

# Terms of Reference of the Technical Expert Advisory Group: e-cigarette product safety

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## 1. Introduction

1.1 These Terms of Reference establish the Technical Expert Advisory Group: e-cigarette product safety (the Group) and set out the:

- functions of the Group
- composition of the Group
- term and work plan requirements
- reporting requirements
- terms and conditions of appointment
- duties and responsibilities of Group members.

## 2. Background

2.1 The Government is legislating to regulate e-cigarettes and e-liquid as consumer products under the Smoke-free Environments Act 1990 (SFEA). Details are available on the Ministry of Health's website <http://www.health.govt.nz/our-work/preventative-health-wellness/tobacco-control/e-cigarettes>. The proposals are to:

- prohibit their sale, and supply in a public place, to those under the age of 18 years
- restrict the use of vending machines to R18 settings
- prohibit promotion and advertising, except for:
  - point-of-sale display of products in all retail settings
  - in-store (including window) display, promotion on the outside of stores, and offers of discounts, free samples and loyalty awards, and co-packaging in R18 settings
- prohibit vaping in legislated smokefree areas
- regulate product safety (eg, ingredients, manufacturing, labelling, packaging etc.).

2.2 At the same time, the Government will legislate to provide a pathway for 'emerging tobacco and nicotine-delivery products' to be regulated as consumer products in future, if that is desirable.

2.3 These proposals will be given effect through an amendment to the SFEA. Passage through Parliament is likely to take until late 2018.

### **3. Functions of the Group**

3.1 The Group will have the following functions:

- advise the Ministry of Health 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 for:
  - manufacturing
  - ingredients
  - labelling
  - packaging
- advise the Ministry of Health on appropriate minimum quality and safety standards in the New Zealand context
- any other functions as determined from time to time by the Manager, Tobacco Control Programme.

3.2 This advice will not apply to 'emerging tobacco and nicotine-delivery products' or products approved under the Medicines Act 1981.

3.3 In carrying out its functions the Group will:

- take account of government policy on health and disability, including e-cigarettes and emerging tobacco and nicotine-delivery products
- be cognisant of minimising costs to industry and government, including spending any taxpayer funding wisely
- engage with experts in e-cigarette quality and safety, particularly where the Group lacks the expertise needed for particular advice.

### **4. Composition of the Group**

4.1 The Group will be chaired by the Ministry. In addition, it will contain up to 8 members. Members will be appointed for their expertise, rather than as representatives of a particular interest group. There will be at least one consumer member. Collectively, the Group will have the following expertise and attributes:

- 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.

4.2 In making themselves available for appointment, members should ensure that:

- there is no conflict of interest which would preclude their appointment; and
- they are available, to the best of their knowledge, to serve for the full term of their appointment.

## **5. Term and Work Plan Requirements**

- 5.1 The Group will directly support the Smoke-free Environments (E-cigarettes) Amendment Bill work programme managed by the Manager, Tobacco Control Programme.
- 5.2 The work of the Group is expected to be completed by mid-2018. Four meetings of the group will be held between the establishment of the group and mid-2018. If circumstances require any member to resign sooner, they should advise the Manager, Tobacco Control Programme.

## **6. Reporting Requirements**

- 6.1 The Manager, Tobacco Control Programme will report, as he or she considers appropriate, to the Director, Service Commissioning and the Associate Minister of Health.

## **7. Establishment, Review Process and End Date**

- 7.1 The Group's work will cease when it has fulfilled its functions, or sooner at the discretion of the Manager, Tobacco Control Programme.
- 7.2 If relevant, the Group's Terms of Reference will be reviewed each year alongside the Ministry's annual stocktake of Ministerial and Ministry committees.

## **8. Meetings**

- 8.1 The Ministry will schedule meetings as necessary to meet the requirements of the work plan. Where preferable and practicable, meetings will be by videoconference or teleconference.
- 8.2 The Secretariat supporting the Group should maintain a register of interests, listing members' interests relevant to the Group's business. Declaration and discussion of conflicts of interest should be a standing item on each meeting's agenda, and actions arising out of this item should be recorded in the minutes.

## **9. Duties and Responsibilities of a Member**

- 9.1 This section sets out the expectations regarding the duties and responsibilities of a person appointed as a member of the Group. This is intended to aid members by providing them with a common set of principles for appropriate conduct and behaviour, and serves to protect the Group and its members from being exposed to legal challenges.
- 9.2 Members have a commitment to work for the public of New Zealand. Members are accountable to the Ministry of Health.
- 9.3 Group members attend meetings and undertake Group activities as independent persons responsible to the Group as a whole and are not representatives of professional organisations or communities. This issue is particularly important when Group members may, at times, be required to be party to decisions which conflict with the views of other organisations with which they are involved.

9.4 There is an expectation that members will attend all meetings and devote sufficient time to become familiar with the affairs of the Group and the wider environment within which it operates.

9.5 Group members may be required to serve on sub-groups or working groups.

9.6 Group members are expected to attend all meetings and must advise the Group secretariat in advance if they are unable to attend a meeting. Members are expected to prepare for meetings by reviewing any material provided. Members may be asked, by the Chair, to prepare for and/or lead discussion on any agenda item. Members are expected to review draft minutes and provide comment to the Group secretariat.

## **10. Removal from Group**

10.1 The Ministry may, at any time and entirely at the Ministry's discretion, remove any member from the Group.

## **11. Conflicts of Interest**

11.1 Members should perform their functions in good faith, honestly and impartially and avoid situations that might compromise their integrity or otherwise lead to conflicts of interest. Proper observation of these principles will enable public confidence in the work of the Group to be maintained.

11.2 When members believe they have a conflict of interest on a subject which will prevent them from reaching an impartial decision or undertaking an activity consistent with the Group's functions, then they must declare a conflict of interest and absent themselves from the discussion and/or activity. This must be done at the earliest possible opportunity, in the regular agenda item around conflicts of interest, and at the point the relevant item of business comes up in the meeting.

## **12. Liability**

12.1 Members are not liable for any act or omission done or omitted in their capacity as a member, if they acted in good faith, and with reasonable care, in pursuance of the functions of the Group.

## **13. Confidentiality**

13.1 Meetings, including agenda material and minutes, are confidential. Members must ensure that the confidentiality of Group business is maintained.

13.2 Members are free to, and are expected to, express their own views within the context of meetings, or the general business of the Group. Members must publicly support a course of action decided by the Group, or if unable to do that, must not publicly comment on decisions.

13.3 At no time shall members divulge details of Group matters or decisions to people who are not members, or Ministry employees, without the approval of the Chair. Disclosure of Group business to anyone outside the Ministry must be the decision of the Ministry.

13.4 Group members must ensure that documents are kept securely to ensure that confidentiality is maintained. Release of correspondence or papers can only be made

with the approval of the Ministry. Any media queries must be referred to the Chair. At the end of a member's term, all Group information must be returned to the Ministry.

#### **14. Remuneration and expenses**

- 14.1 Members of the Group are paid fees for attendance at meetings, in accordance with 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).
- 14.2 The fee for Group members is currently \$250.00 per day (before tax), plus travel, and this is reviewed annually. Members will also be paid actual and reasonable meeting preparation time at the daily fee and pro rata.
- 14.3 The Ministry will cover actual and reasonable costs associated with attending meetings (eg, air travel for people from out of Wellington). These must be agreed in advance by the Manager, Tobacco Control Programme.
- 14.4 Members who are employees of the wider State sector are not entitled to be paid fees for Group business if this is conducted during regular paid work time (i.e., members cannot be paid twice by the Crown for the same hours).
- 14.5 Members are entitled to be reimbursed for actual and reasonable travelling and other expenses incurred in carrying out their duties. The expectation is that the standards of travel, accommodation, meals and other expenses are modest and appropriate to reflect public sector norms.

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**Director, Service Commissioning**

**Approved on:** 16/05/17

**Date for next review:** 16/05/18