‑cigarettes? For example:**

|  |  |  |  |
| --- | --- | --- | --- |
| **Control** | **Yes** | **No** | **Reasons/ additional comments** |
| Requirement for graphic health warnings |  |  | The longer term effects of E.cigarettes as noted above remain unknown. As a result graphic health warnings have the potential to convey any key messages e.g. keep away from children. If regulated for , these messages could be updated as new evidence emerges |
| Prohibition on displaying products in sales outlets |  |  | The tobacco control sector advocated long and hard to see the introduction of tobacco display bans. E.Cigarettes, if sold openly have the potential to undermine this clear position given their ability to “mimic” tobacco products. |
| Restriction on use of vending machines |  |  | Yes. In line with current legislation for tobacco products |
| Requirement to provide annual returns on sales data |  |  | In order to understand trends in use of E.Cigarettes, the tobacco control sector must have robust data. |
| Requirement to disclose product content and composition |  |  | All users should be aware of what their product contains. |
| Regulations concerning ingredients (e.g., nicotine content and/or flavours) |  |  | Ingredients should be regulated to reduce risks of harm to users. It is known that ingredients can be added to increase the addictiveness of nicotine and these should be banned from E.cigarettes. Use of flavouring should also be regulated to avoid use of those that can appeal to children [ e.g. sweet tasting] |
| Requirement for annual testing of product composition |  |  | Checking would ensure consistency in products |
| Prohibition on free distribution and awards associated with sales |  |  | In line with current tobacco control legislation |
| Prohibition on discounting |  |  | As above |
| Prohibition on advertising and sponsorship |  |  | As above |
| Requirement for standardised packaging |  |  | This should be consistent with the current legislation to prevent products being perceived as glamorous and attractive. If not regulated in the same manner as tobacco, again the potential to undermine tobacco control messages is a real concern |
| Other |  |  |  |

**Q7 Do you think it is important for legislation to impose some form of excise or excise-equivalent duty on nicotine e-liquid, as it does on tobacco products?**

Yes  No

Reasons/additional comments:

|  |
| --- |
| Smokefree Canterbury believes that E.cigarettes should be “cheaper” than tobacco products to encourage smokers to quit. Unlike tobacco products where tax increases have been shown to be effective in encouraging quitting, we believe that tax should not be levied on these new devices to ensure a pricing differential. We do however believe that E.Cigarettes should be zero rated rather than exempt from tax in order to provide for future regulation in the event that controls on consumption were seen as desirable [ i.e. evidence suggesting long term health effects becomes widely accepted] |

**Q8 Do you think quality control of and safety standards for e‑cigarettes are needed?**

Yes  No

Additional comments:

|  |  |  |  |
| --- | --- | --- | --- |
| **Area of concern** | **Yes** | **No** | **Reasons/additional comments** |
| Childproof containers |  |  | Child protection from harmful ingestion of products must be considered [[23]](#footnote-23)[[24]](#footnote-24) |
| Safe disposal of e‑cigarette devices and liquids |  |  | The environment should be considered and the impact of waste and risks to waterway pollution mitigated |
| Ability of device to prevent accidents |  |  | Products sold need to be safe for the user to store and use |
| Good manufacturing practice |  |  | In line with all other products on NZ markets , there needs to be manufacturing standards |
| Purity and grade of nicotine |  |  | As above |
| Registration of products |  |  | As above |
| A testing regime to confirm product safety and contents purity |  |  | Required for consumer protection [[25]](#footnote-25)[[26]](#footnote-26)[[27]](#footnote-27) |
| Maximum allowable volume of e-liquid in retail sales |  |  | Limited to personal use to prevent bulk purchase and resale to others |
| Maximum concentration of nicotine e-liquid |  |  | Expert advice should be sought on setting this. |
| Mixing of e-liquids at (or before) point of sale |  |  | If products were mixed there is the risk of invalidating product content information |
| Other |  |  |  |

**Q9 Are there any other comments you would like to make?**

|  |
| --- |
| New Zealand has an international reputation for tobacco control and one of only a handful of countries with a clearly stated “end game” for the impact of tobacco on the population. At present the use of E.Cigarettes is concerning, with water based products being available for sale here in New Zealand and nicotine based products only obtainable via overseas on line ordering. Whilst closely identified with tobacco either as an alternative or as a cessation aid, use of E.Cigarettes is ambiguous. Advertising and product packaging may be misconstrued with tobacco ; their use in public places sends mixed messages about “smokefree areas” ; they have the potential to encourage youth to experiment; act as a gateway to future tobacco use and their efficacy in cessation remains open to debate. With the long term health effects unknown, there is a need to be cautious and to ensure that they are regulated in line with tobacco products. Unless this is the case, New Zealand’s goal to be Smokefree by 2025 will be undermined. |

**Additional information on sales and use**

**Q10 Can you assist us by providing information on the sale of e‑cigarettes in New Zealand (for example, size of sales or range of products for sale on the local market)?**

|  |
| --- |
| No |

**Q11 Would the Ministry of Health’s proposed amendments have any impact on your business? If so, please quantify/explain that impact.**

|  |
| --- |
| Potentially. If cessation rates were to increase and tobacco consumption rates declined at a faster rate than at present, this would contribute to the long term population health in Canterbury and in particular amongst low income, Maori and Pacific peoples, where rates of tobacco consumption are well above national or regional averages. |

**Q12 If you are using nicotine e‑cigarettes: how long have you been using them, how often do you use them, how much do you spend on them per week and where do you buy them?**

|  |  |  |  |
| --- | --- | --- | --- |
| **How long have you been using them?** | **How often do you use them?** | **How much do you spend on them per week?** | **Where do you buy them?** |
| NA |  |  |  |

References

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**Consultation submission 223 – The Royal Australasian College of Surgeons**

12 September 2016

Ministry of Health

PO Box 5013

Wellington 6140

New Zealand

Via email: [ecigarettes@moh.govt.nz](mailto:ecigarettes@moh.govt.nz)

To whom it may concern

**Policy Options for the Regulation of Electronic Cigarettes**

The Royal Australasian College of Surgeons (RACS) is pleased to provide feedback on the *Policy Options for the Regulation of Electronic Cigarettes Consultation Document*.

RACS is the leading advocate for surgical standards, professionalism and surgical education in New Zealand and

Australia.

RACS is a not-for-profit organisation that represents more than 7000 surgeons and 1300 surgical trainees and International Medical Graduates across New Zealand and Australia. As part of its commitment to standards and professionalism, RACS strives to take informed and principled positions on issues associated with the delivery of health services. The harm caused to the health of New Zealanders by the consumption of tobacco and related products is one such issue.

The heath of all New Zealanders is important to the Royal Australasian College of Surgeons. RACS is a strong supporter of the Government’s vision for a Smokefree 2025 and is pleased to see that, although there is considerable work still to be done, progress is being made towards achieving this goal. As part of meeting this target, RACS believes that it is appropriate for the Government to implement tighter controls around the sale and supply of e-cigarettes. RACS does however wish to note that by supporting the regulation of e-cigarettes, and consequently their lawful sale in New Zealand, it is not endorsing their use in any way, either for therapeutic or recreational purposes.

As provided in the consultation document, there is currently inconclusive evidence regarding the efficacy of e-cigarettes as a means for smoking cessation. The long-term health effects of e-cigarette use are also still relatively unknown. For these reasons, RACS agrees with the Ministry that a precautionary approach to the sale and supply of e-cigarettes in New Zealand is warranted. Until the risks and any such benefits of e-cigarettes are better understood through further research, RACS is supportive of a regulatory regime which treats the devices with an appropriate degree of caution.

To this end, RACS supports the policy objectives of the consultation document and agrees that the amendment of the Smoke Free Environments Act (SFEA) to regulate all e-cigarettes in a manner similar to that by which smoked tobacco products are regulated is an appropriate way of achieving these objectives.

The consultation document notes that there are number of risks associated with maintaining the status quo. While these risks may be largely limited by amending the SFEA to prohibit the sale and supply of e-cigarettes to those under 18 years of age, the advertising of e-cigarettes, and the use of e-cigarettes in areas designated Smokefree under the SFEA, RACS believes that further controls would still be needed to limit the appeal of e-cigarettes to young people.

RACS therefore recommends that the SFEA be amended so that the following also apply to e-cigarettes:

* Prohibition on the display e-cigarettes in sales outlets.
* Prohibition on the sale of e-cigarettes via vending machines.
* Introducing and tightening regulations concerning e-cigarette ingredients, with particular regard to flavours which appeal to children and young people.
* Prohibition on free distribution and awards associated with sales of e-cigarettes.
* Prohibition on advertising and sponsorship associated with e-cigarettes.

Thank you for this opportunity to comment on the *Policy Options for the Regulation of Electronic Cigarettes Consultation Document*.

Yours sincerely,

[redacted]

**Consultation submission 224 – Individual**

|  |  |
| --- | --- |
| * + 1. **Your details**   This submission was completed by: *(name)* | [redacted] |
| Address: *(street/box number)* | [redacted] |
| *(town/city)* | [redacted] |
| Email: | [redacted] |
| Organisation *(if applicable)*: | None |
| Position *(if applicable)*: | N/A |

*(Tick one box only in this section)*

Are you submitting this:

as an individual or individuals (not on behalf of an organisation)?

on behalf of a group, organisation(s) or business?

*(You may tick more than one box in this section)*

Please indicate which sector(s) your submission represents:

Commercial interests, including ecigarette manufacturer, importer, distributor and/or retailer

Tobacco control non-government organisation

Academic/research

Cessation support service provider

Health professional

Māori provider

Pacific provider

Other sector(s) *(please specify)*:

*(You may tick more than one box in this section)*

Please indicate your ecigarette use status:

I am using nicotine ecigarettes.

I am using nicotine-free ecigarettes.

I currently smoke as well as use ecigarettes.

I am not an ecigarette user.

I have tried ecigarettes.

**Privacy**

We intend to publish all submissions on the Ministry’s website. If you are submitting as an individual, we will automatically remove your personal details and any identifiable information.

If you do not want your submission published on the Ministry’s website, please tick this box:

Do not publish this submission.

Your submission will be subject to requests made under the Official Information Act. If you want your personal details removed from your submission, please tick this box:

Remove my personal details from responses to Official Information Act requests.

If your submission contains commercially sensitive information, please tick this box:

This submission contains commercially sensitive information.

**Declaration of tobacco industry links or vested interest**

As a party to the global tobacco control treaty, the World Health Organization Framework Convention on Tobacco Control, New Zealand has an obligation to protect the development of public health policy from the vested interests of the tobacco industry. To help meet this obligation, the Ministry of Health asks all respondents to disclose whether they have any direct or indirect links to, or receive funding from, the tobacco industry. The Ministry will still carefully consider responses from the tobacco industry, and from respondents with links to the tobacco industry, alongside all other submissions. Please provide details of any tobacco company links or vested interests below.

|  |
| --- |
| None |

Please return this form by email to:

**ecigarettes**[@moh.govt.nz](mailto:tobacco@moh.govt.nz) by **5 pm, Monday 12 September 2016**.

If you are sending your submission in PDF format, please also send us the Word document.

**Consultation questions**

Although this form provides blank spaces for your answers to questions, there is no limit to the length of your responses; you should take as much space as you need to answer or comment. Feel free to enlarge the boxes or attach additional pages.

**Q1 Do you agree that the sale and supply of nicotine ecigarettes and nicotine liquids should be allowed on the local market, with appropriate controls?**

Yes  No

Reasons/additional comments:

|  |
| --- |
| Yes |

**Q2 Are there other (existing or potential) nicotine-delivery products that should be included in these controls at the same time? If so, what are they?**

Yes  No

Reasons/additional comments:

|  |
| --- |
| Don't know |

**Q3 Do you think it is important for legislation to prohibit the sale and supply of ecigarettes to young people under 18 years of age in the same way as it prohibits the sale and supply of smoked tobacco products to young people?**

Yes  No

Reasons/additional comments:

|  |
| --- |
| Yes |

**Q4 Do you think it is important for legislation to control advertising of ecigarettes in the same way as it controls advertising of smoked tobacco products?**

Yes  No

Reasons/additional comments:

|  |
| --- |
| Yes |

**Q5 Do you think it is important for the SFEA to prohibit vaping in designated smokefree areas in the same way as it prohibits smoking in such areas?**

Yes  No

Reasons/additional comments:

|  |
| --- |
| I would agree with prohibiting vaping in areas like schools or playgrounds (child focused areas), however, I think it's fine in public places like parks or streets and definitely should be allowed in restaurant or bar outdoor areas such as patios or footpath seating. |

**Q6 Do you agree that other controls in the SFEA for smoked tobacco products should apply to ecigarettes? For example:**

|  |  |  |  |
| --- | --- | --- | --- |
| **Control** | **Yes** | **No** | **Reasons/ additional comments** |
| Requirement for graphic health warnings |  |  | No because I don't feel that present evidence justifies that. A warning about possible unknown risks would be fine. |
| Prohibition on displaying products in sales outlets |  |  | Yes, I would want restrictions similar to what we have currently on tobacco. My concern is that dairies might put e-cigs next to the candy. Their display needs greater restriction in shops frequented by children (dairy) and less in a more adult shop like Cosmic Corner. |
| Restriction on use of vending machines |  |  | Definitely |
| Requirement to provide annual returns on sales data |  |  | Yes, being able to monitor sales is a good idea. |
| Requirement to disclose product content and composition |  |  | Yes and quality testing regimes/enforcement to protect purchasers. |
| Regulations concerning ingredients (eg, nicotine content and/or flavours) |  |  | Yes to ensure safe/reasonable contents. |
| Requirement for annual testing of product composition |  |  | Probably so, but presumably that would be a chemical analysis, not animal testing. |
| Prohibition on free distribution and awards associated with sales |  |  | Yes |
| Prohibition on discounting |  |  | Yes |
| Prohibition on advertising and sponsorship |  |  | Yes |
| Requirement for standardised packaging |  |  | No that would unduly limit choice and variety. |
| Other |  |  |  |

**Q7 Do you think it is important for legislation to impose some form of excise or excise-equivalent duty on nicotine e-liquid, as it does on tobacco products?**

Yes  No

Reasons/additional comments:

|  |
| --- |
| No. Tobacco products are the only product we allow where normal use is lethal. E-cigs are a much safe alternative and I would not support measures that discourage their use in place of tobacco. |

**Q8 Do you think quality control of and safety standards for ecigarettes are needed?**

Yes  No

Additional comments:

|  |  |  |  |
| --- | --- | --- | --- |
| **Area of concern** | **Yes** | **No** | **Reasons/additional comments** |
| Childproof containers |  |  | They already are reasonably childproof to use. Has this been an issue? |
| Safe disposal of ecigarette devices and liquids |  |  | Probably the biggest risk is the batteries. We need proper disposal facilities for those and don't have them so providing a national system of proper battery disposal could include e-cigs too. |
| Ability of device to prevent accidents |  |  | Is this an issue? If so, then yes, I support proper safety standards. |
| Good manufacturing practice |  |  | Yes, see above |
| Purity and grade of nicotine |  |  | Ditto |
| Registration of products |  |  | Yes, it would be part of proper regulation. |
| A testing regime to confirm product safety and contents purity |  |  | Ditto |
| Maximum allowable volume of e-liquid in retail sales |  |  | Not sure whether which would be an issue. |
| Maximum concentration of nicotine e-liquid |  |  | Within safe limits. |
| Mixing of e-liquids at (or before) point of sale |  |  | Not sure why this would be a problem. |
| Other |  |  | Proper regulation and enforcement is required for most products in order to ensure efficacy and safety, e-cigs are no different. |

**Q9 Are there any other comments you would like to make?**

|  |
| --- |
| I'm 53 and have never smoked tobacco. We were the first generation old enough to know that tobacco was a carcinogen. I cannot understand why anyone would ever start after that. However, smoking has continued and once you start, the nicotine keeps you addicted and it is very hard for many people to quit.  My partner started smoking when he was about 15 and he's tried to quit many times but hasn't been able to do it. (He also struggles with a sugar habit). I bought him some e-cigs and he hasn't looked back. They are a god-send; nicotine without all the tar and crap. He feels so much better without all that junk clogging his lungs. We realise there are probably concerns with e-cigs that will be revealed in time, but it is almost a certainty that e-cigs are far, far less hazardous than tobacco.  I support reasonable restrictions in order to ensure quality and safety and would also not want to see them promoted to non-smokers in any way. However, I would not want to see any restrictions that limits current smokers from switching to e-cigs.  This is outside the terms of reference, but I think it's a damn good idea to make it that no one born after 2000 could every legally be able to buy tobacco. This was mentioned in the UK a couple of years ago, but I haven't heard it again. This would create a black market (as prohibition always does), but would also be an increased deterrent to young people starting at all. I would also like to see the tobacco excise tax used to support smoking and other addiction treatment programs, rather than going off into the general Treasury funds. The tax on a harm should be used for harm reduction programs....carrot and stick. |

**Additional information on sales and use**

**Q10 Can you assist us by providing information on the sale of ecigarettes in New Zealand (for example, size of sales or range of products for sale on the local market)?**

|  |
| --- |
| I bought the first e-cigs that my partner tried (Kiwicigs from a Henry's liquor store). A friend who had switched to e-cigs was using them and told me that's where she got them. Because they were easy to purchase and affordable, I was able to get buy them for my partner to try.  Later, Henry's couldn't sell them any more, so my partner found other sources online. |

**Q11 Would the Ministry of Health’s proposed amendments have any impact on your business? If so, please quantify/explain that impact.**

|  |
| --- |
| Not in this sort of business. |

**Q12 If you are using nicotine ecigarettes: how long have you been using them, how often do you use them, how much do you spend on them per week and where do you buy them?**

|  |  |  |  |
| --- | --- | --- | --- |
| **How long have you been using them?** | **How often do you use them?** | **How much do you spend on them per week?** | **Where do you buy them?** |
|  |  |  |  |

**Consultation submission 225 – Individual**

12 September 2016

Ministry of Health  
PO Box 5013  
Wellington 6140

NEW ZEALAND

Dear Sir or Madam,

**POLICY OPTIONS FOR THE REGULATION OF ELECTRONIC CIGARETTES**

Thank you for the opportunity to make a submission as part of the public consultation process in relation to the New Zealand Government’s announcement that it has decided in principle to adjust the legal status of e-cigarettes, allowing their availability with appropriate controls.

As outlined in the Appendix, I have a background in Australian health policy, administration and regulation. I am not medically or scientifically qualified in relation to medicine, pharmacology and addiction. However, I have worked extensively in health policy-making in Australia, and currently consult and write on health policy, regulation and related politics, through which I developed a particular policy interest in personal health choices and harm reduction.

On the other hand, my experience in policy-making and politics is relevant to expressing considered views on the intent and practical implications of regulatory reform relating to ENDS and nicotine.

**Introduction**

The purpose of this submission is to offer policy-based insights drawn from Australian experience in relation to Electronic Nicotine Delivery Systems (ENDS), best known as e-cigarettes. It is not intended to be prescriptive or presumptuous, and does not presume that Australia is doing better than New Zealand in this space. If anything, it is lagging behind New Zealand.

New Zealand’s move to legalise access to nicotine-containing ENDS shows progressive yet practical policy thinking well ahead of Australia’s, embracing rather than rejecting a disruptive but still emerging new technology as a tobacco harm-minimisation approach to New Zealand’s ambitious Smokefree 2025 goal.

I also understand New Zealand is the first jurisdiction to make nicotine-containing ENDS legal before integrating them into a national tobacco harm reduction regulatory framework. That in itself is ground-breaking, and New Zealand is offering policy leadership to Australian and other jurisdictions as they grapple with similar decisions.

***Nicotine-containing ENDS and the harm reduction principle***

The harm reduction principle should be the principal basis of both public and population health policy and regulation.

In that regard, there is a public policy case for disruptive new technologies, like ENDS, to be given the benefit of the doubt, under appropriate conditions, rather than suppressed from public access until sufficient evidence is deemed to be accumulated. If they mitigate risk, and therefore adverse morbidity and mortality consequences, for smokers who make the switch, that is a good thing.

Even more important is making ENDS technology to smokers on the balance of evidence probabilities and not waiting, as comparable jurisdictions are, until the weight of favourable evidence is irresistible.

This is the positive regulatory attitude taken to ENDS in the United Kingdom and, to a lesser extent, the European Union. In other countries, including Australia, the approach is the reverse. From a harm reduction perspective, an ultra-cautious approach is problematic and ethically-troubling: if there are reasonable grounds to legalise new technology but it is still withheld from at-risk smokers, it effectively prolongs the exposure of those smokers to the known deadly risks of cigarette use despite the less-risk alternative being available.

While proponents of the precautionary banning approach sincerely believe that if the weight of evidences justifies liberalising access to ENDS in due course, regulatory suppressions can always be eased at some later point. The practical problem, however, is that legislation-based regulation, once in place, is actually difficult to amend or repeal in the parliamentary process, especially if it is contested.

This submission therefore presumes that the early access to ENDS approach is the more ethical and more consistent with the spirit of the harm reduction principle.

***ENDS and attaining a Smokefree 2025***

The cross-party commitment to making New Zealand smoke-free by 2025 is respected in Australia and internationally as well as in New Zealand. Indeed, the cross-party support for the Government’s move towards legalising nicotine-containing ENDS to achieve the goals of Smokefree 2025 is commendable, and gives sensible policy change near unstoppable momentum.

Given current rates of smoking in the whole New Zealand population, and especially the very high rates among Maori and Pacific Islander communities, it is clear reducing smoking rates to zero in a decade is unrealistic unless drastic and costly measures are taken with no guarantees of success.

On the other hand, legalising and sensibly regulating access to ENDS is, as the Government and others have suggested, a potential disrupter that makes Smokefree 2025 potentially more than simply an aspirational goal. Regulated prudently, will offer New Zealand smokers a safer, more affordable and more socially-acceptable alternative to traditional cigarettes and their deadly chemical cocktail, and if taken up on a wide scale, offer the possibility of making big inroads on, especially, Maori and Pacific Islander populations smoking rates.

***Content of this submission***

In suggesting issues for consideration in framing enabling legislation and regulations to implement this policy change, this paper offers insights and suggestions in the following areas:

* Nicotine-containing ENDS as a legitimate tobacco harm reduction mechanism.
* Whether access to nicotine-containing ENDS should be general or restricted, including their sale, packaging and marketing.
* The appropriate fiscal treatment of ENDS products; and
* Regulating vaping in public and social spaces.

This paper is not intended to be prescriptive or exhaustive, and does not propose any specific amendments to the *Smokefree Environments Act 1990* and the *Smokefree Environments Regulations 2007*.

Rather, it offers comments and insights from a public policy perspective drawing on Australian experience that may assist the framing of new related New Zealand legislation.

While this paper draws on the scientific and policy debate over ENDS, it does not claim to be based on any expertise as a scientist, clinician or researcher. While they inform policy and politics, and can be cited in support of policy positions, opinions on scientific matters must be left to scientific experts in the field.

**Presumptions of this submission**

Based on the emerging expert analysis, in turn based on related scientific and clinical studies – especially the scientific reports by Public Health England (2015) and Royal College of Physicians (2016) – the policy commentary in this submission is predicated on the following presumptions:

* Nicotine, separate from the chemicals and gases of tobacco smoke, is relatively safe to users in low-level doses ingested in moderation.
* ENDS vaping solutions, or heat-not-burn tobacco products, contain a range of chemical substances ingested in the vaping process. Therefore, ENDS products themselves are not risk-free.
* ENDS nevertheless are very significantly safer than combustible tobacco for direct users people passively exposed to their vapour.
* In respect to “dual use” of cigarettes and ENDS, there is a *prima facie* net health benefit to dual users if their cigarette consumption is reduced significantly in favour of ENDS.
* International emerging evidence indicates the vaping cohort almost entirely consists of ex-smokers and dual users and that, beyond youthful experimentation with vaping use among minors is also minimal; and
* Emerging evidence indicates the danger of passive exposure to ENDS vapour is very low, and possibly negligible. Therefore, the major problem with ENDS vapour is it can be an unsociable environmental nuisance rather than a serious danger to non-vapers.

***Relevant current Australian development***

As indicated above, this submission approaches the issues from a public policy and not scientific expertise.

It could, however, be noted that the Australian Therapeutic Goods Administration (TGA) currently is considering an application by a non-profit group, the New Nicotine Alliance Australia, to redefine the access conditions to nicotine under the Schedule 7 of the Australian Poisons Standard to permit ENDS vapour solutions (“e-liquids”) with a nicotine content of up to 3.6 per cent.

Forty Australian, New Zealand and international tobacco control and harm reduction experts have made a joint submission in support of that application, which was released publicly on 7 September 2016. A link to the joint submission is at Note 1[[28]](#footnote-28).

Beyond the calibre and professional standing of the comprehensive group of signatories to that submission, it provides an up-to-date evidence-based case for nicotine-containing e-liquids, which is also relevant to considering the legislative and regulatory approach to ENDS and nicotine in New Zealand.

Examining the current Australian TGA nicotine application process, and related public consultation submissions, may assist the Ministry of Health in considering New Zealand specifications for nicotine-containing ENDS.

**Part 1: Tobacco harm reduction is best served by better access to**

**nicotine-containing ENDS**

If public health policy is about reducing harm to individuals and the community, surely it should welcome and fast-track new methods and technologies meeting this important social goal.

In its intention to legalise nicotine-containing ENDS, the New Zealand government recognises this, and that is welcomed by many of those supporting more effective tobacco harm reduction in New Zealand, Australia and more widely.

There are three public policy principles highly relevant, but often disregarded in the heat of controversy, to the debate over tobacco control and ENDS:

* Most individuals with access to *accurate and reliable* information about health risks are able to make informed judgments about the health and other implications of pursuing risky behaviours such as smoking.
* Public policy should concentrate on reducing risk of great harm wherever possible, as early as defensibly possible, and always on the basis of sound objective evidence.
* When new technology that can significant reduce risks and harm becomes available, it should be embraced, not prohibited, if the balance of available evidence fails to prove it is as high-risk as the activity it is intended to replace.

Instead of taking an over-cautious approach as are a number of other jurisdictions, including Australia, New Zealand is embracing these principles as new and flexible policy tools that can make achieving smoke-free goals more rather than less likely.

The New Zealand government effectively is accepting that the steady accumulation of scientific evidence is sufficient to indicate they are relatively and significantly safer to direct and passive users than combustible cigarettes, and should be legally available for smokers determined to quit or reduce their smoking. Moreover, it is doing so with broad acceptance from across the political spectrum, as indicated by the August 2016 announcement of these consultations.

This is why New Zealand’s proposed move on ENDS is highly important and ground-breaking harm reduction policy, and is welcome way beyond New Zealand itself.

***Adopting the UK/EU approach***

Unlike in Australia, the British government and public health establishment have embraced these principles and got behind ENDS as aids to both helping smokers reduce or quit cigarette consumption, and to mitigate tobacco-related harm.

Beyond the August 2015 Public Health England evidence review that concluded e-cigarette use is up to 95 per cent safer than for combustible tobacco products, and the April 2016 Royal College of Physicians report giving effective clinical endorsement of the PHE conclusions, ENDS are being advocated and recommended by the National Health Service in England, and increasingly NHS Scotland, an integral part of funded smoking cessation services.

Indeed, in January 2016 it was announced that the UK Medicines and Healthcare Products Regulation Agency has licensed a vaping product, thereby making it available to be prescribed as a smoking cessation aid through the NHS[[29]](#footnote-29).

Former Prime Minister David Cameron declared his personal endorsement of the British harm reduction approach in Parliament in 2015:

We need to be guided by the experts, and we should look at the report from Public Health England, but it is promising that over one million people are estimated to have used e-cigarettes to help them quit or have replaced smoking with e-cigarettes completely. We should be making it clear that this a very legitimate path for many people to improve their health and therefore the health of the nation[[30]](#footnote-30).

In the European Union, a new Tobacco Products Directive (TPD) came into force in May this year, including regulated access to nicotine-containing ENDS. While the TPD has attracted deserved criticism from vaping advocates for being too restrictive and bureaucratic, it offers cross-EU regulatory consistency for providers and users, and accepts nicotine-containing ENDS as legal products.

Crucially from the harm reduction perspective, therefore, the TPD does not prohibit e-cigarettes containing nicotine, but instead regulate their accessibility, quality and safety. While it is not as liberal as UK regulatory and policy thinking, and has erred on the side of over-regulation, it nevertheless is heading in the right harm reduction direction.

***Adopting potentially harm-reducing new technologies is ethical***

No-one claims ENDS are absolutely free of risk. But the extent of risk needs to be kept in perspective. It increasingly is clear that they are far less dangerous than cigarettes, yet many policy-makers and influential public health figures and organisations in New Zealand, Australia and elsewhere remain to be persuaded.

The medical profession and public health experts advocate the principle of *primum non nocere*: first do no harm. In public health circles it is also known as the “precautionary principle”. Opponents of nicotine-containing ENDS are well-intentioned in regard to preventing the re-popularising of smoking, and preventing possible exposure to alternative health risks.

The policy problem this creates is that, by applying the precautionary principle too rigidly, it deprives smokers of lawful access to nicotine delivery systems with the potential both to reduce risks of direct and passive exposure and improve smokers’ health status. In so doing, they inadvertently are potentially doing harm to New Zealanders and others who still smoke, notwithstanding the aggressive turning of policy, regulatory and excise screws in recent years.

In other words, stopping access to e-cigarettes exposes people to ongoing risks that we all say we want to suppress. People who may have quit or reduced smoking by vaping won’t have a convenient alternative source of nicotine delivery to cigarettes, and therefore will continue to be exposed to tobacco smoke and its deadly chemical cocktail.

And, of course, the financial and social costs to individuals and the state of treating the consequence of avoidable smoking-related death and illness will continue.

It is ethical to mitigate or avoid such consequences by relatively early adoption of new innovative technologies that are likely to do much greater good than harm. Each life saved, and each person’s health outcomes improved through access to harm-reducing choices, justifies the policy decisions permitting those choices.

***The New Zealand Government is on solid policy ground in legalising ENDS***

While it may not appear so from media coverage and academic commentary, Australian and New Zealand expert opinion is not solidly in favour of banning ENDS until there is no doubt. For example, In a recent article in the scientific journal *Addiction*, Australian harm reduction experts Wayne Hall, Coral Gartner and Cynthia Forlini argue that prohibiting smokers’ access to ENDS until there is sufficient evidence to be definitive is increasing harm, not reducing it[[31]](#footnote-31).

Nevertheless, harm reduction views of the likes of Gartner, Hall and Forlini, and pro-ENDS colleagues in New Zealand including Drs Marewa Glover and Murray Laugesen, are still opposed by some high-profile figures in the public health and clinical communities, and their research and pro-ENDS advocacy is shouted down by those opponents. Often *ad hominem* campaigns against ENDS expert advocates, and indeed vapers themselves, has not helped policy-makers and the public get a good understanding of the issues, or the opportunities in taking tobacco harm reduction down new paths unimagined less than 20 years ago.

Although it will be criticised by some tobacco control advocates, the New Zealand government has made the decision to regulate. It is now a matter of how not if. The Government is on solid ground.

***Legalising nicotine-containing ENDS is ethically and politically justified***

Prevailing policy mindsets that ignore evidence-based alternative views and deny smokers access to ENDS “until sufficient evidence is in”, should trouble policy-makers. If people lose their health or their lives because policy-makers and regulators are too reluctant to embrace ENDS as harm-mitigating opportunities, and at least consider giving ENDS the interim benefit of the doubt as evidence continues to accumulate, public policy is contradicting itself by tolerating increased harm to citizens when that harm can be minimised by appropriate policy and regulation.

Given these considerations, and the Government’s declared goal of doing everything possible to make New Zealand smoke-free by 2025, becoming the first Western jurisdiction to not just regulate but legalise nicotine-containing ENDS is not only ground-breaking, but sound and ethical policy.

Governments and political parties should always be placing the best interests of citizens ahead of other considerations. Legalising nicotine-containing ENDS, thereby gives smokers legitimate harm-reducing choices, is politically defensible, and is potentially popular with both smokers, vapers and their families. New Zealand’s cross-party consensus on this move indicates that this is understood in the Parliament itself, which in itself is very welcome, and is a positive example to Australian and other jurisdictions.

**Part 2: Access to ENDS: therapeutic or general?**

As the Consultation Paper implies, if nicotine-containing ENDS are to be legalised in New Zealand, there are two access options for policy-makers:

* Open access to nicotine-containing ENDS as a commercially-available retail product to compete with combustible cigarettes at usual points of sale; or
* Restricted access to nicotine-containing ENDS, individually or as a therapeutic product category, as Medsafe-approved smoking cessation aids, with limited availability on prescription through doctors and pharmacists.

On balance, open access is the way to go, and the Government’s willingness to doing so is welcome.

The reason is simple. Instead of over-reacting to fears about “renormalising” smoking, if we are truly serious about normalising harm reduction from tobacco and cigarettes, it must be ensured that ENDS, both nicotine and nicotine-free, are unequivocally legal and commercially-available under appropriate regulation, and affordable to adult New Zealanders.

If nicotine-containing ENDS are pigeon-holed as medicinal or therapeutic cessation aids available only on prescription or through pharmacy-only access, comparable to established cessation aids like nicotine patches and chewing gum, they won’t be able to provide direct competition in the market-place with combustible tobacco cigarettes. They may also be spurned by smokers who refuse to see themselves as needing “treatment”. That largely would defeat the purpose of legalisation.

It therefore would be far better to ensure ENDS are readily available to smokers and vapers as affordably-priced retail products, positioned to take significant market share off deadly cigarettes. If this means using e-cigarettes become accepted as a “normal” behaviour in New Zealand social culture while smoking is further marginalised, that should be seen as a net positive, not an unacceptable negative.

It would also send a powerful message to other countries that access to ENDS can be broadened practically but responsibly with sensible, pragmatic policy and political leadership.

***Conditions of sale and access to ENDS***

ENDS containing nicotine should be legal and readily available but, contrary to the views of some in the vaping community who resent any regulation of their activity, they must not be left unregulated.

While some hard-core vapers see any regulation as intruding on personal freedoms and behaviours, prudent public policy can and should impose reasonable conditions on access, sale and marketing.

While the evidence of vaping as a gateway to smoking are hotly contested, from a policy-making perspective it is also reasonable for Government to regulate carefully to minimise any such risks, while allowing ENDS to be a more attractive and contestable alternative to current smokers than combustible cigarettes.

Nevertheless, any such regulation should be lighter-touch rather than heavy-handed to ensure the widest possible reach of ENDS as an alternative to smoking. Wherever possible, social norms and common sense should be left to govern access to and the use of ENDS outside the home, provided the interests of non-smokers and non-vapers are understood and respected by both regulators and users.

***Sale of ENDS to minors***

Whether containing nicotine or not, ENDS are products for adults. They are not toys for children, and always should be used responsibly. When containing nicotine, they deliver a substance that creates pleasurable sensations and can and does lead to addiction.

If general sale access to them is legalised for adults, they therefore must not be sold, distributed or marketed to persons under the age of 18.

Opponents of ENDS often cite certain flavours of “e-liquids” making them attractive to young people and potentially a gateway to smoking. If banning the sale of ENDS to minors – including vendor sanctions and penalties – is applied sensibly, however, regulatory specifications about flavouring of ENDS “e-liquids” that appeal to children should not be an issue, even if inevitably some determined minors get around the prohibition.

Adults themselves can also be educated by information campaigns about the importance treating ENDS as products suitable for adults only.

This is the one way in which e-cigarettes must be treated the same as combustible tobacco cigarettes. Besides making access to ENDS by minor more difficult, it reassures the wider public that the general sale of ENDS is being permitted only on a responsible basis.

***Importation of ENDS products into New Zealand***

New Zealand and Australia currently have the same problem. In both countries, nicotine-containing ENDS generally are illegal.

This means determined vapers, as otherwise law-abiding citizens, use the Internet and mail order to import vaping products in defiance of these bans, and Government’s ability to interdict and suppress this trade is limited to the point of being useless.

It allows for a black market of ENDS and vaping accessories that both deprives governments of revenue and risks citizens importing items of inferior manufacture, non-compliant with any product safety and tamper-proofing standards and having nicotine contents that are highly risky and dangerous.

Admittedly the problem is small, as few smokers and vapers are determined enough to pursue their habit in this way. Nevertheless, legalising the trade is appropriate.

If nicotine-containing ENDS are legalised, New Zealand vapers would not be placed in the position of breaking the law in their determination to access a product they find both beneficial and pleasurable.

From the Government’s perspective, curtailing the black market trade in vaping products the New Zealand government can at least supervise the trade, but benefit from the taxation and excise revenue that it may apply (further discussed below). At any rate, convenient onshore access would end the need to go offshore for vaping supplies as these products would be readily available without the inconvenience of personal importation by users.

***Points of sale, promotion and marketing***

To make the vaping alternative as attractive as possible, nicotine-containing ENDS, and e-liquid cartridges, should compete with cigarettes at any point where the latter can lawfully be sold.

In public policy terms, it makes no sense to legalise ENDS yet regulate access to them more severely than cigarettes and other deadly combustible tobacco products.

While they impose heavy restrictions on where tobacco may be smoked, and on their packaging and marketing, the *Smokefree Environments Act* and *Regulations* do not limit where cigarettes and other tobacco products may be sold, and therefore New Zealanders can buy tobacco products in convenience stores and dairies.

Some, including Professor Nick Wilson et al of the University of Otago, are suggesting that the impending legislation should restrict access to ENDS to licensed pharmacies and/or specialised “vape shops”[[32]](#footnote-32). While well-intentioned, and partly a reaction to the general availability of cigarettes, such proposed restrictions are short-sighted.

Where ENDS could be sold in a legalised market is a separate issue to the sale of cigarettes. Until any such time as tobacco points-of-sale themselves are licensed, however, ENDS and accessories should be able to be sold wherever cigarettes may lawfully be sold.

The important policy issue is that ENDS need to be available to smokers as a conveniently-accessible and competitive alternative to cigarettes and other combustible tobacco products, especially in Maori and Pacific Islander communities with high smoking rates. If access is restricted to therapeutic channels only, that gives cigarettes the very edge and ongoing convenience and attractiveness that policy-makers are seeking to curtail.

This does not preclude national and local government making sensible targeted regulations for marketing, point-of-sale displays and over-the-counter access to ENDS. But it recognises that ENDS being a key means to progressing towards a smoke-free New Zealand means making those products as convenient for smokers, and directly competitive with cigarettes, as possible.

***Product standards***

The product safety concerns outlined on page 12 of the Consultation Paper largely are valid. Legalising nicotine-containing ENDS enables the Government to set and monitor appropriate product standards if it deems this appropriate.

If so, and as in the UK and Europe, New Zealand should implement practical but stringent product safety and quality standards for e-cigarettes and similar products. This includes manufacturing standards, especially in ensuring that cartridges of “e-juice” are not tampered with (especially by children), and ensuring that vapers do not risk serious injury by mixing their own potentially dangerous nicotine doses.

Preventing backyard operators from manufacturing shoddy ENDS devices, e-juice and e-juice cartridges is also an important consumer protection consideration.

***Packaging of ENDS***

As in other aspects of access, legalised ENDS need to be seen by smokers as a more attractive alternative to cigarettes and other combustible tobacco products.

In terms of packaging ENDS in an open market, there will be considerable pressure to package them identically to cigarettes under New Zealand’s impending plain packaging legislation with graphic health warnings. This effectively would do two unhelpful things:

* Create a public impression that ENDS are no different to cigarettes; and
* Make the promotion of ENDS as a harm-reducing alternative to cigarettes much more difficult.

Moreover, the sort of graphic health warnings that will be required on New Zealand tobacco would defeat the purpose of legalising the products – especially as the presumption of legalisation is that on the balance of evidence they are significantly less risky than cigarettes.

Instead of extending plain packaging to ENDS, it therefore is suggested the following principles of be considered for New Zealand ENDS packaging regulation:

* Distinctive product and brand packaging is permitted.
* Packaging presentation and messaging must not be child-friendly or child-targeted.
* Tamper-proof wrapping for e-liquid containers, including child-proof lids fitted to containers.
* Nicotine content in terms of percentage of solution, dose per unit and doses per pack or container is clearly displayed on labels and/or other packaging; and
* Other propellants and ingredients, and percentage of ingredients per 100 millilitres, also are listed.

This information could also be made available to consumers in product information available at points of sale.

***Marketing and advertising of ENDS***

As a starting point, the sale of legalised nicotine-containing ENDS and accessories would be subject to consumer law, and therefore sellers must comply with the *Fair Trading Act 1986* and the *Consumer Guarantees Act 1993*. That includes warranties given by manufacturers and retailers, and their not making unwarranted claims in relation to the quality, safety and efficacy of their products.

In respect of the advertising or promotion of ENDS products, it is also presumed the Advertising Standards Authority’s new *Therapeutic and Health Advertising Code*, effective from 1 September 2016, will also apply to legalised ENDS products[[33]](#footnote-33).

The extent to which product category-specific regulation is necessary beyond standard consumer and advertising requirements will need to be resolved before nicotine-containing ENDS legalisation can be implemented. This would need to consider consumer information and awareness issues, including:

* Retailers of ENDS should not be precluded – as some Australian regulation does[[34]](#footnote-34) – from assisting new and continuing vapers making a choice of product, including the ability to try and compare different vaping products and e-liquids; and
* Point-of-sale marketing, including in supermarkets, general stores and dairies, should be minimal and unobtrusive, but still sufficient to alert and interest consumers to the vaping choice over cigarettes.

Advertising legal ENDS products in print and electronic media also should not be banned specifically, provided that they do not breach New Zealand consumer law of the *Therapeutic and Health Advertising Code*.

In terms of guidance from other jurisdictions, United Kingdom experience is a useful point of reference. Until the EU Tobacco Products Directive curtailed permissible advertising in May 2016[[35]](#footnote-35), it was possible in the UK to advertise tobacco-containing vaping products generally, including on television in defined adult viewing hours. It should also be noted that the precise application of the TPD advertising restrictions is still being clarified in the UK, notwithstanding the Brexit referendum outcome.

The UK Committees of Advertising Practice, which write and administer British advertising codes has, however, have issued useful guidance to advertisers on promoting e-cigarettes and related matters[[36]](#footnote-36).

***Product warnings***

In the public interest, the sale and display of appropriate advisory statements and product warnings on nicotine-containing ENDS should be required.

It is appropriate to alert users that ENDS are a new technology, and their long-term risks are still unknown: there is a “use at your own risk” element to using ENDS.

Product warnings, however, should be appropriate and not overstate potential risks from use. Graphic health warnings, as used on Australian plain packaging for cigarettes and to be introduced in New Zealand shortly would be inappropriate: graphic claims about impacts on health must not be made without substantiated clinical evidence to support them.

Given this, it would be appropriate to consider specific product warnings such as:

* Nicotine is addictive.
* There may be long-term risks from use.
* There is uncertainty about the long-term effects of vaping on women and foetuses.

Such warnings, however, should be determined by Government with expert clinical advice, and should not place manufacturers and retailers in a double jeopardy under consumer law and health regulation.

***Regulation should anticipate future innovations***

In the decade or so since ENDS first became a commercial success, the technology has evolved at a rapid rate. The Consultation Paper highlights how ENDS vaporising technology has already gone through several product generations, and that rapid evolution is ongoing.

Indeed, the Consultation Paper, and general public discussion of ENDS, focus entirely on vaporising devices as they are known now. It overlooks, for example, the recent emergence of viable “heat-not-burn” ENDS products, in which packed tobacco is heated but not ignited, giving off inhalable nicotine-containing vapour without the full toxicity of burned tobacco smoke.

Policy and regulation therefore need to keep pace with rapid technological progress. The risk is, having taken a highly-progressive step in legalising nicotine-containing ENDS, future technological and product innovation may be shut out by legislation and regulation lagging well behind.

In the best interests of New Zealand smokers seeking to reduce or quit their smoking habit, the new regulatory framework needs to anticipate and integrate new ENDS innovations as they are developed and proven fit for market.

Indeed, a lack of future-proofed regulation already applies to nicotine-containing ENDS in New Zealand and Australia. In both countries far more harmful combustible tobacco products are lawfully available for general sale, while new and disruptive nicotine delivery alternatives are not, simply because poisons regulations covering nicotine were drawn up when ENDS-like products were still many years in the future.

**Part 3: Fiscal treatment of nicotine-containing ENDS**

If nicotine-containing ENDS are legal, then they become taxable.

That is a good thing in public policy terms. Not only does it reflect the legitimate legal status of ENDS products, it enables the New Zealand government and community to receive revenue from their sale that can either contribute to consolidated revenue, or be hypothecated to the health budget or other specific public purposes. It would also end any tax and excise avoidance from the trade in illegally-imported ENDS products.

Effectively, Government has two revenue options for ENDS:

* GST only as for most retail goods; and
* GST plus excise.

***GST only for ENDS***

At minimum, legalised nicotine-containing ENDS would be liable to Goods and Services Tax like any other legally-available good or service. It could be assumed that the current small but active black market in these products would die away as they become available conveniently in New Zealand, so most sales would be brought in to the GST net.

Some argue the taxation treatment of nicotine-containing ENDS should attract minimal fiscal treatment as a legally-available retail product. In their view, only GST should apply to ENDS on that basis. Furthermore, there is a strong policy argument for GST-only fiscal treatment to ensure ENDS are affordable to disadvantaged groups including Maori and Pacific Islander smokers, and the welfare-dependent: GST-only fiscal treatment would make ENDS available to consumers at the cheapest possible price while still providing revenue to Government.

Some would also argue that ENDS should be treated as GST zero-rated products because of their role as smoking cessation aids. If general available is the desired policy goal, however, ENDS and accessories should be treated as general rather than therapeutic goods. This suggests zero-rating actually would not be appropriate.

From Government’s perspective, however, there is also the Treasury issue of protecting the revenue. If smoking rates fall significantly as a result of strong ENDS take-up, the GST collected from ENDS sales almost certainly would fall well short of the GST plus excise revenue from foregone cigarette and other tobacco product sales.

This suggests that a GST-only approach may not be the most realistic way of taxing ENDS, nor would it likely be acceptable to the wider New Zealand public in terms of foregone revenue.

***Excise on nicotine-containing ENDS***

Alternately, the view can be taken that nicotine is derived from tobacco. Tobacco is excisable. Therefore, nicotine-containing ENDS arguably also should be excisable.

Reducing smoking rates reduces tax and excise collected from cigarettes and other combustible tobacco products sold, and deprives the Budget of that revenue. Some of that revenue loss needs to be offset.

If GST plus excise is applied to nicotine-containing ENDS, however, the rates of excise would need to be sufficiently different to cigarettes and other combustible tobacco products. When protecting the revenue is also considered, a GST plus excise approach to nicotine-containing ENDS than cigarettes may be a reasonable balance of interests, provided that ENDS are a considerably more affordable after-tax alternative to cigarettes.

If there is to be a positive incentive for smokers to make the switch to ENDS, a favourable differential excise compared to traditional cigarettes is essential. Less affluent smokers must not be priced out of the ENDS choice by tax and excise settings being too high.

***Framing a differential excise for ENDS***

Given that New Zealand, like Australia, is applying strong fiscal hikes to tobacco excise, with both countries in their current Budgets extending tobacco excise increases well above inflation year-on-year until 2020, it is essential that ENDS are not treated identically to cigarettes for excise purposes.

“Penalty” excise increases, especially those announced recently in the New Zealand Government’s 2016 Budget, should not apply to ENDS. If they do carry excise, as they should, it is imperative that the rate be lower than for combustible tobacco products for the same reason.

The appropriate tax and excise treatment for ENDS is, however, a second-order issue behind their full legalisation. Nevertheless, an excise value could be placed on, for example:

* The nicotine content per 100 millilitres of nicotine-containing e-liquid; or
* The tobacco weight of a heat-not-burn ENDS product.

How ENDS are taxed, and on what terms, needs to be part of a careful and comprehensive conversation beyond these consultations between the New Zealand government, wholesalers, retailers, the public health community and the general public, as part of preparing for the general sale of ENDS.

An interim decision to, say, fiscally treat ENDS identically to cigarettes would, once in place, be hard to wind back. It therefore is easier and more prudent to sort out fiscal issues before implementing a new legal regime for ENDS comes into effect, and the commencement date for any proposed legislation could take this into account.

***Fiscal treatment must send appropriate price signals***

In effect, the public interest indicates the fiscal treatment of nicotine-containing ENDS should be incentivising good policy outcomes, not punitive to those it is intended to help. It therefore should give positive motivations to smokers to shift to the lower-risk alternative for their nicotine consumption.

If an analogy is needed, the relationship should be like that for the dual sale of petrol and Liquid Petroleum Gas.

Given that the use of LPG is more environmental-friendly than petrol, and consumed by car engines at different rates, New Zealand excise per litre (10.4 cents) is one-sixth the excise per litre on petrol (67.1 cents)[[37]](#footnote-37). The differential excise treatment of LPG to petrol, therefore, gives a positive incentive for motorists to convert their vehicles to LPG. Not only do they benefit, but so do other road users, the environment and the wider community.

It is a win-win, just as shifting smokers from cigarettes to ENDS can be a win-win.

**Part 3: Use of ENDS in public and social places**

Like its counterparts in Australia, the *Smokefree Environments Act 1990* places major restrictions on where people may smoke in public and social settings. Some such legislated restrictions are perhaps excessive and difficult to enforce. Their broad intent, however, of disincentivising smokers, making smoking an anti-social act, and protecting third parties from passive exposure to tobacco smoke, are appropriate policy goals.

The Act currently does not place comparable restrictions of vaping in public and social places. In contrast, Australian legislation, including that passed in September 2016 in Victoria[[38]](#footnote-38) is extending the reach of these restrictions very widely, but also are treating vaping identically to smoking for this purpose.

If, however, it is accepted that vaping has significantly lower health risks than smoking for direct users, and very low if negligible health risks from passive exposure, simply to replicate restrictions on where people can smoke to ENDS is excessive regulation. It negates the incentive to switch.

To help make vaping as competitive an alternative to smoking as possible, it is desirable that, if nicotine-containing ENDS are legalised, that the *Smokefree Environments Act* is not amended to replicate place-of-smoking restrictions.

***Let social norms inform regulating vaping in public and social venues***

Vaping is not just a harm reduction option. Compared to other smoking cessation aids, such as nicotine patches and gum, it is a pleasurable and sociable activity. It gives a nicotine hit in a manner that mimics smoking behaviours. Some vapers say that it also more than substitutes for the pleasurable stimulation of holding a cigarette, and still “having something to do with your hands”.

For many, smoking itself is a social activity, pursued and enjoyed in social situations. In seeking to suppress the prevalence of smoking, public health experts and regulators too often neglect this social side of the smoking experience.

On the presumption that passive exposure to ENDS vapour is low-risk to others, decisions on where people can vape could be left to “normative approval”: letting people, workplaces, social venues and communities determine consultatively what is appropriate for them.

That means respecting decisions not to permit vaping as well as those to allow it.

Under a normative approval model, vaping could be permitted openly, or in designated zones in:

* Pubs and clubs.
* Restaurants and cafes.
* Public open spaces; and
* Workplaces.

Vaping would be permissible at these venues at the discretion of proprietors, employers or managing authorities such as a local council, sporting ground trust or building management, provided it is done with the consent of employees and patrons. In these places and venues, those responsible could be expected to provide designated spacing zones and set internal rules for appropriate vaping practices, ensuring third parties who want vapour-free environments still have them.

The proprietor or responsible authority for the locality or venue could then be made accountable under national or local laws for any vaping on their premises, and for complying with any venue restrictions, product or public health warnings or advisories that are required by national or local laws.

In return for concessions like these, however, vapers must be considerate and mindful of others. They cannot expect to vape anywhere, anytime, treating any restriction on their vaping as intolerable restrictions on the personal rights and liberties. In other words, normative regulation of public and social vaping must involve give and take, respect for others and, above all, common sense all round.

***Leave vaping venue regulation to local authorities?***

Instead of national regulation of vaping venues under the *Smokefree Environments Act*, an alternative is to leave regulatory responsibility for public and social vaping with local authorities.

This approach was partly advocated by the National Smokefree Working Group in their August 2016 submission to these public consultations[[39]](#footnote-39). The Working Group proposed that regulating smokefree venues and sites not covered by the *Smokefree Environments Act* be left to local authorities, subject to designate vaping areas being identified clearly and after public consultation.

While not optimal in its simply accepting the Act’s existing venue restrictions should apply automatically to vaping, the Working Group’s recommended approach is a possible compromise as it assumes that local normative rule-making could apply. The outcomes of these consultations may well give an indication to what the New Zealand public, as well as experts, thinks the most appropriate form and level of venue regulation.

The downside of a localised regulatory approach is, if course, the fragmentation and inevitable inconsistency from council to council. For that reason, it would be preferable that national leadership in this regard be maintained.

**Conclusion**

Legalising nicotine-containing ENDS in New Zealand would, from a public policy perspective:

* Be a responsible and ethical policy approach to tobacco harm reduction consistent with the goals and principles of Smokefree 2025.
* Accept that nicotine-containing ENDS pose much lower, and arguably minimal, health risks compared to combustible tobacco, thereby offering a lawful and safer alternative to ingesting safe and modest quantities of nicotine than smoking.
* Give vapers, and smokers seeking to reduce or eliminate their cigarette habit, legalised access to ENDS products and nicotine-containing vaporising solutions without invoking personal importation rules or resorting to black or grey markets (especially Internet mail order) to obtain supplies.
* Facilitate a carefully-regulated New Zealand retail market for ENDS products and nicotine-containing solutions that can operate in direct competition to deadlier combustible tobacco products, especially cigarettes.
* Allow the regulation of ENDS products for safety and quality, including childproofing.
* Virtually eliminate New Zealand’s illicit market for nicotine-containing ENDS.
* Allow Government to determine the appropriate fiscal treatment of nicotine-containing ENDS solutions, and receive GST and possibly excise revenue from their lawful sale; and, above all
* Potentially make big further inroads into the prevalence of tobacco smoking in New Zealand’s general, Maori and Pacific Islander populations, further reduce smoking-related mortality and morbidity, and mitigate related economic and social costs to the community and taxpayers.

The value of ENDS as legitimate smoking-cessation choices for those wanting to enjoy the sensations of ingesting modest quantities of nicotine, and as far lower-risk alternatives to combustible tobacco and its deadly by-products, remains a highly-contested scientific and regulatory debate around the world.

In making this policy shift, however, New Zealand is showing a way ahead. It is demonstrating that promoting harm reduction, adopting practical regulator measures and applying common sense do not have to be mutually exclusive. The wider importance of this example cannot be understated.

A lighter-touch but effective regulatory regime for ENDS, including nicotine-containing ENDS, is sound and enlightened public policy. The public health policy community worldwide will be following New Zealand’s progress, and hopefully Australia and other countries will before too long follow New Zealand’s bold yet practical harm reduction leadership.

I would be very happy to discuss this submission if requested.

Yours faithfully,

[redacted]

[redacted]

**APPENDIX 1**

**About the author –** [redacted]

[redacted]

**Consultation submission 226 – Stroke Foundation of New Zealand**

|  |  |
| --- | --- |
| **Your details**  This submission was completed by: *(name)* | [redacted] |
| Address: *(street/box number)* | [redacted] |
| *(town/city)* | [redacted] |
| Email: | [redacted] |
| Organisation *(if applicable)*: | Stroke Foundation of New Zealand |
| Position *(if applicable)*: | [redacted] |

*(Tick one box only in this section)*

Are you submitting this:

as an individual or individuals (not on behalf of an organisation)?

on behalf of a group, organisation(s) or business?

*(You may tick more than one box in this section)*

Please indicate which sector(s) your submission represents:

Commercial interests, including e‑cigarette manufacturer, importer, distributor and/or retailer

Tobacco control non-government organisation

Academic/research

Cessation support service provider

Health professional

Māori provider

Pacific provider

Other sector(s) *(please specify)*:

*(You may tick more than one box in this section)*

Please indicate your e‑cigarette use status:

I am using nicotine e‑cigarettes.

I am using nicotine-free e‑cigarettes.

I currently smoke as well as use e‑cigarettes.

I am not an e‑cigarette user.

I have tried e‑cigarettes.

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**Declaration of tobacco industry links or vested interest**

As a party to the global tobacco control treaty, the World Health Organization Framework Convention on Tobacco Control, New Zealand has an obligation to protect the development of public health policy from the vested interests of the tobacco industry. To help meet this obligation, the Ministry of Health asks all respondents to disclose whether they have any direct or indirect links to, or receive funding from, the tobacco industry. The Ministry will still carefully consider responses from the tobacco industry, and from respondents with links to the tobacco industry, alongside all other submissions. Please provide details of any tobacco company links or vested interests below.

|  |
| --- |
| The Stroke Foundation of NZ has no direct or indirect links to, does not receive funding from, nor has any vested interests in the tobacco industry. |

Please return this form by email to:

**ecigarettes**[**@moh.govt.nz**](mailto:tobacco@moh.govt.nz)by**5 pm, Monday 12 September 2016**.

If you are sending your submission in PDF format, please also send us the Word document.

**Consultation questions**

Although this form provides blank spaces for your answers to questions, there is no limit to the length of your responses; you should take as much space as you need to answer or comment. Feel free to enlarge the boxes or attach additional pages.

**Q1 Do you agree that the sale and supply of nicotine e‑cigarettes and nicotine liquids should be allowed on the local market, with appropriate controls?**

Yes  No

Reasons/additional comments:

|  |
| --- |
| We cautiously support the sale and supply of nicotine containing e-cigarettes (N-ECs) and nicotine liquids on a restricted basis for the intention of increasing cessation for the following reasons:   1. Our support is cautious given the evidence is still unclear on the overall risks and benefits associated with N-ECs (1). However the Ministry of Health has signalled that a decision has been made to introduce ECs into New Zealand, therefore our intention is to inform the best mix of legislation and regulation to maximise benefit and minimise harm(2). 2. Although the sale of N-ECs is currently prohibited within New Zealand, they have been widely available for some time in NZ (through importation by users and illegal sales) (1). We believe the introduction of legislation and regulations to control this will help to maximise benefits and minimise harms e.g. through the possible gateway effect N-ECs may have among non-smokers, particularly youth. 3. The Ministry’s proposal is to make N-ECs freely available (expect to minors <18 years). We do not support this proposal. We believe N-ECs should only be available on a restricted basis (e.g. licensed pharmacies and specialist shops) to: 4. Minimise the likelihood of minors accessing N-ECs. For example a licensing regime could apply proximity restrictions (e.g. around schools) and other requirements which help to facilitate enforcement and maintain the policy intention. 5. Ensure those selling N-ECs are trained in using N-ECs as a cessation aid. 6. There is good evidence that behavioural support enhances the impact of cessation aids. Pharmacies and specialist shops could therefore be required to undertake basic staff training in brief smoking cessation advice to maximise the benefit of N-ECs as a cessation aid. 7. Our support is given on the condition that the regulation of N-ECs should be less stringent than for smoked tobacco products which are more addictive and harmful. Hence it is imperative that similar or stricter measures should be introduced to control retailing of smoked tobacco products alongside those for N-ECs. |

**Q2 Are there other (existing or potential) nicotine-delivery products that should be included in these controls at the same time? If so, what are they?**

Yes  No

Reasons/additional comments:

|  |
| --- |
| Not to our knowledge. However, controls should be designed, where possible, with mechanisms to assess future innovations where products with a similar risk profile and potential for aiding cessation become more widely available. |

**Q3 Do you think it is important for legislation to prohibit the sale and supply of e‑cigarettes to young people under 18 years of age in the same way as it prohibits the sale and supply of smoked tobacco products to young people?**

Yes  No

Reasons/additional comments:

|  |
| --- |
| Research suggests that the use of e-cigarettes among NZ adolescents has grown significantly in recent years. For example one survey reported the prevalence of ‘ever use’ (i.e. ever tried an e-cigarettes, even if only once) amongst adolescents tripled from 7.0% in 2012 to 20% in 2014 (3). Use was also more common among māori and students from lower decile schools.  These findings raise concern as there is a theoretical (though unproven) risk that e-cigarette use among children and young adults may result in the initiation of tobacco smoking at a later date.  Some e-cigarettes look like traditional cigarettes, are aggressively marketed in a similar way and come in candy like flavours which may appeal to and encourage young people to try the products.  In addition, nicotine is an addictive substance and efforts should be taken to reduce the exposure of children and young adults in particular to nicotine containing products to prevent addiction. |

**Q4 Do you think it is important for legislation to control advertising of e‑cigarettes in the same way as it controls advertising of smoked tobacco products?**

Yes  No

Reasons/additional comments:

|  |
| --- |
| We believe that all advertising of N-ECs should be prohibited except for point of sale displays within licensed retailers (pharmacies, specialist stores).  Our reasons:   1. 1st and 2nd generation N-ECs look similar to smoked tobacco, therefore there is a risk that advertisements for these products may be manipulated by the tobacco industry in a way which undermines efforts towards achieving the Smokefree 2025 goal. For example by glamorising the use of N-ECs, promoting the use of N-ECs as an adjunct to smoking or for longer term use rather than an aid to quit. 2. There will however be a need to communicate to smokers about the availability of N-ECs as a cessation tool, their potential benefits and harms and the availability of behaviour support to quit. This communication should be government led to avoid the risks highlighted in point 1. 3. Restricted point of sale promotions through licensed retailers would also help to limit the exposure of minors and young adults to advertising. |

**Q5 Do you think it is important for the SFEA to prohibit vaping in designated smokefree areas in the same way as it prohibits smoking in such areas?**

Yes  No

Reasons/additional comments:

|  |
| --- |
| The health impacts of second hand vapour are currently unclear (1). While they are likely to be modest it is not yet known if N-EC vapour is completely safe. Therefore it is rational to protect non-smokers, particularly children from possible risks associated with exposure.  As 1st and 2nd generation products in particular look similar to smoked tobacco, areas where children predominate should also prohibit vaping to minimise risks associated with normalising the consumption of N-ECs or smoked tobacco.  Any restrictions introduced for N-ECs should be accompanied by the introduction of more stringent legislation for smoked tobacco. For example it would be contrary to introduce restrictions on vaping in cars if smoking in cars is not similarly prohibited. |

**Q6 Do you agree that other controls in the SFEA for smoked tobacco products should apply to e‑cigarettes? For example:**

|  |  |  |  |
| --- | --- | --- | --- |
| **Control** | **Yes** | **No** | **Reasons/additional comments** |
| Requirement for graphic health warnings |  |  | No, given evidence (though limited), suggests the health risks associated with N-EC consumption are much lower than smoked tobacco (1).  We suggest products carry safety and health warnings (e.g. keep away from children and pets, nicotine is addictive). The inclusion of Quitline information would support the use of N-ECs as a tool for cessation. |
| Prohibition on displaying products in sales outlets |  |  | Except for point of sale displays in licensed retailers. Restrictions on the prominence of displays may be warranted to ensure they do not appeal to minors. |
| Restriction on use of vending machines |  |  | We see no justification for the sale of N-ECs through vending machines. |
| Requirement to provide annual returns on sales data |  |  | It is imperative that systems are put in place to monitor and evaluate the impact of any policy change. This data would be useful for monitoring trends in use along with the balance between independent and tobacco industry owned products.  This requirement would need to be extended to smoked tobacco products as well. |
| Requirement to disclose product content and composition |  |  | This is important information for both the consumer and the protection of public health.  This requirement would need to be extended to smoked tobacco in line with the principle of applying equal or more stringent regulations for a product that has far greater health risks. |
| Regulations concerning ingredients (eg, nicotine content and/or flavours) |  |  | Nicotine content – we recommend a maximum content of nicotine be set in line with international best practice and compliance with set levels is a condition of sale. This requirement would also need to be extended to smoked tobacco on the grounds of applying equal/ more stringent regulations.  Flavourings and ingredients –flavourings are not required for N-ECs to assist in cessation. Furthermore they have the potential to enhance palatability for children and young adults. Therefore we recommend prohibiting flavourings and any other ingredients known to be harmful or likely to enhance addition.  Any such regulations would also need to be extended to smoke tobacco products to ensure equal/ more stringent regulations. |
| Requirement for annual testing of product composition |  |  | This should be aligned with credible international guidance for product composition and testing. |
| Prohibition on free distribution and awards associated with sales |  |  | Incentives encouraging sales are unnecessary. |
| Prohibition on discounting |  |  | Such incentives could encourage bulk purchasing and intensive longer term use of N-ECs. |
| Prohibition on advertising and sponsorship |  |  | See response to questions 4. |
| Requirement for standardised packaging |  |  | Standardised packaging would help to reduce the attractiveness of N-ECs to children and youth. We do not believe branding and individualised packaging is essential for N-ECs to function as a successful cessation tool. |
| Other |  |  |  |

**Q7 Do you think it is important for legislation to impose some form of excise or excise-equivalent duty on nicotine e-liquid, as it does on tobacco products?**

Yes  No

Reasons/additional comments:

|  |
| --- |
| Maintaining a price difference between N-ECs and smoked tobacco would help encourage the use of N-ECs as a cessation tool. Therefore we recommend no additional tax be applied to N-ECs.  We believe this stance should be reviewed if N-EC uptake increases substantially among children and youth. A monitoring and evaluation regime would therefore require mechanisms to monitor consumption by demographics. |

**Q8 Do you think quality control of and safety standards for e‑cigarettes are needed?**

Yes  No

Additional comments: Consumers need assurances around the quality of the products they are purchasing. For cost and practically, we recommend aligning with international best practice standards.

|  |  |  |  |
| --- | --- | --- | --- |
| **Area of concern** | **Yes** | **No** | **Reasons/additional comments** |
| Childproof containers |  |  | The high concentration of nicotine in e-liquids makes them a potentially hazardous material if consumed by children.  We recommend that minimum standards for child safety be based on best international practice and that compliance is a condition of sale. |
| Safe disposal of e‑cigarette devices and liquids |  |  | Disposal should not impact negatively on the environment. Disposal standards should be introduced in line with best international practice. |
| Ability of device to prevent accidents |  |  | Safety standards for N-EC devices should be introduced in line with best international practice to prevent cases such battery malfunctions. Compliance with these standards should be a condition of sale. |
| Good manufacturing practice |  |  | Manufacturing standards for N-EC devices should be introduced in line with best international practice. Compliance with these standards should be a condition of sale. |
| Purity and grade of nicotine |  |  | There is a potential for harm if low grade or mixed products are used by manufacturers e.g. for cost cutting purposes. We therefore recommend standards be set for nicotine grade and purity and that these align with international best practice. Compliance with these standards should be a condition of sale. |
| Registration of products |  |  | Product registration, along with demonstration of compliance with standards should be a condition of sale in New Zealand. |
| A testing regime to confirm product safety and contents purity |  |  | Yes ideally, but we understand that resources for a comprehensive testing regime may not be available in NZ. |
| Maximum allowable volume of e-liquid in retail sales |  |  | The maximum should be in line with reasonable personal use to prevent bulk purchasing for the purposes of:   * Supplying others (particularly minors) * Avoiding other restrictions around sale and supply (e.g. licensing and staff training requirements) |
| Maximum concentration of nicotine e-liquid |  |  | The maximums should align with best international practice and compliance should be a condition of sale.  If maximums are set for N-ECs, then there is a strong case for developing such controls in smoked tobacco. |
| Mixing of e-liquids at (or before) point of sale |  |  | We believe this is unnecessary as liquid are generally mixed prior to distribution. |
| Other |  |  |  |

**Q9 Are there any other comments you would like to make?**

|  |
| --- |
| Given the current state of uncertainty about many issues in relation to N-ECs, it is essential that the Ministry of Health develop a framework for monitoring and evaluating the emerging evidence on N-ECs, such as their efficacy and safety, consumption and the overall impact on smoking prevalence. The regulatory regime should be so that amendments can be made as new evidence emerges.  N-EC policys should be driven by the primary aim of achieving the Smokefree 2025 goal. Specifically for the benefit of increasing cessation, through the use of N-ECs, particularly for Māori, Pacific and other population groups with high smoking rates. |

**Additional information on sales and use**

**Q10 Can you assist us by providing information on the sale of e‑cigarettes in New Zealand (for example, size of sales or range of products for sale on the local market)?**

|  |
| --- |
| No. |

**Q11 Would the Ministry of Health’s proposed amendments have any impact on your business? If so, please quantify/explain that impact.**

|  |
| --- |
| Not applicable |

**Q12 If you are using nicotine e‑cigarettes: how long have you been using them, how often do you use them, how much do you spend on them per week and where do you buy them?**

Not applicable.

|  |  |  |  |
| --- | --- | --- | --- |
| **How long have you been using them?** | **How often do you use them?** | **How much do you spend on them per week?** | **Where do you buy them?** |
|  |  |  |  |

References

1. National Smokefree Working Group (2016). Background Paper – E-cigarettes and their potential contribution to achieving the Smokefree 2025 Goal. Wellington.
2. Ministry of Health (2016). Policy Options for the Regulation of Electronic Cigarettes – A consultation document. Wellington.
3. White J, Li J, Newcombe R, Walton D. Tripling Use of Electronic Cigarettes Among New Zealand Adolescents Between 2012 and 2014. *Journal of Adolescent Health*. 2015; 56:522-8.

**Consultation submission 227 – Hauora Tairāwhiti**

|  |  |
| --- | --- |
| **Your details**  This submission was completed by: *(name)* | [redacted] |
| Address: *(street/box number)* | [redacted] |
| *(town/city)* |  |
| Email: | [redacted] |
| Organisation *(if applicable)*: | Hauora Tairāwhiti |
| Position *(if applicable)*: | [redacted] |

*(Tick one box only in this section)*

Are you submitting this:

as an individual or individuals (not on behalf of an organisation)?

√ on behalf of a group, organisation(s) or business?

*(You may tick more than one box in this section)*

Please indicate which sector(s) your submission represents:

Commercial interests, including e‑cigarette manufacturer, importer, distributor and/or retailer

√ Tobacco control non-government organisation

Academic/research

Cessation support service provider

√ Health professional

√ Māori provider

√ Pacific provider

Other sector(s) *(please specify)*:

*(You may tick more than one box in this section)*

Please indicate your e‑cigarette use status:

I am using nicotine e‑cigarettes.

I am using nicotine-free e‑cigarettes.

I currently smoke as well as use e‑cigarettes.

√ I am not an e‑cigarette user.

I have tried e‑cigarettes.

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**Declaration of tobacco industry links or vested interest**

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Please return this form by email to:

**ecigarettes**[**@moh.govt.nz**](mailto:tobacco@moh.govt.nz) by **5 pm, Monday 12 September 2016**.

If you are sending your submission in PDF format, please also send us the Word document.

**Consultation questions**

Although this form provides blank spaces for your answers to questions, there is no limit to the length of your responses; you should take as much space as you need to answer or comment. Feel free to enlarge the boxes or attach additional pages.

**Q1 Do you agree that the sale and supply of nicotine e‑cigarettes and nicotine liquids should be allowed on the local market, with appropriate controls?**

Yes √ No

Reasons/additional comments:

|  |
| --- |
| Taki Tahi Toa Mano would like to ensure appropriate controls pertaining to ‘Māori and Pacific Health’ should e-cigarettes and nicotine liquids be allowed on the local market for example included in smoking cessation services only |

**Q2 Are there other (existing or potential) nicotine-delivery products that should be included in these controls at the same time? If so, what are they?**

Yes  No

Reasons/additional comments:

|  |
| --- |
| N/A |

**Q3 Do you think it is important for legislation to prohibit the sale and supply of e‑cigarettes to young people under 18 years of age in the same way as it prohibits the sale and supply of smoked tobacco products to young people?**

Yes  No √

Reasons/additional comments:

|  |
| --- |
| Children as young as 8 years old are taking up the habit of smoking. The supply of e-cigarettes to under 18 year olds to have appropriate controls. |

**Q4 Do you think it is important for legislation to control advertising of e‑cigarettes in the same way as it controls advertising of smoked tobacco products?**

Yes √ No

Reasons/additional comments:

|  |
| --- |
| Absolutely !  legislation to control advertising of e-cigarettes in the same way it controls advertising of smoked tobacco products |

**Q5 Do you think it is important for the SFEA to prohibit vaping in designated smokefree areas in the same way as it prohibits smoking in such areas?**

Yes √ No

Reasons/additional comments:

|  |
| --- |
| At this stage Vaping is not linked to Second hand smoke therefore it does not pose a health risk to non-smokers however it does mimic smoking and could potentially encourage Youth or Children to start either smoking tobacco or vaping |

**Q6 Do you agree that other controls in the SFEA for smoked tobacco products should apply to e‑cigarettes? For example:**

|  |  |  |  |
| --- | --- | --- | --- |
| **Control** | **Yes** | **No** | **Reasons/ additional comments** |
| Requirement for graphic health warnings | √ |  | So what are the Health Warnings for e-cigarettes? |
| Prohibition on displaying products in sales outlets | √ |  | Ultimately we want to see tobacco products banned from Aotearoa New Zealand however if we can continue to keep them and e-cigarettes from being displayed it is a move forward. |
| Restriction on use of vending machines | √ |  | Same as above |
| Requirement to provide annual returns on sales data | √ |  | Yes as this will help us to measure if sales have increased or decrease. |
| Requirement to disclose product content and composition | √ |  | Absolutely! to ensure the products are safe to use |
| Regulations concerning ingredients (eg, nicotine content and/or flavours) | √ |  | Same as above |
| Requirement for annual testing of product composition | √ |  | Same as above |
| Prohibition on free distribution and awards associated with sales | √ |  | We have seen a reduction in the uptake of smoking we want prohibition that to continue as if e-cigarettes were tobacco products |
| Prohibition on discounting | √ |  |  |
| Prohibition on advertising and sponsorship | √ |  | E-cigarettes to be advertised as a form of smoking cessation device/ product only and aligned with smokefree messages. |
| Requirement for standardised packaging | √ |  | Same methodology as tobacco products |
| Other |  |  |  |

**Q7 Do you think it is important for legislation to impose some form of excise or excise-equivalent duty on nicotine e-liquid, as it does on tobacco products?**

Yes No √

Reasons/additional comments:

|  |
| --- |
| Not if it’s being used as a Smoking Cessation device |

**Q8 Do you think quality control of and safety standards for e‑cigarettes are needed?**

Yes √ No

Additional comments:

|  |  |  |  |
| --- | --- | --- | --- |
| **Area of concern** | **Yes** | **No** | **Reasons/additional comments** |
| Childproof containers | √ |  |  |
| Safe disposal of e‑cigarette devices and liquids | √ |  |  |
| Ability of device to prevent accidents | √ |  |  |
| Good manufacturing practice | √ |  |  |
| Purity and grade of nicotine | √ |  |  |
| Registration of products | √ |  |  |
| A testing regime to confirm product safety and contents purity | √ |  |  |
| Maximum allowable volume of e-liquid in retail sales | √ |  |  |
| Maximum concentration of nicotine e-liquid | √ |  |  |
| Mixing of e-liquids at (or before) point of sale | √ |  |  |
| Other |  |  |  |

**Q9 Are there any other comments you would like to make?**

|  |
| --- |
| Ultimately Taki Tahi Toa Mano would like to see tobacco products banned from Aotearoa New Zealand because Māori (Indigenous peoples of New Zealand) continue to be the highest smoking population.  Taki Tahi Toa Mano want e-cigarettes to be promoted for smoking cessation purposes only and to be made affordable to low income families. |

**Additional information on sales and use**

**Q10 Can you assist us by providing information on the sale of e‑cigarettes in New Zealand (for example, size of sales or range of products for sale on the local market)?**

|  |
| --- |
| N/A |

**Q11 Would the Ministry of Health’s proposed amendments have any impact on your business? If so, please quantify/explain that impact.**

|  |
| --- |
| N/A |

**Q12 If you are using nicotine e‑cigarettes: how long have you been using them, how often do you use them, how much do you spend on them per week and where do you buy them?**

|  |  |  |  |
| --- | --- | --- | --- |
| **How long have you been using them?** | **How often do you use them?** | **How much do you spend on them per week?** | **Where do you buy them?** |
| N/A | N/A | N/A | N/A |

**Consultation submission 228 – Nicoventures Holdings Limited**

**Submission by Nicoventures Holdings Limited**

**in respect of the**

**New Zealand Ministry of Health consultation**

**on  
“*Policy Options for the Regulation of Electronic Cigarettes*”**

**12th September 2016**

**Introduction**

This is Nicoventures Holdings Limited’s (**Nicoventures**) submission to the New Zealand Ministry of Health consultation “*Policy Options for the Regulation of Electronic Cigarettes*”.

Nicoventures is engaged in the development and sale of innovative and high-quality nicotine products, including e-cigarettes. It is part of the British American Tobacco group of companies, but is managed separately from the tobacco business. Nicoventures does not currently sell e-cigarettes or nicotine liquids in New Zealand.

International evidence indicates that appropriately regulated e-cigarettes and nicotine liquids, incorporating restrictions on youth access and mandated quality standards, may yield public health benefits over and above existing tobacco control measures.[[40]](#footnote-40) In July 2016 the Royal College of Physicians, Action on Smoking and Health UK, the British Lung Foundation, Cancer Research UK and Public Health England, amongst others, signed a joint statement stating their support for the public health role of e-cigarettes in helping smokers to quit.[[41]](#footnote-41)

As such, Nicoventures fully supports legalising the sale and supply of nicotine e-cigarettes and nicotine liquids in New Zealand and implementation of regulation that is fit-for-purpose, including:

* Product safety and quality requirements for e-cigarettes and e-liquids, including:
  + child resistant packaging
  + tamper evident packaging
  + appropriate labelling and warning statements
  + e-liquid quality
* Provisions that enable e-cigarettes to be advertised in a responsible way
* A prohibition on sales to persons aged under 18.

**INTERNATIONAL CALLS FOR BALANCED REGULATION**

An increasing number of international public health bodies and specialists in the areas of tobacco control, nicotine science and public health policy are calling for balanced regulation of e-cigarettes.

In August 2016,the Royal College of Physicians (**RCP**) released a comprehensive analysis of nicotine and e-cigarettes in its report “Nicotine without smoke: Tobacco harm reduction”.[[42]](#footnote-42) In this report the RCP recommended that "*in the interests of public health it is important to promote the use of e-cigarettes, NRT and other non-tobacco nicotine products as widely as possible as a substitute for smoking in the UK*."

Also in August 2016, the UK Parliamentary Office of Science and Technology published a briefing for British Members of Parliament.[[43]](#footnote-43) Three major observations made in this briefing were:

* *“A growing body of evidence shows that e-cigarettes are much less harmful than tobacco.”*
* *“There is evidence showing that e-cigarettes can help smokers quit tobacco.”*
* *“Current evidence suggests that e-cigarettes do not encourage tobacco smoking among non-smokers or children.”*

In July 2016, the use of e-cigarettes in a public health strategy was recognised in a guidance document on the use of e-cigarettes in public places and workplaces published by Public Health England (**PHE**). Its authors concluded: “*We believe e-cigarettes have the potential to make a significant contribution to its achievement. Realising this potential depends on fostering an environment in which e-cigarettes can provide a route out of smoking for England’s eight million smokers, without providing a route into smoking for children or non-smokers.*”[[44]](#footnote-44)

The PHE report proposes five key principles intended to *"guide the development of evidence-based policies that maximise the potential for e-cigarettes to improve public health while managing the risks in any particular setting".* These principles are:

**1*.       Make clear the distinction between vaping and smoking***

*E-cigarette use does not meet the legal or clinical definitions of smoking. Furthermore, international peer-reviewed evidence suggests that e-cigarettes carry a fraction of the risk of cigarettes and have the potential to help drive down smoking rates and improve public health. So policies need to be clear on the differences between vaping and smoking.*

***2.       Ensure policies are informed by the evidence on health risks for bystanders***

*International peer-reviewed evidence indicates that the risk to the health of bystanders from second-hand e-cigarette vapour is extremely low and insufficient to justify prohibiting e-cigarettes. This evidence should inform risk assessments.*

***3.       Identify and manage risks of uptake by children and young people***

*E-cigarette use is not recommended for young people and this is reflected in the UK’s age of sale and advertising restrictions. However, because adult smokers use e-cigarettes to quit smoking and stay smokefree, the products can help reduce children’s and young people’s exposure to second-hand smoke and smoking role models. In developing policies for child and youth settings, guarding against potential youth uptake should be balanced with fostering an environment where it is easier for adults not to smoke.*

***4.       Support smokers to stop smoking and stay smokefree***

*E-cigarettes are used almost exclusively by smokers and ex-smokers and are now the most popular stop smoking aid in England. To help smokers to stop smoking and stay smokefree, a more enabling approach to vaping may be appropriate to make it an easier choice than smoking. In particular, vapers should not be required to use the same space as smokers, as this could undermine their ability to quit and stay smokefree.*

***5.       Support compliance with smokefree law and policies***

*Maintain and support compliance with smokefree requirements by emphasising a clear distinction between smoking and vaping. Indicate accurately where vaping is permitted or prohibited, and communicate the policy clearly to everyone it affects*.[[45]](#footnote-45)

Earlier, in 2015, PHE published a number of independent reviews and positions on e-cigarettes supporting a balanced approach to all aspects of e-cigarette regulation. Of note, PHE concluded that:

* *"Best estimates show e-cigarettes are 95% less harmful to your health than normal cigarettes, and when supported by a smoking cessation service, help most smokers to quit tobacco altogether."*[[46]](#footnote-46)
* *“EC [electronic cigarettes] release negligible levels of nicotine into ambient air with no identified health risks to bystanders.”*[[47]](#footnote-47)
* *“Based on the available evidence, the risk to the health of bystanders from exposure to vapour from nicotine vapourisers is extremely low. A legal ban on the use of nicotine vapourisers in enclosed public places and workplaces would not be justified on the grounds of passive exposure.”[[48]](#footnote-48)*

In May 2014, over fifty international public health researchers and specialists in the areas of tobacco control, nicotine science and public health policy publicly urged both the World Health Organisation (**WHO**) and signatories to the WHO's Framework Convention on Tobacco Control (**FCTC**) to refrain from proposing bans and/or undue restrictions on e-cigarettes, noting that:

*"The potential for tobacco harm reduction products to reduce the burden of smoking related disease is very large, and these products could be among the most significant health innovations of the 21st Century – perhaps saving hundreds of millions of lives. The urge to control and suppress them as tobacco products should be resisted and instead regulation that is fit for purpose and designed to realise the potential should be championed by WHO. We are deeply concerned that the classification of these products as tobacco… will do more harm than good, and obstruct efforts to meet the targets to reduce non-communicable disease we are all committed to."*[[49]](#footnote-49)

In view of the growing weight of evidence, New Zealand has the opportunity to adopt an appropriate and evidence-based regulatory framework for these products with regulated and legal access to e-cigarettes and nicotine liquids.

**SPECIFIC CONSULTATION QUESTIONS**

Set out below are Nicoventures’ responses to the specific questions of the consultation.

**Q1: Do you agree that the sale and supply of nicotine e‑cigarettes and nicotine liquids should be allowed on the local market, with appropriate controls?**

Yes  No

Reasons/additional comments:

|  |
| --- |
| We believe that regulations should reflect the growing acceptance among many health professionals that nicotine e-cigarettes and nicotine liquids have a real potential to improve public health by helping people to cut down or quit smoking.  We therefore support a regulatory approach in New Zealand that adopts appropriate safety and product quality standards and restricts sales to over 18s, while enabling companies to innovate, market and make available their products responsibly.  It is important that regulations recognise that e-cigarettes are consumer products that require manufacturers to responsibly communicate with and educate adult consumers on features, correct usage and important differences when compared with cigarettes. |

**Q2: Are there other (existing or potential) nicotine-delivery products that should be included in these controls at the same time? If so, what are they?**

Yes  No

Reasons/additional comments:

|  |
| --- |
| We believe that the current review should focus solely on making nicotine e-cigarettes and nicotine liquids available for adult consumers under a regulatory scheme that is proportionate to the harm-reduction benefits referred to above, due to their prevalence in the New Zealand market. Such focus will ensure that New Zealand smokers can access such products without delay.  Regulations should be flexible to support the introduction of future product innovations and improvements, ensuring that New Zealanders always have access to the highest quality products and to enable the category to reach its potential for tobacco harm reduction. |

**Q3: Do you think it is important for legislation to prohibit the sale and supply of e‑cigarettes to young people under 18 years of age in the same way as it prohibits the sale and supply of smoked tobacco products to young people?**

Yes  No

Reasons/additional comments:

|  |
| --- |
| We agree that the sale and supply of e-cigarettes should be restricted to over 18s. |

**Q4: Do you think it is important for legislation to control advertising of e‑cigarettes in the same way as it controls advertising of smoked tobacco products?**

Yes  No

Reasons/additional comments:

|  |
| --- |
| E-cigarettes are not tobacco products so they should not be regulated in the same way as cigarettes.  We believe that because of the potential for e-cigarettes to play a significant role in tobacco harm reduction, regulation should permit responsible advertising, marketing, point of sale communications and support wide retail availability so that they can be a visible, available and accessible alternative for smokers.  Evidence indicates that many smokers continue to be unaware of the difference of e-cigarettes as compared with cigarettes, with many believing that each results in a similar degree of harm.[[50]](#footnote-50) The recent PHE report concluded that “*a sizeable minority*” of people inaccurately considered e-cigarettes “*to be more harmful*” than tobacco products, to be “*about as harmful*” as tobacco products, or were “*unsure about their relative risks*”.[[51]](#footnote-51) ASH UK also found that: "*The public and smokers are increasingly failing to recognise that electronic cigarettes are less harmful than smoking… Of particular concern is the worsening understanding among smokers. In 2016 the proportion of smokers who said they did not know whether electronic cigarettes were more or less harmful than smoking increased and is now nearly the same rate as it was in 2013 (29% in 2013 and 28% in 2016). When compared to three years ago, the proportion of smokers who believe e-cigarettes are more or as harmful as smoking has grown and the number who believed they were less harmful has fallen."*[[52]](#footnote-52). This demonstrates the need to ensure that New Zealand consumers can be given accurate product information on reasons to switch from smoking to vaping products.  Because of the nature of the product, we believe that e-cigarettes should only be marketed responsibly. In our view this means:   * marketing communications should be targeted at adults, both in terms of the content of such communications and by virtue of media placement; * marketing communications should be targeted to current smokers and consumers of vapour and nicotine products; and * nothing in marketing communications should be aimed at promoting the use of tobacco products.   It is important that smokers who may use an e-cigarette have ready access to accurate product information and understand the differences from cigarettes. As such, communication is critical both to convey information and to clearly denote the difference between e-cigarettes and tobacco products. |

**Q5: Do you think it is important for the SFEA to prohibit vaping in designated smokefree areas in the same way as it prohibits smoking in such areas?**

Yes  No

Reasons/additional comments:

|  |
| --- |
| E-cigarettes are not tobacco products and they do not produce smoke so should not be regulated in the same way as cigarettes, hence we do not support any proposal to ban vaping in public places.  As stated previously, a 2015 report by PHE[[53]](#footnote-53) concluded that: “*Based on the available evidence, the risk to the health of bystanders from exposure to vapour from nicotine vapourisers is extremely low. A legal ban on the use of nicotine vapourisers in enclosed public places and workplaces would not be justified on the grounds of passive exposure.*” We also concur with the Public Health England statement that: "*To help smokers to stop smoking and stay smokefree, a more enabling approach to vaping may be appropriate to make it an easier choice than smoking. In particular, vapers should not be required to use the same space as smokers, as this could undermine their ability to quit and stay smokefree."*  It is also noteworthy that the 2016 proposal to ban public place vaping in Wales (as part of the Public Health (Wales) Bill (the “Bill”))[[54]](#footnote-54) was opposed by a number of highly reputable public health organisations, such as Cancer Research UK: *"There isn’t enough evidence to justify a ban on using e-cigarettes indoors. The measure could create more barriers for smokers trying to quit tobacco."*[[55]](#footnote-55)The Bill subsequently failed to gain approval from the National Assembly for Wales and was therefore rejected[[56]](#footnote-56). Whilst the Bill set out a series of proposals in priority areas of public health policy, the vaping ban proposal was reported as a major reason for its failure to be agreed*.*  It should be up to individual establishments and business owners to decide whether or not to prohibit the use of e-cigarettes inside their premises. |

**Q6: Do you agree that other controls in the SFEA for smoked tobacco products should apply to e‑cigarettes?**

Yes  No

Reasons/additional comments:

|  |
| --- |
| E-cigarettes are not tobacco products so they should not be regulated in the same way as cigarettes under SFEA controls.  We concur with Public Health England that: "*E-cigarette use does not meet the legal or clinical definitions of smoking. Furthermore, international peer-reviewed evidence suggests that e-cigarettes carry a fraction of the risk of cigarettes and have the potential to help drive down smoking rates and improve public health. So policies need to be clear on the differences between vaping and smoking."* [[57]](#footnote-57)  We also note that the May 2014 letter to the World Health Organization noted above stated that: “*We are deeply concerned that the classification of these products as tobacco… will do more harm than good, and obstruct efforts to meet the targets to reduce non-communicable disease we are all committed to.*"[[58]](#footnote-58)  Therefore, we support appropriate safety and quality standards for e-cigarettes and nicotine liquids that are specific to such products. Having these standards in place underpins our belief that these products should enjoy appropriate advertising and marketing freedoms, wide availability and the flexibility for rapid introduction of product innovations to enable the category to reach its potential for tobacco harm reduction. The cut-and-paste of tobacco regulation is technically inappropriate and can confuse smokers on the differences between their cigarette usage with that of an e-cigarette. |

**Q7: Do you think it is important for legislation to impose some form of excise or excise-equivalent duty on nicotine e-liquid, as it does on tobacco products?**

Yes  No

Reasons/additional comments:

|  |
| --- |
| There are many reasons why governments all over the world single out particular products and services for excise duties over and above GST.  However, the most common justifications for an excise duty tend to be to raise tax revenues; to pay for the wider costs to society of the product’s consumption; and / or simply to discourage consumption (what can be described as a wholly paternalistic motivation for excise duty).  It is clear that a one-size fits all approach to levying an excise duty on e-cigarettes and tobacco products will not work. A clear, tailored, approach needs to be adopted in the tax and regulation of each distinct product category.  The e-cigarette category is highly fragmented and in its infancy, which would make it complex and costly to levy an excise duty, as evidenced in European Union Member States such as Italy and Portugal where taxes collected to date are far below expectations.  According to official EU survey statistics, almost 60% of people who consume e-cigarettes in Europe are current smokers and the vast majority of the rest are ex-smokers, having switched to e-cigarettes from combustible tobacco products.  Goniewicz et al[[59]](#footnote-59) (2013) concluded that:  “… *e-cigarettes will prove to be much less harmful than smoking - so for a smoker to switch from tobacco to electronic cigarettes will bring significant health benefits*…”  Cancer Research UK[[60]](#footnote-60) argued that it is important that regulation “*… does not stifle the development of e-cigarettes nor make accessing them more difficult to smokers …*”  And Nutt et al (2014)[[61]](#footnote-61) argued that:  “… *attempts to switch to non-combusted sources of nicotine should be encouraged as the harms from these products are much lower*.”  The RCP/PHE etc reports mentioned above, and in the consultation paper, strongly suggest that there is no justification for taxing e-cigarettes like tobacco products, but also there is a clear public health justification for *support* to encourage smokers in switching from tobacco products to e-cigarette use.  This would, it could very well be argued, mean that e-cigarettes should not be taxed at all.  If e-cigarettes were to be taxed, according to the relative risk, (estimated by the Nutt study mentioned above), then they should be taxed at around 5% of the level of existing cigarette taxes:   * **Definition and categorisation**. E-cigarette excise should be managed within a clear stand-alone product category, defined independently and delineated from all other tobacco and non-tobacco products. * **Excise Structure/base**. Specific only excise * **Calculation method**. The basis of calculation should be the consumable – i.e. the volume of e-liquid. This reflects the multiple delivery devices on the market with one constant – the consumable. * **Rate**.  Commensurate with the lower risk profile of e-cigarettes vis-à-vis cigarettes; and it should be simple to collect and not stifle future innovation of the category. |

**Q8: Do you think quality control of and safety standards for e‑cigarettes are needed?**

Yes  No

Additional comments:

|  |
| --- |
| We support the introduction of appropriate quality and safety standards.  In July 2015, the British Standards Institute (**BSI**) issued detailed product safety and quality standards for e-cigarettes after consultation with the industry and the British Government (the ‘standards’).[[62]](#footnote-62)  These standards, although not legally binding or incorporated into regulation, are a huge milestone, enabling governments to start looking seriously at product safety and quality standards in this important innovative category.  British American Tobacco (BAT) Nicoventures was one of nine contributors to the standards that we fully support and would like to see standardised across the industry. Our involvement in this important milestone, with a respected institution such as the BSI and other industry experts, evidences the efforts we have made to improve product quality so that consumers are not put off from switching, by being exposed to inferior products.  The following points summarise our views on the BSI product safety and quality standard proposals for e-cigarettes and our preferred regulatory position for e-cigarettes.   * We welcome the BSI’s guidelines on standards for e-cigarettes in the UK * E-cigarettes can be an important element of a comprehensive tobacco harm reduction approach – something that could deliver public health benefits * However, at the moment there is no consistency in the market, no minimum standards for quality and safety and this means that consumers are not protected from poor quality products (that may not achieve the desired harm-reduction benefits) and will therefore discourage switching from tobacco * For e-cigarettes we support an approach which classifies the key drivers for product standards across these categories:   + **Protection of health and safety whilst maintaining appeal to adult smokers:** The consumer has to be at the heart of all standards, therefore there needs to be standards on managing risks and mitigating them for the consumer alongside strict requirements on risk and quality management around the product. For example, we support the use of flavours in e-cigarettes in order to maintain the appeal to adult smokers, as long as the flavours are appropriately risk assessed and are not intended to appeal to those underage. We also support the requirement for tamper evident and child resistant packaging for e-liquid containers   + **A framework supporting innovation and competition:** There needs to be appropriate freedoms for manufacturers to innovate and improve the products available to consumers within the product safety and quality guidelines – without these freedoms, the category won’t deliver new innovations to meet the needs of smokers * Whilst we support product standards within this industry, we acknowledge that these are only guidelines. As such, we also support appropriate regulation in this category * We support an approach that ensures consumer safety and product quality, allows the appropriate levels of innovation, marketing and distribution freedoms that we believe are required to enable this important category to grow * In addition, we do not believe that consumers should face legal restrictions on where they can use these products   The standards are comprehensive in scope and provide detailed requirements covering all areas of product manufacture, packaging and labelling. As such they form an excellent basis for product safety standards in New Zealand. |

**CONCLUSION**

The growing weight of scientific evidence strongly points in favour of allowing New Zealand adult smokers to purchase locally nicotine liquids for use in e-cigarettes.

This evidence has prompted other jurisdictions, similar to New Zealand, to endorse their use and regulation.

Regulation should maximise the role that e-cigarettes can play as part of a comprehensive tobacco harm reduction approach.

As such, Nicoventures fully supports legalising the sale and supply of nicotine e-cigarettes and nicotine liquids in New Zealand and implementation of regulation that is fit-for-purpose, including:

* Product safety and quality requirements for e-cigarettes and e-liquids, including:
  + child resistant packaging
  + tamper evident packaging
  + appropriate labelling and warning statements
  + e-liquid quality
* Provisions that enable e-cigarettes to be advertised in a responsible way
* A prohibition on sales to persons aged under 18.

**Consultation submission 229 – High Entertainment Limited (trading as Shosha)**

|  |  |
| --- | --- |
| **Your details**  This submission was completed by: *(name)* | [redacted] |
| Address: *(street/box number)* | [redacted] |
| *(town/city)* | [redacted] |
| Email: | [redacted] |
| Organisation *(if applicable)*: | High Entertainment Limited (t/a Shosha) |
| Position *(if applicable)*: | [redacted] |

*(Tick one box only in this section)*

Are you submitting this:

as an individual or individuals (not on behalf of an organisation)?

on behalf of a group, organisation(s) or business?

*(You may tick more than one box in this section)*

Please indicate which sector(s) your submission represents:

Commercial interests, including e‑cigarette manufacturer, importer, distributor and/or retailer

Tobacco control non-government organisation

Academic/research

Cessation support service provider

Health professional

Māori provider

Pacific provider

Other sector(s) *(please specify)*:

*(You may tick more than one box in this section)*

Please indicate your e‑cigarette use status: **Not applicable – organisation submission**

I am using nicotine e‑cigarettes.

I am using nicotine-free e‑cigarettes.

I currently smoke as well as use e‑cigarettes.

I am not an e‑cigarette user.

I have tried e‑cigarettes.

**Privacy**

We intend to publish all submissions on the Ministry’s website. If you are submitting as an individual, we will automatically remove your personal details and any identifiable information.

If you do not want your submission published on the Ministry’s website, please tick this box:

Do not publish this submission.

Your submission will be subject to requests made under the Official Information Act. If you want your personal details removed from your submission, please tick this box:

Remove my personal details from responses to Official Information Act requests.

If your submission contains commercially sensitive information, please tick this box:

This submission contains commercially sensitive information.

**Declaration of tobacco industry links or vested interest**

As a party to the global tobacco control treaty, the World Health Organization Framework Convention on Tobacco Control, New Zealand has an obligation to protect the development of public health policy from the vested interests of the tobacco industry. To help meet this obligation, the Ministry of Health asks all respondents to disclose whether they have any direct or indirect links to, or receive funding from, the tobacco industry. The Ministry will still carefully consider responses from the tobacco industry, and from respondents with links to the tobacco industry, alongside all other submissions. Please provide details of any tobacco company links or vested interests below.

|  |
| --- |
| HEL has no links to the tobacco industry as such. For completeness/full disclosure purposes HEL acknowledges that it does sell cigarettes/tobacco through its stores |

Please return this form by email to:

**ecigarettes**[**@moh.govt.nz**](mailto:tobacco@moh.govt.nz) by **5 pm, Monday 12 September 2016**.

If you are sending your submission in PDF format, please also send us the Word document.

**Consultation questions**

Although this form provides blank spaces for your answers to questions, there is no limit to the length of your responses; you should take as much space as you need to answer or comment. Feel free to enlarge the boxes or attach additional pages.

**Q1 Do you agree that the sale and supply of nicotine e‑cigarettes and nicotine liquids should be allowed on the local market, with appropriate controls?**

Yes  No

Reasons/additional comments:

|  |
| --- |
| High Entertainment Limited (HEL) agrees that there should be legalised sale and supply of Nicotine e-cigarettes and nicotine liquids. HEL provides 3 main reasons for its support. Those reasons are set out in the attached page including supporting research. |

**Q2 Are there other (existing or potential) nicotine-delivery products that should be included in these controls at the same time? If so, what are they?**

Yes  No

Reasons/additional comments:

|  |
| --- |
| n/a |

**Q3 Do you think it is important for legislation to prohibit the sale and supply of e‑cigarettes to young people under 18 years of age in the same way as it prohibits the sale and supply of smoked tobacco products to young people?**

Yes  No

Reasons/additional comments:

|  |
| --- |
| Because HEL accepts that a sensible and precautionary approach would be to restrict sales to U18s until there are further studies showing that e-cigarettes are not harmful at all. This is because U18s can be impressionable and subject to peer pressure and thus may unwittingly become addicted to e-cigarettes. For adults, the counter-argument (that e-cigarettes assist people to stop smoking) strongly outweighs any such argument. |

**Q4 Do you think it is important for legislation to control advertising of e‑cigarettes in the same way as it controls advertising of smoked tobacco products?**

Yes  No

Reasons/additional comments:

|  |
| --- |
| HEL considers that for precautionary reasons (as per the answer to question 3) until there is proof that ECs/ELs are not harmful at all that there should be some control/regulation over advertising |

**Q5 Do you think it is important for the SFEA to prohibit vaping in designated smokefree areas in the same way as it prohibits smoking in such areas?**

Yes  No

Reasons/additional comments:

|  |
| --- |
| There are no proven bad effects from vaping let alone “secondary” effects of being associated with vapers. Public Health England published a report which specifically stated that e-cigarettes release only negligible levels of nicotine into the air with no identified health risks to bystanders. Allowing vaping will normalise vaping and encourage conversion from smoking to vaping.  That said is comfortable if MOH determines that there should be “vape-free” work/other areas or controls over vaping; |

**Q6 Do you agree that other controls in the SFEA for smoked tobacco products should apply to e‑cigarettes? For example:**

|  |  |  |  |
| --- | --- | --- | --- |
| **Control** | **Yes** | **No** | **Reasons/ additional comments** |
| Requirement for graphic health warnings |  |  | not as graphic as for ordinary cigarettes but nevertheless there should be some control over advertising (see q4 answer above) |
| Prohibition on displaying products in sales outlets |  |  | see reasons under q1 |
| Restriction on use of vending machines |  |  | until it there is proof that EL/ECs are completely harmless there should be some control over sales – eg through registered outlets |
| Requirement to provide annual returns on sales data |  |  | this would be helpful so that uptake of EC/ELs can be tracked (as against reduction in smoking) and this data would also help ascertain if there are shown to be any adverse effects on health over time |
| Requirement to disclose product content and composition |  |  | definitely important for the consumer information purposes |
| Regulations concerning ingredients (eg, nicotine content and/or flavours) |  |  | as above |
| Requirement for annual testing of product composition |  |  | yes – for quality control for the consumer’s protection |
| Prohibition on free distribution and awards associated with sales |  |  | as per control over advertising |
| Prohibition on discounting |  |  | again, until the health effects are known, the availability on basis of price should not be such as to encourage non smokers to uptake to vaping. e |
| Prohibition on advertising and sponsorship |  |  | not prohibition – but control (see answers to q1 and 4) |
| Requirement for standardised packaging |  |  | for standardisation purposes this will help the consumer so they can be assured as to the product being purchased |
| Other |  |  |  |

**Q7 Do you think it is important for legislation to impose some form of excise or excise-equivalent duty on nicotine e-liquid, as it does on tobacco products?**

Yes  No

Reasons/additional comments:

|  |
| --- |
| There are no adverse health effects of e-cigarettes that need to be funded through the public health system. Excise would make e-cigarettes more expensive and discourage conversion by smokers to vaping – this is problematic as the highest percentage of smokers come from low socio-economic backgrounds. Alternatively, if it is necessary for there to be a duty/tax then it should only be at a very modest level – enough to fund ongoing research into the effects of vaping. |

**Q8 Do you think quality control of and safety standards for e‑cigarettes are needed?**

Yes  No

Additional comments:

|  |  |  |  |
| --- | --- | --- | --- |
| **Area of concern** | **Yes** | **No** | **Reasons/additional comments** |
| Childproof containers |  |  | obvious reasons |
| Safe disposal of e‑cigarette devices and liquids |  |  | too difficult to control. If the concern is over the battery in the EC then there are many other consumer products that carry similar batteries |
| Ability of device to prevent accidents |  |  | if this is related to the batteries – then this should be controlled/have standards to prevent batteries from causing harm |
| Good manufacturing practice |  |  | this should be controlled/standardised |
| Purity and grade of nicotine |  |  | this should be controlled/standardised |
| Registration of products |  |  | this should be controlled/standardised |
| A testing regime to confirm product safety and contents purity |  |  | for quality control and consumer protection purposes – yes |
| Maximum allowable volume of e-liquid in retail sales |  |  | yes – to ensure dangerous levels are not included in products |
| Maximum concentration of nicotine e-liquid |  |  | as above |
| Mixing of e-liquids at (or before) point of sale |  |  | don’t understand this question |
| Other |  |  |  |

**Q9 Are there any other comments you would like to make?**

|  |
| --- |
| N/A. |

**Additional information on sales and use**

**Q10 Can you assist us by providing information on the sale of e‑cigarettes in New Zealand (for example, size of sales or range of products for sale on the local market)?**

|  |
| --- |
|  |

**Q11 Would the Ministry of Health’s proposed amendments have any impact on your business? If so, please quantify/explain that impact.**

|  |
| --- |
| Yes, it would have both a positive and negative impact. It would mean more sales of e-cigarette and e-liquid products. The point is that vaping/use of e-cigarettes is proven to help smokers quit. That is a major positive. On the other hand it is thought that the changes will |

**Q12 If you are using nicotine e‑cigarettes: how long have you been using them, how often do you use them, how much do you spend on them per week and where do you buy them?**

|  |  |  |  |
| --- | --- | --- | --- |
| **How long have you been using them?** | **How often do you use them?** | **How much do you spend on them per week?** | **Where do you buy them?** |
| N/A | N/A | N/A | N/A |

**DO YOU AGREE THAT THE SALE AND SUPPLY OF NICOTINE E-CIGARETTES AND NICOTINE LIQUIDS SHOULD BE ALLOWED ON THE LOCAL MARKET, WITH APPROPRIATE CONTROLS?**

High Entertainment Limited (HEL) agrees that there should be legalised sale and supply of Nicotine e-cigarettes and nicotine liquids. HEL provides 3 main reasons for its support. Those reasons are set out below. Supporting research, together with source is then set out in the following table under each heading.

1. ***E-cigarettes help people give up smoking and thus having these more readily available will make it easier for smokers to switch to them. More smokers quitting is good for everyone (due to the health cost burden).***

|  |  |
| --- | --- |
| **SOURCE** | **RELEVANT POINTS MADE** |
| Policy Options for the Regulation of Electronic Cigarettes: A consultation document  https://www.health.govt.nz/system/files/documents/publications/policy-options-e-cigarette-regulation-consultation-aug16.pdf | In 2015, Public Health England commissioned and published an expert review report called E-cigarettes: an evidence update. This concluded that e-cigarettes are significantly less harmful to health than smoked tobacco and have the potential to help smokers quit smoking.  The Royal College of Physicians published their report Nicotine without Smoke: Tobacco harm reduction earlier this year. This report provides a fresh update on the use of all nicotine products that are not smoked, and in particular e-cigarettes, as a tool to reduce harm from tobacco smoking. It concludes that, for all the potential risks involved, a complete switch to e-cigarettes has significant potential to prevent death and disability from tobacco use and to hasten progress towards a tobacco-free society.  People often report that they vape because they want to reduce the harm from smoking tobacco.  English report estimated that 2.5 percent of smokers who used an e-cigarette in their quit attempt (22,000 people) succeeded where they would have failed if they had used nothing or a licensed nicotine product bought (similar to NRT[[63]](#footnote-63) in New Zealand) from a shop. 1 |
| Potential new regulatory options for e-cigarettes in New Zealand  [Wilson, Nick](http://search.proquest.com.ezproxy.auckland.ac.nz/indexinglinkhandler/sng/au/Wilson,+Nick/$N?accountid=8424); [Edwards, Richard](http://search.proquest.com.ezproxy.auckland.ac.nz/indexinglinkhandler/sng/au/Edwards,+Richard/$N?accountid=8424); [Hoek, Janet](http://search.proquest.com.ezproxy.auckland.ac.nz/indexinglinkhandler/sng/au/Hoek,+Janet/$N?accountid=8424); [Thomson, George](http://search.proquest.com.ezproxy.auckland.ac.nz/indexinglinkhandler/sng/au/Thomson,+George/$N?accountid=8424); [Blakely, Tony](http://search.proquest.com.ezproxy.auckland.ac.nz/indexinglinkhandler/sng/au/Blakely,+Tony/$N?accountid=8424); et al.  **The New Zealand Medical Journal (Online)**128.1425 (Nov 20, 2015): 88-96,5. | A potential benefit of e-cigarettes is that they could offer smokers another therapeutic option to help them quit smoking, and may thus increase quit rates at a population level. E-cigarettes might be particularly important for smokers who have tried existing therapies without success. They also may be an appealing method that prompts smokers who have not tried to quit previously to do so.   Another potential benefit of e-cigarettes is that they may provide a possible substitute source of nicotine with much lower adverse health effects among those who cannot, or do not wish to, end their nicotine dependency. |
| http://www.radionz.co.nz/news/national/293473/e-cigarette-rule-hurting-nz's-poorest | Researcher and public health doctor, Auckland University associate professor Chris Bullen, said with appropriate regulation and tracking, e-cigarettes containing nicotine should be sold here to provide the poorest with access.  "All people who smoke should be strongly encouraged to quit smoking as soon as possible.  "E cigarettes are helping many people to do that, especially people who can't afford to continue smoking, people on low incomes, people from groups with high smoking prevalence such as Māori, particularly Māori women.  A study published in the New Zealand Medical Journal by Professor Murray Laugesen of the University of Canterbury in March last year showed the nicotine levels of e-cigarettes being smoked here were half-to-two thirds that of a normal cigarette, but toxicity levels were 100 times lower, or one percent of the toxicants of ordinary cigarettes. |
| End Smoking NZ  http://www.sfc.org.nz/documents/Ban-on-HydroSales18SepML.pdf | Dr Laugesen (End Smoking NZ Chair) says it is clearly not in the public interest to run a prosecution against sellers of nicotine e-cigarettes which the Ministry of Health itself says are “far safer” than tobacco cigarettes, when banning them is expected to send hundreds of users back to smoking tobacco cigarettes. In 2010 End Smoking NZ identified e-cigarettes as one of the top four policies for ending tobacco smoking in New Zealand in an article in the New Zealand Medical Journal.  Harmful health effects of banning nicotine electronic cigarettes:  *The key to quitting*? A number of research reports have shown impressive quitting rates in e-cigarette users. The Ministry of Health could be throwing away the key for the thousands of smokers who want a lifestyle alternative to smoking, one that replaces their smoking experience, not just the nicotine.  *High risk of smokers returning to smoking and early deaths from smoking:* E-cigarette users in overseas surveys say if they can't get their e-cigarette nicotine they will return to smoking. As one in two persistent smokers die early, hundreds of avoidable potential deaths could be expected due to resumption of smoking. |
| Public Health England  E-cigarettes: an evidence update A report commissioned by Public Health England  McNeill A, Brose LS, Calder R, Hitchman SC Institute of Psychiatry, Psychology & Neuroscience, National Addiction Centre, King’s College London UK Centre for Tobacco & Alcohol Studies Hajek P, McRobbie H (Chapters 9 and 10) Wolfson Institute of Preventive Medicine, Barts and The London School of Medicine and Dentistry Queen Mary, University of London UK  Centre for Tobacco & Alcohol Studies  https://www.gov.uk/government/uploads/system/uploads/attachment\_data/file/457102/Ecigarettes\_an\_evidence\_update\_A\_report\_commissioned\_by\_Public\_Health\_England\_FINAL.pdf | Since EC were introduced to the market, cigarette smoking among adults and youth has declined. In adults, overall nicotine use has also declined (not assessed for youth). These findings, to date, suggest that the advent of EC is not undermining, and may even be contributing to, the long-term decline in cigarette smoking.  Harm reduction guidance, published by the National Institute for Health and Care Excellence in England in 2013, recognised that some smokers struggled to quit abruptly and that cigarettes were a lethal delivery system for nicotine; it is widely accepted that most smokers smoke for the nicotine but die from the other smoke constituents  In 1991, Professor Michael Russell, a leading English smoking cessation expert from the Institute of Psychiatry, argued that ”it was not so much the efficacy of new nicotine delivery systems as temporary aids to cessation, but their potential as long-term alternatives to tobacco that makes the virtual elimination of tobacco a realistic future target”, and he recommended that “tobacco should be rapidly replaced by cleaner, less harmful, sources of nicotine”.  Smoking is increasingly concentrated in disadvantaged groups who tend to be more dependent. EC potentially offer a wide reach, low-cost, intervention to reduce smoking and improve health in disadvantaged groups. |
| http://www.nzherald.co.nz/nz/news/article.cfm?c\_id=1&objectid=11324232 | Public health specialist Dr Murray Laugesen, who has been researching e-cigarettes since 2007, labelled the ministry's decision "ridiculous" and said it would drive people back to smoking tobacco.  "The ministry itself says half of combustible cigarette smokers will die from smoking so what is being set up is a ridiculous policy which enables people to keep on smoking something which is going to kill them. It's a crazy policy." |
| Royal College of Physicians. Nicotine without smoke: Tobacco harm reduction. London: RCP, 2016. | Observational population-level evidence indicates that dual users of both tobacco and e-cigarettes are more likely to make an attempt to stop smoking than smokers who do not also use e-cigarettes  Experience with NRT suggests that e-cigarette use is likely to increase the proportion of smokers making a quit attempt, but appropriate evidence on this effect is not yet available. A recent study has shown that dual users maintain their intake of nicotine, but reduce their intake of smoke and related toxins significantly. Obtaining nicotine from an alternative source leads to a reduction in smoking |
| Use of electronic cigarettes (vapourisers) among adults in Great Britain  Action on Smoking and Health (ASH)  http://www.ash.org.uk/files/documents/ASH\_891.pdf | Over time the proportion of current electronic cigarette users who smoke tobacco has fallen and the proportion who are ex-smokers has risen. Between 2010 and 2014 there was a rise in the number of current cigarette smokers who also use electronic cigarettes, from 2.7% in 2010 to 17.6% in 2014. However, since 2014, this increase has slowed or even plateaued (figure 2). The proportion of ex-smokers using electronic cigarettes continues to rise from 4.5% in 2014 to 6.7% in 2015 to 8.4% in 2016  The top three reasons ex-smokers give for currently using electronic cigarettes are:   * “to help me stop smoking entirely” (67%); * “to save money compared with smoking” (47%), and; * “to help keep me off tobacco” (43%).   The top three reasons smokers give for currently using electronic cigarettes are:   * “to help me reduce the amount of tobacco I smoke, but not stop completely” (41%); * “to help me stop smoking entirely” (35%), and; * “to save money compared with smoking” (32%). |

1. ***Currently, there is a certain stigma associated with using e-cigarettes (which likely relates it to being new/strange). More availability will “normalise” vaping which in turn will help more smokers to switch/quit.***

|  |  |
| --- | --- |
| **SOURCE** | **RELEVANT POINTS MADE** |
| Policy Options for the Regulation of Electronic Cigarettes: A consultation document  https://www.health.govt.nz/system/files/documents/publications/policy-options-e-cigarette-regulation-consultation-aug16.pdf | Users obtain nicotine e‑cigarettes through importation and illegal local sales.  Overseas media have occasionally reported on e-cigarettes being used for illicit drugs such as cannabis and methamphetamine. This has been raised as a concern in New Zealand. |
| http://www.radionz.co.nz/news/national/293473/e-cigarette-rule-hurting-nz's-poorest | Massey University College of Health associate professor Marewa Glover said inequity and disparity in smoking rates will increase because the poor cannot easily access the product.  “I'm worried that the inequity and the disparity will increase because they are least likely to be able to access the nicotine e-liquid under the current system where nicotine is illegal to sell in New Zealand.  "That means you have got to have a credit card, you've got be IT savvy and used to and know how to buy online from overseas, so I think it really limits access for lower socio-economic and Māori and Pacific smokers.  University of Stirling health policy professor and deputy director of the UK Centre for Tobacco and Alcohol Studies, Linda Bauld, said the New Zealand Government should use every tool available to give people choices to quit tobacco:  New Zealand could learn from the UK's experience of selling e-cigarettes with nicotine freely.  "New Zealand has set an ambitious target to be tobacco free for 2025 and across the world we've been looking to New Zealand for many years because of the tremendous progress actually that you've made in reducing tobacco rates.  "But yet you still have these stubbornly high rates in some communities and that really means that there is still a problem and there's something missing. It's wrong for a country like New Zealand to deny its population something that could actually prevent ill health and disease." |
| End Smoking NZ  http://www.sfc.org.nz/documents/Ban-on-HydroSales18SepML.pdf | Simply because nicotine is listed as a medicine under the Medicines Act, this paradoxically results in cigarettes containing nicotine being legal, whereas e-cigarettes containing nicotine are not.  Dr Laugesen (End Smoking NZ Chair):  “Smokers interested in switching to nicotine electronic cigarettes should be able to buy them over the counter at any dairy or supermarket, just like tobacco cigarettes.”  “Smokers are not asking for the Ministry of Health to subsidise their switch to e-cigarettes. If e-cigarettes help them stop smoking and they like it, they will pay for it. Most smokers interested in e-cigarettes are not sick and don’t want a medicine, they want a lifestyle. Currently smokers can buy cigarettes from some 10,000 retailers, but would not in effect be able to buy nicotine electronic cigarettes in New Zealand.” |
| Public Health England  E-cigarettes: an evidence update A report commissioned by Public Health England  McNeill A, Brose LS, Calder R, Hitchman SC Institute of Psychiatry, Psychology & Neuroscience, National Addiction Centre, King’s College London UK Centre for Tobacco & Alcohol Studies Hajek P, McRobbie H (Chapters 9 and 10) Wolfson Institute of Preventive Medicine, Barts and The London School of Medicine and Dentistry Queen Mary, University of London UK Centre for Tobacco & Alcohol Studies  https://www.gov.uk/government/uploads/system/uploads/attachment\_data/file/457102/Ecigarettes\_an\_evidence\_update\_A\_report\_commissioned\_by\_Public\_Health\_England\_FINAL.pdf | Current EC users are almost exclusively smokers (~60%) or ex-smokers (~40%), that is smokers who now use EC and have stopped smoking altogether. Current EC use among never smokers is very low, estimated to be 0.2%. This means that the government’s fear of e-cigarettes leading to increased rates of smoking in youth and never-smokers is incorrect.  A recent Eurobarometer survey [63] asked smokers in absolute terms whether EC were harmful to the health of those using them. Overall in Europe, 40.6% perceived EC as not harmful (UK: 48.6%), 28.5% as harmful (UK: 14.6%) and 30.9% did not know if they were or were not harmful (UK: 36.8%).  EC were perceived as less harmful by a small majority of respondents, but with a sizeable minority inaccurately judging them to be more harmful, about as harmful or being unsure about their relative risks. For example, in the 2015 ASH Smokefree GB adult survey, 2% thought that EC were more harmful than cigarettes, 20% equally harmful, 52% less harmful, 2% completely harmless and 23% did not know.  Nicotine in the form of tobacco and more recently NRT has been available to thousands of millions of people and large numbers of them, including small children, have ingested considerable doses of nicotine. Fatal nicotine poisoning, however, is extremely rare. This fact strongly contradicts the often-repeated claim that an ingestion of 30-60mg of nicotine is fatal. The source of this claim proved difficult to locate – textbooks just cite older textbooks. Eventually, the assertion was found to be based on dubious self-experiments conducted in the 1890s |
| Royal College of Physicians. Nicotine without smoke: Tobacco harm reduction. London: RCP, 2016. | Empirical evidence from adolescent use suggests that, although adolescents experiment with e-cigarettes, few – if any – never-smokers who do so become regular e-cigarette users. |
| Use of electronic cigarettes (vaporisers) among adults in Great Britain  Action on Smoking and Health (ASH)  http://www.ash.org.uk/files/documents/ASH\_891.pdf | Use of the devices is confined to current and ex-smokers and use amongst never smokers remains negligible and has not changed since 2012.  Between 2013 and 2016 the perception of harm from electronic cigarettes has changed. The public and smokers are increasingly failing to recognise that electronic cigarettes are less harmful than smoking. In 2016 only 15% of adults correctly identified that electronic cigarettes are a lot less harmful than smoking whereas 21% correctly identified they were a lot less harmful than smoking in 2013. In addition, more than three times as many people in 2016 than in 2013 think they are as harmful or more harmful than smoking |

1. ***No confirmed studies that show use of e-cigarettes to be harmful and thus they should be legalised – if they are proven harmful then restrictions should be imposed at a later date.***

|  |  |
| --- | --- |
| **SOURCE** | **RELEVANT POINTS MADE** |
| Policy Options for the Regulation of Electronic Cigarettes: A consultation document  https://www.health.govt.nz/system/files/documents/publications/policy-options-e-cigarette-regulation-consultation-aug16.pdf | There is a lack of clarity about long term health risks to users and the potential adverse effects on non-users exposed to e cigarette vapour.  The long-term use of small quantities of nicotine in approved nicotine replacement therapy (NRT) products (such as gum, patches or lozenges) is considered to be safe.  The scientific consensus is that using e‑cigarettes poses less health risks to smokers than continuing to smoke and that short-term use is associated with few adverse effects.  The Cochrane Review found no serious adverse effects in trials as a result of short- to mid-term electronic cigarette use. |
| End Smoking NZ  http://www.sfc.org.nz/documents/Ban-on-HydroSales18SepML.pdf | Persistent tobacco smokers face a lifetime 50 percent risk of dying early, and according to End Smoking NZ are entitled to have access to buy whatever nicotine product would most help them quit. Nicotine products do not cause cancer or heart disease, unlike smoked tobacco products, Laugesen says. “If there is a tiny risk from nicotine, many smokers are prepared to take that risk, rather than run the deadly risks of smoking tobacco.” - Dr Laugesen (End Smoking NZ Chair).  *Low toxicity substitute passed over*: Minus smoke and flame, inhaled vapour from e-cigarettes is rated at under 2 percent of cigarette smoke toxicity. No such product qualifies as a medicine, but many smokers want them. |
| Public Health England  E-cigarettes: an evidence update A report commissioned by Public Health England  McNeill A, Brose LS, Calder R, Hitchman SC Institute of Psychiatry, Psychology & Neuroscience, National Addiction Centre, King’s College London UK Centre for Tobacco & Alcohol Studies Hajek P, McRobbie H (Chapters 9 and 10) Wolfson Institute of Preventive Medicine, Barts and The London School of Medicine and Dentistry Queen Mary, University of London UK Centre for Tobacco & Alcohol Studies  https://www.gov.uk/government/uploads/system/uploads/attachment\_data/file/457102/Ecigarettes\_an\_evidence\_update\_A\_report\_commissioned\_by\_Public\_Health\_England\_FINAL.pdf | E-liquid normally comes in 10ml bottles containing up to 360mg of nicotine (see below). This poses no risk to vapers if used as intended.  Effect of second-hand inhalation of vaping:   * Long et al., 2014 measured nicotine content of EC exhalations. EC exhalations contained eight times less E-cigarettes: an evidence update 65 nicotine than cigarette exhalations [78]. Estimating environmental nicotine exposure, however, has to take into account the fact that side-stream smoke (ie the smoke from the lighted end of the cigarette, which is produced regardless of whether the smoker is puffing or not) accounts for some 85% of passive smoking and there is no side-stream EC vapour. A study measuring nicotine residue on surfaces in houses of smokers and vapers reported only negligible levels from vaping, 169 times lower than from smoking [79]. * EC release negligible levels of nicotine into ambient air with no identified health risks to bystanders. |
| http://www.nzherald.co.nz/nz/news/article.cfm?c\_id=1&objectid=11324232 | Public health specialist Dr Murray Laugesen, who has been researching e-cigarettes since 2007 said e-cigarettes were less harmful than traditional cigarettes, a view shared by the World Health Organisation. |
| Royal College of Physicians. Nicotine without smoke: Tobacco harm reduction. London: RCP, 2016. | In normal conditions of use, toxin levels in inhaled e-cigarette vapour are probably well below prescribed threshold limit values for occupational exposure,71 in which case significant long-term harm is unlikely. Some harm from sustained exposure to low levels of toxins over many years may yet emerge, but the magnitude of these risks relative to those of sustained tobacco smoking is likely to be small.  The absolute magnitude of any risk attributable to e-cigarette use is likely to be very small in absolute terms, and hence substantially smaller than that arising from tobacco smoking. |

**Consultation submission 230 - Individual**

|  |  |
| --- | --- |
| **Your details**  This submission was completed by: *(name)* | [redacted] |
| Address: *(street/box number)* | [redacted] |
| *(town/city)* | [redacted] |
| Email: | [redacted] |
| Organisation *(if applicable)*: | [redacted] |
| Position *(if applicable)*: | [redacted] |

*(Tick one box only in this section)*

Are you submitting this:

X as an individual or individuals (not on behalf of an organisation)?

on behalf of a group, organisation(s) or business?

*(You may tick more than one box in this section)*

Please indicate which sector(s) your submission represents:

Commercial interests, including e‑cigarette manufacturer, importer, distributor and/or retailer

Tobacco control non-government organisation

X Academic/research

X Cessation support service provider

X Health professional

Māori provider

Pacific provider

Other sector(s) *(please specify)*:

*(You may tick more than one box in this section)*

Please indicate your e‑cigarette use status:

I am using nicotine e‑cigarettes.

I am using nicotine-free e‑cigarettes.

I currently smoke as well as use e‑cigarettes.

X I am not an e‑cigarette user.

I have tried e‑cigarettes.

**Privacy**

We intend to publish all submissions on the Ministry’s website. If you are submitting as an individual, we will automatically remove your personal details and any identifiable information.

If you do not want your submission published on the Ministry’s website, please tick this box:

Do not publish this submission.

Your submission will be subject to requests made under the Official Information Act. If you want your personal details removed from your submission, please tick this box:

X Remove my personal details from responses to Official Information Act requests.

If your submission contains commercially sensitive information, please tick this box:

This submission contains commercially sensitive information.

**Declaration of tobacco industry links or vested interest**

As a party to the global tobacco control treaty, the World Health Organization Framework Convention on Tobacco Control, New Zealand has an obligation to protect the development of public health policy from the vested interests of the tobacco industry. To help meet this obligation, the Ministry of Health asks all respondents to disclose whether they have any direct or indirect links to, or receive funding from, the tobacco industry. The Ministry will still carefully consider responses from the tobacco industry, and from respondents with links to the tobacco industry, alongside all other submissions. Please provide details of any tobacco company links or vested interests below.

|  |
| --- |
| I have never used funding by the Tobacco industry and have no links with them. [redacted] |

Please return this form by email to:

**ecigarettes**[**@moh.govt.nz**](mailto:tobacco@moh.govt.nz) by **5 pm, Monday 12 September 2016**.

If you are sending your submission in PDF format, please also send us the Word document.

**Consultation questions**

Although this form provides blank spaces for your answers to questions, there is no limit to the length of your responses; you should take as much space as you need to answer or comment. Feel free to enlarge the boxes or attach additional pages.

**Q1 Do you agree that the sale and supply of nicotine e‑cigarettes and nicotine liquids should be allowed on the local market, with appropriate controls?**

Yes X No

Reasons/additional comments:

|  |
| --- |
| I believe nicotine-based e-cigarettes should be available under controlled circumstances so that they can be used only by adults who are current smokers and interested in quitting smoking.  It is not acceptable to make nicotine e-cigarettes available to the general public because   * Nicotine is a highly addictive substance and shown in recent studies to promote the development of COPD and lung cancer [1-5], * nicotine will be used by non-smokers and ex-smokers to satisfy experimental or addictive tendencies, placing them at risk for no justifiable gain * retailers will sell these products in an uncontrolled fashion to the detriment of otherwise healthy people including kids, non-smokers and ex-smokers * for those people with addictive tendencies, their use of nicotine may be difficult to withdraw from * kids will access these devices through older sibs and parents as a tool of experimentation. The lungs of kids are still growing and exposure to inhaled nicotine may produce another epidemic of lung cancer (see above). This is a terrible scenario that will just increase the disparity in health care outcomes for poorer sections of the community.   The access of nicotine e-cigarettes must **not be left to individual choice** as greedy marketing and distribution tactics (already successful in the tobacco industry) will prey on those vulnerable to the pressures of marketing and ignorant of the long term effects of e-cigarette use.  Nicotine e-cigarettes should be   1. made available to registered distributors according to closely regulated controls on the concentration, quality and volume of e-cigarette solutions Tobacco company–related e-cigarette products would be banned. 2. e-cigarette solutions should be made available to current smokers through a registry and prescription only with sales through pharmacies. Inhaled nicotine must not become seen as anything other than a medicine used to help people quit smoking as there is no medium or long-term data to show that regular use of this highly addictive substance is safe. In fact there is considerable evidence to show that inhaled nicotine (unlike that from patches and gum) binds directly with nicotine receptors in the lung to promote inflammatory changes corresponding to the development of COPD and promote lung cancer. 3. Maori and those with low incomes should be able to obtain nicotine e-cigarettes through subsidised programmes funded by the government and sourced from the taxes collected from regular tobacco use. As Maori are preferentially more susceptible to the adverse effects of smoking on the lung (higher rates of lung cancer and COPD after correction for cigarette use), they are a group for whom long-term use of inhaled nicotine may be particularly bad. 4. Targeted use of e-cigarettes as a smoking cessation device may go a long way to achieving 2025 Smokefree Aoteroa. Two randomised control trials show that nicotine e-cigarettes are more effective than currently available NRT products (gum and patches). These studies both used low dose devices which are known to under estimate the efficacy of nicotine replacement approaches to smoking cessation. In a large “real world effectiveness” study in the UK, e-cigarettes use doubled the abstinence rates (20% vs 10% point abstinence) compared to OTC regular NRT products. These studies confirm the benefits of e-cigarette use in helping smokers quit.   References.   1. Garcia-Arcos I et al. Chronic electronic cigarette exposure in mice induces features of COPD in a nicotine-dependent manner. Thorax 2016; August 24th. Doi: 10.1136/thoraxjnl-2015-208039. 2. Lerner CA, et al. Vapours produced by electronic cigarettes and e-juices with flavorings induce toxicity, oxidative stress, and inflammatory response in lung epithelial cells and in mouse lung. PlosOne 2015; 10: e0116732. 3. Schober W, et al. Use of electronic cigarettes (e-cigarettes) impairs indoor air quality and increases FeNO levels of e-cigarettes consumers. Int J Hyg Environ Health 2014; 217:628-637. 4. Young RP, et al. Lung cancer gene associated with COPD: triple whammy or possible confounding effect? Eur Respir J 2008; 32: 1158-1164. 5. Callahan-Lyon P. Electronic cigarettes: human health effects. Tob Control 2014; 23: ii36-ii40. |

**Q2 Are there other (existing or potential) nicotine-delivery products that should be included in these controls at the same time? If so, what are they?**

Yes  No

Reasons/additional comments:

|  |
| --- |
| Not sure but all inhaled nicotine devices and related products should be closely regulated as suggested above . |

**Q3 Do you think it is important for legislation to prohibit the sale and supply of e‑cigarettes to young people under 18 years of age in the same way as it prohibits the sale and supply of smoked tobacco products to young people?**

Yes X No

Reasons/additional comments:

|  |
| --- |
| The lungs of adolescents are still growing up to the age of 25 yrs old when lung function is maximised. Recent studies show that about 50% of all those adults diagnosed with COPD stem from insults to the lung during the first 3 decades of life. If young people are able to access e-cigarettes and expose themselves to the toxic effects of nicotine in the lungs then we will have taken a big step backwards in trying to improve the health of our citizens and the reduces costs associated with the treatment of COPD and lung cancer. |

**Q4 Do you think it is important for legislation to control advertising of e‑cigarettes in the same way as it controls advertising of smoked tobacco products?**

Yes X No

Reasons/additional comments:

|  |
| --- |
| Advertising of these products should be limited as they are for other drugs made available through prescription with benefits and harms clearly described.  E-cigarettes using nicotine should never be allowed to be made available to the population as a legal uncontrolled product as the evidence to date indicates that inhaled nicotine can cause COPD and lung cancer – see above. |

**Q5 Do you think it is important for the SFEA to prohibit vaping in designated smokefree areas in the same way as it prohibits smoking in such areas?**

Yes X No

Reasons/additional comments:

|  |
| --- |
| If nicotine inhaled through e-cigarette use promotes the development of COPD and lung cancer, then it is possible that exhaled nicotine vapour is also hazardous much like second hand smoke. |

**Q6 Do you agree that other controls in the SFEA for smoked tobacco products should apply to e‑cigarettes? For example:**

|  |  |  |  |
| --- | --- | --- | --- |
| **Control** | **Yes** | **No** | **Reasons/ additional comments** |
| Requirement for graphic health warnings | Yes |  | As staed above longterm use of nicotine e-cigarettes appear to promote the development of COPD and lung cancer. |
| Prohibition on displaying products in sales outlets | Yes |  | On prescription only and subsidised for high risk groups (Maori) or those who cannot afford them. |
| Restriction on use of vending machines | Yes |  | No vending machine access at all. |
| Requirement to provide annual returns on sales data | Yes |  | By pharmacies dispensing this medicine. |
| Requirement to disclose product content and composition | Yes |  | To control volume and concentration of this highly addictive substance. |
| Regulations concerning ingredients (eg, nicotine content and/or flavours) | yes |  | Limit its use as a medicine available through prescription to treat cigarette addiction. |
| Requirement for annual testing of product composition | Yes |  |  |
| Prohibition on free distribution and awards associated with sales | yes |  |  |
| Prohibition on discounting | yes |  |  |
| Prohibition on advertising and sponsorship | Yes |  |  |
| Requirement for standardised packaging | Yes |  |  |
| Other | Yes |  | Prescription only – see above |

**Q7 Do you think it is important for legislation to impose some form of excise or excise-equivalent duty on nicotine e-liquid, as it does on tobacco products?**

Yes  No

Reasons/additional comments:

|  |
| --- |
| Nicotine solutions for e-cigarettes use should be tightly controlled with respect to content and sold cheaply on prescription through pharmacies. |

**Q8 Do you think quality control of and safety standards for e‑cigarettes are needed?**

Yes X No

Additional comments:

|  |  |  |  |
| --- | --- | --- | --- |
| **Area of concern** | **Yes** | **No** | **Reasons/additional comments** |
| Childproof containers | Yes |  |  |
| Safe disposal of e‑cigarette devices and liquids | Yes |  |  |
| Ability of device to prevent accidents | Yes |  |  |
| Good manufacturing practice | Yes |  |  |
| Purity and grade of nicotine | Yes |  |  |
| Registration of products | Yes |  |  |
| A testing regime to confirm product safety and contents purity | Yes |  |  |
| Maximum allowable volume of e-liquid in retail sales | Yes |  |  |
| Maximum concentration of nicotine e-liquid | Yes |  |  |
| Mixing of e-liquids at (or before) point of sale | Yes |  |  |
| Other |  |  |  |

**Q9 Are there any other comments you would like to make?**

|  |
| --- |
| Nicotine absorbed into the blood stream is highly addictive and has powerful neuro-stimulatory effects. This is why cigarettes remain popular and why quitting is so hard.  As nicotine is rapidly absorbed in to the blood stream after inhalation, inhalation is the most effective delivery mechanisms for satisfying nicotine addiction. Studies show us that the nicotine receptor in the lung is important in the development of both COPD and lung cancer and that inhaled nicotine will cause these diseases.  Inhaled nicotine use must be tightly regulated until the long term effects are known otherwise we are inviting another epidemic of lung cancer and a complete erosion of any health gains made by reducing smoking rates in New Zealand. |

**Additional information on sales and use**

**Q10 Can you assist us by providing information on the sale of e‑cigarettes in New Zealand (for example, size of sales or range of products for sale on the local market)?**

|  |
| --- |
| No |

**Q11 Would the Ministry of Health’s proposed amendments have any impact on your business? If so, please quantify/explain that impact.**

|  |
| --- |
| Only the patients I care for in the public health system. |

**Q12 If you are using nicotine e‑cigarettes: how long have you been using them, how often do you use them, how much do you spend on them per week and where do you buy them? Not Applicable.**

|  |  |  |  |
| --- | --- | --- | --- |
| **How long have you been using them?** | **How often do you use them?** | **How much do you spend on them per week?** | **Where do you buy them?** |
|  |  |  |  |

**Consultation submission 231 - Individual**

|  |  |
| --- | --- |
| **Your details**  This submission was completed by: *(name)* | [redacted] |
| Address: *(street/box number)* | [redacted] |
| *(town/city)* | [redacted] |
| Email: | [redacted] |
| Organisation *(if applicable)*: |  |
| Position *(if applicable)*: |  |

*(Tick one box only in this section)*

Are you submitting this:

as an individual or individuals (not on behalf of an organisation)?

on behalf of a group, organisation(s) or business?

*(You may tick more than one box in this section)*

Please indicate which sector(s) your submission represents:

Commercial interests, including e‑cigarette manufacturer, importer, distributor and/or retailer

Tobacco control non-government organisation

Academic/research

Cessation support service provider

Health professional

Māori provider

Pacific provider

Other sector(s) *(please specify)*:

*(You may tick more than one box in this section)*

Please indicate your e‑cigarette use status:

I am using nicotine e‑cigarettes.

I am using nicotine-free e‑cigarettes.

I currently smoke as well as use e‑cigarettes.

I am not an e‑cigarette user.

I have tried e‑cigarettes.

**Privacy**

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If you do not want your submission published on the Ministry’s website, please tick this box:

Do not publish this submission.

Your submission will be subject to requests made under the Official Information Act. If you want your personal details removed from your submission, please tick this box:

Remove my personal details from responses to Official Information Act requests.

If your submission contains commercially sensitive information, please tick this box:

This submission contains commercially sensitive information.

**Declaration of tobacco industry links or vested interest**

As a party to the global tobacco control treaty, the World Health Organization Framework Convention on Tobacco Control, New Zealand has an obligation to protect the development of public health policy from the vested interests of the tobacco industry. To help meet this obligation, the Ministry of Health asks all respondents to disclose whether they have any direct or indirect links to, or receive funding from, the tobacco industry. The Ministry will still carefully consider responses from the tobacco industry, and from respondents with links to the tobacco industry, alongside all other submissions. Please provide details of any tobacco company links or vested interests below.

|  |
| --- |
|  |

Please return this form by email to:

**ecigarettes**[**@moh.govt.nz**](mailto:tobacco@moh.govt.nz) by **5 pm, Monday 12 September 2016**.

If you are sending your submission in PDF format, please also send us the Word document.

**Consultation questions**

Although this form provides blank spaces for your answers to questions, there is no limit to the length of your responses; you should take as much space as you need to answer or comment. Feel free to enlarge the boxes or attach additional pages.

**Q1 Do you agree that the sale and supply of nicotine e‑cigarettes and nicotine liquids should be allowed on the local market, with appropriate controls?**

Yes  No

Reasons/additional comments:

|  |
| --- |
| I belive that smokers wanting to give up need nicotine to get off the smokes. |

**Q2 Are there other (existing or potential) nicotine-delivery products that should be included in these controls at the same time? If so, what are they?**

Yes  No

Reasons/additional comments:

|  |
| --- |
|  |

**Q3 Do you think it is important for legislation to prohibit the sale and supply of e‑cigarettes to young people under 18 years of age in the same way as it prohibits the sale and supply of smoked tobacco products to young people?**

Yes  No

Reasons/additional comments:

|  |
| --- |
| This is still not appropriate for under 18s due to them not needing to necissarily give up smoking |

**Q4 Do you think it is important for legislation to control advertising of e‑cigarettes in the same way as it controls advertising of smoked tobacco products?**

Yes  No

Reasons/additional comments:

|  |
| --- |
|  |

**Q5 Do you think it is important for the SFEA to prohibit vaping in designated smokefree areas in the same way as it prohibits smoking in such areas?**

Yes  No

Reasons/additional comments:

|  |
| --- |
|  |

**Q6 Do you agree that other controls in the SFEA for smoked tobacco products should apply to e‑cigarettes? For example:**

|  |  |  |  |
| --- | --- | --- | --- |
| **Control** | **Yes** | **No** | **Reasons/ additional comments** |
| Requirement for graphic health warnings |  |  |  |
| Prohibition on displaying products in sales outlets |  |  |  |
| Restriction on use of vending machines |  |  |  |
| Requirement to provide annual returns on sales data |  |  |  |
| Requirement to disclose product content and composition |  |  |  |
| Regulations concerning ingredients (eg, nicotine content and/or flavours) |  |  |  |
| Requirement for annual testing of product composition |  |  |  |
| Prohibition on free distribution and awards associated with sales |  |  |  |
| Prohibition on discounting |  |  |  |
| Prohibition on advertising and sponsorship |  |  |  |
| Requirement for standardised packaging |  |  |  |
| Other |  |  |  |

**Q7 Do you think it is important for legislation to impose some form of excise or excise-equivalent duty on nicotine e-liquid, as it does on tobacco products?**

Yes  No

Reasons/additional comments:

|  |
| --- |
|  |

**Q8 Do you think quality control of and safety standards for e‑cigarettes are needed?**

Yes  No

Additional comments:

|  |  |  |  |
| --- | --- | --- | --- |
| **Area of concern** | **Yes** | **No** | **Reasons/additional comments** |
| Childproof containers |  |  |  |
| Safe disposal of e‑cigarette devices and liquids |  |  |  |
| Ability of device to prevent accidents |  |  |  |
| Good manufacturing practice |  |  |  |
| Purity and grade of nicotine |  |  |  |
| Registration of products |  |  |  |
| A testing regime to confirm product safety and contents purity |  |  |  |
| Maximum allowable volume of e-liquid in retail sales |  |  |  |
| Maximum concentration of nicotine e-liquid |  |  |  |
| Mixing of e-liquids at (or before) point of sale |  |  |  |
| Other |  |  |  |

**Q9 Are there any other comments you would like to make?**

|  |
| --- |
|  |

**Additional information on sales and use**

**Q10 Can you assist us by providing information on the sale of e‑cigarettes in New Zealand (for example, size of sales or range of products for sale on the local market)?**

|  |
| --- |
| No |

**Q11 Would the Ministry of Health’s proposed amendments have any impact on your business? If so, please quantify/explain that impact.**

|  |
| --- |
| No |

**Q12 If you are using nicotine e‑cigarettes: how long have you been using them, how often do you use them, how much do you spend on them per week and where do you buy them?**

|  |  |  |  |
| --- | --- | --- | --- |
| **How long have you been using them?** | **How often do you use them?** | **How much do you spend on them per week?** | **Where do you buy them?** |
|  |  |  |  |

**Consultation submission 232 – Action on Smoking and Health NZ**

|  |  |
| --- | --- |
| **Your details**  This submission was completed by: *(name)* | [redacted] |
| Address: *(street/box number)* | [redacted] |
| *(town/city)* | [redacted] |
| Email: | [redacted] |
| Organisation *(if applicable)*: | Action on Smoking & Health (ASH) NZ |
| Position *(if applicable)*: | [redacted] |

*(Tick one box only in this section)*

Are you submitting this:

as an individual or individuals (not on behalf of an organisation)?

on behalf of a group, organisation(s) or business?

*(You may tick more than one box in this section)*

Please indicate which sector(s) your submission represents:

Commercial interests, including e‑cigarette manufacturer, importer, distributor and/or retailer

Tobacco control non-government organisation

Academic/research

Cessation support service provider

Health professional

Māori provider

Pacific provider

Other sector(s) *(please specify)*:

*(You may tick more than one box in this section)*

Please indicate your e‑cigarette use status:

I am using nicotine e‑cigarettes.

I am using nicotine-free e‑cigarettes.

I currently smoke as well as use e‑cigarettes.

I am not an e‑cigarette user.

I have tried e‑cigarettes.

**Privacy**

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Do not publish this submission.

Your submission will be subject to requests made under the Official Information Act. If you want your personal details removed from your submission, please tick this box:

Remove my personal details from responses to Official Information Act requests.

If your submission contains commercially sensitive information, please tick this box:

This submission contains commercially sensitive information.

**Declaration of tobacco industry links or vested interest**

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|  |
| --- |
| I have no direct or indirect links to, or receive funding from, the tobacco industry. |

Please return this form by email to:

**ecigarettes**[**@moh.govt.nz**](mailto:tobacco@moh.govt.nz) by **5 pm, Monday 12 September 2016**.

If you are sending your submission in PDF format, please also send us the Word document.

**Consultation questions**

Although this form provides blank spaces for your answers to questions, there is no limit to the length of your responses; you should take as much space as you need to answer or comment. Feel free to enlarge the boxes or attach additional pages.

**Q1 Do you agree that the sale and supply of nicotine e‑cigarettes and nicotine liquids should be allowed on the local market, with appropriate controls?**

Yes  No

Reasons/additional comments:

|  |
| --- |
| ASH NZ (we) agree that:   * The sale and supply of nicotine e-cigarettes and nicotine liquids should be allowed on local markets i.e. in any retail outlets in NZ with reasonable controls, * Nicotine e-cigarettes (e-cigarettes) should be widely available to all people who smoke over the age of 18 years, as e-cigarettes have so far proven to be a less harmful product than smoked tobacco, * E-cigarettes be less restricted and more accessible than smoked tobacco, * That further measures are required to increase the difficulty of buying smoked tobacco such as retail licensing, not too dissimilar to the already established alcohol liquor licensing regime in New Zealand, and other measures, * Controls be in place to ensure no young people under the age of 18 years of age, who do not smoke smoked tobacco, access e-cigarettes, while ensuring that e-cigarettes are accessible to ALL adults over the age of 18 years who smoke smoked tobacco, * Increased compliance of current retailing practices, which have still allowed tobacco to be sold over the counter to children under the age of 18 years of age, are required, * There can be two streams of e-cigarettes available, one stream as an approved cessation product and the other as a normal retail product that cannot make claims to support smoking cessation, AND * Any and all sales data and information must be captured by either the retailers, the suppliers or both ensuring sale and use statistics can be monitored and reviewed. |

**Q2 Are there other (existing or potential) nicotine-delivery products that should be included in these controls at the same time? If so, what are they?**

Yes  No

Reasons/additional comments:

|  |
| --- |
| * Proven innovative nicotine-delivery products that offer no harm to any individuals that are not reliant on tobacco addiction should be investigated prior to being included in any legislation now or in the future. |

**Q3 Do you think it is important for legislation to prohibit the sale and supply of e‑cigarettes to young people under 18 years of age in the same way as it prohibits the sale and supply of smoked tobacco products to young people?**

Yes  No

Reasons/additional comments:

|  |
| --- |
| We believe:   * This question need support from increased enforcement of current tobacco retail legislation in the Smokefree Environments Act for tobacco to ensure tobacco is increasingly harder to access for young people under the age of 18 years, * That access to smoked tobacco for people under the age of 18 years needs to be much more difficult than access to e-cigarettes, * That e-cigarettes should be available to people under the age of 18 when prescribed by a smoking cessation practitioner or other qualified health professional, * There are a number of other requirements needing to be met in order for this to happen, therefore if e-cigarettes wish to be recognised as a smoking cessation tool, then the appropriate steps for the existing Medicines Act need to be met and adhered to in order to become an approved cessation therapy/medication. |

**Q4 Do you think it is important for legislation to control advertising of e‑cigarettes in the same way as it controls advertising of smoked tobacco products?**

Yes  No

Reasons/additional comments:

|  |
| --- |
| We believe that there should be no advertising for e-cigarettes:   * That is directly targeted towards young people under the age of 18 years who do not smoke smoked tobacco, * That is directly targeted towards people over the age of 18 years who do not smoke smoked tobacco, * That glamourises vaping, the act or the product, OR * That misleads the public about vaping, the act or the product. |

**Q5 Do you think it is important for the SFEA to prohibit vaping in designated smokefree areas in the same way as it prohibits smoking in such areas?**

Yes  No

Reasons/additional comments:

|  |
| --- |
| This is a challenging question.  Cognisant of public health arguments for and against legislation, we consider that installing SFEA legislation which supports SFEA objectives is a priority at this stage.  If evidence can be produced in time showing an adverse effect on the vaping community of such legislation, then reconsideration at that time would warrant further investigation and consideration. |

**Q6 Do you agree that other controls in the SFEA for smoked tobacco products should apply to e‑cigarettes? For example:**

|  |  |  |  |
| --- | --- | --- | --- |
| **Control** | **Yes** | **No** | **Reasons/ additional comments** |
| Requirement for graphic health warnings |  |  | * Warnings regarding underage use restriction, * Warnings regarding possible health risks for pregnant women, |
| Prohibition on displaying products in sales outlets |  |  | * Product placement that attracts young under 18 years of age children to vaping products is to be prohibited |
| Restriction on use of vending machines |  |  | Young people |
| Requirement to provide annual returns on sales data |  |  | To support further knowledge and data regarding where e-cigarettes are being bought and demographics data |
| Requirement to disclose product content and composition |  |  |  |
| Regulations concerning ingredients (eg, nicotine content and/or flavours) |  |  |  |
| Requirement for annual testing of product composition |  |  |  |
| Prohibition on free distribution and awards associated with sales |  |  |  |
| Prohibition on discounting |  |  | Ensuring e-cigarettes remain more accessible than tobacco |
| Prohibition on advertising and sponsorship |  |  |  |
| Requirement for standardised packaging |  |  |  |
| Other |  |  |  |

**Q7 Do you think it is important for legislation to impose some form of excise or excise-equivalent duty on nicotine e-liquid, as it does on tobacco products?**

Yes  No

Reasons/additional comments:

|  |
| --- |
| We believe e-cigarettes must remain more accessible than smoked tobacco, however, pricing must be adequate to deter young people under 18 years of age. |

**Q8 Do you think quality control of and safety standards for e‑cigarettes are needed?**

Yes  No

Additional comments:

|  |  |  |  |
| --- | --- | --- | --- |
| **Area of concern** | **Yes** | **No** | **Reasons/additional comments** |
| Childproof containers |  |  | Essential |
| Safe disposal of e‑cigarette devices and liquids |  |  |  |
| Ability of device to prevent accidents |  |  |  |
| Good manufacturing practice |  |  | Legislation similar to manufacturing practice requirements for current Nicotine Replacement Therapies |
| Purity and grade of nicotine |  |  | Legislation similar to purity and grade of nicotine requirements for current Nicotine Replacement Therapies |
| Registration of products |  |  | Applicable to those products appealing to be registered and offered as cessation products. |
| A testing regime to confirm product safety and contents purity |  |  | Legislation similar to product safety and contents purity requirements for current Nicotine Replacement Therapies |
| Maximum allowable volume of e-liquid in retail sales |  |  |  |
| Maximum concentration of nicotine e-liquid |  |  | Safety guidelines as per current Nicotine Replacement Therapy can be applied |
| Mixing of e-liquids at (or before) point of sale |  |  | Safety guidelines as per current Nicotine Replacement Therapy can be applied |
| Other |  |  |  |

**Q9 Are there any other comments you would like to make?**

|  |
| --- |
| We believe that whatever legislative precautions are placed upon e-cigarettes, legislative measures for smoked tobacco must be more stringent to ensure accessing e-cigarettes remains easier for adults over 18 years of age who currently smoke smoked tobacco. |

**Additional information on sales and use**

**Q10 Can you assist us by providing information on the sale of e‑cigarettes in New Zealand (for example, size of sales or range of products for sale on the local market)?**

|  |
| --- |
| N/A |

**Q11 Would the Ministry of Health’s proposed amendments have any impact on your business? If so, please quantify/explain that impact.**

|  |
| --- |
| Unsure |

**Q12 If you are using nicotine e‑cigarettes: how long have you been using them, how often do you use them, how much do you spend on them per week and where do you buy them? N/A**

|  |  |  |  |
| --- | --- | --- | --- |
| **How long have you been using them?** | **How often do you use them?** | **How much do you spend on them per week?** | **Where do you buy them?** |
|  |  |  |  |

**Consultation submission 233 – The Vaping Kiwi**

Withheld at submitters’ request

**Consultation submission 234 – Lung Foundation New Zealand**

|  |  |
| --- | --- |
| **Your details**  This submission was completed by: *(name)* | [redacted] |
| Address: *(street/box number)* | [redacted] |
| *(town/city)* | [redacted] |
| Email: | [redacted] |
| Organisation *(if applicable)*: | Lung Foundation New Zealand |
| Position *(if applicable)*: | [redacted] |

*(Tick one box only in this section)*

Are you submitting this:

as an individual or individuals (not on behalf of an organisation)?

√ on behalf of a group, organisation(s) - **Lung Foundation New Zealand**

*(You may tick more than one box in this section)*

Please indicate which sector(s) your submission represents:

Commercial interests, including e‑cigarette manufacturer, importer, distributor and/or retailer

√ Tobacco control non-government organisation

√ Academic/research

Cessation support service provider

√ Health professional

Māori provider

Pacific provider

√ Other sector (s) *(please specify)*: See following –



**Lung Foundation New Zealand** is an indepdenant non-government organisation dedicated to promoting healthy lungs and early detection of lung disease (including lung cancer, NZ's biggest cancer killer).

The Foundation advocates on a range of issues, including access to more effective funded treatments, an increase in research funding and a commitment to making Aotearoa a Smokefree nation by 2025.

*(You may tick more than one box in this section)*

Please indicate your e‑cigarette use status:

I am using nicotine e‑cigarettes.

I am using nicotine-free e‑cigarettes.

I currently smoke as well as use e‑cigarettes.

√ I am not an e‑cigarette user.

I have tried e‑cigarettes.

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Remove my personal details from responses to Official Information Act requests.

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**Declaration of tobacco industry links or vested interest**

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The Ministry will still carefully consider responses from the tobacco industry, and from respondents with links to the tobacco industry, alongside all other submissions. Please provide details of any tobacco company links or vested interests below.

|  |
| --- |
| Not applicable |

Please return this form by email to:

**ecigarettes**[**@moh.govt.nz**](mailto:tobacco@moh.govt.nz) by **5 pm, Monday 12 September 2016**.

If you are sending your submission in PDF format, please also send us the Word document.

**Consultation questions**

Although this form provides blank spaces for your answers to questions, there is no limit to the length of your responses; you should take as much space as you need to answer or comment. Feel free to enlarge the boxes or attach additional pages.

**Q1 Do you agree that the sale and supply of nicotine e‑cigarettes and nicotine liquids should be allowed on the local market, with appropriate controls?**

Yes √ No

Reasons/additional comments:

|  |
| --- |
| The sale and supply of e cigarettes is already here, so the best we can do is to regulate the e cigarette market, by allowing;   * The restricted sale of e cigarettes containing nicotine and nicotine liquids through pharmacies and licensed specialist shops (which should also provide other smoking cessation options and have knowledge about e cigarettes and smoking cessation) * Individuals to import a restricted amount for personal use |

**Q2 Are there other (existing or potential) nicotine-delivery products that should be included in these controls at the same time? If so, what are they?**

Yes  No

Reasons/additional comments:

|  |
| --- |
|  |

**Q3 Do you think it is important for legislation to prohibit the sale and supply of e‑cigarettes to young people under 18 years of age in the same way as it prohibits the sale and supply of smoked tobacco products to young people?**

Yes √ No

Reasons/additional comments:

|  |
| --- |
| Studies abroad have documented that e cigarettes contain many harmful chemicals, other than carcinogens and nicotine, which is a highly addictive substance. Examples include formaldehyde and an ingredient used in antifreeze.  Lung Foundation New Zealand is concerned that without regulation, e cigarettes will become a gateway to regular cigarettes for teenagers. Essentially these products have been developed to appear hip and cool and they also offer many flavours which appeal to the younger generation, such as candy and bubble gum etc. |

**Q4 Do you think it is important for legislation to control advertising of e‑cigarettes in the same way as it controls advertising of smoked tobacco products?**

Yes √ No

Reasons/additional comments:

|  |
| --- |
| Studies abroad have documented that e cigarettes contain many harmful chemicals, other than carcinogens and nicotine, which is a highly addictive substance. Examples include formaldehyde and an ingredient used in antifreeze.  Lung Foundation New Zealand is concerned that without regulation, e cigarettes will become a gateway to regular cigarettes for teenagers, because they are marketed as being hip and cool and they also offer many flavours which appeal to the younger generation, such as candy and bubble gum etc. |

**Q5 Do you think it is important for the SFEA to prohibit vaping in designated smokefree areas in the same way as it prohibits smoking in such areas?**

Yes √ No

Reasons/additional comments:

|  |
| --- |
| If e cigarettes users are allowed to vape in Smokefree areas, we are concerned this will detract from the years of hard work to de-normalise smoking in New Zealand. In fact, allowing people to vape in Smokefree areas may well promote smoking itself and this will make Smokefree 2025 so much harder and costly to achieve. |

**Q6 Do you agree that other controls in the SFEA for smoked tobacco products should apply to e‑cigarettes? For example:**

|  |  |  |  |
| --- | --- | --- | --- |
| **Control** | **Yes** | **No** | **Reasons - *As stated above*** |
| Requirement for graphic health warnings | √ |  |  |
| Prohibition on displaying products in sales outlets | √ |  |  |
| Restriction on use of vending machines | √ |  |  |
| Requirement to provide annual returns on sales data | √ |  |  |
| Requirement to disclose product content and composition | √ |  |  |
| Regulations concerning ingredients (e.g., nicotine content and/or flavours) | √ |  |  |
| Requirement for annual testing of product composition | √ |  |  |
| Prohibition on free distribution and awards associated with sales | √ |  |  |
| Prohibition on discounting | √ |  |  |
| Prohibition on advertising and sponsorship | √ |  |  |
| Requirement for standardised packaging | √ |  |  |
| Other | √ |  | Must also provide information about smoking cessation at point of sale |

**Q7 Do you think it is important for legislation to impose some form of excise or excise-equivalent duty on nicotine e-liquid, as it does on tobacco products?**

Yes  No √

Reasons/additional comments:

|  |
| --- |
| Not at the moment  However, review this if evidence in New Zealand shows nicotine e‑cigarettes and nicotine liquids is recruiting non-smokers and then use this to resource campaigns that outline the possible health risks to users. |

**Q8 Do you think quality control of and safety standards for e‑cigarettes are needed?**

Yes √ No

Additional comments:

|  |  |  |  |
| --- | --- | --- | --- |
| **Area of concern** | **Yes** | **No** | **Reasons/additional comments** |
| Childproof containers | √ |  |  |
| Safe disposal of e‑cigarette devices and liquids | √ |  |  |
| Ability of device to prevent accidents | √ |  |  |
| Good manufacturing practice | √ |  |  |
| Purity and grade of nicotine | √ |  |  |
| Registration of products | √ |  |  |
| A testing regime to confirm product safety and contents purity | √ |  |  |
| Maximum allowable volume of e-liquid in retail sales | √ |  |  |
| Maximum concentration of nicotine e-liquid | √ |  |  |
| Mixing of e-liquids at (or before) point of sale | √ |  |  |
| Other |  |  |  |

**Q9 Are there any other comments you would like to make?**

|  |
| --- |
| 1. That E cigarettes recommended as a cessation instrument be licensed by way of Medsafe. 2. We ask that the e cigarettes policy feeds into and assists toward the Smokefree 2025 goal 3. Whilst e cigarettes at this stage are considered much safer than tobacco products, we do have concerns, because the use of e cigarettes amongst adolescents is increasing rapidly. This poses the risk that our younger generation of e cigarette users are establishing a smoker’s behaviour which could well lead them to switch to tobacco products. 4. We ask for an increased investment in smoking cessation campaigns that will engage and support and assist all people who smoke to quit. Such investment will save healthcare costs downstream. 5. We applaud the government for adopting legislation that requires tobacco companies to have plain packaging this past week, however we also ask that there be continued and ongoing commitment to government led tobacco control policy that puts the health of our nation and our people first. |

**Consultation submission 235 – Whanganui District Council**

9 September 2016

Ministry of Health

1–3 The Terrace

Level 2

Wellington 6011

**Attn: Tobacco Team**

**Re: Policy Options for the Regulation of Electronic Cigarettes: A consultation document**

The Whanganui District Council appreciates the Ministry of Health providing an opportunity for Council to submit on its ‘Policy Options for the Regulation of Electronic Cigarettes: A consultation document’.

In general, Whanganui District Council supports the efforts made by the Ministry of Health to identify the risks and benefits of e-cigarettes.

Rather than presenting our submission via the provided consultation form, we believe it would be more appropriate to address key areas of concern in a letter as our expertise is in local governance, not health.

Smoking cessation and improving the Whanganui district’s health, in general, are key areas of focus for our Council. Whanganui District Council is the first Territorial Authority in New Zealand to have adopted a Smoke-free Bylaw in 2010. One of the key strategic objectives of Council’s Leading Edge Strategy is to *pursue initiatives that secure our health, our safety and instil a sense of belonging and wellbeing for all*.

We support the Ministry of Health’s current and future research programmes. These should focus on addressing the knowledge gaps with regard to the health impacts and effects of e-cigarettes on users and sensitive populations.

We agree that legislation applying to the sale and supply of e-cigarettes should be of the same rigour and magnitude of control as that which currently applies to the sale and supply of smoked tobacco. This includes the sale and supply of e-cigarettes to young people and controls on advertising e-cigarettes.

We are concerned that unless changes to the Smoke-free Environments Act 1990 (the Act) are well thought through these will produce poorer health outcomes, for example, if these changes marginalise and/or group persons *vaporing* with tobacco smokers.

As previously mentioned, Whanganui District Council is the only Territorial Authority in New Zealand to have adopted a Smoke-free Bylaw. This is currently under review. As the Act is open to amendment, we ask the Ministry to consider amending the Act to function as parent legislation in the development and review of Territorial Authorities’ Smoke-free Bylaws. We suggest the Act is the best fit for this role considering the Act’s purpose is: “*to reduce the exposure of people who do not themselves smoke to any detrimental effect on their health caused by smoking by others*”[[64]](#footnote-64).

We understand and appreciate that providing parent legislation for Smoke-free Bylaw development sits outside the scope of the current consultation, but believe this consultation provides ample opportunity for this to be considered and is concurrent with the overarching goal of reducing smoking prevalence.

When considering the Act’s potential function as parent legislation, we suggest this amendment should outline what areas a Territorial Authority can designate as smoke-free and that it also permit Territorial Authorities’ delegated officers to issue infringement notices.

Thank you again for allowing Whanganui District Council to provide feedback. We look forward to seeing the advice provided to Government and thank the Ministry of Health for its work to date.

Yours sincerely,

|  |  |
| --- | --- |
| [redacted] | [redacted] |

**Consultation submission 236 - Individual**

|  |  |
| --- | --- |
| **Your details**  This submission was completed by: *(name)* | [redacted] |
| Address: *(street/box number)* | [redacted] |
| *(town/city)* | [redacted] |
| Email: | [redacted] |
| Organisation *(if applicable)*: |  |
| Position *(if applicable)*: |  |

*(Tick one box only in this section)*

Are you submitting this:

as an individual or individuals (not on behalf of an organisation)?

on behalf of a group, organisation(s) or business?

*(You may tick more than one box in this section)*

Please indicate which sector(s) your submission represents:

Commercial interests, including e‑cigarette manufacturer, importer, distributor and/or retailer

Tobacco control non-government organisation

Academic/research

Cessation support service provider

Health professional

Māori provider

Pacific provider

Other sector(s) *(please specify)*:

*(You may tick more than one box in this section)*

Please indicate your e‑cigarette use status:

I am using nicotine e‑cigarettes.

I am using nicotine-free e‑cigarettes.

I currently smoke as well as use e‑cigarettes.

I am not an e‑cigarette user.

I have tried e‑cigarettes.

**Privacy**

We intend to publish all submissions on the Ministry’s website. If you are submitting as an individual, we will automatically remove your personal details and any identifiable information.

If you do not want your submission published on the Ministry’s website, please tick this box:

Do not publish this submission.

Your submission will be subject to requests made under the Official Information Act. If you want your personal details removed from your submission, please tick this box:

Remove my personal details from responses to Official Information Act requests.

If your submission contains commercially sensitive information, please tick this box:

This submission contains commercially sensitive information.

**Declaration of tobacco industry links or vested interest**

As a party to the global tobacco control treaty, the World Health Organization Framework Convention on Tobacco Control, New Zealand has an obligation to protect the development of public health policy from the vested interests of the tobacco industry. To help meet this obligation, the Ministry of Health asks all respondents to disclose whether they have any direct or indirect links to, or receive funding from, the tobacco industry. The Ministry will still carefully consider responses from the tobacco industry, and from respondents with links to the tobacco industry, alongside all other submissions. Please provide details of any tobacco company links or vested interests below.

|  |
| --- |
| I have no direct or indirect links to, or receive funding from, the tobacco industry. |

Please return this form by email to:

**ecigarettes**[**@moh.govt.nz**](mailto:tobacco@moh.govt.nz) by **5 pm, Monday 12 September 2016**.

If you are sending your submission in PDF format, please also send us the Word document.

[redacted]

**Consultation questions**

Although this form provides blank spaces for your answers to questions, there is no limit to the length of your responses; you should take as much space as you need to answer or comment. Feel free to enlarge the boxes or attach additional pages.

**Q1 Do you agree that the sale and supply of nicotine e‑cigarettes and nicotine liquids should be allowed on the local market, with appropriate controls?**

Yes  No

Reasons/additional comments:

|  |
| --- |
| ENDS can help thousands of NZers who remain dependent on combustible tobacco products. It seems very likely that the toll of 5000 smoking related deaths each year would be reduced with the introduction of ENDS, which are 95% safer than the currently available nicotine delivery system, according to a number of published reviews. It is unethical to supply people with the means to die prematurely without offering a reduced harm alternative. People, myself included, currently source nicotine e-liquid from overseas, the USA in my case. I am privileged to be able to do this, as I have the disposable means and internet nous to do so. I would much prefer to buy NZ made from local suppliers. I believe that e-liquids should be regulated as a consumer good, and that adequate warnings can be placed on the labels to inform the public of the properties of the e-liquid as well as the safe use of e-cigarettes. |

**Q2 Are there other (existing or potential) nicotine-delivery products that should be included in these controls at the same time? If so, what are they?**

Yes  No

Reasons/additional comments:

|  |
| --- |
| All recreational nicotine products should be regulated and sold as such. |

**Q3 Do you think it is important for legislation to prohibit the sale and supply of e‑cigarettes to young people under 18 years of age in the same way as it prohibits the sale and supply of smoked tobacco products to young people?**

Yes  No

Reasons/additional comments:

|  |
| --- |
| I believe that it is necessary, more from the perception and the need to communicate (and reassure) the public in the change from prohibition to availability . I am sceptical that the 18 year old restriction prevented any teenagers from not smoking, and it is likely that draconian restrictions on under 18s access to e-cigarettes will cause them to reconsider combustible tobacco. |

**Q4 Do you think it is important for legislation to control advertising of e‑cigarettes in the same way as it controls advertising of smoked tobacco products?**

Yes  No

Reasons/additional comments:

|  |
| --- |
| I believe that e-cigarettes should be advertised as widely as possible, to encourage people to switch from combustible tobacco |

**Q5 Do you think it is important for the SFEA to prohibit vaping in designated smokefree areas in the same way as it prohibits smoking in such areas?**

Yes  No

Reasons/additional comments:

|  |
| --- |
| I agree with what [redacted] has written in his submission:  “It is quite possible that banning vaping in public places or severely restricting it would have adverse effects on health via three mechanisms. First, by making ENDS use relatively less attractive to smokers and so reducing switching. Second, by forcing those who have successfully switched to join smokers while they vape - potentially promoting relapse from vaping back to smoking. Third, by sending an inappropriate and not evidence-based signal that vaping is as harmful as smoking, which it is not. It would be like extending drink-driving laws to coffee - the public would inevitably draw false conclusions about coffee.” |
|  |

**Q6 Do you agree that other controls in the SFEA for smoked tobacco products should apply to e‑cigarettes? For example:**

|  |  |  |  |
| --- | --- | --- | --- |
| **Control** | **Yes** | **No** | **Reasons/ additional comments** |
| Requirement for graphic health warnings |  |  |  |
| Prohibition on displaying products in sales outlets |  |  |  |
| Restriction on use of vending machines |  |  |  |
| Requirement to provide annual returns on sales data |  |  |  |
| Requirement to disclose product content and composition |  |  |  |
| Regulations concerning ingredients (eg, nicotine content and/or flavours) |  |  |  |
| Requirement for annual testing of product composition |  |  |  |
| Prohibition on free distribution and awards associated with sales |  |  |  |
| Prohibition on discounting |  |  |  |
| Prohibition on advertising and sponsorship |  |  |  |
| Requirement for standardised packaging |  |  |  |
| Other |  |  |  |

**Q7 Do you think it is important for legislation to impose some form of excise or excise-equivalent duty on nicotine e-liquid, as it does on tobacco products?**

Yes  No

Reasons/additional comments:

|  |
| --- |
| The 15% GST should suffice |

**Q8 Do you think quality control of and safety standards for e‑cigarettes are needed?**

Yes  No

Additional comments:

|  |  |  |  |
| --- | --- | --- | --- |
| **Area of concern** | **Yes** | **No** | **Reasons/additional comments** |
| Childproof containers |  |  |  |
| Safe disposal of e‑cigarette devices and liquids |  |  |  |
| Ability of device to prevent accidents |  |  |  |
| Good manufacturing practice |  |  |  |
| Purity and grade of nicotine |  |  |  |
| Registration of products |  |  |  |
| A testing regime to confirm product safety and contents purity |  |  |  |
| Maximum allowable volume of e-liquid in retail sales |  |  |  |
| Maximum concentration of nicotine e-liquid |  |  |  |
| Mixing of e-liquids at (or before) point of sale |  |  |  |
| Other |  |  |  |

**Q9 Are there any other comments you would like to make?**

|  |
| --- |
| I would like to add a few comments. I am speaking both as a vaper and a clinical psychologist with 25 years’ experience in treating addiction and dependence, both legal and illegal drug use. As a strong proponent of the harm reduction approach to public health, there can be no other position than that of supporting a change to widely available, safe and regulated e-liquids. Because of the “hand-to-mouth” phenomenon, there is a group of people in the community who are not affected by current government policy. They continue to smoke because the NRT does not address what to do with their hands, nor the satisfaction of unleashing a cloud of vapour!  My mother was a 2 pack a day smoker for most of her adult life. She struggled to quit and stay quit, one time getting to 5 years before relapsing. About 3 years ago, I began to badger her about using e-cigarettes. She had 2 heart valve replacements, and emphysema. Eventually, she made the switch and for the last 2 years of her life enjoyed vaping and didn’t touch another tobacco cigarette. The amount of chest infections went down dramatically, the smoker’s cough disappeared, and her place smelled lovely! She passed away this February, and I owe it to her to write this submission and proselytise the benefits of vaping. |

**Additional information on sales and use**

**Q10 Can you assist us by providing information on the sale of e‑cigarettes in New Zealand (for example, size of sales or range of products for sale on the local market)?**

|  |
| --- |
|  |

**Q11 Would the Ministry of Health’s proposed amendments have any impact on your business? If so, please quantify/explain that impact.**

|  |
| --- |
| NA |

**Q12 If you are using nicotine e‑cigarettes: how long have you been using them, how often do you use them, how much do you spend on them per week and where do you buy them?**

|  |  |  |  |
| --- | --- | --- | --- |
| **How long have you been using them?** | **How often do you use them?** | **How much do you spend on them per week?** | **Where do you buy them?** |
| 4 years | Everyday | $15 | [redacted] |

**Consultation submission 237 – Sport Waitakere, Healthy Families Waitakere**

|  |  |
| --- | --- |
| **Your details**  This submission was completed by: *(name)* | [redacted] |
| Address: *(street/box number)* | [redacted] |
| *(town/city)* | [redacted] |
| Email: | [redacted] |
| Organisation *(if applicable)*: | Sport Waitakere, Healthy Families Waitakere |
| Position *(if applicable)*: | [redacted] |

*(Tick one box only in this section)*

Are you submitting this:

as an individual or individuals (not on behalf of an organisation)?

on behalf of a group, organisation(s) or business?

*(You may tick more than one box in this section)*

Please indicate which sector(s) your submission represents:

Commercial interests, including e‑cigarette manufacturer, importer, distributor and/or retailer

Tobacco control non-government organisation

Academic/research

Cessation support service provider

Health professional

Māori provider

Pacific provider

Other sector(s) *(please specify)*: Regional Sports Trust

*(You may tick more than one box in this section)*

Please indicate your e‑cigarette use status:

I am using nicotine e‑cigarettes.

I am using nicotine-free e‑cigarettes.

I currently smoke as well as use e‑cigarettes.

I am not an e‑cigarette user.

I have tried e‑cigarettes.

**Privacy**

We intend to publish all submissions on the Ministry’s website. If you are submitting as an individual, we will automatically remove your personal details and any identifiable information.

If you do not want your submission published on the Ministry’s website, please tick this box:

Do not publish this submission.

Your submission will be subject to requests made under the Official Information Act. If you want your personal details removed from your submission, please tick this box:

Remove my personal details from responses to Official Information Act requests.

If your submission contains commercially sensitive information, please tick this box:

This submission contains commercially sensitive information.

**Declaration of tobacco industry links or vested interest**

As a party to the global tobacco control treaty, the World Health Organization Framework Convention on Tobacco Control, New Zealand has an obligation to protect the development of public health policy from the vested interests of the tobacco industry. To help meet this obligation, the Ministry of Health asks all respondents to disclose whether they have any direct or indirect links to, or receive funding from, the tobacco industry. The Ministry will still carefully consider responses from the tobacco industry, and from respondents with links to the tobacco industry, alongside all other submissions. Please provide details of any tobacco company links or vested interests below.

|  |
| --- |
| Sport Waitakere confirms that we have no direct or indirect links to the tobacco industry and we do not recieve any funding from the tobacco industry |

Please return this form by email to:

**ecigarettes**[**@moh.govt.nz**](mailto:tobacco@moh.govt.nz) by **5 pm, Monday 12 September 2016**.

If you are sending your submission in PDF format, please also send us the Word document.

**Consultation questions**

Although this form provides blank spaces for your answers to questions, there is no limit to the length of your responses; you should take as much space as you need to answer or comment. Feel free to enlarge the boxes or attach additional pages.

**Q1 Do you agree that the sale and supply of nicotine e‑cigarettes and nicotine liquids should be allowed on the local market, with appropriate controls?**

Yes  No

Reasons/additional comments:

|  |
| --- |
| Sport Waitakere is supportive of policy measures that will support the achievement of Smokefree 2025.  Whilst there is evidence that electronic cigarettes support people who smoke to give up smoking and e-cigarettes are significantly less toxic than cigarettes, there are a variety of adverse effects that need further exploration in the New Zealand context before allowing the sale of these items. For example, the use of electronic cigarettes mimics the same behaviours as smoking and the long term effects of using electronic cigarettes are not known.  Once a degree of safety can be assured in the New Zealand Context it would be appropriate to consider the provision of electronic cigarettes to people who wish to quit smoking only. The American Heart Association advice on electronic cigarettes is to offer these to patients who have failed initial treatment, are intolerant or refuse to use other smoking cessation treatment[[65]](#footnote-65). Furthermore in a study of the toxic effects of nicotine recommended that patients with cardiovascular disease not use electronic cigarettes due to the unknown effects of chemicals such as flavours on cardiovascular health[[66]](#footnote-66) . In addition the Tobacco industry is also developing electronic cigarettes, so there are ethical concerns about offering these products to people wishing to quit.  We are concerned about the recreational use of electronic cigarettes given that 21% of students surveyed in 2014 had tried electronic cigarettes and most of these students were non-smokers[[67]](#footnote-67). In addition electronic cigarettes can be used by youth to vaporise cannabis[[68]](#footnote-68), to perform tricks such as cloud chasing(an activity where the goal is to produce large clouds of vapour in a variety of shapes and patterns) or to enhance peer group status[[69]](#footnote-69).  Some of the adverse effects of electronic cigarettes reported in 2016 publications include a reduced expression of immune related genes in the nasal mucosa amongst those using electronic cigarettes, resulting in an immune system suppression[[70]](#footnote-70); poor maintenance of e-cigarette devices(ie not cleaning regularly) can lead to increased emissions of aldehyde and a range of possible or probable carcinogens exist in e-cigarette vapor[[71]](#footnote-71), lung and liver nodules that were suggestive of an immune response to a foreign body that later disappeared with discontinuation of electronic cigarettes[[72]](#footnote-72).  Sport Waitakere also appreciates that there is growing support from a variety of sectors for electronic cigarette use to be regulated as a tobacco harm reduction approach. Overseas evidence also has suggested that under-regulation of electronic cigarettes has led to rapid innovation of these products with 4600 brands and up to 7000 flavours available in the United States Market[[73]](#footnote-73) If regulation happens we recommend the following   * The Ministry of Health regularly reviews the evidence of electronic cigarette use, benefits and harms * Appropriate protection to minimise the risk of vapours to children, and adults (second hand exposure to vapours) * A risk assessment and toxicological appraisal of all chemicals used in the e-liquids both in the liquid and vapour state * An appraisal of the environmental impact of disposed e-cigarettes |

**Q2 Are there other (existing or potential) nicotine-delivery products that should be included in these controls at the same time? If so, what are they?**

Yes  No

Reasons/additional comments:

|  |
| --- |
| Smokeless tobacco – given there is currently not routine surveillance of the use of smokeless tobacco in New Zealand[[74]](#footnote-74), it would be appropriate for the Ministry of Health Tobacco Control to begin work in understanding this area of tobacco control. |

**Q3 Do you think it is important for legislation to prohibit the sale and supply of e‑cigarettes to young people under 18 years of age in the same way as it prohibits the sale and supply of smoked tobacco products to young people?**

Yes  No

Reasons/additional comments:

|  |
| --- |
| Given the finding that 21% of New Zealand students reported having tried an e-cigarette there is a need to protect youth from electronic cigarettes. A study in the United Kingdom found that students who had never smoked cigarettes but had tried electronic cigarettes tended to be male, the numbers increased with the level of deprivation and use was very high in teenagers whose parents smoked, and that those who also used alcohol were 4.59 times more likely to use electronic cigarettes that non-smokers that did not drink[[75]](#footnote-75). |

**Q4 Do you think it is important for legislation to control advertising of e‑cigarettes in the same way as it controls advertising of smoked tobacco products?**

Yes  No

Reasons/additional comments:

|  |
| --- |
| A study found that youth who were exposed to e-cigarette advertising were 54% more likely to try an electronic cigarette[[76]](#footnote-76). Another study found that exposure a variety of advertising means lead to greater odds of starting to use electronic cigarettes with internet advertising making study participants 2.9 times more likely to start to use electronic cigarettes[[77]](#footnote-77). |

**Q5 Do you think it is important for the SFEA to prohibit vaping in designated smokefree areas in the same way as it prohibits smoking in such areas?**

Yes  No

Reasons/additional comments:

|  |
| --- |
| Protecting people from second hand vaping exposure is a matter of public health concern. |

**Q6 Do you agree that other controls in the SFEA for smoked tobacco products should apply to e‑cigarettes? For example:**

|  |  |  |  |
| --- | --- | --- | --- |
| **Control** | **Yes** | **No** | **Reasons/ additional comments** |
| Requirement for graphic health warnings |  |  | More research is needed to quantify the risk. Packaging should have a safety warning not to use the product around vulnerable populations such as children and pregnant women and that nicotine is addictive |
| Prohibition on displaying products in sales outlets |  |  | See above comments about advertising. The review should also consider the risk to retailers from violent aggravated robbery if these products become more desirable |
| Restriction on use of vending machines |  |  |  |
| Requirement to provide annual returns on sales data |  |  | This will help to monitor sales of electronic cigarettes |
| Requirement to disclose product content and composition |  |  | All ingredients should be appropriately labelled |
| Regulations concerning ingredients (eg, nicotine content and/or flavours) |  |  | A universal standard for these products is required |
| Requirement for annual testing of product composition |  |  |  |
| Prohibition on free distribution and awards associated with sales |  |  |  |
| Prohibition on discounting |  |  | The cost of electronic cigarettes should be set at a level to deter youth use |
| Prohibition on advertising and sponsorship |  |  |  |
| Requirement for standardised packaging |  |  | Standardised packaging can help to prevent the marketing of these products to youth audiences. Colours and flavourings are used to make a product trendy and desired by youth. This needs to be prevented. |
| Other |  |  |  |

**Q7 Do you think it is important for legislation to impose some form of excise or excise-equivalent duty on nicotine e-liquid, as it does on tobacco products?**

Yes  No

Reasons/additional comments:

|  |
| --- |
| Nicotine is an addictive substance, there has not been consideration of whether e cigarettes will create new pathways leading to addiction. |

**Q8 Do you think quality control of and safety standards for e‑cigarettes are needed?**

Yes  No

Additional comments:

|  |  |  |  |
| --- | --- | --- | --- |
| **Area of concern** | **Yes** | **No** | **Reasons/additional comments** |
| Childproof containers |  |  | This would prevent accidental poisoning |
| Safe disposal of e‑cigarette devices and liquids |  |  | Hazardous substance disposal provisions should be considered |
| Ability of device to prevent accidents |  |  | This includes the battery – some batteries have exploded and have caused fire |
| Good manufacturing practice |  |  |  |
| Purity and grade of nicotine |  |  |  |
| Registration of products |  |  |  |
| A testing regime to confirm product safety and contents purity |  |  |  |
| Maximum allowable volume of e-liquid in retail sales |  |  |  |
| Maximum concentration of nicotine e-liquid |  |  |  |
| Mixing of e-liquids at (or before) point of sale |  |  | Need to also consider advice given to users about mixing various e- liquids particularly the chemical flavours also. |
| Other |  |  |  |

**Q9 Are there any other comments you would like to make?**

|  |
| --- |
| Given that tobacco is more harmful that e-cigarettes greater regulations should occur for |

**Additional information on sales and use**

**Q10 Can you assist us by providing information on the sale of e‑cigarettes in New Zealand (for example, size of sales or range of products for sale on the local market)?**

|  |
| --- |
| Whilst we do not have knowledge of technical specifics of electronic cigarettes West Auckland has a vape shop that has recently opened  <http://09vapes.co.nz/?age-verified=c338873e93> |

**Q11 Would the Ministry of Health’s proposed amendments have any impact on your business? If so, please quantify/explain that impact.**

|  |
| --- |
| If vaping was able to be conducted in public spaces we would have a concern with the impact and nuisance to others – particularly park and recreation facilities as well as areas close to schools and early childcare centres and churches or marae. The Local Approved products policies for psychoactive substances have allowed council to limit where retailers can sell |

**Q12 If you are using nicotine e‑cigarettes: how long have you been using them, how often do you use them, how much do you spend on them per week and where do you buy them?**

|  |  |  |  |
| --- | --- | --- | --- |
| **How long have you been using them?** | **How often do you use them?** | **How much do you spend on them per week?** | **Where do you buy them?** |
|  |  |  |  |

**Consultation submission 238 – Vape2Save**

|  |  |
| --- | --- |
| **Your details**  This submission was completed by: *(name)* | [redacted] |
| Address: *(street/box number)* | [redacted] |
| *(town/city)* | [redacted] |
| Email: | [redacted] |
| Organisation *(if applicable)*: | Vape2Save |
| Position *(if applicable)*: |  |

*(Tick one box only in this section)*

Are you submitting this:

as an individual or individuals (not on behalf of an organisation)?

x on behalf of a group, organisation(s) or business?

*(You may tick more than one box in this section)*

Please indicate which sector(s) your submission represents:

Commercial interests, including e‑cigarette manufacturer, importer, distributor and/or retailer

Tobacco control non-government organisation

Academic/research

Cessation support service provider

Health professional

Māori provider

Pacific provider

x Other sector(s) *(please specify)*: Vape2Save (Group Based Treatment with E-cigarettes)

*(You may tick more than one box in this section)*

Please indicate your e‑cigarette use status:

x I am using nicotine e‑cigarettes.

x I am using nicotine-free e‑cigarettes.

x I currently smoke as well as use e‑cigarettes.

I am not an e‑cigarette user.

I have tried e‑cigarettes.

**Privacy**

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Do not publish this submission.

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Remove my personal details from responses to Official Information Act requests.

If your submission contains commercially sensitive information, please tick this box:

This submission contains commercially sensitive information.

**Declaration of tobacco industry links or vested interest**

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|  |
| --- |
| NO links or vested interest to the Tobacco Industry |

Please return this form by email to:

**ecigarettes**[**@moh.govt.nz**](mailto:tobacco@moh.govt.nz) by **5 pm, Monday 12 September 2016**.

If you are sending your submission in PDF format, please also send us the Word document.

**Consultation questions**

Although this form provides blank spaces for your answers to questions, there is no limit to the length of your responses; you should take as much space as you need to answer or comment. Feel free to enlarge the boxes or attach additional pages.

**Q1 Do you agree that the sale and supply of nicotine e‑cigarettes and nicotine liquids should be allowed on the local market, with appropriate controls?**

Yes  No

Reasons/additional comments:

|  |
| --- |
| We should be supporting specialist vape shops to supply e-cigarettes and e-juice. The Vape vendors are the best to support the smokers in regards to getting started vaping with both quipment and e-juice. Vape Vendors should be combined with behavioural support from Stop Smoking Services to ensure smokers have the best possible start to achieve the switch and quit tobacco for good.  We should also be looking at how people access e-juice (Nicotine) outside the hours of vaping shops. We don’t want people relapsing to tobacco because they couldn’t get their nicotine e-jucie in time. We need to allow sale of nicotine e-juice from gas stations or supermarkets. |

**Q2 Are there other (existing or potential) nicotine-delivery products that should be included in these controls at the same time? If so, what are they?**

Yes  No

Reasons/additional comments:

|  |
| --- |
| NZ should have an open review process of all new innovative options as they present. Currently NZ should focus on e-cigarettes as the current harm reduction option that has huge potential to reduce smoking prevalance. |

**Q3 Do you think it is important for legislation to prohibit the sale and supply of e‑cigarettes to young people under 18 years of age in the same way as it prohibits the sale and supply of smoked tobacco products to young people?**

Yes  No

Reasons/additional comments:

|  |
| --- |
| E-cigarettes should be available for sale with the age restriction of 18+.  Under 18 years should be allowed to access e-cigarettes and nicotine e-juice but have to be supported through stop smoking service with parent or guardians involvement. |

**Q4 Do you think it is important for legislation to control advertising of e‑cigarettes in the same way as it controls advertising of smoked tobacco products?**

Yes  No

Reasons/additional comments:

|  |
| --- |
| Positive Marketing : Advertising of e-cigarettes should have a health and wealth marketing angle. E-cigarettes are reducing cost for families and creating healthier whanau.  There should be:   * An acceptable level of POS advertising. * Online advertising through specialist vape vendors. * Events advertised (mass quitting opportunities) Vape Day, Vape Meets * National stop smoking campaigns should include e-cigarettes as an option to quit tobacco.   I think the status quo for **no** advertising sports events and TV ads unless national campaign (see above)  **Positive** messages on cigarette packs should help smokers to promote the e-cig alternative is available, and where they can get further information (e.g. a MOH controlled site with basic information on e-cigarettes, e-cigarette trained stop smoking services, and a ‘nearest vape shops from my postcode’ facility). |

**Q5 Do you think it is important for the SFEA to prohibit vaping in designated smokefree areas in the same way as it prohibits smoking in such areas?**

Yes  No

Reasons/additional comments:

|  |
| --- |
| Vaping needs to be seen as a positive alternative to smoking tobacco. We need to encourage smokers to be motivated to want to vape and switch as well. If vaping was given it own areas where they are not lumped in with smokers, but empowering them feel that they have made the best choice possible for themselves and others.  Individual businesses should get to decide what is best for their customers, and in what parts of the building (e.g. a pub might ban e-cigs in the main bar, while allowing them in another room or the beer garden). Further make it so that the business needs to signal their ‘pro e-cig’ intent explicitly by putting up ‘e-cig OK’ signs.  Outside, I can see the sense of banning e-cig use in places that are **predominantly** for children, but something like open air stadiums should be left to the people controlling them, with the same ‘e-cig OK’ sign requirement. |

**Q6 Do you agree that other controls in the SFEA for smoked tobacco products should apply to e‑cigarettes? For example:**

|  |  |  |  |
| --- | --- | --- | --- |
| **Control** | **Yes** | **No** | **Reasons/ additional comments** |
| Requirement for graphic health warnings |  |  | No need for graphic warning for e-cigs. E-cigs are not tobacco we need to create positive messages rather than warnings. |
| Prohibition on displaying products in sales outlets |  |  | Vaping Shops will need to display products to discuss all options of different types of equipment and e-juice.  For out of hours access where nicotice e-juice can be sold this can have some type of reduction of display. |
| Restriction on use of vending machines |  |  | No needed as vaping needs personal interaction for better outcomes. |
| Requirement to provide annual returns on sales data |  |  | Important to check that e-cigs are doing the job the health department needs of them. This is at least part of the data they will require |
| Requirement to disclose product content and composition |  |  | User knowledge of nicotine content is vital. |
| Regulations concerning ingredients (eg, nicotine content and/or flavours) |  |  | Yes, all e-juice should have nicotine mg , what is the flavouring and what is the PG and VG percentage and food grade. Sample supplied: 18 mg/mL nicotine, lemon and lime flavouring, 80/20 PG/VG’ |
| Requirement for annual testing of product composition |  |  | If products are tested once and are not changed, I don’t see the benefit of annual testing.  Testing should be implemented if concerns of quality have been reported from the community. |
| Prohibition on free distribution and awards associated with sales |  |  | No need to restrict this, these are going to create more people wanting to switch to vaping and also maintain their quit status - No smoking tobacco |
| Prohibition on discounting |  |  | No need to restrict this, discounts are going to create more people wanting to switch to vaping and also maintain their quit status - No smoking tobacco |
| Prohibition on advertising and sponsorship |  |  | Advertising should be strictly controlled, but not prohibited. I am not in favour of allowing sponsorship. |
| Requirement for standardised packaging |  |  | Compulsory leaflets to go with hardware & e-liquids should be sufficient. |
| Other |  |  |  |

**Q7 Do you think it is important for legislation to impose some form of excise or excise-equivalent duty on nicotine e-liquid, as it does on tobacco products?**

Yes  No

Reasons/additional comments:

|  |
| --- |
| Let’s try not to create further barriers for smokers to achieve swithcing to vaping. E-cigarettes should be seen as a positive option and not a tobacco product.  Currently all my Vape2Save members are experiencing the cost reduction from vaping and this is helping them to enjoy life and focus on reducing debt, more food and clothing for whanau etc.  Perhaps Tobacco tax revenue can be allocated to paid for testing of e-juice, data collection and supporting the specialist vape vendors self regulation process. |

**Q8 Do you think quality control of and safety standards for e‑cigarettes are needed?**

Yes  No

Additional comments:

|  |  |  |  |
| --- | --- | --- | --- |
| **Area of concern** | **Yes** | **No** | **Reasons/additional comments** |
| Childproof containers |  |  | Yes and currently this is a standard with Vape Vendors. |
| Safe disposal of e‑cigarette devices and liquids |  |  | Vape vendors should offer a service to safely dispose of, or recycle, old batteries & safely dispose of unused e-liquids |
| Ability of device to prevent accidents |  |  | Vape Vendors are always sourcing the best quality vaping devices to prevent accidents this should also be covered by existing ‘consumer electrical safety’ requirements? |
| Good manufacturing practice |  |  | Vape Vendors that mix e-liquid should have staff go through a 1 day training course on how to mix the components (nicotine, flavour, PG, VG) together (note that there are existing on-line calculators for doing just that). This may need to be monitored for quality assurance. |
| Purity and grade of nicotine |  |  | pharmaceutical grade’ nicotine and ‘food grade’ everything else. |
| Registration of products |  |  | Vape Vendors to register new models of e-cig battery packs & tanks with a central repository of such information. It could be handy if a particular device is found to be e.g. electrically unsafe. |
| A testing regime to confirm product safety and contents purity |  |  | Product safety for hardware should already be covered by existing consumer regulations. E-liquid is too variable (especially in regards flavour & diluent) to require testing of every possible variant. But certainly some basic standards should be specified (e.g. ‘food grade’ is pretty much a de-facto standard within the industry). |
| Maximum allowable volume of e-liquid in retail sales |  |  | 30ml if nicotine is 12mg,18mg,24,mg  Up to 100ml if nicotine is 3mg with higher VG mix. |
| Maximum concentration of nicotine e-liquid |  |  | Currently 24mg with juice mix PG 60/ VG 40 is rarely taken up with those smokers that present high tobacco addiction and would normally be recommended 21mg nicotine patch and oral nicotine as well.  I would say keep the maximum at 24mg with the PG/VG 60/40 if people require more nicotine a patch can be offered. |
| Mixing of e-liquids at (or before) point of sale |  |  | Only in Vape Shops - I feel the option should be there for the consumer to walk into a shop, request a custom nicotine strength, wait 15 minutes while it’s mixed, and leave with it. |
| Other |  |  |  |

**Q9 Are there any other comments you would like to make?**

|  |
| --- |
| The NZ govt need to work with the Vape Vendors to ensure the best quality of equipment and e-juice is available and that the stop smoking services are integrated into this new harm reduction option. |

Additional information on sales and use

**Q10 Can you assist us by providing information on the sale of e‑cigarettes in New Zealand (for example, size of sales or range of products for sale on the local market)?**

|  |
| --- |
| Currently Vape2Save members purchase their e-cigs and e-juice from [www.NZVAPOR.com](http://www.NZVAPOR.com).  30ml bottles of e-juice nicotine 12mg. 18mg and 24mg PG/VG 60/40  100ml bottles of e-juice nicotine 3mg PG/VG 30/70 - all higher VG juice are used in e-cigs that burn more efficiently. Bigger Pen styles and 3rd Gen Mod Boxes.. Because of the effective burn they only need 3mg nicotine, anything higher is too harsh. |

**Q11 Would the Ministry of Health’s proposed amendments have any impact on your business? If so, please quantify/explain that impact.**

|  |
| --- |
| N/A not a vendor |

**Q12 If you are using nicotine e‑cigarettes: how long have you been using them, how often do you use them, how much do you spend on them per week and where do you buy them?**

|  |  |  |  |  |
| --- | --- | --- | --- | --- |
| **How long have you been using them?** | **How often do you use them?** | **How much did you spend on tobacco?** | **How much do you spend on them per week?** | **Where do you buy them?** |
| Vape2Save Member 1  10 months | All the time | $60 per week | $40 per month | NZVAPOR |
| Vape2Save Member 2  10 months | All the time | $100 per week | $25 per month | NZVAPOR |
| Vape2Save Member 3  3 months | All the time | $100 per week | $25 per month | NZVAPOR |
| Vape2Save Member 4  10 months | Not all the time – now and then | $100 per week | $25 per month | NZVAPOR |
| Vape2Save Member 5 and husband  3 months | All the time | $120 per week | $90 per month | NZVAPOR |

**Consultation submission 239 – Hapai Te Hauora Tapui Limited**

|  |  |
| --- | --- |
| **Your details**  This submission was completed by: *(name)* | [redacted] |
| Address: *(street/box number)* | [redacted] |
| *(town/city)* | [redacted] |
| Email: | [redacted] |
| Organisation *(if applicable)*: | Hapai Te Hauora Tapui Limited |
| Position *(if applicable)*: | [redacted] |

*(Tick one box only in this section)*

Are you submitting this:

on behalf of a group, organisation(s) or business?

*(You may tick more than one box in this section)*

Please indicate which sector(s) your submission represents:

Health professional

Māori provider

National Tobacco Control Advocacy Service

The core of our work at Hāpai National Tobacco Control Advocacy Service is to address the health issues and determinants of tobacco use. To achieve this goal we grow local, regional and national leadership, increase communication and enhance collaboration across the country. Hāpai have wide array of public health networks (Māori, Pacific and non-Māori) we actively collaborative cross-sector approaches that enable the addressing of multiple factors linked to tobacco use. All our initiatives are based on evidence based strategies to support and maximise Government priorities, policies and actions in the area of tobacco harm.

*(You may tick more than one box in this section)*

Please indicate your e‑cigarette use status:

I am not an e‑cigarette user.

**Privacy**

We intend to publish all submissions on the Ministry’s website. If you are submitting as an individual, we will automatically remove your personal details and any identifiable information.

If you do not want your submission published on the Ministry’s website, please tick this box:

Do not publish this submission.

Your submission will be subject to requests made under the Official Information Act. If you want your personal details removed from your submission, please tick this box:

Remove my personal details from responses to Official Information Act requests.

If your submission contains commercially sensitive information, please tick this box:

This submission contains commercially sensitive information.

**Declaration of tobacco industry links or vested interest**

As a party to the global tobacco control treaty, the World Health Organization Framework Convention on Tobacco Control, New Zealand has an obligation to protect the development of public health policy from the vested interests of the tobacco industry. To help meet this obligation, the Ministry of Health asks all respondents to disclose whether they have any direct or indirect links to, or receive funding from, the tobacco industry. The Ministry will still carefully consider responses from the tobacco industry, and from respondents with links to the tobacco industry, alongside all other submissions. Please provide details of any tobacco company links or vested interests below.

|  |
| --- |
| Hāpai does not have any tobacco company links or other vested interests to declare. |

Please return this form by email to:

**ecigarettes**[**@moh.govt.nz**](mailto:tobacco@moh.govt.nz) by **5 pm, Monday 12 September 2016**.

If you are sending your submission in PDF format, please also send us the Word document.

**Consultation questions**

Although this form provides blank spaces for your answers to questions, there is no limit to the length of your responses; you should take as much space as you need to answer or comment. Feel free to enlarge the boxes or attach additional pages.

**Q1 Do you agree that the sale and supply of nicotine e‑cigarettes and nicotine liquids should be allowed on the local market, with appropriate controls?**

Yes

Reasons/additional comments:

|  |
| --- |
| Hāpai believes that the sale and supply of nicotine e-cigarettes and nicotine liquids should be allowed in the local market.   * To support the achievement of the Smokefree 2025 goal, for all population groups in New Zealand. * To support the reduction in smoking for Māori and Pacific (anecdotal evidence suggest a high interest in using e-cigs to quit by these two population groups) * To provide additional stop smoking support for communities that are struggling to afford to tobacco due to tax increases. * Increasing accessibility of EC equipment (coils, liquids, and hardware) to quit tobacco through pharmacies, specialist vaping shops and gas stations (24 hour access). * Venues that sell EC equipment should train their staff in ABC, and e-cig technical use. * Nicotine E-Cigarettes and Liquid should be more readily available than tobacco. * Tobacco regulations should be more stringent that any proposed regulations for e-cigarette and nicotine liquid. * The Ministry of Health should continue to monitor emerging evidence on e-cigarettes and nicotine liquid and the potential impacts (positive and negative) on all populations. * Minimum age of purchase 18 years. (tobacco products should be 21) * Regardless of decisions made about EC, intensifying comprehensive smoked tobacco measures are crucial to achieving the Smokefree 2025 goal in all population groups, and will enhance any impact e-cigarettes have in reducing smoking prevalence and disparities in smoking. |

**Q2 Are there other (existing or potential) nicotine-delivery products that should be included in these controls at the same time? If so, what are they?**

Yes

Reasons/additional comments:

|  |
| --- |
| This submission is focused on EC’s, but when other products are emerging that are being marketed as potentials for aiding cessation or safer substitutes for tobacco smoking. All potential products associated with less harm or with stop smoking claims should be evaluated in a similar way to determine their usefulness in the New Zealand context. |

**Q3 Do you think it is important for legislation to prohibit the sale and supply of e‑cigarettes to young people under 18 years of age in the same way as it prohibits the sale and supply of smoked tobacco products to young people?**

No

Reasons/additional comments:

|  |
| --- |
| Hāpai recommend increasing the age of purchase for the sale and supply of tobacco products to 21 years of age. The age of purchase for the sale and supply of e-cigarettes should be made 18 years of age. This fits with one of our main bullet points in Q1” *Tobacco regulations should be more stringent that any proposed regulations for e-cigarette and nicotine liquid”.*  Considering there is a scientific consensus suggesting that e-cigarettes are less harmful than tobacco, it seems appropriate to promote the difference in harm by having two separate age restrictions for two separate products. 18 for the less harmful, 21 for the more harmful. Without age differentiation an unintended consequence maybe that smokers consider both products to be as harmful as each other and continue to smoke tobacco. <https://blogs.otago.ac.nz/pubhealthexpert/2016/07/04/what-does-recent-biomarker-literature-say-about-the-likely-harm-from-e-cigarettes/>  We do believe that an 18 age restriction will help to minimise the use of EC’s by minors. Currently there is no evidence to suggest that e-cig user’s gateway into tobacco. Ongoing research and monitoring needs to occur to deal with any new e-cig trends in the New Zealand context. |

**Q4 Do you think it is important for legislation to control advertising of e‑cigarettes in the same way as it controls advertising of smoked tobacco products?**

Yes

Reasons/additional comments:

|  |
| --- |
| Hāpai have strong connections with Māori communities both at a regional and a national level. From our observations Maori communities are displaying an ever increasing interest in the use of e-cigs to quit tobacco.  To capture and leverage off a growing Māori interest in what is essentially re-energised thoughts about quitting, Hāpai recommends a targeted layered and non-commercial approach to product promotion:  Local:   * Point of sale e-cig displays, accompanied by quit smoking messages. * Information provision and promotion of quitting to smokers using e-cigs through local health promotion services, Māori health providers, Pacific health providers doctors, GP’s, sports clubs, marae, hospitals, stop smoking services etc. * Distribution of information on e-cigs for quitting tobacco at local events such as; those hosted by the vape community and other health focused local events. * Distribution of information by local radio stations; as long as they were promoted by a quit smoking professional in the context of quitting and the benefits and possible unknown harms of long term usage.   National:   * Ministry of Health websites, tobacco control sector websites * Health Promotion Agency: Mass media campaigns on quitting – inclusive of information on the availability of e-cigs, and potential benefits and possible unknown long term harms.   All advertising at both a local and national level should be undertaken in the context of quitting and health, as opposed to promoting a glamorous lifestyle as done by the tobacco industry in other countries (UK and US) where an open marketing approach has been adopted. |

**Q5 Do you think it is important for the SFEA to prohibit vaping in designated smokefree areas in the same way as it prohibits smoking in such areas?**

No

Reasons/additional comments:

|  |
| --- |
| Currently the use of e-cigarettes in smoke-free places is not prohibited by the Smoke-free Environments Act 1990. However, individual organisations can ban the use of e-cigarettes as part of their own smoke-free policies, this includes local councils. We would like to keep the current policy status.  Hāpai believes that to support a range of quit smoking needs i.e. some communities have higher numbers of smokers, E-cig areas should be decided on through local discretion and where public consultation suggests this is acceptable. If due to the needs of the community there is a call for e-cig friendly areas, clear signage should indicate where e-cig use is permitted and why it is permitted (to support community members to quit). Framing e-cig friendly areas as supporting those on their quitting journey will help to create a supportive community spirit, rather than a dismissive and unsupportive community response to addiction.  Hāpai suggests that quitting needs to be normalised in Māori and Pacific communities, just as much as we need to continue de-normalising tobacco use. |

**Q6 Do you agree that other controls in the SFEA for smoked tobacco products should apply to e‑cigarettes? For example:**

|  |  |  |  |
| --- | --- | --- | --- |
| **Control** | **Yes** | **No** | **Reasons/ additional comments** |
| Requirement for graphic health warnings |  |  | Current evidence suggests that short term e-cig use is far less harmful than tobacco. There is also a lack of evidence on health outcomes for long term e-cig users, therefore at present Hāpai does not support the need for graphic health warnings.  Unless alternative research findings emerge, e-cigs need to be viewed by smokers as a healthier option than tobacco. |
| Prohibition on displaying products in sales outlets |  |  | Display products in approved sales outlets (gas stations, supermarkets, pharmacies, vape shops, all with ABC and E-cig technical training) should be allowed, but stop smoking messages need to accompany all advertisements.  Attracting current smokers to start to think about quitting tobacco should be the aim of all display products. |
| Restriction on use of vending machines |  |  | E-cig vending machines would be very difficult to monitor and restrict in regards to use by children.  Tobacco vending machines should be made illegal, to ensure tobacco is harder to get than e-cigs. |
| Requirement to provide annual returns on sales data |  |  | The provision of annual returns on sales data, as well as importation and sales would greatly assist in the monitoring of e-cig trends in the New Zealand context. Knowing where they are being sold, who is selling them (independent retail products or tobacco owned products) would assist us all in adjusting future policy recommendations locally and nationally.  Ideally Hāpai would like to see implementation of the same set of requirements for tobacco products. |
| Requirement to disclose product content and composition |  |  | Hāpai would like to ensure that anyone that decides to use an e-cig can do so knowing that they are using a product that is safe in content and composition.  It would be ideal if the same rule was applied to smoked tobacco products, so that consumers and decision makers are fully aware of what other ingredients they are inhaling. This request is not a new recommendation, this is a recommendation that the tobacco control sector has requested with regularity over the years.  Knowing more about both e-cig and smoked tobacco products will only but strengthen our understanding of how both products should be placed in the New Zealand context, and how we can best maximise the health outcomes of all population groups. |
| Regulations concerning ingredients (e.g., nicotine content and/or flavours) |  |  | Just as there are a range of flavours for gum nicotine replacement therapy (NRT), Hāpai believes that there should be a range of safe flavour options available for those who choose e-cigs as their quitting tool.  However we recommend that those known internationally to be toxic are excluded from New Zealand. Keeping abreast with internationally developments in regards to findings around safety of flavours needs to be maintained.  We also suggest using international best practice/credible standards around accuracy of nicotine labelling and nicotine concentration quality.  Equally as important in smoking reduction outcomes, Hāpai would like to see more rigorous regulations applied to tobacco products. Removing menthol flavoured tobacco products, controlling nicotine content and levels, as we as other addictive’s that make tobacco more palatable from the New Zealand market would reduce the appeal and addictiveness of smoked tobacco products, and encourage more smokers to quit.  Introducing this regulation at the same time as applying any new e-cig regulations seems practical and logical. Again, Hāpai would not like to see stronger regulations applied to e-cigs than tobacco. |
| Requirement for annual testing of product composition |  |  | Ideal scenario for e-cigs and tobacco products. |
| Prohibition on free distribution and awards associated with sales |  |  | Yes. Sales should be about health benefits to customers not a sales maximisation operation. |
| Prohibition on discounting |  |  | Retailers should be able to do normal consumer/retail promotional discounts for e-cig products. Such discounts could assist with e-cig equipment/e-liquid costs for low income earners wanting to give/continue giving quitting a go. |
| Prohibition on advertising and sponsorship |  |  | Same response as question 4. |
| Requirement for standardised packaging |  |  | Hapai view standardised packaging as relative to the amount of harm that a product generates. E-cigs according to scientific consensus are less harmful than tobacco products.  Therefore currently until research suggests otherwise, standardised packaging should remain for tobacco, but not e-cigs.  Current smokers should receive clear messages that differentiate tobacco products from e-cigs. |
| Other |  |  | N/A |

**Q7 Do you think it is important for legislation to impose some form of excise or excise-equivalent duty on nicotine e-liquid, as it does on tobacco products?**

No

Reasons/additional comments:

|  |
| --- |
| Hāpai recommends keeping e-cigs and e-liquid free of excise taxation. A price differential between tobacco products and e-cigs is an important strategy to maximise reductions in smoking prevalence – especially in low income population groups, and Māori and Pacific.  As tobacco becomes more expensive with tax increases, e-cigs could become a more attractive, more affordable, healthier option for many. |

**Q8 Do you think quality control of and safety standards for e‑cigarettes are needed?**

Yes

Additional comments:

To mitigate expensive quality control and safety standard tests, New Zealand should align itself to international best practices and make it mandatory that products available in New Zealand comply with these standards. We recommend having independent vaping vendors help the Ministry decide on the international set of standards to use in New Zealand. Independent vaping vendors are best placed to know what standards will suit tobacco industry e-cig producers the most, and what standards will support independent suppliers. Hapai would like to see in the New Zealand context standards that support more independent e-cig suppliers.

|  |  |  |  |
| --- | --- | --- | --- |
| **Area of concern** | **Yes** | **No** | **Reasons/additional comments** |
| Childproof containers |  |  | Align with best practice as indicated above. |
| Safe disposal of e‑cigarette devices and liquids |  |  | Align with best practice as indicated above |
| Ability of device to prevent accidents |  |  | Align with best practice as indicated above. |
| Good manufacturing practice |  |  | Full pharmaceutical industry standards should not be applied. Pharmaceutical industry standard requirements would benefit the tobacco industry more than local independent distributors.  Good manufacturing practice standards should align with international best practice with guidance from local independent distributors. |
| Purity and grade of nicotine |  |  | Aligned with international standards of best practice as discussed above. |
| Registration of products |  |  | Aligned with international best practice |
| A testing regime to confirm product safety and contents purity |  |  | Due to costs of accurate e-liquid testing regimes we are currently unable to do so. This may reduce in cost over time as technology improves.  Product safety for hardware should already be covered by existing consumer regulations. There are already some known unsafe e-liquids. Following international best practice standards and listening to independent e-cig distributors is recommended. |
| Maximum allowable volume of e-liquid in retail sales |  |  | 30ml I nicotine is 12mg, 18mg, 24mg. Up to 100ml if nicotine is 3mg with higher VG mix.  Recommendations made by Hāpai after discussions with a range of independent distributors and stop smoking practitioners supporting clients who wanted to use e-cigs as part of their stop smoking treatment. Distributors based levels on e-cig user and safety experiences. |
| Maximum concentration of nicotine e-liquid |  |  | Currently 24mg with juice mix PG 60/VG 40 is rarely taken up with those smokers that present high tobacco addiction and would normally be recommended 21mg nicotine patch and oral nicotine as well.  Again recommendations made by Hapai after discussions with independent vendors and local stop smoking practitioners supporting clients wanting to use e-cigs in treatment. |
| Mixing of e-liquids at (or before) point of sale |  |  | Aligned with best practice and with guidance from experienced local independent distributors. |
| Other |  |  | None. |

**Q9 Are there any other comments you would like to make?**

|  |
| --- |
| None |

**Additional information on sales and use**

**Q10 Can you assist us by providing information on the sale of e‑cigarettes in New Zealand (for example, size of sales or range of products for sale on the local market)?**

|  |
| --- |
| Hapai could assist MOH in this area by introducing MOH to local independent e-cig distributors if requested. |

**Q11 Would the Ministry of Health’s proposed amendments have any impact on your business? If so, please quantify/explain that impact.**

|  |
| --- |
| Not applicable |

**Q12 If you are using nicotine e‑cigarettes: how long have you been using them, how often do you use them, how much do you spend on them per week and where do you buy them?**

|  |  |  |  |
| --- | --- | --- | --- |
| **How long have you been using them?** | **How often do you use them?** | **How much do you spend on them per week?** | **Where do you buy them?** |
| N/A | N/A | N/A | N/A |

**Consultation submission 240 – The New Zealand Initiative**

|  |  |
| --- | --- |
| Your details This submission was completed by: *(name)* | [redacted] |
| Address: *(street/box number)* | [redacted] |
| *(town/city)* | [redacted] |
| Email: | [redacted] |
| Organisation *(if applicable)*: | The New Zealand Initiative |
| Position *(if applicable)*: | [redacted] |

*(Tick one box only in this section)*

Are you submitting this:

as an individual or individuals (not on behalf of an organisation)?

on behalf of a group, organisation(s) or business?

*(You may tick more than one box in this section)*

Please indicate which sector(s) your submission represents:

Commercial interests, including e‑cigarette manufacturer, importer, distributor and/or retailer

Tobacco control non-government organisation

Academic/research

Cessation support service provider

Health professional

Māori provider

Pacific provider

Other sector(s) *(please specify)*: Think tank research

*(You may tick more than one box in this section)*

Privacy

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If you do not want your submission published on the Ministry’s website, please tick this box:

Do not publish this submission.

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Remove my personal details from responses to Official Information Act requests.

If your submission contains commercially sensitive information, please tick this box:

This submission contains commercially sensitive information.

Declaration of tobacco industry links or vested interest

As a party to the global tobacco control treaty, the World Health Organization Framework Convention on Tobacco Control, New Zealand has an obligation to protect the development of public health policy from the vested interests of the tobacco industry. To help meet this obligation, the Ministry of Health asks all respondents to disclose whether they have any direct or indirect links to, or receive funding from, the tobacco industry. The Ministry will still carefully consider responses from the tobacco industry, and from respondents with links to the tobacco industry, alongside all other submissions. Please provide details of any tobacco company links or vested interests below.

|  |
| --- |
| The New Zealand Initiative is supported by its corporate and individual members. Our members include businesses from the tobacco industry, but they do not fund specific research projects or policy areas. |

Please return this form by email to:

**ecigarettes**[**@moh.govt.nz**](mailto:tobacco@moh.govt.nz) by **5 pm, Monday 12 September 2016**.

If you are sending your submission in PDF format, please also send us the Word document.

Policy Options for the Regulation of Electronic Cigarettes

Consultation submission, September 2016  
  
[redacted] The New Zealand Initiative

**Introduction**

* 1. Thank you for this opportunity to submit to this consultation on ‘Policy Options for the Regulation of Electronic Cigarettes’. The proposal to legalise the sale and supply of nicotine e-cigarettes and liquids is a welcome change to the current regulation. While a growing number of people have taken up vaping in New Zealand, the status quo is not working. Vapers who import nicotine e-liquids from overseas risk bringing in unsafe or unknown products, without the same consumer protection under New Zealand legislation. Paradoxically, domestic retailers face more stringent regulations than international retailers, despite the fact it is easier to hold domestic retailers accountable.
  2. [redacted] The New Zealand Initiative is a public policy think-tank based in Wellington, supported by New Zealand’s leading businesses. The shared vision of The Initiative’s staff and members is to build a free and prosperous New Zealand. I can be contacted at [redacted].
  3. My interest in this consultation stems primarily from my research for *The Health of the State* (available on The New Zealand Initiative’s [website](http://nzinitiative.org.nz/shop/Library+by+type/Reports/Reports+2016/The+Health+of+the+State/x_show_article/1.html)). The report considers public health from two angles. The first is whether the policy’s infringements on personal choice and liberty is justified. The report also looked at the evidence that supports public health policies, such as those around e-cigarettes. *The Health of the State* considers the quality of these studies and points out some of the methodological flaws recognised in those research areas. My research found flaws in many of the studies that purported to show associated risks or harms from e-cigarettes. Given no substantial risks had been established at the time of publication, the report recommended a harm-reduction approach to e-cigarettes. The policy framework envisaged would involve minimal regulation, given the existing coverage of the *Consumer Guarantees Act (1993)* and the *Fair Trading Act (1986)*, and the risk of stifling market competition and innovation of the product.
  4. Since releasing *The Health of the State* report in April, I have remained engaged with overseas developments regarding new research and legislation. Of particular interest are the likely consequences of the European Union Tobacco Products Directive (EUTPD[[78]](#footnote-78)) and the Food and Drug Administration’s (FDA) regulatory framework. Despite new studies being released since publication, no research to date has convinced me to rethink my conclusions on the e-cigarette’s role in harm reduction.[[79]](#footnote-79)
  5. Based on the principles of harm reduction and avoiding unnecessary regulation[[80]](#footnote-80), the challenge will be balancing the following priorities:
     1. Ensuring reasonable health and safety precautions.
     2. A range of products are available to suit individual needs and preferences.
     3. Regulations should not favour specific businesses by being overly prescriptive.
     4. The products are accessible for vapers (ready access to the product will increase its effectiveness as a cessation tool)[[81]](#footnote-81).
     5. As a new technology, legislation should not constrain improvements to the model, or constrain the development of similar products.
  6. Whatever regulations are eventually applied to e-cigarettes will no doubt stem from whatever the primary aim of e-cigarette policy is. These are the principles The New Zealand Initiative would recommend:
     1. Regulations should be proportionate with proven individual harm, or increased disease risk.
     2. Any harm should be considered on a net basis, which means considering the benefits of the product, as well as the costs.
     3. Given the long term effectiveness as a cessation tool is still unknown, e-cigarettes should be treated as a consumer product, not a health product. As a consumer product, where possible, further regulations should not be needed, given the already wide-reaching requirements of the Consumer Guarantees Act and Fair Trading Act.

**The risks of over-regulation**

* 1. When considering examples from overseas, it is important not to repeat their same mistakes. While the legislation in the EU and US will not restrict access to e-cigarettes completely, the EUTPD and the FDA will limit the diversity of products available on the market and reduce innovation.[[82]](#footnote-82)
  2. Equally, it would be a mistake to limit the sale of e-liquids to pharmacies and other specialist shops. In an environment where tobacco cigarettes are available in a variety of places, limiting the availability of e-cigarettes/liquids makes it harder to treat e-cigarettes as a viable alternative to smoking.
     1. Prescription-only availability might also put off potential vapers, because those who would avoid going to the doctor for traditional NRT products would equally avoid going to the doctor for an e-cigarette prescription. It also increases the cost for those who are curious about the product, but not motivated enough to pay for formal advice. There are additional costs for those who need to renew their prescription.
     2. Pharmacy- or ‘specialist store’- only non prescription access can be equally restrictive as pharmacy hours are not as flexible as the many places you can buy tobacco such as at dairies, petrol stations, supermarkets etc. The sheer number of pharmacies or specialist stores is also unlikely to come close to rivalling the number of places tobacco is sold.

**Other nicotine-delivery products**

* 1. Products substantially less harmful than smoked tobacco – and not substantially more harmful than other consumer products on the market – should be regulated as normal consumer products. Additional regulation of these products, other than age restrictions to those over 18, will prove counterproductive. The harms caused by reduced access to a safer alternative to smoked tobacco will likely outweigh any benefits of the regulatory regime.
  2. Ideally, the framework allowing e-cigarettes to be sold on the New Zealand market would be flexible enough to incorporate any other product carrying equivalent risk. Examples include smokeless tobacco (snus) and the “heat-not-burn” tobacco products being introduced on international markets.[[83]](#footnote-83)
  3. Delaying legal access to e-cigarettes in order to build a regime able to handle more types of products would harm current and potential e-cigarette users. But failing to incorporate a wider range of products can harm those current smokers who do not find e-cigarettes an acceptable substitute for smoked tobacco and who would switch to other safer alternatives. Balancing these considerations is not simple.
  4. Our preferred balancing of these considerations would allow a broad array of harm-reduced products onto the market while:
     1. Maintaining a watching brief on the evidence regarding risks of novel nicotine- and tobacco-delivery devices;
     2. Establishing a framework for regulating those products that, while less harmful than tobacco, are more harmful than normal consumer products;
     3. If the government wishes to recoup costs to the public health system[[84]](#footnote-84) by use of an excise regime, any tax imposed should be proportionate to the cost that product imposes;
     4. Bringing products into the new regime as and where warranted.
  5. If the government instead decides to regulate either pure nicotine-based products or other harm-reduced products under the Smoke-Free Environments Act and make them subject to excise[[85]](#footnote-85), we urge an impartial review of the framework and of evidence on health effects within five years. Excise and regulatory regimes, if imposed, should be proportionate to health risks. If those risks are overestimated when the products are first allowed onto the market, a required review allows correction where, in the alternative, it would be tempting for the government to maintain too-high an excise regime for revenue reasons rather than to compensate for costs imposed on the public health system.

**Age restrictions**

1.14 Restriction of sales to those 18 and over is a sensible approach to mitigate some of the concerns around e-cigarettes and the uptake by young people. The legislation will also override the need to specifically design regulations that ensure e-cigarettes are not attractive to young people.

* 1. As long as sales and supply are restricted, there is less need for additional legislation to protect young people, such as restrictions around advertising, places they can be sold, or limitations to flavours that are “attractive” to young people.[[86]](#footnote-86)
  2. One of the oft-publicised ‘risks’ of e-cigarettes is the gateway effect: a hypothesised causal relationship where youth who take up vaping eventually might take up smoking. Because of this risk, there are some who might argue that young people in particular need to be protected. Yet to date, no such effect has been proven, and most of the studies purporting to ‘prove’ a gateway effect suffer similar flaws.[[87]](#footnote-87)

**Advertising and standardised packaging restrictions**

1.17 Restrictions on tobacco advertising and packaging were applied once the harms of tobacco smoking had been established. The same restrictions cannot be extended to e-cigarettes, given the different harm profile.

1.18 A fair compromise would be to include some limitations on when and where e-cigarettes are advertised to ensure the product does not target young people[[88]](#footnote-88). Useful restrictions could include banning images of children using the product in advertisements, restrictions on television advertising for shows predominantly watched by children, and warnings that nicotine is an addictive substance.[[89]](#footnote-89)

1.19 Smoked tobacco currently has the market advantage of having customer recognition and loyalty. Restricting e-cigarette advertising to the same degree will simply protect the tobacco industry as the incumbent.

1.20 Advertising and packaging restrictions also limit competition between e-cigarette manufacturers and stifle innovation, as manufacturers have no way of letting consumers know how their product is different from others in the market. Some of these innovations are likely to include improvements to the effectiveness and safety of the product.

1.21 Finally, restrictions on e-cigarette advertising restrict consumer knowledge and awareness. This is particularly important if the goal of this policy framework is to encourage smoking cessation. Smokers need to be aware that e-cigarettes exist, that there are a range of products and flavours to choose from, and that they could be an effective alternative to smoking for those wanting to quit.

**Prohibition of vaping in designated smoke-free areas**

* 1. Vaping is a healthier alternative to smoking. Regulations should reflect this difference. Current regulations do not prohibit the use of e-cigarettes in smokefree areas, and instead leave it up to private organisations and workplaces to set their own rules. This is a reasonable policy: if the action causes no harm to bystanders[[90]](#footnote-90), workplaces should be able to set their own rules.
  2. A more questionable policy is Wellington City Council’s approach, where vaping is banned in both outdoor and indoor smokefree spaces. Vaping in large open spaces is unlikely to cause much discomfort, let alone harm, to bystanders.**[[91]](#footnote-91)** Unlike tobacco cigarettes, there is no side-stream smoke from e-cigarettes, and only vapour is discharged upon exhalation.
  3. There are several flaws with existing studies on the subject, too. These include the fact that establishing a change in air quality is not the same as establishing a change in health effects or risks, and even *if* toxic particles are detected, it is not the same as calculating the increase in risk of disease from these particles.
  4. Banning vaping in smokefree places could have an adverse effect on the effectiveness of vaping as a smoking cessation method. One of the attractive features e-cigarettes have above smoking is that it is more convenient to use in public than smoking. In a society where smoking has become an increasingly socially marginalised activity, no doubt exacerbated by rigorous public health campaigns, vaping could be an attractive alternative.
  5. Action on Smoking and Health (ASH) UK has provided some reasonable advice to private businesses and organisations who are trying to decide whether to allow vaping on their premises.[[92]](#footnote-92)
  6. They find: “While there have been a number of studies looking at the potential for harm to bystanders from secondhand vapour we have been unable to find any published scientific evidence that identifies harm from indirect exposure to electronic cigarettes.” [these are the findings of this researcher too.]
  7. Addressing the question of whether vapers will influence children as ‘role models’, ASH finds: “The available evidence does suggest that, so far, sustained use of electronic cigarettes among children in Britain is limited to those who have already tried smoking. There is evidence of a growth in the number of young people who have tried electronic cigarettes, even among those who have never smoked, **however this one off use does not appear to be translating into regular vaping or regular smoking**.” [own emphasis added]
  8. Overall, ASH recognises businesses and workplaces face differing considerations involving image and reputation, working environment, health promotion considerations, and convenience. It should therefore be up to individual businesses to decide their policy.

**Other SFEA controls for smoked tobacco products that should/should not apply**

* 1. There is little logical reason for applying the SFEA to e-cigarettes (nicotine-containing or not). While they both contain nicotine, they are not analogous in the harm they cause to the user or to bystanders. If the purpose of the SFEA is to reduce harm, there is not yet any evidence that capturing e-cigarettes in this legislation will achieve that purpose.
  2. Given the differences in harm profile, some SFEA regulations are simply irrelevant to e-cigarettes. For example, the requirement for graphic health warnings. Significant harms have not been established, so perhaps smokers-turned-vapers might enjoy images of healthier lungs, unstained teeth etc. on their vape products.
  3. Some SFEA regulations simply increase the burden of the consumer (vapers or would-be vapers).
  4. An example is the prohibition on displaying products in sales outlets. Given the wide range of technologies and products that are available/could become available, prohibiting the display of such products could limit new uptake from smokers who are curious about the product, as well as current e-cigarette users who want to explore the range of products available to find something that is right for them.
  5. Some SFEA regulations could be a costly burden on manufacturers. This in turn can protect only those businesses big enough to afford the costs, rather than the businesses who have a superior product.
  6. The requirement for annual testing of product composition is an example of this. The Fair Trading Act already prohibits deceptive labelling. If a product containing a nicotine concentration (or other ingredients) is at odds with the product’s label, the manufacturer already faces consequences.

**Free distribution and discounting**

1.36 There are some circumstances where free distribution would be a positive, and health-affirming option.

1.37 Charities and NGOs might offer the devices to smokers wanting to quit, especially as the upfront cost might be prohibitive for some would-be vapers. Given the health consequences of smoking, and the increasing financial consequences of the current excise regime, e-cigarettes offer an alternative that could improve both health and alleviate poverty.[[93]](#footnote-93)

1.38 Retailers might offer free trials of new devices or flavours for those consumers who are unsure about whether the product is for them.

1.39 Manufacturers might offer free samples of products as a taster and means of attracting new customers from their competitors, and differentiate themselves in the market.

* 1. Discounting ought to be left to the discretion of retailers. It is reasonable to assume there will be instances when discounting makes good business sense. For example, discounting could apply to unpopular products, in order to make way for newer products. It could also be a way to reward loyal customers, and could even be the incentive ‘non-committal’ vapers need to make a stronger transition from smoking to vaping.

**Excise tax**

1.41 There should not be an excise duty on nicotine e-liquids. None of the standard reasons for an excise tax, namely the existence of externalities[[94]](#footnote-94), would apply in the case of e-cigarettes.[[95]](#footnote-95) If anything, it is likely that any excise tax would cause potential vapers to overestimate the risks of vaping, and would postpone or stop their transition from smoking.

1.42 Vaping does not affect bystanders the same way smoking does. There are no proven harms caused by secondhand vapour, and the activity does not produce the same litter.

1.43 There is no evidence of population-wide risks of re-normalising smoking. However, the claim is not very convincing. First, because smoking and vaping are sufficiently different activities. But more importantly, it sets a worrying precedent for banning any risky activity if it has the unproven potential to encourage others to take on that risk (or in this case, an even riskier activity). The risk of re-normalising smoking would have to be taken into account at a ‘net harm’ level, so the risk of people taking up smoking would have to be balanced with the benefits of the number of people who quit smoking.

1.44 There is no evidence that the activity imposes disproportionate costs on the health system. While vaping is not a risk-free activity[[96]](#footnote-96), there has not yet been any established risk of death or disease from vaping that is high enough to warrant an excise tax.[[97]](#footnote-97)

1.44.1 Some excise taxes are proposed on the basis it could be a useful signaling tool. However, it is unclear what message the government would want to send in this case. A similar argument has been made in New Zealand as justification for a sugar tax, where its real value might be symbolic rather than functional. Given vaping is a safer alternative to smoking, it is unclear why the government would signal the activity is undesirable, especially to smokers who have or who may have switched to vaping.

1.44.2 Just because nicotine is addictive, establishment of addiction is not a harm that warrants excise, and might not even be a harm at all.[[98]](#footnote-98) There are some who would argue that there is no rational explanation for smoking or participating in an addictive activity. However, a basic understanding of welfare economics will demonstrate that such a state of being is impossible. There are may be harms and risks involved in an activity, but that does not mean there are zero benefits. No person will voluntarily undertake an activity from which they derive no enjoyment or benefit.

1.45 Because of the physical harm that smoking causes, and the enjoyment derived from nicotine (and for some, the action of vaping itself), e-cigarettes could be the most optimal choice for smokers from a welfare economics perspective. This applies in a situation where they would prefer smoking to abstinence, but harm reduction to smoking. For those who have no intention of quitting nicotine, vaping is the optimal choice for these people. Besides, surveys revealing that smokers actually ‘want to quit’ should also be treated with some scepticism. This is the difference between stated versus revealed preferences, where it is the revealed preference that matters.[[99]](#footnote-99)

* 1. On a purely fiscal note, the costs of tax administration must also be taken into account. Even if the hypothetical excise tax were not a significant burden or disincentive for vapers, the costs of tax administration would need to be taken into account. If the expected revenue of the tax is low, then the costs to government for administering the tax might outweigh any fiscal gains.

**Other quality controls and safety checks**

1.47 The importance of separate and wide reaching legislation to ensure safety risks are mitigated is likely overstated as opposed to the alternative: doing nothing. The e-cigarette market still operates like any other market, and may face even stricter expectations of safety by their customers. There is a natural incentive for producers of e-cigarettes to establish themselves as a safe and credible brand in order to attract a loyal customer base. Given many people take up vaping because of the decreased potential harm, consumers may use ‘established safety’ as a key determinant in their choice of brands. There are also ‘opt-in’ options for producers who do want to differentiate their products, such as voluntary codes of conduct, voluntary independent testing, and other industry association standards of quality.

1.48 Some of the proposed standards in the Ministry of Health’s discussion document are difficult, if not impossible to meet.

* 1. For example, it is impossible to design childproof containers. It is unclear how any container could be completely childproof (as opposed to the more feasible and common child-resistant packaging). It would make good sense for nicotine-containing e-liquids to be child resistant. It would be difficult, however, to make the actual e-cigarette device child resistant without making the device extremely difficult to refill.[[100]](#footnote-100)
  2. The same could be said for ‘ability to prevent accidents’.
  3. While the registration of products sounds like a reasonable request, there seems no obvious case why there should be stronger registration requirements for these products than for other addictive products like different grades of coffee or for coffee machines.
     1. If there is to be a registration process it should not be overly time consuming or costly, as this can discourage improvements and innovation in the sector. Even small fixed costs can be a hassle for smaller businesses who offer a range of products or flavours as a large number of small costs soon add up.
     2. This could potentially be the case in the United States under FDA regulations. Under the system, any improvements, including safety improvements (including the removal of ingredients that have since been found harmful), to a product must go through a pre-market tobacco application process that could take up to two years and cost at least US $5 million.[[101]](#footnote-101)
     3. If improving products is to likely incur further registration costs, there are fewer incentives to improve the product. More worryingly, it could also disincentivise health and safety improvements.
  4. A testing regime to confirm product safety and contents purity has the potential to be costly and prohibitive to smaller businesses in the market.
     1. The case for such a regime is not obvious, beyond the requirements of the Fair Trading Act.
     2. If there is to be a process, it is recommended New Zealand does not follow the FDA example. Premarket applications, such as the US FDA’s Premarket Tobacco Applications are lengthy documents that require a high burden on proof on applicants. As well as proving general safety, the FDA’s regime requires a risk and benefit assessment on effectiveness as a cessation tool and its likely impact on third parties. In many cases, this data simply isn’t available. Not only does such a regime favour those larger companies who can invest in the application process, it is excessive compared to testing on other consumer products.
  5. Some ‘safety’ regulations designed to protect the consumer might just be an inconvenience, and could make vaping a less attractive or convenient alternative to smoking.
     1. Limiting the maximum allowable volume of e-liquid in retail sales is an example. This regulation has the potential to harm e-cigarette users by limiting the availability of the product, thus increasing the likelihood users could switch back to tobacco cigarettes if they run out of e-liquid. The ability to stock up on e-liquid, especially if the user anticipates they will not be able to conveniently purchase the product, is an important consideration.
     2. Limiting the maximum concentration of nicotine in e-liquid is another potential inconvenience. While in principle this seems like a good safety requirement, choosing the “right” level of nicotine will differ from vaper to vaper, just as smokers differ in their habits. If nicotine concentrations are set too low, then vapers might compensate by either dual use or returning fully to smoking. Heavy smokers will require more nicotine. The delivery mechanism also matters, as does the frequency of use in determining how much nicotine is absorbed by the body.

**Consultation submission 241 – Individual**

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| --- | --- |
| **Your details**  This submission was completed by: *(name)* | [redacted] |
| Address: *(street/box number)* |  |
| *(town/city)* | [redacted] |
| Email: | [redacted] |
| Organisation *(if applicable)*: |  |
| Position *(if applicable)*: |  |

*(Tick one box only in this section)*

Are you submitting this:

√ as an individual or individuals (not on behalf of an organisation)?

on behalf of a group, organisation(s) or business?

*(You may tick more than one box in this section)*

Please indicate which sector(s) your submission represents:

Commercial interests, including e‑cigarette manufacturer, importer, distributor and/or retailer

Tobacco control non-government organisation

Academic/research

Cessation support service provider

Health professional

Māori provider

Pacific provider

Other sector(s) *(please specify)*:

*(You may tick more than one box in this section)*

Please indicate your e‑cigarette use status:

√ I am using nicotine e‑cigarettes.

I am using nicotine-free e‑cigarettes.

I currently smoke as well as use e‑cigarettes.

I am not an e‑cigarette user.

I have tried e‑cigarettes.

**Privacy**

We intend to publish all submissions on the Ministry’s website. If you are submitting as an individual, we will automatically remove your personal details and any identifiable information.

If you do not want your submission published on the Ministry’s website, please tick this box:

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**Declaration of tobacco industry links or vested interest**

As a party to the global tobacco control treaty, the World Health Organization Framework Convention on Tobacco Control, New Zealand has an obligation to protect the development of public health policy from the vested interests of the tobacco industry. To help meet this obligation, the Ministry of Health asks all respondents to disclose whether they have any direct or indirect links to, or receive funding from, the tobacco industry. The Ministry will still carefully consider responses from the tobacco industry, and from respondents with links to the tobacco industry, alongside all other submissions. Please provide details of any tobacco company links or vested interests below.

|  |
| --- |
| I have no tobacco industry interests. |

Please return this form by email to:

**ecigarettes**[**@moh.govt.nz**](mailto:tobacco@moh.govt.nz) by **5 pm, Monday 12 September 2016**.

If you are sending your submission in PDF format, please also send us the Word document.

**Consultation questions**

Although this form provides blank spaces for your answers to questions, there is no limit to the length of your responses; you should take as much space as you need to answer or comment. Feel free to enlarge the boxes or attach additional pages.

**Q1 Do you agree that the sale and supply of nicotine e‑cigarettes and nicotine liquids should be allowed on the local market, with appropriate controls?**

Yes √ No

Reasons/additional comments:

|  |
| --- |
| The Sale and supply of Nicotine e-cigarettes and Nicotine e-liquids in New Zealand’s domestic market is a positive and appropriate action to take. As a smoker who has taken up e-cigarettes to lower the harm cigarettes is causing to mine and other New Zealanders health is an important one. Pricing cigarettes out of the reach of existing smokers without allowing e-cigarettes available where the user experiences “ a smoking experience” is protecting the individual rights of New Zealanders to choose how they wish to live their lives. It is my view e-cigarettes should be directly available wherever tobacco products are currently sold. E-cigarettes should have the same or similar controls.  I had smoked for 30 years. I first tried an e-cigarette approximately 18 months ago. For a start, I used a then available refillable device, and used it in conjunction with smoking tobacco. For a start I used tobacco flavours with nicotine, but as I regained taste sensitivity in my taste buds, I tried different flavours. This helped me to smoke even less cigarettes. Today I smoke “Custard Pear” or “Grape” that have pleasant aromas should anyone smell them. I now smoke inside at home in a house with 4 children and my partner without complaints from others. Four months ago I tried a new generation device, which improved my smoking, now known as vaping experience. Since starting the new device I have ceased smoking tobacco. The fact that I also have vape flavours that are not tobacco flavours gives me no desire to smoke tobacco again. I have been steadily reducing both the nicotine strength and the amount of consumption from my original 18mg when I first started, currently I consume between 6mg per week.  My only issue has been getting a regular supply and availability when I need refills of the quality of product I require. I currently order online, I have no wish to walk into Shisha shops in Auckland to buy liquids of uncertain origin. I consider this an issue as tobacco products are available in petrol stations, dairy’s and supermarkets, bars and clubs and are readily available 24/7.  I would be very disappointed should e-cigarettes not be made available. I want to see products that help people to change from smoking and that are healthier made available in the same places as the current alternate, tobacco. Today, 12th September 2016, I have read an article in the NZ herald which quotes a leading health official of the NZ National Smokefree Workgroup recommending limited outlets such as pharmacies and vape shops only sell vaping products. Why would you have a product that is a tobacco harm reduction tool not is made available where the tobacco is? It is widely considered 95% safer than traditional tobacco smoking.  Let’s encourage those retailers and outlets that do sell tobacco the opportunity to sell the alternative product. Why stuff there profitability through no fault of there own. When I was first introduced to vaping I saw the product in a dairy and when I discovered it wasn’t a toy I bought it to try when I had actually gone into to buy a packet a of cigarettes.  Limiting outlets will mean limited uptake. The sooner regulations are in place allowing nicotine sales for e- liquids the greater the take up will be and therefore reducing tobacco sales and therefore related problems. Isn’t that the primary goal of any public health decision around smoking, or as it seems to me people making rules to ensure they have jobs rather than completing any public benefit. I say this because it seems to me that western authorities, better resourced than New Zealand’s equivalent, have already completed the necessary research and established appropriate protocols.  On the negative side that I have heard, it will lead people to smoking tobacco. Rubbish, until they make Pear and Custard tobacco cigarettes I cannot see it. This is where I believe health officials sometimes get it wrong, and sometimes do not consider or mis-interpret what is happening to those who are experiencing these things first hand. There is nothing sensible about the costs and the damage smoking and the way it is treated in society today.  Show me the evidence, controlled trials do not necessarily mean that this will translate into real life results.  Do not tax e-liquids out of the market, appropriate pricing is critical to uptake and the benefits I believe exist.  I have attached the latest UK parliament post on e-cigarette use in the UK I asked a supplier for some evidence. The UK is one of the largest regulated and developed vaping markets in the world, with over 3 million smokers or ex-smokers now vaping. The UK government report indicates they are not seeing the ‘gateway into smoking effect for youth’ that the NZ smokefree workgroup are warning of. A group of over zealous do gooders that lack any real credible argument.  The product there is not restricted and retailers are selling tobacco to actively promote it to smokers which are accelerating the switch to vaping  I have tried approved quit smoking devices, gum, patches and the Alan Carr book. I didn’t like into a pharmacy, as I am an adult making a choice and I don’t consider myself sick or needing treatment. I was aware of the dangers of smoking, but once I realised I could have the experience without the horrible tastes and already known risks of smoking, it was an easy choice for me to change to vaping. This is what appeals to me the most; it has been my choice, and something that has not been forced upon me. Many of my friends who were smokers and are now vaping. We are individuals, allow us freedom of choice rather than being told by people who do not smoke what we have to do, or can’t do. |

**Q2 Are there other (existing or potential) nicotine-delivery products that should be included in these controls at the same time? If so, what are they?**

Yes √ No

Reasons/additional comments:

|  |
| --- |
| I don’t know what they are. I have found, as life goes on and technology improves we don’t know what is around the corner. We can only deal with what is in front of us now. These vaping devices are 2-300% better today than they were just 18 months ago, don’t try to stop progress or innovation! |

**Q3 Do you think it is important for legislation to prohibit the sale and supply of e‑cigarettes to young people under 18 years of age in the same way as it prohibits the sale and supply of smoked tobacco products to young people?**

Yes √ No

Reasons/additional comments:

|  |
| --- |
| Target at smokers only, it’s an adult choice. |

**Q4 Do you think it is important for legislation to control advertising of e‑cigarettes in the same way as it controls advertising of smoked tobacco products?**

Yes  No √

Reasons/additional comments:

|  |
| --- |
| This is a harm reduction product, and it has been driven by smoker’s freedom of choice to make a change. Smokers need to be made aware of these products, and if there is no display like tobacco products, perception could be that they are as dangerous as tobacco products, thus undermining the desire to transition smokers away from traditional tobacco consumption. |

**Q5 Do you think it is important for the SFEA to prohibit vaping in designated smokefree areas in the same way as it prohibits smoking in such areas?**

Yes  No √

Reasons/additional comments:

|  |
| --- |
| I don’t believe that passive vaping is a lot safer than passive smoking. Why treat it the same?  It does not smell and doesn’t seem to be offensive |

**Q6 Do you agree that other controls in the SFEA for smoked tobacco products should apply to e‑cigarettes? For example:**

|  |  |  |  |
| --- | --- | --- | --- |
| **Control** | **Yes** | **No** | **Reasons/ additional comments** |
| Requirement for graphic health warnings |  | √ | No evidence exists for the need for graphic images |
| Prohibition on displaying products in sales outlets |  | √ |  |
| Restriction on use of vending machines | √ |  | Age verification |
| Requirement to provide annual returns on sales data | √ |  | Manufacturers and importers |
| Requirement to disclose product content and composition | √ |  | Manufacturers and importers. Consumers need to be aware of what is in the product. |
| Regulations concerning ingredients (eg, nicotine content and/or flavours) | √ |  |  |
| Requirement for annual testing of product composition |  | √ |  |
| Prohibition on free distribution and awards associated with sales |  | √ | Want to encourage smokers to try vaping. |
| Prohibition on discounting |  | √ | Want to encourage smokers to try vaping. |
| Prohibition on advertising and sponsorship |  | √ | In store advertising and education at point of sale should |
| Requirement for standardised packaging |  | √ | No need. Perception if standardised packaging then they will be perceived as just as dangerous as smoked tobacco. |
| Other |  |  |  |

**Q7 Do you think it is important for legislation to impose some form of excise or excise-equivalent duty on nicotine e-liquid, as it does on tobacco products?**

Yes  No √

Reasons/additional comments:

|  |
| --- |
| This is a harm reduction product. Limiting uptake of product if taxed. |

**Q8 Do you think quality control of and safety standards for e‑cigarettes are needed?**

Yes √ No

Additional comments:

|  |  |  |  |
| --- | --- | --- | --- |
| **Area of concern** | **Yes** | **No** | **Reasons/additional comments** |
| Childproof containers | √ |  | Child safety |
| Safe disposal of e‑cigarette devices and liquids | √ |  | Environment safety |
| Ability of device to prevent accidents | √ |  | Battery and general product safety standards |
| Good manufacturing practice | √ |  | Then we know the product is manufactured to Good consistent standards |
| Purity and grade of nicotine | √ |  | Pharmaceutical Grade |
| Registration of products | √ |  | Provides a register visible to all of legitimate products that meet NZ standards |
| A testing regime to confirm product safety and contents purity | √ |  | Should do, we should look to adopt similar standards in testing like the EU. |
| Maximum allowable volume of e-liquid in retail sales | √ |  |  |
| Maximum concentration of nicotine e-liquid | √ |  | 20mg/ml in e-liquid. |
| Mixing of e-liquids at (or before) point of sale |  | √ | No quality control/ nicotine dose consistency |
| Other |  |  |  |

**Q9 Are there any other comments you would like to make?**

|  |
| --- |
|  |

**Additional information on sales and use**

**Q10 Can you assist us by providing information on the sale of e‑cigarettes in New Zealand (for example, size of sales or range of products for sale on the local market)?**

|  |
| --- |
|  |

**Q11 Would the Ministry of Health’s proposed amendments have any impact on your business? If so, please quantify/explain that impact.**

|  |
| --- |
|  |

**Q12 If you are using nicotine e‑cigarettes: how long have you been using them, how often do you use them, how much do you spend on them per week and where do you buy them?**

|  |  |  |  |
| --- | --- | --- | --- |
| **How long have you been using them?** | **How often do you use them?** | **How much do you spend on them per week?** | **Where do you buy them?** |
| 18months | daily | $10 | Online and convenience stores. |

**Consultation submission 242 – Individual**

|  |  |
| --- | --- |
| **Your details**  This submission was completed by: *(name)* | [redacted] |
| Address: *(street/box number)* | [redacted] |
| *(town/city)* | [redacted] |
| Email: | [redacted] |
| Organisation *(if applicable)*: | [redacted] |
| Position *(if applicable)*: | [redacted] |

*(Tick one box only in this section)*

Are you submitting this:

√ as an individual or individuals (not on behalf of an organisation)?

on behalf of a group, organisation(s) or business?

*(You may tick more than one box in this section)*

Please indicate which sector(s) your submission represents:

Commercial interests, including e‑cigarette manufacturer, importer, distributor and/or retailer

Tobacco control non-government organisation

√ Academic/research

Cessation support service provider

Health professional

Māori provider

Pacific provider

Other sector(s) *(please specify)*:

*(You may tick more than one box in this section)*

Please indicate your e‑cigarette use status:

I am using nicotine e‑cigarettes.

I am using nicotine-free e‑cigarettes.

I currently smoke as well as use e‑cigarettes.

√ I am not an e‑cigarette user.

I have tried e‑cigarettes.

**Privacy**

We intend to publish all submissions on the Ministry’s website. If you are submitting as an individual, we will automatically remove your personal details and any identifiable information.

If you do not want your submission published on the Ministry’s website, please tick this box:

Do not publish this submission.

Your submission will be subject to requests made under the Official Information Act. If you want your personal details removed from your submission, please tick this box:

Remove my personal details from responses to Official Information Act requests.

If your submission contains commercially sensitive information, please tick this box:

This submission contains commercially sensitive information.

**Declaration of tobacco industry links or vested interest**

As a party to the global tobacco control treaty, the World Health Organization Framework Convention on Tobacco Control, New Zealand has an obligation to protect the development of public health policy from the vested interests of the tobacco industry. To help meet this obligation, the Ministry of Health asks all respondents to disclose whether they have any direct or indirect links to, or receive funding from, the tobacco industry. The Ministry will still carefully consider responses from the tobacco industry, and from respondents with links to the tobacco industry, alongside all other submissions. Please provide details of any tobacco company links or vested interests below.

|  |
| --- |
| I have no tobacco industry links, nor any commercial interest in e-cigarettes or in nicotine replacement therapy.  I am funded by the California Department of Public Health to do some research on e-cigarette liquid safety, and have been funded by The Tobacco Control Research Turanga (University of Auckland) to do some work on the biochemistry of tobacco dependence; on the use of e-cigarettes in a hospital setting (the subject of this submission); and in an on-line survey of e-cigarette users. |

Please return this form by email to:

**ecigarettes**[**@moh.govt.nz**](mailto:tobacco@moh.govt.nz) by **5 pm, Monday 12 September 2016**.

If you are sending your submission in PDF format, please also send us the Word document.

**Consultation questions**

**Preamble**

This submission is limited in scope. I have been part of a wider submission from End Smoking New Zealand. However I wished to make an independent submission on two significant points.

One relates to some relevant research, which has been written up and is under consideration for publication in Nicotine and Tobacco Research. I delayed finalising this submission as long as possible in the hope that the paper would be accepted in time for this submission, but this has not happened.

The project was funded by the Tobacco Control Research Turanga’s innovation fund, and comprised an acceptability trial of the use of e-cigarettes for smoking cessation for alcoholics during the time that they were in hospital for detoxification.

The trial showed clearly that these patients would use e-cigarettes were they offered. There were no adverse events, other than one patient who repeatedly lit the end of her e-cigarette with a lighter and was removed from the trial.

Initial doubts were expressed by the nursing staff (“will it upset the other patients?”, “could it cause a fire”, “will condoning nicotine use interfere with their overall treatment?”). By the end of the trial, the nurses all seemed to see e-cigarettes as just another form of nicotine replacement therapy, in a form that was extremely helpful to them, as making patient management easier. There were no reports of concern from other patients.

Given that e-cigarettes seem likely to be used increasingly for cessation, our fear is that, by restricting the places where e-cigarettes can be used, they will not be able to be used for cessation whenever smokers are in hospitals, or other institutions where people who may be smokers are cared for. I am requesting that this be considered as an important consideration when deciding whether to restrict vaping to places where people are allowed to smoke.

My other point relates to the addictiveness of nicotine. My research group has shown in animal studies that nicotine does not act by itself in causing tobacco addiction.(1-2) It follows that e-cigarettes are unlikely to be as addictive as tobacco is. It may even be that, by allowing teenagers to experiment with a less addictive substitute for tobacco, e-cigarettes will discourage youth initiation into smoking. I do not put this forward as a fact, or even as an opinion, but as a possibility. It is a fact that youth initiation into smoking is decreasing in the UK, where e-cigarettes are available.(3) The science is simply not yet advanced enough for us to know the truth of this. My personal belief is that it would be better to restrict youth access to vaping, just as is done for smoking, for now, but that it would be criminal to deny young smokers access to e-cigarettes, should they want to use them for cessation.

1. Brennan KA, Crowther A, Putt F, Roper V, Waterhouse U, Truman P (2013). Tobacco particulate matter self-administration in rats: differential effects of tobacco type. Addiction Biology,20(2), 227-235. doi:10.1111/adb.12099.
2. Brennan KA, Putt F, Roper V, Waterhouse U, Truman P (2013). Nicotine and tobacco particulate self-administration: effects of mecamylamine, SCH23390 and ketanserin pretreatment. Current Psychopharmacology 2, 229-240.
3. Tobacco Advisory Group of the Royal College of Physicians. *Nicotine without smoke: tobacco harm reduction.* Royal College of Physicians, 2016 https://www.rcplondon.ac.uk/projects/outputs/nicotine-without-smoke-tobacco-harm-reduction-0

**Q1 Do you agree that the sale and supply of nicotine e‑cigarettes and nicotine liquids should be allowed on the local market, with appropriate controls?**

Yes √ No

Reasons/additional comments:

|  |
| --- |
| Yes, I agree that the sale and supply of nicotine e-cigarettes and nicotine liquids should be allowed on sale in New Zealand with appropriate controls. |

**Q2 Are there other (existing or potential) nicotine-delivery products that should be included in these controls at the same time? If so, what are they?**

Yes  No

Reasons/additional comments:

|  |
| --- |
|  |

**Q3 Do you think it is important for legislation to prohibit the sale and supply of e‑cigarettes to young people under 18 years of age in the same way as it prohibits the sale and supply of smoked tobacco products to young people?**

Yes  No

Reasons/additional comments:

|  |
| --- |
|  |

**Q4 Do you think it is important for legislation to control advertising of e‑cigarettes in the same way as it controls advertising of smoked tobacco products?**

Yes  No

Reasons/additional comments:

|  |
| --- |
|  |

**Q5 Do you think it is important for the SFEA to prohibit vaping in designated smokefree areas in the same way as it prohibits smoking in such areas?**

Yes  No √

Reasons/additional comments:

|  |
| --- |
| E-cigarettes do not burn tobacco and do not create smoke. The risks to the health of smokers are many times lower than the risks from tobacco. Similarly there is no evidence of harm to bystanders from exposure to e-cigarette vapour and the risks to their health are likely to be extremely low. (1)  I would like to see discretion granted to all organisations to set rules for whether they allow vaping that suit their individual needs. This has to mean that vaping in workplaces is not automatically prohibited.  Prohibiting alcoholics and others with complex physical and mental health conditions from vaping, comes with its own risks to health and potentially to life, in some cases.  Without the ability to vape while in the institution caring for them, patients either have to stop smoking altogether, or be allowed outside to smoke. Often, the latter is the case.  Patients are not criminals, and smoking is legal. Further, they are often very stressed and in considerable mental and bodily distress. Staff have heavy workloads, so that a staff member accompanying a patient outside, while they smoke or vape is impracticable and may compromise the care of other patients.  Prohibiting patients from smoking is inhumane in practice, but allowing them to smoke comes with risks that they will abscond, or do something damaging to overall treatment and wellbeing while released from effective supervision. Where vapers come into hospital, or where smokers use vaping as a substitute while in hospital, the restrictions necessary for smoking need not apply, because the harm to others is not there.  E-cigarettes have proved an acceptable alternative to smoking and should be able to be offered as a cessation aid, just as patches and gum are now, to patients in hospitals or similar institutions, to be used on the ward/on the premises, without this being illegal.   1. Public Health England. Use of e-cigarettes in public places and workplaces. Advice to inform evidence-based policy making. July 2016 <https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/534586/PHE-advice-on-use-of-e-cigarettes-in-public-places-and-workplaces.PDF> |

**Q6 Do you agree that other controls in the SFEA for smoked tobacco products should apply to e‑cigarettes? For example:**

|  |  |  |  |
| --- | --- | --- | --- |
| **Control** | **Yes** | **No** | **Reasons/ additional comments** |
| Requirement for graphic health warnings |  |  |  |
| Prohibition on displaying products in sales outlets |  |  |  |
| Restriction on use of vending machines |  |  |  |
| Requirement to provide annual returns on sales data |  |  |  |
| Requirement to disclose product content and composition |  |  |  |
| Regulations concerning ingredients (eg, nicotine content and/or flavours) |  |  |  |
| Requirement for annual testing of product composition |  |  |  |
| Prohibition on free distribution and awards associated with sales |  |  |  |
| Prohibition on discounting |  |  |  |
| Prohibition on advertising and sponsorship |  |  |  |
| Requirement for standardised packaging |  |  |  |
| Other |  |  |  |

**Q7 Do you think it is important for legislation to impose some form of excise or excise-equivalent duty on nicotine e-liquid, as it does on tobacco products?**

Yes  No

Reasons/additional comments:

|  |
| --- |
|  |

**Q8 Do you think quality control of and safety standards for e‑cigarettes are needed?**

Yes √ No

Additional comments

|  |  |  |  |
| --- | --- | --- | --- |
| **Area of concern** | **Yes** | **No** | **Reasons/additional comments** |
| Childproof containers |  |  |  |
| Safe disposal of e‑cigarette devices and liquids |  |  |  |
| Ability of device to prevent accidents |  |  |  |
| Good manufacturing practice |  |  |  |
| Purity and grade of nicotine |  |  |  |
| Registration of products |  |  |  |
| A testing regime to confirm product safety and contents purity |  |  |  |
| Maximum allowable volume of e-liquid in retail sales |  |  |  |
| Maximum concentration of nicotine e-liquid |  |  |  |
| Mixing of e-liquids at (or before) point of sale |  |  |  |
| Other | √ |  | If we are to supply E-cigarettes to patients it is desirable that they comply with basic safety and quality rules. |

**Q9 Are there any other comments you would like to make?**

|  |
| --- |
| See End Smoking New Zealand submission |

**Additional information on sales and use**

**Q10 Can you assist us by providing information on the sale of e‑cigarettes in New Zealand (for example, size of sales or range of products for sale on the local market)?**

|  |
| --- |
| No |

**Q11 Would the Ministry of Health’s proposed amendments have any impact on your business? If so, please quantify/explain that impact.**

|  |
| --- |
| Not applicable (N/A) |

**Q12 If you are using nicotine e‑cigarettes: how long have you been using them, how often do you use them, how much do you spend on them per week and where do you buy them?**

|  |  |  |  |
| --- | --- | --- | --- |
| **How long have you been using them?** | **How often do you use them?** | **How much do you spend on them per week?** | **Where do you buy them?** |
| N/A | N/A | N/A | N/A |

**Consultation submission 243 – Vaping Trade Association of New Zealand**

Duplicate

**Consultation submission 244 – Individual**

|  |  |
| --- | --- |
| **Your details**  This submission was completed by: *(name)* | [redacted] |
| Address: *(street/box number)* | [redacted] |
| *(town/city)* | [redacted] |
| Email: | [redacted] |
| Organisation *(if applicable)*: |  |
| Position *(if applicable)*: |  |

*(Tick one box only in this section)*

Are you submitting this:

as an individual or individuals (not on behalf of an organisation)?

on behalf of a group, organisation(s) or business?

*(You may tick more than one box in this section)*

Please indicate which sector(s) your submission represents:

Commercial interests, including e‑cigarette manufacturer, importer, distributor and/or retailer

Tobacco control non-government organisation

Academic/research

Cessation support service provider

Health professional

Māori provider

Pacific provider

Other sector(s) *(please specify)*:

*(You may tick more than one box in this section)*

Please indicate your e‑cigarette use status:

I am using nicotine e‑cigarettes.

I am using nicotine-free e‑cigarettes.

I currently smoke as well as use e‑cigarettes.

I am not an e‑cigarette user.

I have tried e‑cigarettes.

**Privacy**

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Do not publish this submission.

Your submission will be subject to requests made under the Official Information Act. If you want your personal details removed from your submission, please tick this box:

Remove my personal details from responses to Official Information Act requests.

If your submission contains commercially sensitive information, please tick this box:

This submission contains commercially sensitive information.

**Declaration of tobacco industry links or vested interest**

As a party to the global tobacco control treaty, the World Health Organization Framework Convention on Tobacco Control, New Zealand has an obligation to protect the development of public health policy from the vested interests of the tobacco industry. To help meet this obligation, the Ministry of Health asks all respondents to disclose whether they have any direct or indirect links to, or receive funding from, the tobacco industry. The Ministry will still carefully consider responses from the tobacco industry, and from respondents with links to the tobacco industry, alongside all other submissions. Please provide details of any tobacco company links or vested interests below.

|  |
| --- |
| None |

Please return this form by email to:

**ecigarettes**[**@moh.govt.nz**](mailto:tobacco@moh.govt.nz) by **5 pm, Monday 12 September 2016**.

If you are sending your submission in PDF format, please also send us the Word document.

**Consultation questions**

Although this form provides blank spaces for your answers to questions, there is no limit to the length of your responses; you should take as much space as you need to answer or comment. Feel free to enlarge the boxes or attach additional pages.

**Q1 Do you agree that the sale and supply of nicotine e‑cigarettes and nicotine liquids should be allowed on the local market, with appropriate controls?**

Yes  No

Reasons/additional comments:

|  |
| --- |
|  |

**Q2 Are there other (existing or potential) nicotine-delivery products that should be included in these controls at the same time? If so, what are they?**

Yes  No

Reasons/additional comments:

|  |
| --- |
| Patches and gum and any other nicotine based product... The same for all. |

**Q3 Do you think it is important for legislation to prohibit the sale and supply of e‑cigarettes to young people under 18 years of age in the same way as it prohibits the sale and supply of smoked tobacco products to young people?**

Yes  No

Reasons/additional comments:

|  |
| --- |
| It is still a drug, the same as alcohol, it causes harm. The decision to use them should be after the person has reached age af adulthood which seems to be 18 in NZ. |

**Q4 Do you think it is important for legislation to control advertising of e‑cigarettes in the same way as it controls advertising of smoked tobacco products?**

Yes  No

Reasons/additional comments: As before, It is still a drug, the same as alcohol, it causes harm. The government policy should be the same… no promotion of it.

|  |
| --- |
|  |

**Q5 Do you think it is important for the SFEA to prohibit vaping in designated smokefree areas in the same way as it prohibits smoking in such areas?**

Yes  No

Reasons/additional comments:

|  |
| --- |
| Unsure, I would defer to the science recommendations on how much nicotine is exhaled into the air and would include it in smokefree area if there are the same concerns as 2nd hand smoke. Non-nicotine vaping would have to be included in the vaping as there is no way for others in room to tell the difference when using the devices. |

**Q6 Do you agree that other controls in the SFEA for smoked tobacco products should apply to e‑cigarettes? For example:**

|  |  |  |  |
| --- | --- | --- | --- |
| **Control** | **Yes** | **No** | **Reasons/ additional comments** |
| Requirement for graphic health warnings |  |  |  |
| Prohibition on displaying products in sales outlets |  |  |  |
| Restriction on use of vending machines |  |  | Restriction to over 18 for health reasons.. same as alcohol and tobacco |
| Requirement to provide annual returns on sales data |  |  |  |
| Requirement to disclose product content and composition |  |  | Ingredients should be listed for anything that is being consumed by people |
| Regulations concerning ingredients (eg, nicotine content and/or flavours) |  |  | No regs for flavours, but unsure on nicotine levels. It is dangerous in concentrated form so maybe to prevent overdoses? |
| Requirement for annual testing of product composition |  |  |  |
| Prohibition on free distribution and awards associated with sales |  |  |  |
| Prohibition on discounting |  |  |  |
| Prohibition on advertising and sponsorship |  |  | This is still a drug. I think the Govt's view should be is to reduce harm from cigarettes |
| Requirement for standardised packaging |  |  | Not at the introduction |
| Other |  |  |  |

**Q7 Do you think it is important for legislation to impose some form of excise or excise-equivalent duty on nicotine e-liquid, as it does on tobacco products?**

Yes  No

Reasons/additional comments:

|  |
| --- |
| Using this mechanism to remove cigarettes (extreme harm) from use to be replaced by a substance that has similar harm as alcohol (Health Specialists comment to my wife and I for her treatment) should be encouraged. |

**Q8 Do you think quality control of and safety standards for e‑cigarettes are needed?**

Yes  No

Additional comments:

|  |  |  |  |
| --- | --- | --- | --- |
| **Area of concern** | **Yes** | **No** | **Reasons/additional comments** |
| Childproof containers |  |  | nicotine is dangerous for children |
| Safe disposal of e‑cigarette devices and liquids |  |  | Yes.. the devices have batteies |
| Ability of device to prevent accidents |  |  |  |
| Good manufacturing practice |  |  | Consumer gurantees act? |
| Purity and grade of nicotine |  |  | It should be as stated and |
| Registration of products |  |  |  |
| A testing regime to confirm product safety and contents purity |  |  | for the nicotine .. not the device. |
| Maximum allowable volume of e-liquid in retail sales |  |  |  |
| Maximum concentration of nicotine e-liquid |  |  |  |
| Mixing of e-liquids at (or before) point of sale |  |  |  |
| Other |  |  |  |

**Q9 Are there any other comments you would like to make?**

|  |
| --- |
| This is still a drug, as is alcohol, and cause health issues. I think the Govt's view should be is to reduce harm from cigarettes by changing to e-cigarettes (banning cigarettes much sooner) |

**Additional information on sales and use**

**Q10 Can you assist us by providing information on the sale of e‑cigarettes in New Zealand (for example, size of sales or range of products for sale on the local market)?**

|  |
| --- |
| No |

**Q11 Would the Ministry of Health’s proposed amendments have any impact on your business? If so, please quantify/explain that impact.**

|  |
| --- |
| No |

**Q12 If you are using nicotine e‑cigarettes: how long have you been using them, how often do you use them, how much do you spend on them per week and where do you buy them?**

|  |  |  |  |
| --- | --- | --- | --- |
| **How long have you been using them?** | **How often do you use them?** | **How much do you spend on them per week?** | **Where do you buy them?** |
| My wife --a year or two | Daily to reduce and hopefully eliminate the need for cigartettes. | about a quarter or less the price of the cigarettes… and with the health benefit!! | Devices from NZ internet sales. The Nicotine has to come from overseas. |

**Consultation submission 245 – Smokefree Marlborough Coalition**

Withheld at submitter’s request

**Consultation submission 246 – Hawke’s Bay Vapour**

Withheld at submitter’s request

**Consultation submission 247 – Hospitality New Zealand**

12 September 2016

Consultation Submission  
Ministry of Health  
P.O Box 5013  
Wellington 6140

Email ecigarettes@moh.govt.nz

**Re: Policy Options for the Regulation of Electronic Cigarettes**

Hospitality NZ, through membership servicing of approximately 3000 members throughout New Zealand, is able to gauge the views and experiences of a wide variety of New Zealand hospitality operators. These include restaurants, cafes, bars, taverns, hotels, retail liquor and a wide array of commercial accommodation providers, and in this capacity our members employ approximately 40,000 people. Membership of Hospitality NZ is voluntary and funded by member subscriptions.

We play a significant role in assisting the hospitality industry with the day to day activities of their businesses, both mandatory and operational, through advice and support.

Hospitality New Zealand wishes to comment on Question 5 of the consultation document - Do you think it is important for the SFEA to prohibit vaping in designated smokefree areas in the same way as it prohibits smoking in such areas?

The Smoke Free Environments Act is well known to our hospitality and commercial accommodation members. Currently, given the SFEA does not prohibit the use of e-cigarettes in smokefree areas, our members set they own terms and conditions prohibiting the use of e-cigerettes as part of their own smokefree policies, if deemed necessary. Anecdotal evidence from members indicates that the issue of people vaping e-cigerettes within a property or establishment has not been a significant issue to date however, they acknowledge that, as e-cigerettes become more, common this may become an issue.

For hospitality operators the smoking of e-cigarettes in bars and restaurants can be problematic due to the vaping clouds and aromas that can impact on other patrons. For commercial accommodation providers, the provision of non-smoking rooms ensures that guests checking into a room are not greeted with the odoriferous scent of stale smoke, likewise vaping odours can leave an aroma that also lingers. This can, in some cases, lead to complaints from guests, negative reviews and loss of income if the room has to be taken out of inventory for a period of time for commercial cleaning or deodorising.

**Status Quo - businesses set own e-cigarette policy**

The current process of operators setting their own terms and conditions prohibiting the use of e-cigarettes as part of their smokefree policies works well. Hospitality New Zealand was no concerns if status quo remains with this aspect of SFEA.

**SFEA Prohibition of e-cigarettes in smokefree areas**

If the SFEA is amended to prohibit the use of e-cigarettes in areas designated smokefree, Hospitality New Zealand asserts that its members will evolve to this new legislation. However, we stress that the above process of self-regulation works very effectively currently.

**SFEA non Prohibition of e-cigarattes in smokefree areas**

If the SFEA is amended and e-cigarettes are not prohibited in designated smokefree areas ie: making it legal to smoke e-cigarettes in smokefree areas, then operators must still be able to assert the right to prohibit e-cigarettes under their own terms and conditions and these terms and conditions must be enforceable by law.

**RECOMMENDATION:**

That the industry must be able to maintain control over the accommodation of e-cigarettes within their operation and should be allowed to set their own terms and conditions as to their use.

Yours sincerely

[redacted]

**Consultation submission 248 – New Zealand Association of Convenience Stores**

New Zealand Association of Convenience Stores

Submission To Ministry Of Health’s Consultation:

Policy Options for the Regulation of Electronic Cigarettes

September 2016

To: Ministry of Health

PO BOX 5013

WELLINGTON 6145

Email: ecigarettes@moh.govt.nz

From: [redacted]

[redacted]

[redacted]

Telephone: [redacted]

Email: [redacted]

**EXECUTIVE SUMMARY**

The New Zealand Association of Convenience Stores (NZACS) welcomes the opportunity to submit to the Ministry of Health’s Consultation ‘*Policy Options for the Regulation of Electronic Cigarettes*’.

We make this submission in order to contribute the views of retailers who support the sale and supply of nicotine e-cigarettes and e-liquids at convenience stores and retail outlets across the country.

NZACS represents more than 600 convenience stores and their suppliers across New Zealand and has consistently expressed a willingness to engage constructively with the Ministry over retail sector issues. We remain committed to engaging with the Ministry, particularly around issues of education and enforcement.

Our members, both suppliers and retailers have been witnessing an increasing demand for e-cigarettes and note there is considerable consumer knowledge of these products. Retailers have faced frustration from customers who would like to buy nicotine e-cigarettes and e-liquids from convenience stores and service stations, but are in a situation whereby they are unable to supply or sell them due to current restrictions.

Retailers are also frustrated knowing that there are other retail-sector outlets selling both nicotine e-cigarettes and e-liquids in breach of the current law who are profiting from the lack of any enforcement action by the Ministry to the detriment of law-abiding retailers.

NZACS notes the comments in the Consultation Document that ‘due to the lack of clarity on the legal position of e-cigarettes … the Ministry has been unable to carry out enforcement actions against retailers.’ With respect, this statement is difficult to accept as current law is clear that it is unlawful to sell nicotine e-liquids and the Ministry states this on its website. The Ministry should either legalise the sale of nicotine e-cigarettes and e-liquids at the earliest opportunity, or the Ministry should take effective enforcement action against unlawful sales rather than allowing the current situation to continue.

**Do you have any direct or indirect links to the tobacco industry?**

Yes. NZACS has membership open to both retailers within the convenience organised retail segment, as well to suppliers of goods to retailers. As such the three main tobacco companies operating in New Zealand are registered as supplier members. In addition, the Scandinavian Tobacco Group New Zealand Ltd is also a member of NZACS. It is our understanding that at least some of these member companies have e-cigarette and e-cigarettes in other countries.

NZACS understands that our submission may be requested under the Official Information Act 1982 and as such agrees to the release of NZACS details as provided in this submission. We would however request that should a request be made for the release of this submission, NZACS is advised that a request has been made and who the requestor is.

**CONSULTATION QUESTIONS**

NZACS provides the following comments to questions contained in the consultation paper that specifically relate to, or impact upon the convenience store sector and or businesses supplying this retail sector.

**Q1. Do you agree that the sale and supply of nicotine e-cigarettes and nicotine liquids should be allowed on the local market, with appropriate controls?**

Yes. NZACS strongly encourage the Ministry to move as quickly as possible in legalising the sale and supply of nicotine e-cigarettes and e-liquids for the New Zealand market.

As outlined above, NZACS notes that there is currently an uneven playing-field in the market where some smaller retailers and vaping suppliers are illegally selling nicotine e-cigarettes and e-liquids without fear of prosecution.

In an environment like that, it will only be a matter of time before larger, more well-known retail outlets start to openly sell these products and, as such, ostensibly be flouting the law. Competitive pressures will make this inevitable if that status quo is permitted to continue.

On the basis of the information publicly available about these products, and the claims that they are 95% safer than smoked tobacco products, retailers may well feel justified in selling these products.

NZACS would be greatly concerned if retailers were placed at a competitive and commercial disadvantage while any changes to the legislation progress slowly through the Parliamentary process. On the basis that any law changes could take over 12 months plus to take effect, NZACS implores the Government to move quickly to resolve this market dilemma.

In respect of ‘appropriate controls’, NZACS would support an open retail environment for these products on the basis that the evidence we have seen (principally the Public Health England E-cigarettes: an evidence update) demonstrates a potential public health gain if current smokers switch from smoked tobacco products to e-cigarettes.

NZACS is aware of comments by tobacco control groups that sales ‘*be allowed through pharmacies and a limited number of licensed specialist shops*’. We cannot support this proposal due to the following:

1. Limiting the sales’ venues of a product that has the potential to have widespread public health benefits risks undermining the objectives of public health, particularly when existing tobacco products are readily sold at convenience stores throughout the country.
2. Currently, convenience stores sell in excess of $500 million worth of tobacco per annum. Convenience stores are a key retail outlet for tobacco sales and for smokers looking for tobacco products. It is these very consumers who are now looking to nicotine e-cigarettes (and e-liquids) to reduce the harm from tobacco smoking. It would make sense from a public health perspective to allow the sale of nicotine e-cigarettes and e-liquids in convenience stores to encourage the switch from tobacco. Convenience stores are also open at hours when pharmacies and or specialist vape shops are close, and have stores throughout the country which would mean wider availability for consumers outside the main metropolitan centres.
3. Further to this point, limiting the sale of these products to licensed specialist shops, i.e. vape shops, again creates market disadvantages for other retailer businesses and is opposed.
4. NZACS has consistently opposed the introduction of a licensing regime for tobacco retailers, and view the idea of licensed specialist shops is simply another attempt by tobacco control to see retail licensing of tobacco products introduced.
5. A licensing regime will force more business costs and ‘red-tape’ onto the retail sector with little public health benefit. Information released under the Official Information Act by the Ministry clearly shows a high level of compliance by retailers with the provisions of the Smokefree Environments Act.

**Q2. Are there other (existing or potential) nicotine-delivery products that should be included in these controls at the same time? If so, what are they?**

NZACS is aware that there are a number of nicotine-delivery products available for sale in overseas markets. NZACS understands that the evidence from the Public Health England E-cigarette report that nicotine e-cigarettes and e-liquids are 95% safer only applies to these non-tobacco containing products.

These other products are not viewed as e-cigarettes, instead described as heat-not-burn devices that contain or use tobacco. We are also aware of the low-toxicant smokeless tobacco product Snus.

NZACS is conscious that this market is constantly evolving with innovative new products emerging all the time. Trying to regulate or be overly prescriptive in trying to ‘future- proof’ legislation to cover all potential innovations risks delaying the public health gains that would be almost immediate from allowing the sale of nicotine e-cigarettes and e- liquids in New Zealand.

NZACS recognises that the range of products on the market will evolve, any development of detail performance standards based on today’s products should be avoided.

Any delay would also continue the issues mentioned above with illegal sales damaging the business of law-abiding retailers.

NZACS is aware that the tobacco companies have developed a range of tobacco products that are claimed to be less harmful than regular cigarettes, e.g. snus. We would be concerned that any policy proposals to legalise such products should not be used to delay legislation allowing the legal sale of nicotine e-cigarettes and e-liquids that are tobacco-free and shown to be 95% safer.

**Q3. Do you think it is important for legislation to prohibit the sale and supply of e- cigarettes to young people under 18 years of age in the same way as it prohibits the sale and supply of smoked tobacco products to young people?**

Yes.

**Q4. Do you think it is important for legislation to control advertising of e-cigarettes in the same way as it controls advertising of smoked tobacco products?**

In light of the potential public health gains in having smokers switch to e-cigarettes instead of continuing to smoke tobacco products, allowing advertising (print, radio, TV and digital) and point-of-sale communications would seem entirely appropriate.

Restricting consumer awareness of these products, when many vapers and ex-smokers have said these products have helped them quit smoking when NRT products have failed, would be a step backwards.

We believe there is a need for consumers to be better informed about these products and that the manufacturers, and suppliers should have the opportunity to communicate about them.

**Q5. Do you think it is important for the SFEA to prohibit vaping in designated smokefree areas in the same way as it prohibits smoking in such areas?**

NZACS has no comment to make on this question.

**Q6. Do you agree that other controls in the SFEA for smoked tobacco products should apply to e-cigarettes? For example:**

NZACS makes the following comments as they relate to the retail sector.

In light of the possible public health benefits of e-cigarettes over that of smoked tobacco products, the suggestion to regulate these products in similar ways makes no sense at all. Rather, the Ministry should be doing all it can to encourage smokers to switch to these safer products.

NZACS opposes any restrictions on the display of these products in sales outlets.

**Q7. Do you think it is important for legislation to impose some form of excise or excise-equivalent duty on nicotine e-liquid, as it does on tobacco products?**

No.

**Q8. Do you think quality control of and safety standards for e-cigarettes are needed?**

NZACS believes the Consumer Guarantees Act is applicable to the sale of these products. However, as this is a rapidly evolving product category, NZCAS would support the introduction of an internationally recognised set of standards for these products.

NZACS is aware of a vaping group called the New Zealand Vaping Alliance. We are aware of comments on their website indicating they support the introduction of a UK standards based approach. We believe others are better placed to answer questions about quality control and safety standards, but retailers would certainly be supportive of suppliers who comply with a recognised set of standards.

**Q9. Are there any other comments you would like to make?**

See General Comments below.

**Q10. Can you assist us by providing information on the sale of e-cigarettes in New Zealand (for example, size of sales or range of products for sale on the local market)?**

Market information on e-cigarettes in New Zealand is very limited, especially as selling nicotine e-cigarettes and e-liquids is currently illegal.

**Q11. Would the Ministry of Health’s proposed amendments have any impact on your business? If so, please quantify/explain that impact.**

There is a real risk that unless urgent action is taken over the legalising for sale of nicotine e-cigarettes and e-liquids, competitive market forces will result in wide-spread ‘illegal’ sales of these products though-out the retail sector. Retailers will take action in order to remain competitive, particularly when the Government has ‘agreed in principle to nicotine e-cigarettes being legally available for sale and supply in New Zealand…’ alongside awareness that the Ministry ‘has been unable to carry out enforcement actions against retailers’.

Until such a time that the Ministry outlines specific policy proposals resulting from this consultation process, it is difficult to quantify the direct impact on the retail sector.

However, aside from the comments about the growth of this product category, retailers believe that these products should be available for sale, and as they are said to be 95% safer than tobacco products, they question the need for restrictive regulations.

**General Comments:**

At any one point in time it is estimated that there is approximately $8 billion worth of tobacco in the New Zealand supply chain. At this stage, while growing, the market in e-cigarettes is very small in comparison.

Any regulations that seek to hide or restrict visibility and information about a product that is viewed by experts as 95% safer than smoked tobacco products runs counter to public health policy objectives.

Customers that experience delays or find their preferred product is not available in a convenience store setting reduces NZACS members’ value proposition; that of offering a fast, efficient convenience service. This has broader business and financial implications when multiplied across for example, 170 plus retail outlets under one brand banner i.e. Mobil Oil NZ.

Restricting e-cigarettes to pharmacies or licenced specialist shops risks the Ministry playing market favourites. This could potentially be seen as anti-competitive and is likely to have a negative impact on the convenience store sector by driving customers to other retail sites. More worryingly though will be likelihood that ex-smokers will relapse if the nicotine they seek is not available wherever tobacco is sold.

The convenience store retail sector is about providing customers with a fast, efficient and customer-focused service. With the popularity of e-cigarette and vaping products increasing, alongside the increasingly recognised public health benefits of these products, NZACS encourages the Ministry to move quickly and legalise the sale of nicotine e-cigarettes and e-liquids.

**NEW ZEALAND ASSOCIATION OF CONVENIENCE STORES**

**12 September 2016**

**Consultation submission 249 - Individual**

|  |  |
| --- | --- |
| **Your details**  This submission was completed by: *(name)* | [redacted] |
| Address: *(street/box number)* | [redacted] |
| *(town/city)* | [redacted] |
| Email: | [redacted] |
| Organisation *(if applicable)*: | N/A |
| Position *(if applicable)*: | N/A |

*(Tick one box only in this section)*

Are you submitting this:

as an individual or individuals (not on behalf of an organisation)?

on behalf of a group, organisation(s) or business?

*(You may tick more than one box in this section)*

Please indicate which sector(s) your submission represents:

Commercial interests, including e‑cigarette manufacturer, importer, distributor and/or retailer

Tobacco control non-government organisation

Academic/research

Cessation support service provider

Health professional

Māori provider

Pacific provider

Other sector(s) *(please specify)*:

*(You may tick more than one box in this section)*

Please indicate your e‑cigarette use status:

I am using nicotine e‑cigarettes.

I am using nicotine-free e‑cigarettes.

I currently smoke as well as use e‑cigarettes.

I am not an e‑cigarette user.

I have tried e‑cigarettes.

**Privacy**

We intend to publish all submissions on the Ministry’s website. If you are submitting as an individual, we will automatically remove your personal details and any identifiable information.

If you do not want your submission published on the Ministry’s website, please tick this box:

Do not publish this submission.

Your submission will be subject to requests made under the Official Information Act. If you want your personal details removed from your submission, please tick this box:

Remove my personal details from responses to Official Information Act requests.

If your submission contains commercially sensitive information, please tick this box:

This submission contains commercially sensitive information.

**Declaration of tobacco industry links or vested interest**

As a party to the global tobacco control treaty, the World Health Organization Framework Convention on Tobacco Control, New Zealand has an obligation to protect the development of public health policy from the vested interests of the tobacco industry. To help meet this obligation, the Ministry of Health asks all respondents to disclose whether they have any direct or indirect links to, or receive funding from, the tobacco industry. The Ministry will still carefully consider responses from the tobacco industry, and from respondents with links to the tobacco industry, alongside all other submissions. Please provide details of any tobacco company links or vested interests below.

|  |
| --- |
| No links or invested interests to declare. |

Please return this form by email to:

**ecigarettes**[**@moh.govt.nz**](mailto:tobacco@moh.govt.nz) by **5 pm, Monday 12 September 2016**.

If you are sending your submission in PDF format, please also send us the Word document.

**Consultation questions**

Although this form provides blank spaces for your answers to questions, there is no limit to the length of your responses; you should take as much space as you need to answer or comment. Feel free to enlarge the boxes or attach additional pages.

**Q1 Do you agree that the sale and supply of nicotine e‑cigarettes and nicotine liquids should be allowed on the local market, with appropriate controls?**

Yes  No

Reasons/additional comments:

|  |
| --- |
| The current use and demand for nicotine e-cigarettes and nicotine liquids by the general population, whether through legal or illegal pathways, can be interpreted as an indication that individuals are willing to utilize these products to control or reduce their tobacco smoking. This is also paralleled in anecdotal reports of health care workers about smokers’ requests for health information on nicotine e-cigarettes. This is currently occurring without appropriate controls – i.e. without any control over the type and safety of the product; dosage of nicotine; potential for tempering with product; etc. The potential harms associated with the current state are unknown.  Scientific evidence suggests that nicotine e-cigarettes and nicotine liquids are effective in reducing the harm related to tobacco smoking and are of public health benefit with potential for significant reductions in health care costs. The World Health Organization states that “Tobacco is the single most preventable cause of death in the world today”. Prevalence rates for smoking in the general population in New Zealand have been gradually declining through concerted policy and government initiatives. However, there is little evidence to indicate similar rates of reduction among population subgroups such as Maori people and Pacific people; and within the mental health and addictions populations reduction is even less significant. This data indicates health inequalities within the NZ population.  Sanctioning the use of nicotine e-cigarettes and nicotine liquids for sale in NZ provides an opportunity for properly regulating the supply, product safety, and nicotine dosage of nicotine e-cigarettes and nicotine liquids. This would benefit the NZ population through reduction of the gap of health inequalities and reduction in harm related to tobacco use and consequent health care costs. |

**Q2 Are there other (existing or potential) nicotine-delivery products that should be included in these controls at the same time? If so, what are they?**

Yes  No

Reasons/additional comments:

|  |
| --- |
| All nicotine delivery devices should be evaluated in a similar way. |

**Q3 Do you think it is important for legislation to prohibit the sale and supply of e‑cigarettes to young people under 18 years of age in the same way as it prohibits the sale and supply of smoked tobacco products to young people?**

Yes  No

Reasons/additional comments:

|  |
| --- |
| Currently there is not enough evidence about the effects of e-cigarettes on young people under the age of 18. However, evidence from the addiction field and from research on the effects of substances including tobacco on the developing brain, suggests the potential of harmful effects within this population.  Potential harmful effects include:   * gateway to tobacco and/or other drug use; * impact of nicotine on the developing brain; * risk of early addiction; * economic burden.   These justify the importance for legislation to prohibit the supply to this population subgroup with the aim of reducing the potential for harm related to its use if it were not prohibited. |

**Q4 Do you think it is important for legislation to control advertising of e‑cigarettes in the same way as it controls advertising of smoked tobacco products?**

Yes  No

Reasons/additional comments:

|  |
| --- |
| Control over the advertising of e-cigarettes reduces the potential for domination of marketing of these products by the tobacco industry. It is important to reduce the potential for glamorisation of the product and to reduce advertising to potential vulnerable populations, such as minors.  However, appropriate communication to smokers regarding the benefits of the product, similar to that as for NRT products, can be achieved through:   * health promotion campaigns; * point of sale communication. |

**Q5 Do you think it is important for the SFEA to prohibit vaping in designated smokefree areas in the same way as it prohibits smoking in such areas?**

Yes  No

Reasons/additional comments:

|  |
| --- |
| The primary purpose of designated smokefree areas is to protect the non-smoker from the effects of second hand smoking. There is currently not enough evidence on the potential second hand effects of vaping – such as, physical harmful effects; impact on minors (mirroring and glamorising behaviour). |

**Q6 Do you agree that other controls in the SFEA for smoked tobacco products should apply to e‑cigarettes? For example:**

|  |  |  |  |
| --- | --- | --- | --- |
| **Control** | **Yes** | **No** | **Reasons/ additional comments** |
| Requirement for graphic health warnings |  |  |  |
| Prohibition on displaying products in sales outlets |  |  |  |
| Restriction on use of vending machines |  |  |  |
| Requirement to provide annual returns on sales data |  |  |  |
| Requirement to disclose product content and composition |  |  |  |
| Regulations concerning ingredients (eg, nicotine content and/or flavours) |  |  |  |
| Requirement for annual testing of product composition |  |  |  |
| Prohibition on free distribution and awards associated with sales |  |  |  |
| Prohibition on discounting |  |  |  |
| Prohibition on advertising and sponsorship |  |  |  |
| Requirement for standardised packaging |  |  |  |
| Other |  |  |  |

**Q7 Do you think it is important for legislation to impose some form of excise or excise-equivalent duty on nicotine e-liquid, as it does on tobacco products?**

Yes  No

Reasons/additional comments:

|  |
| --- |
| Nicotine e-cigarettes and nicotine liquids should be considered as medicines. In addition, maintaining a price differential between tobacco products and nicotine e-cigarettes and nicotine liquids could be an effective strategy to the achieve NZ smokfree target at 2025. |

**Q8 Do you think quality control of and safety standards for e‑cigarettes are needed?**

Yes  No

Additional comments:

|  |  |  |  |
| --- | --- | --- | --- |
| **Area of concern** | **Yes** | **No** | **Reasons/additional comments** |
| Childproof containers |  |  |  |
| Safe disposal of e‑cigarette devices and liquids |  |  |  |
| Ability of device to prevent accidents |  |  |  |
| Good manufacturing practice |  |  |  |
| Purity and grade of nicotine |  |  |  |
| Registration of products |  |  |  |
| A testing regime to confirm product safety and contents purity |  |  |  |
| Maximum allowable volume of e-liquid in retail sales |  |  |  |
| Maximum concentration of nicotine e-liquid |  |  |  |
| Mixing of e-liquids at (or before) point of sale |  |  |  |
| Other |  |  |  |

**Q9 Are there any other comments you would like to make?**

|  |
| --- |
| Nicotine e-cigarettes and nicotine liquids are health products and should be categorized as medicines with appropriate controls.  I recommend that there is a regime to license vendors approved for selling e-cigarettes, with vendors being limited to pharmacies. This will help to position e-cigarettes as a stop smoking device and the pharmacy can sell the product along with advice on stopping smoking and other NRT products. Pharmacies will also be unlikely to drive up sales as a stand alone vaping shop would. |

**Additional information on sales and use**

**Q10 Can you assist us by providing information on the sale of e‑cigarettes in New Zealand (for example, size of sales or range of products for sale on the local market)?**

|  |
| --- |
| N/A |

**Q11 Would the Ministry of Health’s proposed amendments have any impact on your business? If so, please quantify/explain that impact.**

|  |
| --- |
| N/A |

**Q12 If you are using nicotine e‑cigarettes: how long have you been using them, how often do you use them, how much do you spend on them per week and where do you buy them?**

|  |  |  |  |
| --- | --- | --- | --- |
| **How long have you been using them?** | **How often do you use them?** | **How much do you spend on them per week?** | **Where do you buy them?** |
|  |  |  |  |

**Consultation submission 250 – New Zealand Taxpayers Union (Inc.)**

See PDF submissions.

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11. Smokefree Needs Analysis May 2015 CDHB <https://www.health.govt.nz/system/files/documents/pages/canterbury_dhb_tobacco_control_plan.pdf>

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12. Penelope Truman (Senior Scientist, ESR Kenepuru Science Centre in Porirua, Senior Lecturer Massey University in Wellington) speaking at New Zealand Symposium on E-Cigarettes March 2015

    <https://youtu.be/oi6C5ieKyZ0?t=8402>

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13. Penelope Truman (Senior Scientist, ESR Kenepuru Science Centre in Porirua, Senior Lecturer Massey University in Wellington) speaking at New Zealand Symposium on E-Cigarettes March 2015

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33. <http://www.asa.co.nz/codes/codes/therapeutic-health-advertising-code/> [↑](#footnote-ref-33)
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78. Many of the recommendations suggested in the Ministry of Health’s discussion document are similar to Article 20 of the EUTPD. The European Union’s regulation of e-cigarettes has been criticised as damaging for both vapers (current and potential) and manufacturers. On the consumer side, the regulations are likely to disincentivise vaping as an alternative to smoking. On the producer side, regulations are likely to increase the costs of production, discourage innovation, and can limit market diversity. Christopher Snowdon, Director of Lifestyle Economics at the Institute of Economic Affairs has reviewed the likely implications for each regulation in Article 20. See Christopher Snowdon (2015) ‘E-cigarettes and Article 20 of the Tobacco Products Directive’, Epicenter, http://www.epicenternetwork.eu/wp-content/uploads/2015/09/EPICENTER-Briefing-E-cigarettes-and-Article-20-14th-September-2015.pdf [↑](#footnote-ref-78)
79. Though new research has been released since publication of *The Health of the State,* many of the studies repeat the flaws in methodology or policy conclusions that I identified in my research. [↑](#footnote-ref-79)
80. Even with the best intentions, unnecessary regulation, misguided regulation, or poorly designed regulation can sometimes cause more harm than applying no regulations at all. Further, once regulations are put in place, they can become costly and burdensome to lift. For a recent example, consider the 400% increase in the price of EpiPens in the US, due to pharmaceutical giant Mylan enjoying a monopoly protected by FDA regulation. The burden of proof regarding EpiPen safety and effectiveness is so stringent and costly that no other manufacturers have been able to enter the market and compete at the same level. [↑](#footnote-ref-80)
81. As an addictive product, ready access is important to satisfy nicotine cravings, and if access is too limited, vapers trying to quit smoking could easily just switch back to smoking. [↑](#footnote-ref-81)
82. A recent report by think-tank the Reason Foundation emphasised the importance of bottom-up innovation, and is critical of the EUTPD and FDA for limiting competition and innovation. The report also points out the many ways the e-cigarette industry is already self-regulating for safety, making the case for regulating vape products as consumer products. Julian Morris and Amir Ullah Khan (2016) ‘The Vaping Revolution: How Bottom-up Innovation is Saving Lives’, Working Paper, Reason Foundation. [↑](#footnote-ref-82)
83. Such products are not readily available in New Zealand, but have enjoyed popularity overseas. These products use a stick of tobacco rather than an e-liquid, but are similar in that they avoid the harmful toxins associated with combustion. It is likely innovations such as this will continue. See ‘Big Tobacco Wants to Turn Japan's Smokers into Vapers’ (29 August 2016) *Bloomberg.com,* but note that Japan has a regulatory environment that favours this product over nicotine e-liquids. [↑](#footnote-ref-83)
84. Although, as *The Health of the State* argues, this reason alone is not justified from an economics perspective. The externalities that matter from an economist’s perspective are those that distort peoples’ choices. For a discussion of what externalities are and are not relevant, see Edgar K. Browning (1999) ‘The Myth of Fiscal Externalities’ *Public Finance Review* 27:1; Jenesa Jeram (2016) *The Health of the State*, The New Zealand Initiative. [↑](#footnote-ref-84)
85. This is not our recommendation, but a consideration of possible outcomes from this consultation. [↑](#footnote-ref-85)
86. Limitations on flavours would especially be nonsensical. There is no such thing as ‘adult’ and ‘kid’ flavours. A study by ASH UK found that while tobacco was the most popular flavour for adult vapers (33%) a significant proportion also preferred fruit flavours (22%) or menthol flavours (22%). Adults should not be restricted from purchasing a product that might be attractive to children, if appropriate age restrictions have already been implemented. ASH UK (2016) ‘Use of electronic cigarettes (vapourisers) among adults in Great Britain’, ash.org.uk [↑](#footnote-ref-86)
87. Clive Bates, former director of Action on Smoking and Health (UK) puts forward seven criteria for assessing the reliability of ‘gateway effect’ studies: 1) Is the term ‘gateway effect’ clearly defined? 2) Are the reported trends consistent with smoking trends generally? 3) The order in which vaping and smoking initiation happens does not matter, what matters is when vaping causes a smoking habit *that would not have occurred otherwise* (this is known as considering the counterfactual). 4) Are ‘smoking’ and ‘vaping’ well defined? (Keep an eye out for experimentation vs regular use) 5) Was there nicotine in the e-cigarettes? 6) Be aware of confounding variables and establishing causation (and the direction of causation). 7) Are the measures of ‘susceptibility to smoking’ reliable? See Clive Bates (June 10 2016) ‘How not to be duped by gateway effect claims’, http://www.clivebates.com [↑](#footnote-ref-87)
88. Note that avoiding targeting children is not the same as avoiding advertising anywhere a child might see it. The harm of a child seeing the advertisement and subsequently taking up smoking (worst possible scenario) or vaping (a less harmful, but arguably still undesirable scenario), must be measured against the benefits advertising brings to vaping consumers and would-be consumers. [↑](#footnote-ref-88)
89. Though no such warnings are given for coffee advertisements, despite coffee also being an addictive substance. [↑](#footnote-ref-89)
90. Even if the action does cause harm to bystanders, a case could be made that people who voluntarily occupy that premises are willing to take on that risk. [↑](#footnote-ref-90)
91. Besides, not even smoking bans in ‘large outdoor spaces’ is as evidence-based as one might think. While there have been studies proving the existence of second hand smoke particles in outdoor spaces, fewer studies have shown how this exposure is harmful to health. [↑](#footnote-ref-91)
92. ASH UK (2015) ‘Will you permit or prohibit electronic cigarette use on your premises?’, Briefing document, http://www.ash.org.uk [↑](#footnote-ref-92)
93. This is a point made in *The Health of the State* and by political parties across the political spectrum from New Zealand First (http://nzfirst.org.nz/news/tobacco-tax-all-about-money-not-public-health) to the Act Party (http://www.act.org.nz/posts/free-thoughts-tobacco-tax-0). Smoking excise has harmed the poor disproportionately. [↑](#footnote-ref-93)
94. The standard reasons are often referred to in ‘economic terms’ as externalities. That is, smokers should be taxed because of the external costs they impose on others. But the term ‘externalities’ is often bastardised from its economic definition. While it has come to mean ‘anything that affects anyone or anything else’, the economic definition of the term is much more narrow. For an externality to be relevant, the party must be affected to such a degree that they would be willing to pay to change the outcome. [↑](#footnote-ref-94)
95. Note that *The Health of the State* questions whether the current rates of excise tax on tobacco are even justified, given the revenue gathered is well in excess of health costs to the state, and despite aggressive measures, the smoking rate is now barely responding. See Jenesa Jeram (2016) *The Health of the State*, The New Zealand Initiative. [↑](#footnote-ref-95)
96. Given New Zealanders voluntarily participate in all manner of risky activities from mountain biking, to driving, to rugby, it would seem odd to impose an additional tax on vaping even if a minor risk had been proven. [↑](#footnote-ref-96)
97. There is only one case where an excise on vaping might be justified to recoup costs borne through the health system, and it is an absurd case. If smokers were to quit smoking entirely through the aid of vaping, they are likely to improve their health and life expectancy. While that is a gain for the individual, and for public health, there is evidence that shows that it is the healthy and long-living that wind up costing the health system more in end of life care. This, combined with a reduction in excise revenue collected, could leave the government coffers worse off. In case it is not obvious, it is not our recommendation to thus impose a tax. The point is that the so-called ‘costs to the health system’ justification cannot be made for vaping. [↑](#footnote-ref-97)
98. Carl V. Phillips is a researcher in epidemiology and economics and has worked extensively on tobacco control and harm reduction. On addiction, Phillips argues that “While it gets discussed as if it were a biomedical concept –because it has implications for health and sometimes involves biological pathways –ultimately it describes behaviour, not physiology. Thus it can *only* be analysed via economics.” See Carl V. Phillips (2016) ‘Understanding the basic economics of tobacco harm reduction’, IEA Discussion Paper No.72. [↑](#footnote-ref-98)
99. More strongly, Carl V. Phillips argues that “the naïve claim that taxes should be proportional to the risk seems to be motivated by a rudimentary understanding of the economics, with the assumption being that consumers completely ignore health costs when making a decision, and thus consumption would be [zero] in the absence of taxes.” Ibid. [↑](#footnote-ref-99)
100. The first generation of e-cigarettes (cigalikes) might technically satisfy the need to prevent leakage, but given innovations in the technology that have occurred since then, not all vapers would find the first generation technology preferable or effective. [↑](#footnote-ref-100)
101. A vocal and evidence-based critic of the FDA regulations is Michael Siegel, Professor in the Department of Community Health Sciences, Boston University School of Public Health. See Michael Sigel (2016) ‘FDA Bans Safety Improvements in E-Cigarettes and American Lung Association Supports this Unprecedented Regulatory Blunder’, http://tobaccoanalysis.blogspot.co.nz [↑](#footnote-ref-101)