

Standardised Tobacco Products and Packaging Draft Regulations

Submission to the Ministry of Health

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About the New Zealand Nurses Organisation

NZNO is the leading professional nursing association and union for nurses in Aotearoa New Zealand. NZNO represents over 47,000 nurses, midwives, students, kaimahi hauora and health workers on professional and employment related matters. NZNO is affiliated to the International Council of Nurses and the New Zealand Council of Trade Unions.

NZNO promotes and advocates for professional excellence in nursing by providing leadership, research and education to inspire and progress the profession of nursing. NZNO represents members on employment and industrial matters and negotiates collective employment agreements.

NZNO embraces te Tiriti o Waitangi and contributes to the improvement of the health status and outcomes of all peoples of Aotearoa New Zealand through influencing health, employment and social policy development enabling quality nursing care provision. NZNO's vision is *Freed to care, Proud to nurse*.

1. The New Zealand Nurses Organisation (NZNO) welcomes the opportunity to comment on the Draft Regulations Standardised Tobacco Products and Packaging.
2. This submission is informed by feedback from all NZNO's member groups and staff advisers, and from the large body of evidence, papers, and previous submissions we have made in support of stringent tobacco control.
3. We welcome, at last, this evidence-based action supporting the multilateral goal of a Smokefree Aotearoa New Zealand by 2025, which has been anticipated for years, during which time hundreds of young people have started smoking, a disproportionate number of whom are Māori women, thousands of others have died of tobacco-related diseases, and thousands have suffered preventable respiratory and heart disease, including children and people who have never smoked¹.
4. That this gesture has come at the same time as the government has slashed funding for tobacco cessation support and raised excise duty on tobacco indicates a callous and deliberate disregard of prior commitment to plain packaging and evidence that it is a necessary part of a balanced, comprehensive public health strategy to eliminate the

¹ Statistics New Zealand NZ social indicators: Tobacco smoking. Retrieved July 2016 http://www.stats.govt.nz/browse_for_stats/snapshots-of-nz/nz-social-indicators/Home/Health/tobacco-smoking.aspx

mortality and morbidity of tobacco use and improve population health (Warner, 2013).

5. That it was cynically delayed until after the signing of the Trans-Pacific Partnership Agreement incorporating legal carve-out provisions for tobacco which *increase* the influence of tobacco companies² is shameful. It is a betrayal of the many people and agencies who have advocated and worked tirelessly to reduce harm from tobacco, a key contributor to health disparities and inequity.
6. The delay in legislative progress on plain packaging of tobacco products has not only failed to prevent harm, the reprieve has been effectively utilised by the tobacco industry to hone marketing and campaign strategies for e-cigarettes³. These are now widely available and marketed to young people, despite the Ministry of Health's unequivocal advice that "e-cigarette use poses threats to adolescents and fetuses of pregnant mothers using these devices"⁴, which NZNO strongly supports.
7. Cigarette smoking is the leading preventable cause of death globally (WHO, 2009) causing 5 million deaths annually; in Aotearoa New Zealand 5,000 people die each year from because of smoking or second-hand smoke exposure⁵.
8. Due to the restrictions on the advertising of tobacco products the packaging of the product itself has become a major focus of tobacco companies (Smith, Kraemer, Johnson, & Mays, 2015).

² Far from reinforcing the tobacco industry as the health pariah that it is, the TPPA does not mention the Framework Convention on Tobacco control, allows the tobacco industry to retain the same privileges afforded to all investors under the agreement, and provides new opportunities for it to influence government decisions eg as "interested persons" in the Regulatory Coherence chapter. The carve-out applies only to manufactured tobacco, ie readymade cigarettes, not tobacco leaf, and governments must invoke the exception for it to apply – it is not automatic. With such weak constraints and the generous provision of new legal entitlements within TPPA countries that the tobacco industry did not previously have, the TPPA has managed to snatch defeat for the FCTC, from victory. (NZNO. 2016. *International Examination of the Trans Pacific Partnership Agreement: Submission to Ministry of Foreign Affairs Defence and Trade*. Retrieved July, 2016 http://www.nzno.org.nz/Portals/0/Files/Documents/Activities/Submissions/1_2016-03_TPPA_%20NZNO.pdf

³ "All four of the transnational tobacco companies own at least one e-cigarette product" (Britten & Bogdanovica 2014, p15).

⁴ <http://www.health.govt.nz/our-work/preventative-health-wellness/tobacco-control/advice-use-e-cigarettes>

⁵ Statistics New Zealand NZ social indicators: Tobacco smoking. Retrieved July 2016 http://www.stats.govt.nz/browse_for_stats/snapshots-of-nz/nz-social-indicators/Home/Health/tobacco-smoking.aspx

9. Evidence suggests that when youth are exposed to plain packaging there is less associated pleasure experienced during smoking (Maynard, Leonards, Attwood, Bauld, Hogarth, & Munafo, 2015).
10. Plain packaged tobacco products are perceived as less attractive amongst youth who are experimenting with cigarettes, who are then less drawn to them, and pay more attention to the health warnings (Maynard, Munafo, & Leonards, 2013).
11. There is no safe level of second hand smoke exposure, which is particularly harmful for children and can cause serious health issues, such as an increased risk of ear infections, respiratory infections, asthma attacks, bronchitis and pneumonia (Farber, Groner, Walley, & Nelson, 2015).
12. One in ten women smoke in pregnancy in Aotearoa New Zealand, with higher rates among Maori and in lower socioeconomic areas (McRobbie, 2013).
13. Smoking during pregnancy results in higher incidence of IUGR, premature birth, stillbirth and SUDI (Crawford, Tolosa, & Goldenberg, 2008). Aotearoa New Zealand has the second highest rate of youth pregnancies in the OECD (McPherson, 2015). Reducing maternal smoking would have the biggest impact on improving fetal and infant health outcomes (McRobbie, 2013).
14. Plain packaging on tobacco products will help reduce smoking and protect the most vulnerable newborns and children from the harmful effects of second hand smoke exposure.
15. Countries comparable to Aotearoa New Zealand have or are implementing plain packaging of tobacco products, eg Australia legalised plain packaging in 2012 and the United Kingdom are also currently drafting regulations to do the same.
16. NZNO supports plain packaging, but notes that the effectiveness of this and all other measures to reduce smoking and tobacco related harm is considerably undermined by the concomitant removal of funding to *support* people to quit smoking this highly addictive and toxic product. This removal of support must be factored into the evaluation and if plain packaging is less effective in reducing tobacco consumption and costs than anticipated, the government must take responsibility for it. We strongly advocate for those supports to be reinstated.
17. Our response re the draft regulation consultation questions follows a brief discussion about e-cigarettes, as we believe there is a risk that may not be harm reduction.

E-cigarettes

18. We commend the leadership that the Ministry has shown with regard to e-cigarettes, but have been disturbed to note widespread misunderstanding and misinformation with regard to how 'safe' they are and in what context.
19. For example, on the *Science* page of the Dompst (April 18, 2016) Oliver Knight-West's response to the question "*How safe is that e-cigarette?*" stated that 'vaped' nicotine is safer than nicotine in tobacco, and questioned why "toxic tobacco is given preferential treatment as a way for people to use nicotine", an implicit criticism of the Ministry's cautionary approach to the introduction of a new product for consuming nicotine and various other substances.
20. Poor understanding of the wider public health issues that e-cigarettes raise (with non-smokers) risks political and public pressure to change current regulation.
21. Nicotine is a highly addictive and toxic substance, however it is consumed. Research showing that e-cigarettes might be a useful aid to curb smoking addiction is not the same as research showing that they are safe *per se* and the two should not be conflated.
22. Marketing is already being directed at young people for these 'fashionable' accessories, available online in an array of flavours.
23. Legalising e-cigarettes would effectively legalise an alternative pathway to the introduction of nicotine (and other substances which may negatively impact health) to a whole new generation and undermine the advances made in reducing addiction that caused the highest number of preventable death and disease for decades.
24. While there is some evidence that e-cigarettes may have a role in the reduction of harm for smokers, the same does not apply to non-smokers. To date there is very little evidence little of the impact of e-cigarettes on non-smokers on the non-smoking population, and since this is an industry in its infancy, what evidence there is demands circumspection.
25. We recommend the Ministry proactively develops and promotes balanced health information about e-cigarettes as "maximising those benefits while minimising harms and risks to society requires appropriate regulation, careful monitoring, and risk management" (Britton & Bogdanovica, 2014).

CONSULTATION QUESTIONS

1. Do you agree with the proposals to limit the number of cigarettes in a pack to either 20 or 25, and the amount of loose tobacco to 30 grams or 50 grams?

Yes

We would prefer the lower options ie a maximum of 20 cigarettes per packet, and 30g of loose tobacco and note that this would imply an adjustment to the personal concession allowance duty free tobacco products. Plain packaging should also be specified for duty free products.

2. Do you agree with the proposals to restrict the dimensions of cigarette sticks by setting minimum and maximum length and diameter?

Yes

But to be consistent with the aim of removing distinctions between brands, and therefore reducing the advertising potential, the dimensions should be specific and universal – one size fits all.

3. Do you agree with the proposals setting minimum and maximum height, width and depth of cigarette packs, consistent with the limits on the number and size of the cigarette sticks they contain?

Yes

Note our previous answer: universal and specific dimensions to limit options for promoting brand variation.

4. Do you agree with the proposal that loose tobacco should be sold only in rectangular pouches made of soft-plastic?

No

If you do not agree, what alternatives do you suggest?

There are environmental and health promotion issues with soft-plastic packaging which does not readily decompose and can easily be folded to avoid harm reduction messages. We recommend plain packaging specifications apply to all products.

5. Do you agree with the proposals to standardise cigar packaging, including the proposal to limit the number of cigars that may be sold in a pack?

Yes

6. Should the regulations include a general provision to set a minimum size for all tobacco packages, including cigar packages?

Yes

7. Do you have any other suggestions for regulatory requirements to standardise the shape and size of tobacco products and tobacco product packages?

Yes

We endorse the considered recommendations put forth in ASPIRE2025's submission, that the regulations:

- should prevent any introduction of new variant names of tobacco products not already in use at date of legislation;
- should set out a regular (two year) programme to continually review and refresh pack warnings, so that research can support design of currently resonant themes for the diversity of existing customers;
- should require all factory made cigarettes and all rolling papers to match Pantone448C;
- should include the "two format" design spec provided by ASPIRE2025 to enhance the salience of the *Quitline* information;
- should include inserts to promote quitting within the package;
- should prohibit distinctive filter colours or designs (eg. grooves, holes or recesses); and that

- the Ministry of Health should set in place a regime for evaluating these regulations' impact on consumer behaviour to support other countries implementing the Framework convention for Tobacco Control.

8. Do the regulations need to allow for any other anti-counterfeiting marks?

NO.

We note and support Smokefree Aotearoa New Zealand's comments with regard to anti-counterfeiting marks:

"We strongly recommend submissions from tobacco industry are treated with extreme scepticism when they suggest extra markings to be permitted for anti-counterfeiting purposes. Permitting their suggestions or providing them with room to determine markings is opening a new door toward continuing a form of brand variance. The tobacco industry itself has been found in various places around the world, to be active and/or complicit in illicit trade of tobacco products. The motivation is to undermine strong tobacco excise tax regimes using trade circuits between nations: their advice on controlling counterfeiting will have the same motivations and is therefore compromised and not to be trusted."

9. If additional anti-counterfeiting marks are to be allowed, how could these be regulated to ensure they do not communicate to consumers or have any effect that might undermine the intentions of standardised packaging?

Please provide detail below.

N/A

10. Do the regulations need to permit any other marks or features on tobacco product packages to allow for automated manufacturing and packaging processes?

No

11. Should the regulations allow for the country of manufacture to be printed on tobacco products or packages?

No

No for the same reason we do not support any other variation on packaging: it undermines the intention of plain packaging as any difference could be exploited for brand variation. Country of origin, we suggest, would be an influential factor for brand preference.

12. Are there any additional features within the scope of the regulation-making powers in the Smokefree Environments (tobacco standardised packaging) Amendment bill that might increase the effectiveness of standardising tobacco products and packaging? If so what is the rationale and can you provide supporting evidence?

Yes

We suggest that the evaluation programme measuring the impact of the packaging regulations be expanded to include measurement of other smoking-related factors including health warning themes via mass media marketing; e-cigarette uptake and use by smokers and non-smokers; and cessation support.

As indicated in the first part of our submission, the removal of funding for smoking cessation support in the last budget including for SmokeFree Aotearoa NZ 2025 as well as the increase in excise can only exacerbate health and socio-economic disparities, and will also skew evaluation results, since plain packaging is most effective as part of a comprehensive balanced programme of increased pricing *alongside* rather than exclusive of cessation support mechanisms and health promotion. We expect that the evaluation will clearly reference the government's decision to undermine this already delayed strategy.

Nāku noa, nā

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