

Submission form

Your details

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Additional information

I am, or I represent an organisation that is, based in:

☒ New Zealand ☐ Australia ☐ Other (please specify):

[Click or tap here to enter text.](#)

I am, or I represent, a: (tick all that apply)

- | | |
|--|---|
| <input type="checkbox"/> Overseas manufacturer | <input type="checkbox"/> New Zealand-based manufacturer |
| <input type="checkbox"/> Importer | <input type="checkbox"/> Exporter |
| <input type="checkbox"/> Retailer | <input type="checkbox"/> Government |
| <input type="checkbox"/> Wholesaler or distributor | <input type="checkbox"/> Institution (e.g., university, hospital) |
| <input type="checkbox"/> Member of the public | <input checked="" type="checkbox"/> Non-governmental organisation |
| <input type="checkbox"/> Other (please specify): | |

[Click or tap here to enter text.](#)

Privacy

We intend to publish the submissions from this consultation, but **we will only publish your submission if you give permission**. We will remove personal details such as contact details and the names of individuals.

If you do not want your submission published on the Ministry's website, please tick this box:

☐ Do not publish this submission.

Your submission will be subject to requests made under the Official Information Act (even if it has not been published). If you want your personal details removed from your submission, please tick this box:

☒ Remove my personal details from responses to Official Information Act requests.

Commercial interests

Do you have any commercial interests?

- ☐ I have a commercial interest in tobacco products
- ☐ I have a commercial interest in vaping products
- ☐ I have commercial interests in tobacco and vaping products
- ☒ I do not have any commercial interests in tobacco or vaping products

Commercially sensitive information

We will redact commercially sensitive information before publishing submissions or releasing them under the Official Information Act.

If your submission contains commercially sensitive information, please tick this box:

- ☐ This submission contains commercially sensitive information.

If so, please let us know where.

Click or tap here to enter text.

Protection from commercial and other vested interests of the tobacco industry

New Zealand has an obligation under Article 5.3 of the World Health Organisation Framework Convention on Tobacco Control (FCTC) when 'setting and implementing public health policies with respect to tobacco control ... to protect these policies from the commercial and other vested interests of the tobacco industry'.

The internationally agreed Guidelines for Implementation of Article 5.3 recommend that parties to the treaty 'should interact with the tobacco industry only when and to the extent strictly necessary to enable them to effectively regulate the tobacco industry and tobacco products'.

The proposals in this discussion document are relevant to the tobacco industry and we expect to receive feedback from companies in this industry. We will consider all feedback when analysing submissions.

To help us meet our obligations under the FCTC and ensure transparency, all respondents are asked to disclose whether they have any direct or indirect links to, or receive funding from, the tobacco industry.

Please provide details of any tobacco company links or vested interests below.

Click or tap here to enter text.

Please return this form:

By email to: vaping@health.govt.nz

By post to: Vaping Regulatory Authority, PO Box 5013, Wellington 6140.

Consultation questions

The Ministry of Health is seeking comments on the following.

Regulatory proposal 1: Defining and internal area

1. Which option do you support for the definition of an internal area and why?

Option **D** – in the end it is the air quality that matters more than how enclosed a space is. Are there verified assessment tools available that would be useful in this context?

In order for vaping to be an effective smoking cessation tool vapers need to easily identify places where they can vape. Some observe that vaping is becoming as socially unacceptable as smoking which may reduce the incentive for replacing smoking with vaping.

2. If you support option c, or if option c were to proceed, would you support a 50 percent coverage threshold? If not, what threshold would you suggest and why?

[Click or tap here to enter text.](#)

Regulatory proposal 2: Specialist vape retailer approvals

3. Do you agree that being in a rural location should be a factor in determining whether to approve an application to be a specialist vape retailer with the lower threshold of 60 percent of sales from vaping products?

What other products could a specialist vape retailer (SVR) sell in the 40% of sales from non-vaping products? If those sales were for other products injurious to health and wellbeing (e.g. sugary drinks and nitrous oxide canisters) then this regulation achieves little especially in a rural environment where customer choice is limited.

4. Are there any other criteria that should be considered when determining whether to approve an application to be a specialist vape retailer with the lower threshold of 60 percent of sales from vaping products?

The changes to vaping regulation, includes, applying a whānau centred community-led approach to intervention. This means socialising proposed changes not just with retailers, but also consulting regularly with hauora providers, marae services that offer

smoking cessation programmes, whānau, hapū, iwi. It is about ensuring lines of communication and intelligence shared is locally based and determined.

5. Do you agree that regulations are not necessary at this stage? If not, what do you propose should be put in regulations?

Click or tap here to enter text.

Regulatory proposal 3: Promotion, information, and advice

3.1 Display of vaping products in retail settings

6. Do you agree that the display of vaping products should not be regulated at this stage? If you do not agree, what controls do you think should be put in place and why?

NZNOs submission on the Smokefree Environments and Regulated Products (Vaping) Amendment Bill (the Bill) to the Health Committee in Apr 2020 recommended the development of best practice guidelines related to ensuring appeal and availability to children of vaping products is minimised and this should include placement in retail settings. Currently, cigarette retailers lock products – this can be the same case for vape products, especially if up to 40% of stock is non-vape merchandise?

NZNO from an equity perspective supports the intent to protect children, young people and non-smokers from the risks associated with vaping and smokeless tobacco products. Ensuring outcomes from transitioning smokers to vaping would reduce inequities in smoking prevalence that Māori experience, particularly young Māori wahine aged 18-24 years. Provisions in the Oranga Tamariki Act, United Nations on the Rights of Child (UNCROC), Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW), United Nations Declaration on the Rights of Indigenous Peoples, to name a few provide legal levers to reducing disparities for all tamariki, rangatahi, particularly Māori and their whānau.

3.2 Price lists given to retailers for tobacco only

7. Do you support the proposal to restrict the information allowed on manufacturers' price lists for tobacco products?

Click or tap here to enter text.

8. Is there any other information that you consider should be allowed on manufacturers' price lists for tobacco products? If so, what do you propose?

Click or tap here to enter text.

3.3 Public health messages

9. Do you consider that other information, beyond the information that Vaping Facts already outlines, should be designated as a public health message issued by the Director-General of Health for public services and any publicly funded individuals or organisations to use? If so, what do you propose?

This presents a health literacy opportunity to expand the details on 'Vaping Facts'. Through including broader benefits of smoking cessation through transitioning from smoking to vaping. Considerations include addressing wellbeing of whānau, and constraints on household budgets (i.e. many low-income households are consumers, therefore what info is being communicated to support this transition and what other messaging is increasing whānau to become smoke and vape free households). NZNO recommends messages are in both te reo Māori and English, this ensures that government continues to actively protect the use of te reo Māori and the application of tikanga and kawa, through consistent and culturally appropriate messaging.

3.4 Vaping product information in retail settings

10. Do you support limiting information about vaping products in retail premises and on retailers' websites to written authorised statements (other than permitted oral communications)? If not, what do you propose?

Click or tap here to enter text.

11. Do you support the proposed statements? If not, what do you propose?

Can the statement '*The greatest benefit for you and your whānau will be stopping smoking and vaping*' be added?

Translation of the statements into te Reo Māori and other languages

NZNO supports all information including packaging health warning labels to be in both te reo Māori and English, this ensures that government continues to actively protect the use of te reo Māori and the application of tikanga and kawa, through consistent and culturally appropriate messaging.

12. Do you support limiting the format of these notices so that they are consistent with tobacco product notices? If not, what do you propose?

Yes

3.5 Product availability notices in retail premises

13. Do you support the proposal to align availability notices for vaping products with those for tobacco products? If not, what do you propose?

Yes – it makes sense to align the provisions in the regulations 3.4 and 3.5. In more remote areas accessibility of product needs to be considered if the purpose of vaping is to support smoking cessation. If purchasing cigarettes is more convenient than vape products little is achieved.

3.6 Point-of-sale information on purchase age

14. Do you agree there should be a requirement for retailers to display purchase age (R18) notices at each point-of-sale? If not, why not?

Yes

We also recognise and agree with the limits of sales of flavoured vaping liquids to tobacco, menthol, and mint by retailers, other than approved specialist vape retailers. Given the social trends of young smokers transitioning to vaping, this a less harmful option than smoking, and we want to avoid the temptation of encouraging a new trend of smoking (vaping) all together. Therefore, it would also be advisable to reduce the number of retailers advertising and selling these products, in low socio-economic communities, with high deprivation. This aligns with NZNOs comments provided in previous submissions, that focus is on helping whānau, hapū and iwi to quit all together as we are acutely aware of the burden of disease that Māori whānau suffer from smoking related products.

15. Do you support the proposed wording and presentation requirements? If not, what do you propose?

Recommend the addition of 'harmful' so the notice reads - *'Vaping Products may contain nicotine, which is a highly addictive substance which may be harmful'*

3.7 Suitably qualified health workers

16. Do you agree that no additional category of person should be added to the definition of 'suitably qualified health worker'? If you do not agree, which category do you think should be added and why?

While a SVR should not be eligible for the 'suitably qualified health worker' category, they are maybe the first person to whom someone seeking to quit smoking cigarettes addresses question about the potential benefit/harm/side effects of vaping. Sufficient and accurate information with which to respond needs to be available to

the SVR including the contact details of suitably qualified health workers to whom to refer the vaper.

Regulatory proposal 4: Packaging

17. Do you support the proposed wording of the health warning for vaping products? If not, what do you propose?

Click or tap here to enter text.

18. Do you agree with the proposed requirements for the health warning panel for vaping products? If not, what do you propose?

Click or tap here to enter text.

19. Do you support the proposed wording of the health warning for smokeless tobacco products? If not, what do you propose?

Click or tap here to enter text.

20. Do you agree with the proposed requirements for the health warning panel for smokeless tobacco products? If not, what do you propose?

Click or tap here to enter text.

21. Do you agree with the proposals for product presentation for vaping products? If not, what do you propose?

Click or tap here to enter text.

22. Do you agree with the safety messaging statements? If not, what changes to them do you suggest?

Click or tap here to enter text.

23. Do you agree with the proposals for product presentation for smokeless tobacco products? If not, what do you propose?

Click or tap here to enter text.

24. How much time do you think smokeless tobacco product manufacturers should have before they need to comply with new packaging requirements? Please give reasons.

Click or tap here to enter text.

25. Do you agree with the proposed instructions on and in the packaging? If not, what changes to them do you suggest?

Click or tap here to enter text.

26. Do you agree with allowing track and trace markings? If not, why not?

What is the cost to the regulator of this change? If the benefits outweigh the costs then yes, otherwise this is not a priority.

27. Do you support the proposal to restrict the quantity of smokeless tobacco sticks in a package to 20 or 25? If not, what do you propose?

Click or tap here to enter text.

28. How much time do you think manufacturers of vaping products and smokeless tobacco products should have before they need to comply with new packaging requirements? Please give reasons.

Click or tap here to enter text.

Regulatory proposal 5: Product notification and safety

5.1 Product notification requirements

29. Do you agree that these are the right details for the Ministry of Health to collect for each notifier? If not, what changes would you make to the details collected?

Location of the retail premises used for vaping product retail would also be useful to the MoH – sometimes the business address is not the same as that of the retail premises. National data which captures where these retail premises are located would be one indication of which socio-economic groups are being 'targeted' by SVRs. The data on location of liquor and fast-food outlets and 'loan sharks' for example is useful in supporting communities to reduce harm and realise benefits of local 'services'. Improving any guidelines ensures prohibition of advertising and sponsorship is developed in a way that is focused on children and restricting availability of products placement in shops.

30. Do you agree that the notifier should declare that they meet the current requirements of the Act? If not, what approach to enforcing the provisions of the Act do you suggest?

Click or tap here to enter text.

31. Do you agree that these are the right details for the Ministry of Health to collect for each notifiable product? If not, what changes would you make to the details collected?

Click or tap here to enter text.

32. Do you agree that the notifier should declare that each product meets the current requirements of the Act? If not, what approach to enforcing the provisions of the Act do you suggest?

Click or tap here to enter text.

5.2 Product safety requirements

33. Do you agree with our approach of basing product safety requirements on the EU and UK legislation and guidance? If not, what approach to our product safety requirements do you suggest we use?

Yes

34. Do you agree with the product controls we are proposing to include in the product safety requirements? If not, what changes to the areas that the product safety requirements cover do you suggest?

Click or tap here to enter text.

35. After reviewing our full proposal in Appendix, A, do you agree with our proposed product safety requirements? If not, what changes to them do you suggest?

Click or tap here to enter text.

Regulatory proposal 6: Annual reporting and returns

36. Do you support the proposals for manufacturers' and importers' annual sales reports? If not, what do you propose?

Yes – this data will support the primary aim of electronic nicotine delivery systems (ENDS), the goal being Smokefree Aotearoa 2025

37. Do you support the proposals for specialist vape retailers' annual sales reports? If not, what do you propose?

Yes – this data will support the primary aim of electronic nicotine delivery systems (ENDS), the goal being Smokefree Aotearoa 2025

Regulatory proposal 7: Fees

38. Do you agree the Ministry of Health should charge for the activities identified? If not, what activities do you suggest we charge for?

Click or tap here to enter text.

39. Do you agree with the way the fees are structured? If not, how should they be structured?

NZNOs April 2020 submission on the Bill suggested a fund to support ongoing evaluation of the effectiveness of vaping as a smoking cessation tool so fees may need to increase accordingly. Given that the greatest volume anticipated is with product notifications – devices, substances and smokeless tobacco products – 800 and 9200 respectively – a modest fee increase (+\$10/application) to include a 'levy' to be used for evaluative research would achieve a useful research funding source.

40. Do you agree with the level of each of the fees? If not, how much do you suggest the Ministry of Health should charge?

Click or tap here to enter text.

41. Do you agree with our assumptions on annual volumes of work? If not, what assumptions do you suggest we use?

Click or tap here to enter text.

42. How many products do you anticipate notifying yourself?

N/A

43. Are there additional issues relating to fees and charges that you would like us to consider?

See response to Q. 39 above

44. Do you agree that we should reduce fees for very low-volume products? If not, how would you suggest the Ministry of Health handles very low-volume products?

Click or tap here to enter text.

45. How would you suggest we define very low-volume products?

Click or tap here to enter text.

46. Do you have suggestions for the design of any provisions, including suggestions for: (a) limits on the number of products that any notifier can have fee exemptions for (b)

administrative efficiency (c) any other issues that might be associated with low-volume products?

Click or tap here to enter text.