

Standardised Tobacco Products Packaging Draft Regulations

Summary of Submissions

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Introduction

This report provides a summary of the submissions received by the Ministry of Health on an ‘exposure draft’ of proposed regulations to standardise tobacco products and packaging.

On 31 May 2016 the Ministry of Health opened consultation on draft regulations to standardise tobacco products and packaging. This consultation gave interested parties the opportunity to comment and give input on regulating the following:

- general issues such as the colour and smell of tobacco products and packaging, the format for text that can be printed on tobacco products and packaging, and general issues around the size and positioning of graphic health warnings
- restrictions on the size, shape, number and appearance of cigarette sticks and tobacco packaging, controls on linings inside cigarette packaging, and restrictions on brand names and brand variant names
- requirements on selling loose tobacco in plastic pouches of 30 or 50 grams of manufactured tobacco, and requirements for printing standardised brand names and brand variant names on loose tobacco pouches
- provisions for the number of cigars sold in a pack – single, 5 or 10 packs – as well as requirements around the use of bar codes and brand and brand variant names.

Submitters could also suggest other features to increase the effectiveness of standardised packaging and make other comments on the content of the draft regulations.

The consultation ran from 31 May 2016 to 29 July 2016. The submissions will help inform the development of a regulatory framework for standardising tobacco product packaging.

Summary of responses

The Ministry received 61 written submissions on the consultation document. Overall the respondents can be categorised as follows:

Submission category	Number
Health, community or tobacco control NGOs (including 4 from Australia)	44
Academic groups	1
Tobacco industry / manufacturers	6
Retailers and retail groups	5
Individuals	3
Other	2

A number of the submissions used the standardised questionnaire developed for the consultation exercise. The remaining written submissions were in the form of reports, and some included supporting documentation. Overall, the comments received from submitters focused on the details of the regulations. Some submitters also discussed the advantages, disadvantages and impact of standardised packaging, and commented on intellectual property rights.

Both the contents of the Bill and the earlier policy decision to standardise tobacco products and packaging have been the subject of previous public consultation and are considered to be outside the scope of this consultation.

The key themes that emerged from the consultation questions are summarised by submission category.

Results

Health and community groups

Health, community and tobacco-control non-governmental organisations (NGOs), public health units and district health boards generally supported the regulations and suggested additional measures to further limit the appeal of tobacco products.

The following are the key recommendations that emerged from these submissions.

1. There should be restrictions on new brand variant names being introduced into the market.
2. All tailor-made cigarettes (cigarette sticks) and rolling papers should be coloured Pantone shade 448C.
3. There should be a wider range of warning labels, ensuring these have high salience to different priority populations, as well as a more rapid rotation cycle and ongoing development of new warnings.
4. All roll-your-own (RYO) tobacco should be sold in rigid containers of specified sizes and dimensions.
5. Quitline and other cessation information should be reformatted on tobacco packages to have greater visual impact.
6. Inserts should be included in tobacco packaging, which would provide more detailed warning and cessation support information.
7. Cigarettes containing flavour capsules should be prohibited, as these types of cigarettes appeal to young people.
8. A comprehensive evaluation programme should be developed to assess the impact of standardised packaging.

In addition to the measures above, the following suggestions were made.

1. Bidis, shisha and cigarillos should be included in standardised packaging regulations.
2. The sale of single cigars should be prohibited.
3. Smartphone-readable QR codes¹ that direct the user to the Quitline website should be provided on tobacco packaging.
4. There should be regulations concerning compliance with and enforcement of packaging regulations.
5. There should be regulations concerning online sales of tobacco.
6. The wording that describes the characteristic of a tobacco product on its packaging, for example 'natural', should be changed to wording such as 'unaltered' and 'unchanged'.
7. There should be regulations concerning child-proof pouches for loose tobacco.
8. The size of cigarette filters should be regulated.

¹ A QR (quick response) code is a type of barcode that contains information which can be read on devices such as phones or tablets.

There was a mixed response to including the country of origin on tobacco packaging. The two main views were:

- country of origin labelling on packaging would increase the appeal of tobacco products
- country of origin labelling on packaging would increase transparency.

There was also a mixed response to the inclusion of anti-counterfeiting marks. The responses included:

- anti-counterfeiting marks should be allowed on tobacco packaging, but regulated
- anti-counterfeiting marks should not be allowed, as this would promote brand variance among tobacco products
- anti-counterfeiting marks should only have alphanumeric codes
- anti-counterfeiting marks should have track-and-trace, security and/or authentication codes.

Submissions received from overseas-based NGOs

Overseas-based NGOs supported the proposed regulations. As well as supporting the recommendations made by the academic group's submission (listed above), NGOs made the following recommendations.

1. The regulations should consider setting minimum height, width and depth for cigar packaging, cigarette cartons, and loose tobacco packs.
2. The inside surfaces of cigarette packaging, cigarette stick colour, and rolling papers should be standardised with the same unattractive drab colour as the outside packaging.
3. 'Lift-out' lining designs, such as those deployed by Imperial Tobacco in Australia, should be prohibited. This would stop consumers from removing the outer packaging, which contains the health warning information.
4. The length of rolling papers should be prescribed at a maximum of 95 mm (to match the length of cigarettes), to prevent a surface area that can be used for marketing by tobacco companies.
5. The material used for embellishing cigarette packaging should be standardised.
6. Adhesives and/or glues used in tobacco packaging should be regulated.
7. The use of re-sealable tabs on cigar and RYO tobacco packaging should be regulated.
8. The use of windows or cut-outs in tobacco packaging should be regulated.
9. The use of 'onserts' (similar to inserts) in tobacco packaging should be regulated.
10. Graphic health warnings should be refreshed regularly.
11. Tobacco packaging features (such as origin marks and bar codes) should be prohibited, as these might be used for tobacco advertising.
12. No anti-counterfeiting marks should be permitted on tobacco products, as these marks may be used for tobacco advertising or promotion, obscure health warnings, be false, misleading or deceptive, be linked to the emission yields of a product, or be linked to the brand and/or brand variant name of the product.

13. Flavour capsules and other similar innovations should be banned, as these filters can be crushed by the consumer, giving cigarettes an appealing taste.
14. The implementation timeframe for standardised packaging should be a maximum of 12 months.

Retail organisations

The majority of retail organisations did not support the proposed regulations. One retail organisation raised the concern that ‘regulatory imposition’ would place further costs of compliance on businesses, while another was concerned that the proposed regulations ‘set a bad precedent’ in regard to intellectual property rights and commodity trading principles. The key themes that emerged from the submissions included the following.

1. The width of brand name information (set at 35 mm) would mean that brand names that are longer will have smaller font on the packaging, making it more difficult for staff to read and identify products. This would slow transaction times, reduce checkout efficiency and frustrate customers.
2. The proposed standardised packaging regulations are different to Australia’s in terms of the size and dimensions of tobacco packaging, which potentially constrains trans-Tasman trade relationships.
3. The cabinetry that holds tobacco products is spring loaded, with a bottom lip that obscures the bottom part of the products. The impact of this is that tobacco products would be difficult to locate and identify by staff. There is also the issue of safety, as staff need their backs turned for longer periods of time in order to identify products, leading to risk of theft/burglary, and risk to personal safety.
4. Frequent rotation of graphic health warning labels on packaging would result in retailers bearing the cost of product non-compliance, as well as the increased risk burden of having extra stock on premises and selling through old stock. One retail organisation stated that having a rotation of health warnings is unnecessary and expensive.
5. The proposed regulations would have an impact on the illicit tobacco trade and counterfeiting. The concern was that standardised packaging would lead to a lack of differentiation between products and increase the counterfeiting of black market tobacco.
6. Transition timeframes for implementing regulations would be too short to sell through old stock, or would fall on key dates such as the Christmas / New Year period or near excise tax change. The retailers recommended a transition timeframe ranging from 6 to 12 months.

Cigar industry

The two cigar importers that made submissions suggested that the proposed regulations for standardised packaging of cigar products should align with the current Australian regulations. The key themes that emerged from these submissions included the following.

1. There was concern at the proposal to limit the number of cigars that may be sold in a pack. The submitters stated that the proposed requirement that cigars be sold in pack sizes of either 5 or 10 cannot be met. Repacking cigars into these quantities would compromise the integrity of the product, as well as being prohibited by the state enterprise that regulates the cigar industry in Cuba.

2. RYO tobacco packaging cannot be made entirely of plastic. The pouch is currently made from printed paper placed in a plastic envelope, so they are not made entirely of plastic. The cigar industry recommended that the regulations allow for pouches to be made of a combination of plastic (on the outside) and paper (on the inside), or a certain type of 'plastic' laminate.
3. Pipe tobacco needs to be stored in tins to preserve the quality of the product. The cigar companies recommended that the draft regulations be amended to allow for pipe tobacco to be sold in tins in New Zealand.
4. There was an issue surrounding the size of warning labels on single cigar packaging. The cigar importers stated that size restrictions are not possible unless the definition of the length of a cigar tube is defined as the length between the rim of the tube (just under the lid of a tube) and the end of the tube, including the round bottom.
5. Factory and date codes, alphanumeric codes and country of manufacture should be allowed on cigar packaging in order to de-incentivise counterfeiting of tobacco products.
6. The cigar industry stated that in order to avoid losing older stock (stock not wrapped in standardised packaging), cigars and pipe tobacco should be allowed on the market at least one year after the new regulations come into force.

Tobacco industry

Six tobacco companies with a presence in the New Zealand market made a submission.

Tobacco companies asked for alignment of the proposed regulations with Australia, and stated that, as currently drafted, the proposed New Zealand regulations are too restrictive.

All companies stated that standardised packaging in New Zealand should not continue while the World Trade Organization has yet to rule on disputes relating to Australia's standardised packaging regulations. Any comments made on the effectiveness of standardised packaging were considered out of scope of this consultation.

The tobacco industry raised a number of issues with the proposed regulations, and made the following recommendations.

1. Existing brand, and brand variant, names should not be subject to the proposed restrictions on length, use of capital letters and full stops, and appearance (fonts).
2. There should be no requirement to colour the inner foil of tobacco products. The issue here is that coloured ink would dislodge from the foil and infiltrate the cigarette sticks, contaminating the product.
3. The tobacco industry would not be able to comply with changes in relation to the colour of the lining and some of the font colours on the packs.
4. Tear strips on tobacco wrapping, outer tobacco packaging and bar codes on cigarette sticks should be required to be either Pantone 448C or black.
5. Track-and-trace printed codes should be allowed on cigarette sticks and tobacco packaging, and should not be required to be coloured Pantone 448C or black. These track-and-trace codes should also be allowed to be numeric and alphanumeric.
6. Cigarette packaging should not be restricted by size, as this would disadvantage existing tobacco products on the market.

7. Proposals relating to the smell of tobacco products should be removed from regulations.
8. Country of origin and anti-counterfeiting marks should be included on tobacco packaging.
9. Graphic health warnings should not be rotated regularly.
10. Transition timeframes are too short: the tobacco industry recommends an implementation timeframe ranging from 12 months to 20 months.
11. An explicit provision should be made for the regulations to be reviewed in full two years after implementation.

Other interested parties (tobacco packaging company and international trade organisation)

These parties did not support the standardised packaging proposal. Both raised concerns around standardised packaging and its impact on intellectual property rights and the illicit trade of tobacco. Two key points arose from these submissions.

1. The introduction of standardised packaging would lead to issues relating to intellectual property rights in New Zealand. The proposed regulations would lead to the number of counterfeit goods increasing, in turn reducing consumer choice and making trademarking pointless.
2. Anti-counterfeiting marks should be used to ensure product differentiation and prevent the counterfeiting of products. Further, these anti-counterfeiting marks should be fixed onto packs and not attached via a label. Regulation should also allow for the possibility of rotating marks on products in line with innovations in technology.