

Sent Via Email 6 December 2022

To: BAT New Zealand, Whitehall Ltd, Vapemall NZ, Cosmic NZ, Vape Merchant Ltd, The Vapour Warehouse NZ Ltd, Kolotex LH Vape Ltd, Mission Brands Ltd, Ecigdis Ltd, Liquid Lab Ltd, TRM Ltd, BAT New Zealand, Alt New Zealand Ltd, VEC Ltd, and Te Wairua Ltd

Kia ora koutou,

This email responds to matters raised in the following communications:

- Letter dated 23 November 2022 from BAT New Zealand to the Vaping Regulatory Authority (VRA)
- Letter dated 23 November 2022 from BAT New Zealand on behalf of Whitehall Ltd, Vapemall NZ, Cosmic NZ, Vape Merchant Ltd, The Vapour Warehouse NZ Ltd, TRM Ltd, BAT New Zealand, Alt New Zealand Ltd, VEC Ltd, and Te Wairua Ltd to Associate Minister Verrall, copied to the Minister's office, the Director-General of Health, Ministry of Health officials and the VRA
- Letter dated 25 November 2022 from BAT New Zealand on behalf of Whitehall Ltd, Vapemall NZ, Cosmic NZ, Vape Merchant Ltd, The Vapour Warehouse NZ Ltd, Kolotex LH Vape Ltd, Mission Brands Ltd, Ecigdis Ltd, Liquid Lab Ltd, TRM Ltd, BAT New Zealand, Alt New Zealand Ltd, VEC Ltd, and Te Wairua Ltd to Associate Minister Verrall, copied to Minister Little, Minister Hipkins, the Associate Minister's office, the Director-General of Health, Ministry of Health officials and the VRA
- Letter dated 25 November 2022 from Bell Gully on behalf of BAT New Zealand to the Director-General of Health, copied to Minister Little and Associate Minister Verrall.

Each letter relates to regulatory operations for which the VRA is responsible, and we have been asked to respond on behalf all recipients.

It also responds to matters contained in the following letters from BAT New Zealand to vaping retailers which were provided to Mānatu Hauora, the Ministry of Health (the Ministry) anonymously:

- Letter dated 28 October 2022
- Letter dated 4 November 2022.

We note that the letters characterise issues raised with notifiers by the VRA on 27 October 2022 as re-interpretation or as interpretive guidance. The communications from the VRA have re-stated existing product safety requirements and notifiers' obligations under the Smokefree Environments and Regulated Products Act 1990 (the Act) and the Smokefree Environments and Regulated Products Regulations 2021 (the Regulations) in order to assist notifiers to understand and support them to comply. There have been no changes to the intended meaning of the Regulations since they came into force, and notifiers have been required to understand and meet their obligations under the Regulations since August 2021.

You requested to meet with the VRA to discuss various matters raised in the letters. The matters raised relate to tobacco control policy, as the product safety requirements were set in the Regulations in August 2021, and any changes to the product safety requirements discussed in the letters would therefore represent a change in current policy. New Zealand is a party to the World Health Organization Framework Convention on Tobacco Control (FCTC) that protects tobacco control policy from commercial and other vested interests of the tobacco industry. To meet its obligations under article 5.3 of the FCTC, the VRA will only interact with the tobacco industry when and to the extent strictly necessary for effective regulation. At this stage, the VRA does not consider a meeting on the matters raised to be strictly necessary for effective regulation.

The time allowed to respond to the written notice under section 71 of the Act issued under authority from the Director-General of Health to notifiers on 21 November 2022 has been raised in the letters. The product safety information requested was expected to be substantially the same information that notifiers would have collated and relied upon when notifying their products to the Ministry, including when making the statutory declaration that each product was safe and compliant with applicable requirements in the Regulations. The VRA had previously alerted notifiers to potential issues with product notifications on 27 October and 4 November 2022, asking them to review their product notifications to ensure they were compliant. Requiring existing information to be collated and provided within 9 working days was deemed to be reasonable in the circumstances, given notifiers had already been aware of the issues for 16 working days. However, following requests for additional time from several notifiers, the VRA contacted each notifier to extend the deadline for responses by 5 working days to 12 noon on 9 December 2021.

The letters suggested the maximum permitted concentration of nicotine salt in a vaping substance in the Regulations would be a barrier to current or ex-smokers using vaping to help them quit smoking. Mānatu Hauora is satisfied that there is no clear evidence in New Zealand or other comparable jurisdictions to support this position. New Zealand set a substantially higher limit for nicotine salts than the UK and Europe, and we are confident that the current limits remain appropriate for New Zealand at this time.

BAT New Zealand sent letters to retailers on 28 October and 4 November 2022. Mānatu Hauora is concerned that the letters contain information misrepresenting the product notification scheme as a product approval scheme. We are also concerned that the 4 November letter significantly mis-quoted the VRA's communication by stating that the maximum strength of nicotine salt in vaping substances (50 mg/mL) applied to the nicotine in the vaping substance, rather than to the nicotine salt as specified in the Regulations. We are aware of confusion amongst retailers as a result of these two letters, and believe it would be appropriate for BAT New Zealand to issue a correction confirming:

- that products notified to the Ministry are accepted for sale in New Zealand on the basis of each notifier's declarations that the product is safe and that the product meets all relevant statutory requirements
- that the Ministry does not approve any vaping product for sale in New Zealand, but rather the Act places a clear obligation on notifiers to satisfy themselves of the product's safety before they submit a notification
- that, contrary to the information provided by BAT New Zealand previously, the Regulations require the strength of nicotine salt in a vaping substance to not exceed 50 mg/mL.

Coordinating responses to multiple letters sent to multiple recipients over multiple days is administratively complex and requires significant effort. We would therefore appreciate any future correspondence being sent as a single email to the VRA so we can provide a single response.

Nga mihi,

Vaping Regulatory Authority