

Summary of Submissions

Review of Drug Utensils
Regulation: A discussion
document

Citation: Ministry of Health. 2016. *Summary of Submissions: Review of Drug Utensils Regulation: A discussion document*. Wellington: Ministry of Health.

Published in January 2017
by the Ministry of Health
PO Box 5013, Wellington 6140, New Zealand

ISBN 978-1-98-850205-2 (online)
HP 6539

This document is available at health.govt.nz



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Introduction

The discussion document *Review of Drug Utensils Regulation: A discussion document* was released for consultation by the Ministry of Health in July 2016. Twenty-seven submissions were received; 13 from organisations and 14 from individuals. This summary notes key points made by submitters, along with their views on the evaluation criteria and options for change in the discussion document.

Context

The goal of New Zealand's *National Drug Policy 2015 to 2020* is to minimise alcohol and other drug-related harm and promote and protect health and wellbeing. The Policy includes a commitment to release a discussion document seeking feedback on the appropriate regulation of drug utensils. The goal of reviewing drug utensils regulations is to understand their effectiveness in achieving health and social outcomes for New Zealanders. The review looks at whether current regulations will improve these outcomes and support drug policy goals.

Themes in submissions

- Support for change: every submitter supported changes to the regulation of drug utensils. Almost all expressed preference for Option 2 (replacing possession prohibition with regulations to restrict and manage supply) over Option 1 ('enhanced status quo', which would involve continuing with prohibition while changing some settings, for example clarifying the legal definition of drug utensils).
- Opposition to status quo: most submitters criticised current arrangements, with reference to factors such as: lack of deterrence; disproportionate penalties; ineffective definition of drug utensils; and the fact that enforcement effectively increases harm.
- Harm reduction: submitters gave highest priority to harm reduction out of the five evaluation criteria presented in the discussion document (namely: harm prevention; harm reduction; proportionality; cost-effectiveness; and ease of implementation).

Next steps

This review will help inform options for future changes to the regulation of drug utensils. Ministers have been provided with an initial summary of the issues raised by submitters. In 2017 the Ministry of Health will do further analysis of these issues.

Recommendations on any regulatory options will follow a more complete review of the offence and penalty regime for personal possession of drugs which is scheduled to take place in 2017/18. Further public consultation will take place during this review.

Appendix One

Evaluation criteria	Support for option 1 or 2	Key points
1 On behalf of Aotearoa Vapers Community Advocacy		
Harm reduction first, then harm prevention as an umbrella which the other criteria are means to.	Regardless of options, asks for exclusion of vaping and vaporisers using e-liquid from any action that involves infringement regulations. Notes difficulty experienced by those who legally participate in vaping, including New Zealand importers of vaporisers.	Clarify in legislation that vaporisers for cannabis and synthetic cannabinoids are specifically dry herb and wax vaporisers (electronic cigarettes and personal vaporising equipment used with e-liquid should not be illegal or suspect).
2 Individual submitter		
Harm reduction first, then harm prevention as an umbrella which the other criteria are means to.	Regardless of options, asks for exclusion of vaping and vaporisers using e-liquid from any action that involves infringement regulations. Notes difficulty experienced by those who legally participate in vaping.	Clarify in legislation that vaporisers for cannabis and synthetic cannabinoids are specifically dry herb and wax vaporisers (electronic cigarettes and personal vaporising equipment used with e-liquid should not be illegal or suspect).
3 Individual submitter		
Supports, noting we should be helping people rather than focusing on punishment.	Supports, noting Option 2 is best. <ul style="list-style-type: none"> Option 1: encourage safer alternatives. Option 2: supports lower taxes on healthier alternatives such as herb vaporisers for public health. Also the cost of regulatory oversight may enable Police and Customs efficiencies. 	People will use anything as a drug utensil. Adding barriers to access utensils that reduce harm effectively increases harm.
4 Individual submitter		
Supports. Proposes proportionality over all criteria; one should always presume an item is for legal use until proven otherwise.	Current regulation is ineffective, likely increases harm, is costly and difficult to enforce, and punishes vulnerable people who need more support.	Decriminalise all personal possession of utensils. Remove all penalties on users of utensils. Recommend as controls: age restriction on sales and compulsory dissemination of harm prevention information with sales.
5 Individual submitter		
Harm reduction is the most important goal.	Supports option 2 and opposes option 1: "If you want to look 'tough on crime' then you should go with option 1, if you want to actually achieve any of the stated goals, you should choose option 2."	Provide safe access to safe utensils and reliable information on which utensils are most safe.
6 Individual submitter		
Supports less punitive approach: "Not so harsh. Maybe not so enforced."	Supports option 2: anticipates a decrease in enforcement cost as enforcing sales to minors will be less costly than general prohibition.	More harm is involved with using unsafe and toxic utensils.

Evaluation criteria	Support for option 1 or 2	Key points
7 On behalf of the New Zealand Drug Foundation		
Equal weighting	<p>Supports Option 2, in line with the Law Commission's recommendation in 2011 report. Shares the Commission's view that there does not appear to be any evidence that this offence deters drug use or reduces drug-related harm.</p> <p>Option 2 would deliver far greater positive outcomes than Option 1 which would marginally improve the status quo. Regulating availability of drug utensils gives authorities ability to ensure products are safe, restrict access to minors, and get health messages to the drug using community.</p>	<p>The regulations are impractical and pointless considering the availability of household items that can be used for drug taking. It is of particular concern that the maximum penalty for possessing a drug utensil is greater than for possessing illicit drugs. This is neither proportionate nor compassionate.</p> <p>Refers to recent overseas research on utensils:</p> <ul style="list-style-type: none"> • vaporisers: commonly accepted as safer than cigarettes • bongos: mixed views; the argument that they can reduce harm is contested • crack kits: assist harm minimisation among crack users. <p>Also refers to risks of alternative methods for drug taking when standard equipment is unavailable.</p>
8 Individual submitter		
<p>Harm prevention and harm reduction are the prime criteria for achieving the objectives of the National Drug Policy (NDP). Without the development of an evaluative model to guarantee consistency it is not appropriate to specify weightings.</p>	<p>The status quo is unjust. Regulations to manage supply is the proper public health approach. Option 1 does not meet NDP objectives. If it is considered, civil penalties should replace criminal penalties.</p> <p>Supports Option 2 but opposes three sub-options:</p> <ul style="list-style-type: none"> • unrealistic and harmful to restrict sale of utensils to minors • unjust to restrict possession in public places (this is the wrong focus if public drug use is the problem) • the sub-option on infringements and confiscations is unclear; there is no evidence that penalties for utensil possession have a harm reduction impact. 	<p>There is no evidence that hygienic and properly regulated drug utensils increase harm. So prohibition of possession should be abolished. Sale should be legal but regulated.</p> <p>Drug paraphernalia should be broadly defined – the more specific, the more loopholes.</p>
9 Individual submitter		
No comment	<p>Status quo is not having the desired effect. Prohibition of harm-reducing equipment increases harm. Need broader discussion about prohibition in general, especially of cannabis.</p>	<p>Prohibiting utensils is pointless and unjustifiable, as people can still use. Without proper education on drugs people may expose themselves to unnecessary risk (eg, using tin cans to smoke through).</p>
10 On behalf of an importer (withheld from publication)		
Support, unsure on weightings	<p>Prefers Option 2. States that utensils should be regulated and available at R18 outlets.</p>	<p>Drug utensils will continue to change, so defining them for prohibition purposes will be an ongoing issue. Utensils simply enable a less harmful way to consume.</p>

Evaluation criteria	Support for option 1 or 2	Key points
11 On behalf of Community Alcohol and Drug Services (Auckland)		
<p>Support all, weighting towards harm prevention and harm reduction.</p> <p>Proportionality: people who use drugs with a utensil are treated unequally to those who use drugs without utensils. People who use drugs are treated more harshly than users of alcohol.</p> <p>Proposes 2 criteria:</p> <ol style="list-style-type: none"> 1 reducing illness and injury 2 shifting our attitudes towards alcohol and other drugs. The current law stigmatises people, which reduces help-seeking, results in social isolation and can mean people who inject drugs are less likely to attend health services except in emergency. 	<p>Supports Option 2 and opposes Option 1.</p> <p>Option 2 has the greatest potential to engage people who use drugs in harm reducing strategies. Regulation provides more opportunities for public health messages.</p> <p>With regard to sub-options:</p> <ul style="list-style-type: none"> • reframe 'drug utensils' as harm reduction equipment/products • it is safer for young people to use approved products • the Health sector needs to be well-informed about risks of home-made utensils • opposes restricting possession in public, as it perpetuates the role of policing the end user, and creates confusion about utensils from the needle exchange programme (NEx) • infringement regulations should apply only to illegal suppliers • put harm reduction information in vending machines. <p>Option 1 is incompatible with the NDP. Law needs to change to allow NEx to use improved equipment.</p>	<p>Prefer people who use drugs to have a relationship with a health service than the criminal justice system. Would like police diversion extended beyond first AOD related offence.</p> <p>It is vital anyone selling equipment can provide purchasers with harm reduction information. Peer based educational support is a strength of the NEx.</p> <p>Vape pens are used without regulatory controls, but should be regulated due to chemicals within cartridges.</p> <p>New Zealand lags internationally in implementing harm reduction strategies for methamphetamine smoking, and NEx in prison environments.</p> <p>Strongly recommend pill testing equipment be considered to allow testing for purity/quality.</p> <p>Opposes criminalisation of people using cannabis for medicinal purposes.</p> <p>Promote strategies for safer ways to use than injecting.</p>
12 On behalf of Clendon/Manurewa CAYAD Reference Group		
<p>Suggest 2 criteria:</p> <ol style="list-style-type: none"> 1 reducing illness and injury 2 shifting our attitudes towards AOD. <p>Young people should not be convicted for possession and/or use of an illicit drug or drug utensil. Convictions and imprisonment cause social harms, particularly for young people.</p>	<p>No: opposes criminalising possession of utensils.</p> <p>Proposed third option: Health control of supply of utensils. This would involve mandatory harm information, and restrictions on: possession of commercial quantities; possession in public only where promoting illicit drug use; and media portrayal of drug utensils. Health services would promote safest utensils and methods of use.</p>	<p>The DAPAANZ (Addiction Practitioners Association of Aotearoa New Zealand) can regulate peer led needle exchange in an 'endorsed support worker' capacity.</p> <p>The law stigmatises people which is a barrier to harm reduction and accessing treatment.</p> <p>Greater efforts are needed to eliminate Hepatitis C, HIV, and other drug-related harms.</p> <p>Support vending machines, to reach an otherwise hard to reach population.</p>
13 On behalf of Auckland Regional Methamphetamine Working Group		
<p>Suggest 2 criteria:</p> <ol style="list-style-type: none"> 1 reducing illness and injury 2 shifting our attitudes towards AOD. <p>Young people should not be convicted for possession and/or use of an illicit drug or drug utensil. Convictions and imprisonment cause social harms, particularly for young people.</p>	<p>No: opposes criminalising possession of utensils.</p> <p>Proposed third option: Health control of supply of utensils. This would involve mandatory harm information, and restrictions on: possession of commercial quantities; possession in public only where promoting illicit drug use; and media portrayal of drug utensils. Health services would promote safest utensils and methods of use.</p>	<p>The law stigmatises people which is a barrier to harm reduction and accessing treatment.</p> <p>Greater efforts are needed to eliminate Hepatitis C, HIV, and other drug-related harms.</p> <p>Support vending machines, to reach an otherwise hard to reach population.</p> <p>As consumption by injecting is highest risk, strategies should encourage safer ways of consuming illicit drugs.</p>

Evaluation criteria	Support for option 1 or 2	Key points
14 On behalf of an importer (withhold from publication)		
Balance criteria by level of potential harm vs cost of effectiveness and ease of implementation. Only criminalise supply of drugs.	Prefers Option 2. Remove or limit offences from items imported or sold for legitimate purposes.	Restricting drug utensils requires care: items that are legal but can be modified by the consumer (such as Shisha) should not be prohibited.
15 On behalf of New Zealand Nurses Foundation		
No comment.	Supports Option 2. Reducing harm requires timely access to culturally and clinically safe and affordable health services.	Regulations must include mandatory provisions for facilitating access to addiction services. The evidence informing the discussion needs to be cited.
16 Individual submitter		
Criteria are all important and interdependent.	Supports only Option 2. Current laws are pointless, largely unenforceable, wasteful, and may increase harm by restricting availability of safer utensils. Legislation cannot limit utensil use, but with education it can change use patterns.	Well-designed borosilicate glass is the 'clean disposable needle' of the drug consumption society. Other materials are more harmful. It cannot be argued that a utensil having attributes as per the current legislation means it will be used for a particular substance. Recommend banning paint in pipes, and abolishing penalties for sales.
17 On behalf of an importer (withhold from publication)		
Supports all criteria, unsure on weightings.	Agrees with the analysis of options in the discussion document.	
18 On behalf of Mindfuel Ltd		
No comment.	Legalise all cannabis utensils, with the following restrictions: R18; sales in online and offline headshops and adult shops; provide harm reduction information at point of sale (including health and environmental benefits of materials such as glass).	Vital that harm reduction equipment is legal and available. Licensing retailers would be too expensive (as a pipe/bong may last years). Recommend vaporiser as safest for cannabis.
19 On behalf of National Organisation for the Reform of Marijuana Law (NORML)		
Harm reduction must remain central. Harm prevention is a pre-emptive element of harm reduction, and should not be confused with use prevention. Proportionality needs to be maintained. While ease of implementation and cost effectiveness are important and linked, in our current policy they '... seem to reflect an approach more aligned with a "War on Drugs" philosophy, where the focus on use reduction appears to override costs to individuals or overall expenditure'.	Prefers Option 2 as it meets the stated objectives. Also most appropriate given support for cannabis law reform and pending review of MoDA penalties. Support sub-options except: restriction on public places; infringement notices; wholly unconvinced of a need for licensing – why would alcohol consumption paraphernalia vendors need licensing? Can see sense of Option 1 provided 'enhancement' is understood as a shift towards greater harm reduction and proportionality, and greater clarity of utensil definition: <ul style="list-style-type: none"> • remove all arbitrary reference to forms of utensils and names they are called • any operating guidance should deprioritise enforcement • reduce penalties to the absolute minimum politically-achievable level. 	Utensils are ubiquitous. People who cannot obtain a properly manufactured utensil can – and will – improvise, which increases harm. Define utensils by intention of use at point of sale. Current definitions and prohibited features are useless, and encourage discretionary enforcement. Feature-based definitions tend to outlaw harm reduction innovations (eg, 'insert or metal gauze' feature supposedly helps define a cannabis pipe, but this feature exists to stop smokers from inhaling burning embers/hot ash). Vaporisers are so closely aligned with harm reduction they should be exempt.

Evaluation criteria	Support for option 1 or 2	Key points
20 On behalf of New Zealand Needle Exchange Programme		
<p>Prioritise harm reduction; as a first principle should be nothing that hinders harm reduction.</p> <p>New Zealand has been a world leader in needle exchange services.</p> <p>Proportionality is critical. Penalties for possession of utensils should not be higher than for drug possession.</p>	<p>Support Option 2. It is more compassionate, in line with the NDP. It also addresses online purchasing, which is an increasingly popular way to buy utensils.</p>	<p>Recommends the inclusion of: butterflies; wheel filters; sterile water; tourniquets; steri-cups; catheters.</p> <p>Recommends disposal of used equipment be included in regulations. At the moment the NEx is unable to update its collection processes in line with new technologies.</p>
21 On behalf of The Hempstore Aotearoa Ltd		
<p>Harm minimisation is the cornerstone of all successful drug policy. It encapsulates harm prevention and harm reduction, which should have the most weighting.</p> <p>Arrest and prosecution merely substitute harms.</p> <p>Strongly support central inclusion of proportionality.</p> <p>The status quo is 'monstrously disproportionate' and represents the lowest conceivable ease of implementation for any health policy. It seems to ignore cost effectiveness and ease of implementation, preferring to seek an unobtainable goal of a drug-free world. All aspects of drug prohibition amount to a deeply inefficient use of tax-payer resources.</p>	<p>Only Option 2 can meet the stated policy objectives. Support sub-options while noting consistency with restrictions on alcohol (eg, it would be hypocritical to license drug utensil sales if not licensing for alcohol and tobacco paraphernalia). Opposes infringement notices as they will send a message to the Police to harass more people.</p> <p>Can understand Option 1 may be politically more achievable. If so, 'enhancement' needs to be a bold shift towards greater harm reduction and proportionality. Should option 1 proceed, strongly recommends any new Notice be based on the Hempstore's proposed Notice regulating the supply of cannabis utensils (which is included as an Appendix, and was initially part of a 2010 submission to the Health Select Committee).</p> <p>The aggregate effect of Customs efforts to stop the importation of drug utensils has been to eliminate all reputable overseas brands from the local market and flood it with cheaper goods, frequently of dubious quality. Border control on drug utensils has therefore backfired from a harm reduction perspective.</p>	<p>Prevention of drug use and prevention of drug harm are not the same thing; but prevention of harm reduction – and harm increase – do amount to the same thing.</p> <p>Most illicit drug consumers strongly prefer to use a properly manufactured utensil. If consumers are not allowed to obtain such a utensil, they will improvise. In nearly all cases, the use of a properly manufactured utensil significantly reduces the risk of harm. Potential harms from homemade substitutes include unsafe manufacture, inappropriate (toxic) materials, and ongoing reactions to heat or combustion.</p> <p>The Notice fails by trying to define by appearance rather than intention. It only prohibits named items – and only if they have a prohibited feature. Customs often argues vaporisers are hash pipes – this needs to be clarified to ensure vaporisers are legally available.</p> <p>Rather than normalising drug use, greater visibility of harm reduction equipment will most likely normalise safer, more responsible drug use.</p>

Evaluation criteria	Support for option 1 or 2	Key points
22 Individual submitter		
<p>Supports criteria but notes the outcomes are prevented by current legislation.</p> <p>Criticisms of the status quo include:</p> <ul style="list-style-type: none"> • the definition of drug utensils: “It’s all a bit pointless trying to describe something that could just as easily be an apple, a piece of paper, a can, a soda bottle or a knife. This is like trying to stop people from drinking alcohol by banning champagne flutes.” • the penalties for possession of utensils are disproportionate to those for possession of drugs • it forces profits into the hands of the black market • ease of implementation: “It’s not easy to fly around the countryside looking for cannabis crops from a helicopter which is what we currently do.” 	<p>Supports Option 2. Agrees to the pros and cons except for cost-effectiveness, which doesn’t consider the wider societal benefits:</p> <p>“Everything has its costs, but the social cost of alcohol is so massively high, it’s false economy to worry about the costs of relaxing the laws around cannabis.”</p> <p>Notes nothing in Option 1 adequately addresses the health issue of drug use, as it continues to treat drug use as a criminal matter, rather than as a health matter:</p> <p>“It will continue to disadvantage Māori and Pacific peoples because of their higher likelihood of search and arrest. It will not stop anyone from doing drugs but will continue to prevent people from choosing healthier methods when they do use drugs.”</p>	<p>Need to reflect that a disproportionate number of young Māori and Pacific people are arrested on drug offences: “Our drug laws combined with our racially skewed justice system increase the risk of vulnerable and disadvantaged people facing criminal charges that others might avoid because they are white.”</p> <p>The current prohibition is not a deterrent: “No one ever sat down to take drugs and said ‘Wait a minute. I just remembered that this pipe is against the law. That changes everything.’”</p>

Evaluation criteria	Support for option 1 or 2	Key points
23 Individual submitter		
<p>Strongly supports weighting of criteria, while noting the criteria as presented in the discussion document are confusing (if they were criteria one should be able to assess and make decisions against each criterion).</p> <p>The NDP means harm reduction should have the highest weight.</p> <p>Proportionality needs to take into account the harm from convictions.</p> <p>Harm prevention should not be a criterion.</p> <p>Suggests six key aims of drug policy that could be used as a basis for a common ground approach:</p> <ul style="list-style-type: none"> • protect and improve public health • reduce drug-related crime, corruption and violence • improve security and development • protect the young and vulnerable • protect human rights • base policy on evidence of what works and value for money. 	<p>The evidence supports the removal of possession prohibitions. Questions why this is presented as an 'extreme' option.</p> <p>Lack of specificity of options makes it hard to comment on them.</p> <p>Availability of utensils does not promote or encourage drug use – it reflects the simple fact that there is demand for drugs: 'The argument that restricting the availability of utensils prevents harm is incorrect logic.'</p> <p>The law cannot send a 'clear and consistent message' about the harmfulness of drugs and this is not its purpose. Drugs do pose risks but do not necessarily cause harm.</p> <p>Restrictions on sale to minors and possibly on advertising are the only justifiable restrictions.</p> <p>There is no evidence that supply of utensils has any impact on drug use and/or harm. Trying to suppress these products in the internet age is futile.</p> <p>Supports new ways of making decisions, involving drug user representatives and groups such as the New Zealand Drug Foundation more.</p>	<p>Seeks rational drug laws. For example, queries the purpose of defining a drug utensil. States that under the status quo, the main outcome is increased harm (from legal ramifications).</p> <p>Supports educational efforts and prevention programmes targeted at specific at-risk groups: '...current drug laws clearly disproportionately impact those who are more likely to be in contact with the Police in the first place (ie, young bored disadvantaged brown men)'.</p> <p>Enforcement guidance is inappropriate, as grey areas in law open up problems and risks.</p> <p>There is a circular logic with the current prohibition model: the policy-related harms that result from prohibition are conflated with the direct harms of drug use, to bolster the 'drug menace' narrative.</p> <p>The UN Office on Drugs and Crime identifies five unintended consequences of prohibitionist drug policy, of which 2–5 are relevant to the current consultation:</p> <ol style="list-style-type: none"> 1 creation of a black market 2 'policy displacement' (resources are redirected from health to enforcement) 3 'balloon effect' (enforcement measures shift rather than eliminate the issue) 4 'substance displacement' (enforcement causes users to use other drugs) 5 stigmatisation and discrimination (which prevents access to support). <p>Notes an error in the discussion document reference to 'smoking' with vaporisers; they heat substances to produce vapour, not smoke.</p>

Single issue submissions

24	Individual submitter	Legalise/decriminalise drug utensils
25	Individual submitter	Legalise/decriminalise drug utensils
26	Individual submitter	Introduce regulations to restrict and manage supply of drug utensils
27	Individual submitter	Consider open tank vaporisers in isolation to drug utensils as they are a useful tool for smoking cessation