

28 May 2019



### Response to your request for official information

Thank you for your request for information under the Official Information Act 1982 (the Act) on 30 April 2019 for:

- *"Copy of the Final Report of the Electronic Cigarette Expert Advisory Group, as managed by the Manager, Tobacco Control Programme. Please take this to include any documents, papers or reports relating to the conclusion of the work of this Advisory Group.*
- *Copies of any communications sent from the Manager, Tobacco Control Programme to the Director, Service Commissioning and the Associate Minister of Health relating to the Electronic Cigarette Technical Expert Advisory Group.*
- *The date on which the Smoke-free Environments (E-cigarettes) Amendment Bill was provided to the Parliamentary Council Office. Please take this request to include any emails and covering documentation the MOH provided to the PCO."*

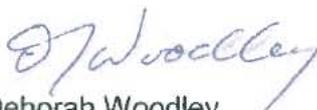
The advice of the Electronic Cigarette Expert Advisory Group is not delivered in the form of a final report, but is instead provided in the form of the minutes of the meeting. The minutes of all four of the group's meetings are publicly available on the Ministry's website at <https://www.health.govt.nz/our-work/preventative-health-wellness/tobacco-control/vaping-and-smokeless-tobacco/electronic-cigarette-technical-expert-advisory-group>.

Three pieces of communication have been identified regarding the Electronic Cigarette Expert Advisory Group: two memos to the Director, Service Commissioning, and one monthly report item. These are itemised in Appendix 1 to this letter, and a copy of the memo is enclosed.

The Smoke-free Environments (Vaping) Amendment Bill has not yet been provided to the Parliamentary Council Office.

I trust that this information fulfils your request. Under section 28(3) of the Act you have the right to ask the Ombudsman to review any decisions made under this request.

Yours sincerely

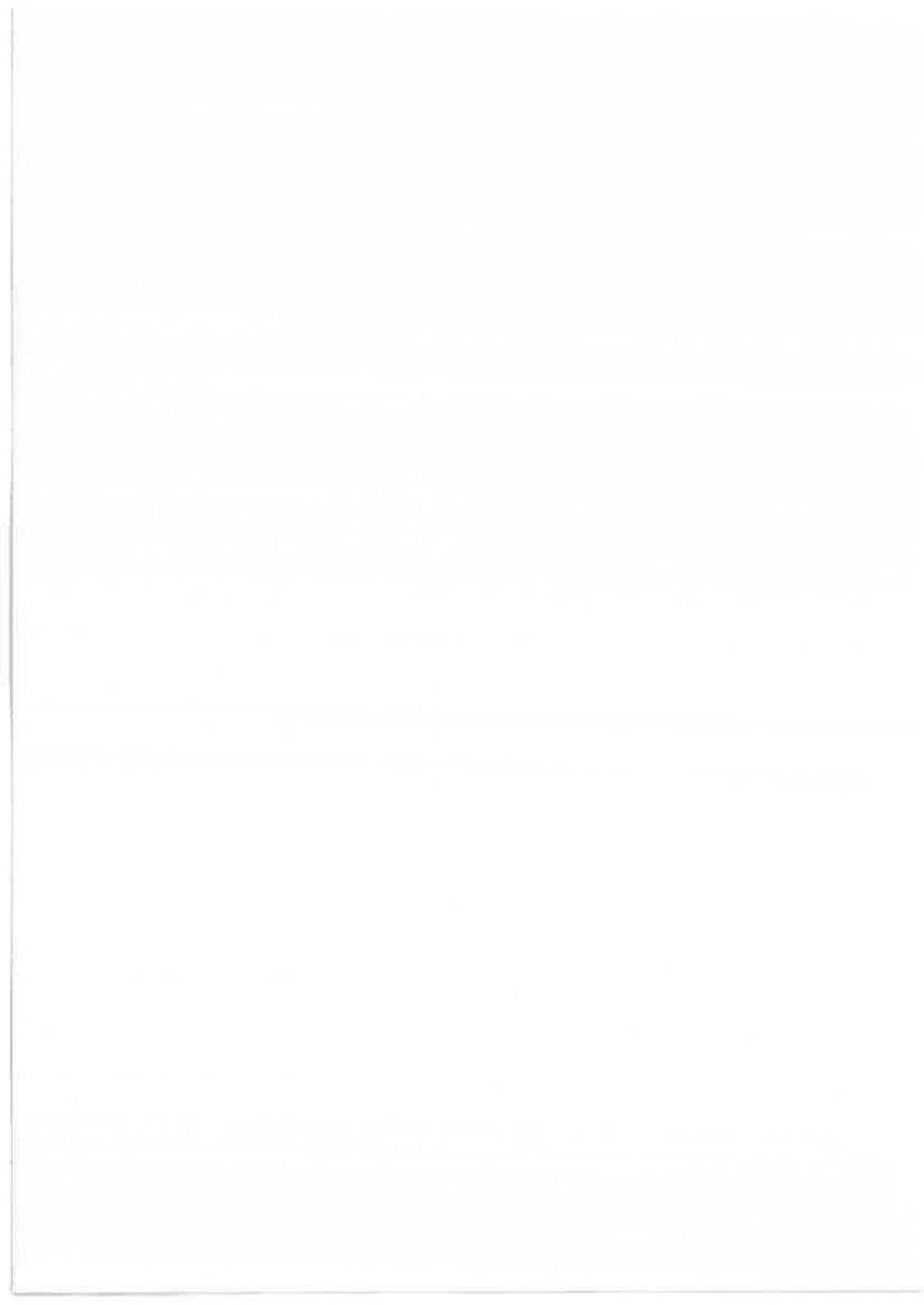


Deborah Woodley  
**Deputy Director-General**  
**Population Health and Prevention**



## Appendix 1: List of documents proposed for release

#	Date	Title	Decision on release
1.	June 2017	Monthly report item ' <i>Tobacco Control, Regulation of E-Cigarettes and Emerging Tobacco and Nicotine-Delivery Products</i> '	The phone numbers of Ministry staff withheld under section 9(2)(a) of the Act in order to protect the privacy of natural persons.
2.	28 July 2017	Memo, ' <i>Appointments to Technical Expert Advisory Group: Electronic Cigarette Product Safety</i> '	Information in appendix regarding unsuccessful nominees withheld under section 9(2)(a) of the Act in order to protect the privacy of natural persons.  Some information withheld under section 9(2)(g)(i) of the Act in order to protect the effective conduct of public affairs through the free and frank expression of opinions
3.	26 October 2017	Minutes Technical Expert Advisory Group: Electronic Cigarette Product Safety	Release in full
4.	11 December 2017	Minutes Technical Expert Advisory Group: Electronic Cigarette Product Safety	Release in full
5.	6 March 2018	Minutes Technical Expert Advisory Group: Electronic Cigarette Product Safety	Release in full
6.	25 June 2018	Minutes Technical Expert Advisory Group: Electronic Cigarette Product Safety	Release in full



# Memo

<b>Date:</b>	12 May 2017
<b>To:</b>	Jill Lane, Director, Service Commissioning
<b>Copy to:</b>	Sam Kunowski, Group Manager, System Outcomes
<b>From:</b>	Jane Chambers, Manager, Tobacco Control
<b>Subject:</b>	Approval to establish technical expert advisory group on electronic cigarette product safety; approval of associated Terms of Reference for the advisory group and recommended remuneration for members; and approval to use Tobacco Control team departmental expenditure budget
<b>For your:</b>	Decision

## Purpose

Your approval is sought to establish a technical expert advisory group ("the group") on electronic cigarette (e-cigarette) product safety; agree to the Terms of Reference for the group; agree to the recommended remuneration for each member and the use of Tobacco Control team departmental expenditure budget of up to \$35,000.00.

## Background

### Mandate

On 27 March 2017 Cabinet noted that the Ministry will work with industry stakeholders and technical experts to develop detailed requirements for e-cigarette and e-liquid product safety [CAB-17-MIN-0122 refers].

At the Officials meeting on 2 May 2017 Minister Nicky Wagner reiterated the need to progress the regulation of e-cigarettes with urgency and she is looking forward to the committee getting underway.

### Why does this group need to be established?

The Government is legislating to regulate e-cigarettes and e-liquid as consumer products under the Smoke-free Environments Act 1990. One of the proposals is to regulate product safety, which includes ingredients, manufacturing, etc. Concurrently, the Government will legislate to provide a pathway for 'emerging tobacco and nicotine-delivery products' to be regulated as consumer products in future, if desirable.

The group is needed to advise the Ministry of Health on appropriate minimum quality and safety standards in the New Zealand context, taking into account existing international safety standards and/or regulatory requirements for e-cigarettes and e-liquid. These standards include:

- manufacturing
- ingredients
- labelling
- packaging.

The set up of this group aligns with the establishment of previous expert advisory groups including the Orthopaedic Service Improvement Initiative Expert Reference Group, the Child Obesity Technical Expert Advisory Group, as well as the Ophthalmology Service Improvement Expert Advisory Group which is currently being established.

### *How will members be appointed?*

Up to eight members will be appointed for their expertise, rather than as representatives of a particular interest group. There will be at least one consumer member.

There will be an open nomination process for members and the Ministry will call for nominations to the group via an advertisement on the Ministry website. Potential candidates will also be sourced from submissions made on the *Policy Options for the Regulation of Electronic Cigarettes* consultation document, as well as parties who contacted either the Minister or Ministry directly. The Tobacco Team will notify all of the potential candidates of the advertisement on the Ministry of Health website.

The nominations will be considered by a panel of senior Ministry officials, using an assessment table which evaluates each nominee against the assessment criteria outlined below. An exemplar assessment table for nominations are attached.

The main criteria against which nominees are to be assessed, as set out in the Terms of Reference, are:

- understanding of the international market for alternative tobacco and nicotine-delivery products
- understanding of the e-cigarette and e-liquid market in New Zealand
- understanding of the manufacture, importation, and/or retail sale of e-cigarettes and e-liquid
- knowledge of regulatory developments for e-cigarette and e-liquid internationally
- knowledge of the risks and benefits associated with the use of e-cigarettes
- any other expertise considered relevant by the Manager, Tobacco Control Programme.

The group will be chaired by Dr. Hayden McRobbie.

The Terms of Reference of the group (which have been peer reviewed by Health Legal) and the draft Call for Nominations form which will be advertised on the Ministry website are attached.

### *Remuneration and fees*

The Tobacco Control team referred to the Cabinet Office Circular CO (12) 6 *Fees framework for members appointed to bodies in which the Crown has an interest* (or its successor circular) when making considerations on remuneration for members of the group. The group was classified as *Other Committees and Other Bodies* and the fee scale was evaluated at Level 4.

The team assessed that proposed fees per day be \$250.00 plus travel costs. Fees for members will be paid from the Tobacco Control team departmental expenditure budget. The Service Commissioning Funding Board (8 May 2017) recommended that remuneration for members of the group be paid from the Tobacco Control team departmental expenditure budget. The Service Commissioning Funding Board minutes are attached. The breakdown of fees are outlined below:

\$250.00	<i>fee per day (for one member)</i>
\$500.00	<i>travel per day if required (for one member)</i>
<u>\$ 25.00</u>	<i>catering per day (for one member)</i>
\$775.00	<i>total per day (for one member)</i>
\$ 6,200.00	<i>total per day (for 8 members)</i>
\$24,800.00	<i>total for 4 meetings (for 8 members)</i>
\$10,000.00	<i>contingency</i>
\$34,800.00	<i>Total</i>

The above breakdown is an estimate. Some members will not require payment for travel as it is likely that meetings will be conducted via video conference or teleconference. It is envisaged that up to half of this budget will be used from 2016/17 budget and the remainder to be used from 2017/18 budget.

The Cabinet Office Circular, with proposed salary band highlighted, is attached.

*Consultation*

The Tobacco Control team consulted Protection, Regulation and Assurance, Medsafe, Health Legal and the Office of the Director-General (Governance team) around development of the Terms of Reference and process for selecting members to the group.

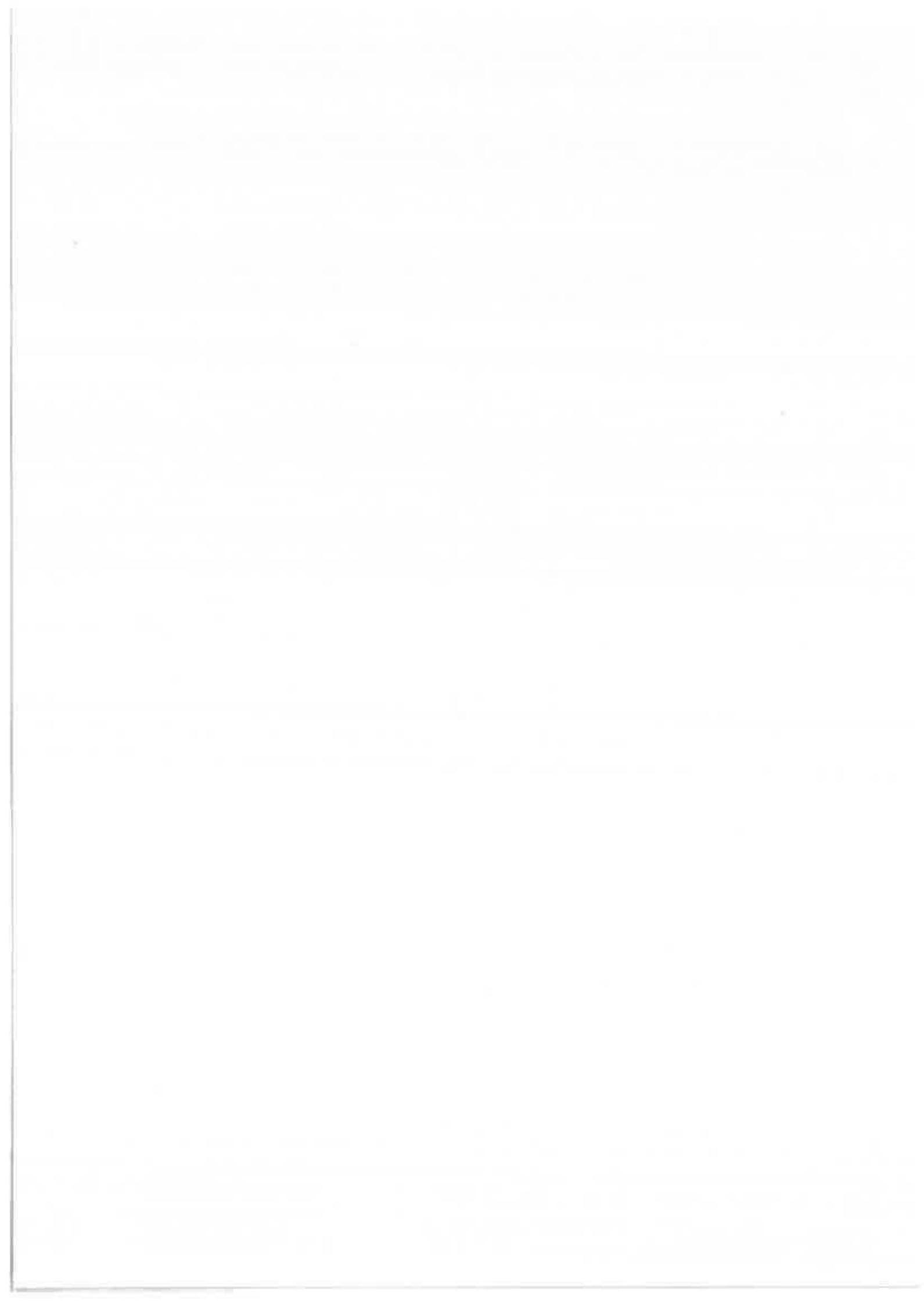
**Recommendations**

It is recommended that you:

1.	agree to the establishment of the technical expert advisory group on electronic cigarette product safety	Yes/No
2.	agree to the Terms of Reference of the technical expert advisory group and recommended remuneration for each member	Yes/No
3.	agree to the use of Tobacco Control team departmental expenditure budget of up to \$35,000.00 to be shared between both 2016/17 and 2017/18 budget years for the establishment of the technical expert advisory group on electronic cigarette product safety	Yes/No

Signature \_\_\_\_\_  
Jill Lane  
Director, Service Commissioning

Date:



Contacts: Jane Chambers, Manager Tobacco Control, s 9(2)(a)  
Sam Kunowski, Group Manager Service Outcomes, s 9(2)(a)

Out of scope

[Redacted]

Out of scope [redacted]

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## Tobacco Control

### Regulation of E-Cigarettes and Emerging Tobacco and Nicotine-Delivery Products

Policy work continues for the report-back to SOC on emerging tobacco and nicotine-delivery products, scheduled for 26 July 2017. In June 2017, the Ministry prepared a draft Cabinet paper for your consideration and subsequent consultation with government departments.

Preliminary decisions have been made on preferred candidates for the Technical Advisory Group: E-cigarette Product Safety. Reference checking is under way.

# Memo



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**Date:** 28 July 2017

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**To:** Jill Lane, Director, Service Commissioning

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**Copy to:** Sam Kunowski, Group Manager, System Outcomes

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**From:** Jane Chambers, Manager, Tobacco Control

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**Subject:** Appointments to Technical Expert Advisory Group: Electronic Cigarette Product Safety

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**For your:** Decision

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## Purpose

This memo seeks your approval to appoint eight members to the Technical Expert Advisory Group (TEAG) on electronic cigarette (e-cigarette) product safety.

## Background

Refer to memo dated 12 May 2017

On 16 May 2017 you agreed to establish a TEAG to advise the Ministry on technical matters relating to e-cigarette product safety. The memo is attached. The functions of the group are to:

- advise the Ministry on definitions for e-cigarettes, e-liquid, etc.
- identify and assess existing international safety standards and/or regulatory requirements for e-cigarettes and e-liquid (including manufacturing, ingredients, labelling, and packaging)
- advise the Ministry on appropriate minimum quality and safety standards in the New Zealand context
- any other functions as determined by the Manager of the Tobacco Control Programme.

The group will consist of eight members and be chaired by Dr Hayden McRobbie (Clinical Advisor, Tobacco Control Programme). Members will be remunerated in accordance with Cabinet's Fees Framework.

## *How were the members appointed?*

On 19 May 2017 the Ministry called for nominations to the group. Twenty-seven nominations were received. These were considered by a panel comprising Jane Chambers (Manager, Tobacco Control Programme), Haley Ataera (Acting Manager, Medsafe), and Dr Hayden McRobbie.

The criteria for selection included:

- understanding of the international market for alternative tobacco and nicotine-delivery products
- understanding of the e-cigarette and e-liquid market in New Zealand
- understanding of the manufacture, importation, and/or retail sale of e-cigarettes and e-liquid
- knowledge of regulatory developments for e-cigarette and e-liquid internationally
- knowledge of the risks and benefits associated with the use of e-cigarettes
- any other expertise considered relevant by the Manager of the Tobacco Control Programme.

The panel discussed New Zealand's obligations as a signatory to the WHO Framework Convention on Tobacco Control, in particular to Article 5.3 which requires Parties to protect their tobacco control and public health policies from commercial and other vested interests of the tobacco industry. For this reason, the panel decided *not* to consider nominees who are current employees of tobacco companies.

This obligation does not extend to other industries and therefore the panel agreed to consider nominees who are current owners/employees of vape businesses. Any potential conflicts of interest held by such nominees will be dealt with in the same way as other non-tobacco company nominees.

### Advice

The following individuals are recommended for appointment to the group:

- Rebecca Ruwhiu-Collins (consumer representative)
- Paul Marshall (international manufacturer)
- QJ Satchell (New Zealand manufacturer)
- Julian Crane (physician, developer of nicotine inhaler)
- Penelope Truman (toxicologist)
- Nell Rice (New Zealand importer, retailer)
- Murray Winiata (general practitioner, uses vaping products)
- Andrew Dent (international manufacturer)

Collectively, this group meets the selection criteria. Appendix one provides a summary of the preferred candidates and Appendix two provides a summary of the unsuccessful nominees. The Ministry conducted reference checks of preferred nominees to identify any potential or perceived conflicts of interest and to seek the referee's broader view on their suitability for appointment. Reference checking for all candidates was satisfactory.

The Terms of Reference allow that, when required, expertise may be drawn from outside of the group, for example, we would be likely to seek expertise in the manufacture of devices as no nominees had this experience.

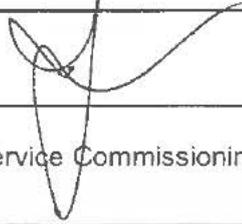
As this is a Ministry appointed group, Ministerial approval is not required. Subject to your decision about the recommendations, a Health Report has been prepared to notify the Associate Minister of Health about the proposed appointments. This health report is attached.

Next steps for this work includes the development of a work programme for the TEAG and scheduling of meetings. This work will be carried out in collaboration with Medsafe colleagues.

### Recommendations

It is recommended that you:

1.	agree to appoint the following members to the technical expert advisory group:	
	• Rebecca Ruwhiu-Collins	Yes/No
	• Paul Marshall	Yes/No
	• QJ Satchell	Yes/No
	• Julian Crane	Yes/No
	• Penelope Truman	Yes/No
	• Nell Rice	Yes/No
	• Murray Winiata	Yes/No
	• Andrew Dent	Yes/No

Signature   
Jill Lane  
Director, Service Commissioning

Date: 10/8/17

## Appendix one: summary of preferred nominees

Rebecca Ruwhiu-Collins (preferred): experience in representing a consumer perspective, Māori perspective.

Comment: s 9(2)(g)(i)

Paul Marshall (preferred): manufacturer, understands international market and regulations, relevant technical expertise, experience on advisory groups.

Comment: s 9(2)(g)(i)

QJ Salchell (preferred): manufacturer, importer/retailer, experience in representing a consumer perspective, relevant technical expertise, construction of ISO approved manufacturing facility.

Comment: s 9(2)(g)(i)

Julian Crane (preferred): Research Professor in Clinical Epidemiology, physician, developer of nicotine inhaler.

Comment: s 9(2)(g)(i)

Penelope Truman (preferred): toxicologist, academic.

Comment: s 9(2)(g)(i)

Nell Rice (preferred): e-cigarette/e-liquid importer and retailer, experience in representing a consumer perspective, relevant technical expertise.

Comment: s 9(2)(g)(i)

Murray Winiata (preferred): general practitioner, experience in representing a consumer perspective, knowledge of risks/benefits of e-cigarettes.

Comment: s 9(2)(g)(i)

Andrew Dent (preferred): manufacturer, understands international market and regulations, relevant technical expertise.

Comment: s 9(2)(g)(i)

Please note that the following two pages are withheld in full under section 9(2)(a) of the Act in order to protect the privacy of natural persons. The need to protect the privacy of these individuals outweighs any public interest in this information.

