



Summary of the discussion paper on the regulation of Electronic Nicotine Delivery Systems (e-cigarettes, vaping) in Aotearoa New Zealand

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Prepared by the Smokefree Expert Advisory Group (SEAG) of the Health Coalition Aotearoa (HCA). HCA is an umbrella organisation for the advocacy, healthcare and academic sectors established to achieve the shared vision of health and equity in Aotearoa New Zealand (NZ).

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Purpose and scope of this document

The purpose of this document is to inform individuals and organisations preparing submissions for government consultation on the regulation of electronic nicotine delivery systems (ENDS - vaping products, e-cigarettes) in Aotearoa NZ.

The document sets out some possible principles and options in response to the introduction of the Smokefree Environments and Regulated Products (Vaping) Amendment Bill ('the Bill'). The options presented are as agreed by the SEAG.

In cases where there was substantial disagreement about the preferred approach, more than one option is given.

Principles to guide policy and regulation

We suggest the following set of principles be followed to inform respectful discussion, debate and decision-making on regulation and policy.

- The primary aim of ENDS-related policies should be to support health equity through achieving the Smokefree 2025 goal of minimal smoking prevalence among all population groups in NZ; the policies should not create barriers to achieving a longer term Tupeka Kore goal.^[1]
- Policy options should be considered and evaluated in the context of the overall policy environment, taking into account complementarity with, and impacts on, other current or potential measures to achieve the Smokefree 2025 goal.
- Smoked tobacco product regulation should always be more stringent than that applied to ENDS because of the proportionately greater harm caused by smoked tobacco products.
- ENDS-related policies should aim to:
 - (i) maximise the benefits of ENDS (such as supporting smokers to quit smoking; or for those who cannot quit, to transition completely from smoking to ENDS), and
 - (ii) minimise harms related to ENDS use. This includes minimising: the health risks that ENDS users are potentially exposed to; the initiation of nicotine-containing ENDS by non-smokers (especially children and young people), and potential 'gateway' to smoking effects of ENDS use.
- Priority should be given to ENDS-related policy and regulation that help reduce smoking among Māori, Pacific peoples, people experiencing higher levels of deprivation, people with mental health conditions and other groups where smoking prevalence is high.
- The Ministry of Health should continue to monitor emerging evidence on ENDS, particularly their potential impacts on smoking prevalence and users' health.
- Policies and regulations should be crafted so as to be able to be updated swiftly in light of new evidence.

[1]Tupeka Kore arose from Māori leaders who proposed a tobacco-free kaupapa in which tobacco use and availability was eliminated for Māori

Preferred regulatory options

Supply and availability: place of sale

The Bill proposes:

- Regulated products (including vaping products, smokeless tobacco products and smoked tobacco products) may be sold by any retailer, including dairies, with no requirement for a licence or any other stipulations about retailer facilities, staff expertise etc.
- Vending machine sales allowed if supervised by staff, do not make regulated products visible, not located where the public have access, and must have health warnings.
- Differentiation between specialist vape stores, which will require registration, and generic retailers, who will not. Specialist vape stores are defined as those where at least 85% of the total sales from the retail premises are from vaping products. Such retailers will need to report sales annually to the Ministry of Health.
- Specialist vape stores must be R18 and the retailer must take all practicable steps to prevent under-18s from entering.
- That vaping is permitted in specialist vape retail shops so that smokers can be better supported to successfully switch, but not in generic stores. Limitations on flavours of e-liquids that may be sold by generic retailers but specialist vape stores exempt from these restrictions.
- Specialist vape stores can provide give-aways, discounting and loyalty points for vaping products but not for other regulated products (including tobacco product).

SEAG view:

There were three options discussed by SEAG members for the availability and place of sale of ENDS. These options reflect the diversity of option between members.

- Option 1: More constrained: Sale of all devices, starter kits, e-liquids/pods etc limited to:
 - (i) Licensed specialist R18 vape retailers. Licence to include meeting stipulated standards in relation to staff training (in ENDS products and their use, smoking cessation advice/referral etc), sale of adequate product range, products meeting safety standards, and location e.g. non-proximity to schools and early learning centres.
 - (ii) Selected/certified community pharmacies. Selection/certification based on meeting stipulated requirements as above (note adequate product range and staff training in use of ENDS and continuing education on new products is essential). Members noted that the feasibility and practicality of pharmacy sales needs exploring further.
 - (iii) No sales allowed in other stores including dairies, supermarkets and gas stations.
 - (iv) No vending machine sales.
- Option 2: Moderately constrained: Sale of devices/starter kits limited as in option 1, other than in areas where no specialist vape stores or community pharmacies selling devices are available within a reasonable (to be defined) distance, in which case generic retailers could apply for registration to sell a specified range of devices.

- (i) Sale of refills for ENDS (e-liquids/pods etc) allowed in other stores including dairies, supermarkets and gas stations, but only with a limited range of flavours e.g. tobacco, mint and menthol.
 - (ii) Sale of refills for ENDS (e-liquids/pods etc) including all non-prohibited flavours allowed in R18 specialist vape retailers.
 - (iii) Vending machines allowed to sell refills with limited flavour range (subject to location in R18 premises and supervised operation with age verification). Vending machines should also include other cessation options such as NRT products.
- Option 3: Less constrained: Sale of devices, starter kits, and refills for ENDS (e-liquids/pods etc) allowed in all stores, including specialist vape retailers, dairies, supermarkets and gas stations (with age verification).
 - (i) Sale of refills for ENDS as in option 2
 - (ii) Vending machines as in option (ii) and to include devices, starter kits, and refills for ENDS, plus other cessation options (such as NRT products).

For all of the above options, SEAG members agreed that sales to minors in all settings should be prohibited and subject to rigorous enforcement action.

This is an example of an area where regulations could vary for different products according to likelihood of harms. For example in option (ii), HTP and smokeless tobacco products (including refills) could be restricted to sale in R18 premises and pharmacies, whilst ENDS and NRT refills could be sold more widely.

All these options will result in the availability of the most harmful smoked tobacco products being less constrained than vaping products. This anomaly must be addressed by progressively decreasing the availability of smoked tobacco products so that they are less easily purchased than vaping products

Supply and availability: minimum age restrictions

The Bill proposes:

- That retailers are prohibited from selling all regulated products (including ENDS) to persons aged under 18 years.

SEAG view:

- The minimum age for sale of ENDS should be the same as for smoked tobacco products.
- However, minors who smoke should have access to ENDS to help them switch from tobacco, e.g. through accredited smoking cessation providers.
- Identify strategies for preventing online sales to minors (e.g. retailer fines, bans, shipping with verified R18 delivery).

Product safety standards

The Bill proposes:

- Set product safety requirements, establishment of a product notification process with self-certification by importers and manufacturers.
- Establishment of an adverse reaction monitoring system.

SEAG view:

- Product safety standards for approval for sale or importation of devices and consumables are needed, together with an appropriate monitoring and enforcement mechanism. These standards should be implemented through a Government-led regulatory (rather than legislative) approach, with enforcement powers and requirements for environmental sustainability.
- Establish a national Early Warning System for acute vaping-related adverse events, with an appropriate escalation pathway. Running costs to be recovered from industry.

Flavours

The Bill proposes:

- Generic retailers can sell tobacco, mint and menthol flavoured vaping liquid only.
- Specialist vape retailers will be allowed to sell any flavours that have not been prohibited.
- ‘Tailored’ packaging requirements to be developed. No specific restrictions on flavour marketing indicated. These changes will come into effect six months after the date on which the Act receives Royal assent.

SEAG view:

- Prohibit flavour-related marketing that uses evocative and appealing descriptors or packaging.
- Option 1: Allow all flavours (unless shown to be associated with health risks) OR
- Option 2: Limit flavours to a smaller range, with the option of liberalising restrictions if supported by evidence.

Nicotine Content

The Bill proposes:

- Products will need to comply with any product safety requirements that are set out in regulations, including, maximum nicotine content of vaping liquids.
- These requirements will be publicly consulted on before being finalised, and will come into effect six months after the date on which the Act receives Royal assent.

SEAG view:

- Nicotine content is not a current priority as this is a highly complex regulatory area.
- Nicotine content may be an unreliable predictor of nicotine delivery and absorption by the user, because there are multiple influences on nicotine uptake and bio-availability, and product design and use patterns vary widely.

Marketing and consumer information

The Bill proposes:

- Similar prohibitions on promotion, sponsorship and advertising as smoked tobacco products.
- All retailers are able to display products within stores and to display information about, for example, the relative-risks of vaping compared with smoking. The information that may be displayed within stores will be set out in regulations.
- In response to a customer enquiry, generic stores may do no more than identify the regulated products (including tobacco products, vaping products and smokeless tobacco devices) available for purchase and indicate their price. However, a specialist vape retailer may provide advice, recommendations and demonstrations of regulated products to customers.

SEAG view:

- Option 1: All marketing should be prohibited (including sponsorship and product placement, and point-of-sale advertising and displays in vape stores or pharmacies), OR
- Option 2: Minimal marketing allowed (eg. only point-of-sale only advertising and displays in vape shops or pharmacies).
- Permissible product claims should be available from a set of pre-approved statements.
- Targeted communications should be developed and made available to smokers (to promote switching), on matters such as the types of ENDS and consumables, potential benefits and harms of ENDS, education about nicotine, the effective use of ENDS devices, and how to use ENDS to support quitting.
- Targeted communications should be developed and made available to non-smokers, particularly youth and young adults (to deter vaping uptake), focusing on education about nicotine and ENDS as a harm reduction tool for smokers-only.

Packaging and warnings/information

The Bill proposes:

- Tailored packaging requirements for vaping products and smokeless tobacco products, which will be set in regulations. There will be public consultation before these are finalised. It is proposed that New Zealand will follow the UK model.

SEAG view:

- Maximise ENDS appeal to smokers as quitting aids or as alternatives to smoking, whilst minimising their appeal to and use among non-smokers, particularly youth and young adults.
- ENDS products should only be available in standardised and child-proof packaging.
- Information provided about ENDS should include: ingredients, nicotine content and concentration, information about the potential harms (e.g. possible long term health effects, addictiveness) and benefits (less harmful than smoked tobacco products) and recommended purpose of ENDS (i.e. for smokers to help quit smoking or as short-term complete substitutes for

smoking), instructions for use of devices and safety advice should be stated on products and in packaging or inserts.

Advice and support for ENDS for smoking cessation

The Bill proposes:

- No comment made on this topic.

SEAG view:

- Cessation service providers should be encouraged to give smokers (including smokers < 18 years) information about the full range of options available to help quitting, including ENDS.
- Smokers who choose to use ENDS to help them quit smoking should be provided with high quality advice and support to do so.
- Cessation service providers should be supported through appropriate training and resources (e.g. guidance in the use of ENDS, and to support quitting smoking using ENDS).

Use of ENDS in indoor and outdoor workplaces and public places

The Bill proposes:

- The same restrictions on smoking in the Smoke-free Environments Act are applied to vaping and smokeless tobacco products in legislated smokefree areas (
- although product demonstrations will be permitted in specialist vape stores).
- Local authorities still have the ability to determine whether to include vaping in outdoor smokefree areas.

SEAG view:

- Option 1: All indoor legislated smokefree areas, including prisons and schools, should be vape-free (although specialist vape retailers, pharmacies selling ENDS, and possibly healthcare in-patient facilities should be exempt), OR
- Option 2: Allow additional exemptions for all R18 workplaces (e.g. bars and pubs) and prisons.
- It is preferable to provide separate vaping and smoking areas where partial restrictions apply.

Excise duty/taxation of ENDS

The Bill proposes:

- No comment.

SEAG view:

- Maintain the status quo of no specific excise tax on ENDS, but keep under review.

- Consider fiscal measures to incentivise the use of ENDS (and other smoking cessation products) by socioeconomically disadvantaged smokers.
- If taxes were to be imposed on ENDS, they should be set at such a level to ensure the cost of vaping is less than that of smoking tobacco products, to encourage switching by smokers.