



Nelson Marlborough
District Health Board

Submission on Policy Options for the Regulation of Electronic Cigarettes

12 September 2016

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Introduction

1. Nelson Marlborough Health (NMH) (Nelson Marlborough District Health Board) is a key organisation involved in the health and wellbeing of the people within Te Tau Ihu. NMH appreciates the opportunity to comment from a public health perspective on the Ministry of Health's consultation document on Policy Options for the Regulation of Electronic Cigarettes.
2. NMH makes this submission in recognition of its responsibilities to improve, promote and protect the health of people and communities under the New Zealand Public Health and Disability Act 2000 and the Health Act 1956. In particular, and of relevance to this submission, its responsibilities and activities involving smoking cessation advice and support, promotion and advocacy for the extension of smokefree environments, and regulation of smoked tobacco and tobacco products.
3. As set out in the Ministry's consultation document, the risks and benefits of e-cigarettes are currently uncertain. As a result, it is apparent that there are several high level conflicting matters relating to public health in considering regulations and their place on the market:
 - **Regulatory setting** – currently the sale and supply of nicotine e-cigarettes is prohibited in New Zealand (although nicotine e-cigarettes and e-liquids are allowed to be imported for personal use). However, due to a lack of a clarity and certainty as to the legal effect of current legislation and therefore ability to enforce it, the reality is that they have been available for purchase within New Zealand for some time with no quality control, safety measures or marketing restrictions in place.
 - **Smokefree environments** – currently nicotine e-cigarettes are not prohibited in areas defined as smokefree in the Smoke-free Environments Act 1990. The potential adverse health effects on non-users exposed to e-cigarette vapour is uncertain.
 - **Therapeutic use** – there is general scientific consensus that the use of e-cigarettes is significantly less harmful than smoking. Although more robust evidence is required, current evidence suggests that e-cigarettes may be an effective tool for smokers who want to quit. NMH is aware that some tobacco smokers are already independently using e-cigarettes to support quitting.
 - **Undermining of current tobacco control initiatives and potential for perverse outcomes** – there are fears that normalisation, access and experimentation of e-cigarettes may lead to nicotine addiction or a gateway effect to tobacco smoke, particularly for young New Zealanders. Although studies have indicated that there are no serious adverse effects from their short or medium term use, the long-term health effects from the use of e-cigarettes is uncertain.
4. This submission sets out matters of interest or concern to NMH in relation to the regulation of e-cigarettes and smoked tobacco products. NMH believes that its recommendations made in

response to policy and regulatory options will address the conflicting public health matters set out above pertaining to e-cigarettes and result in better public health outcomes than the current situation.

Comprehensive strategy needed

5. NMH would like to take this opportunity to acknowledge the National Smokefree Working Group (NSFWG) for the relevance, comprehensiveness and timeliness of its recently released background paper 'E-Cigarettes and their potential contribution to achieving the Smokefree 2025 goal'¹.
6. NMH strongly agrees with the general steer of the NSFWG background paper in that the primary aim of e-cigarette policy and regulations should be to support achievement of New Zealand's Smokefree 2025 goal, and that in working towards the Smokefree 2025 goal, e-cigarettes need to be viewed as part of a comprehensive tobacco control strategy along with other measures such as tightening smoked tobacco regulations.
7. As noted in the background paper, existing evidence suggests that the increase in e-cigarette use may contribute to some (but not all) of the observed declines in smoking prevalence within developed countries and accordingly, may assist with achieving the Smokefree 2025 goal.
8. Importantly, the background paper also notes that *"the impact of e-cigarettes in helping achieve the Smokefree 2025 goal will be enhanced by implementing a comprehensive tobacco control strategy and by adhering to the principle that where regulatory control measures are applied to e-cigarettes, equivalent or more stringent regulatory measures should be in place or introduced for smoked tobacco products."*
9. It is asserted that existing smoked tobacco supply arrangements undermine the Smokefree 2025 goal and accordingly, need to be urgently addressed.² As an example, current regulations - which allow any retailer to sell tobacco resulting in over 6000 outlets across New Zealand - have experienced high levels of non-compliance such as illegal sales to young people (a 2006 survey found 64% of tobacco retailers had at least one breach of point of sale regulations).²
10. In agreeing with the overall direction and aims of the NSFWG background paper, the recommendations of NMH within this submission are largely consistent with those of that paper, with the exception of the supply and availability of e-cigarettes (discussed directly below) where

¹ Edwards R, Bullen C, Walker N, Hoek J, Beaglehole R. 2016. *Background paper: E-cigarettes and their potential contribution to achieving the Smokefree 2025 goal*. Prepared for the National Smokefree Working Group.

² Wilson N, Hoek J, Sanne van der Deen F, Thomson G, Edwards R. 2016. *Perspective: Options for licensed retailing of nicotine-containing e-cigarettes in New Zealand*. Public Health Expert. Wellington: University of Otago <https://blogs.otago.ac.nz/pubhealthexpert/2016/09/08/perspective-options-for-licensed-retailing-of-nicotine-containing-e-cigarettes-in-nz/>

more stringent measures are recommended. Recommendations are set out under each of the relevant section headings which ensure that:

- Policy and regulations for e-cigarettes focus on supporting the Smokefree 2025 goal and address the conflicting matters set out in the introduction of this submission
- The principle that equivalent or more stringent control measures are applied to smoked tobacco products is adhered to.

Recommendations

11. That the focus of e-cigarette-related policy and regulations is centred on the role of e-cigarettes in achieving the Smokefree 2025 goal.
12. That e-cigarettes are not viewed in isolation and instead, that a comprehensive tobacco control strategy which aims to achieve the Smokefree 2025 goal is developed (incorporating initiatives relating to the control of smoked tobacco and which support smoking cessation), and is regularly reviewed as new evidence emerges.

Supply and availability of e-cigarettes

13. NMH supports the Government's position that upon considering evidence and concerns about e-cigarettes, it agrees in principle to nicotine e-cigarettes being legally available for sale and supply in New Zealand, with appropriate controls.
14. NMH considers that an appropriate regulatory framework would provide certainty as to the legal status of e-cigarettes while ensuring a balance between supporting their availability where existing evidence indicates potential positive effects (e.g. short-medium term use as a smoking cessation aid, contribution towards achieving the Smokefree 2025 goal) and limiting their availability where existing evidence indicates potential negative effects (e.g. nicotine addition/gateway for youth, uncertain health impacts of longer term use). NMH notes that this approach is consistent with Article 5.2(b) of the World Health Organisation Framework Convention of Tobacco Control whereby medicinal use of nicotine is a public health option under the treaty (in which New Zealand is a party to), while recreational use is not³.
15. To this effect, NMH considers that the supply and availability of nicotine e-cigarettes and e-liquids should be restricted to community pharmacies only for smokers who want to quit.

³ World Health Organisation. 2014. *Electronic nicotine delivery systems: Report by WHO*. Conference of the Parties to the WHO Framework Convention on Tobacco Control. Sixth session Moscow. FCTC/COP/6/10 Rev.1

Benefits of this approach are varied and many, as assessed by a recent blog on the University of Otago's Public Health Expert⁴:

- It would establish e-cigarettes as a smoking cessation aid or, at the very least, a harm-reduction strategy for long-term users
 - It would support a change in perception of e-cigarettes as a recreational drug and therefore may help reduce youth experimentation
 - Pharmacies are likely to have less incentive to sustain sales beyond cessation, than specialist vape shops for example who may have a major economic incentive to continue and expand the market including to non-smokers
 - Most pharmacies already provide smoking cessation advice and sell nicotine replacement therapy products, therefore staff are likely to be trained in smoking cessation support
 - Pharmacy staff are used to a strict regulatory environment for the supply of addictive or restricted substances and pharmacies would be highly motivated to sustain their reputations
 - Community pharmacies are relatively well distributed within New Zealand (approximately 1000 exist) and would attract a more diverse customer base, effectively reaching more smokers than for instance a vape shop
 - It would simplify any future action to phase-out e-cigarettes, should that become a consideration once smoked tobacco sales have fallen to minimal levels.
16. While a possible down-side of pharmacy-only sales might be that staff are less likely to have personal experience and specific product expertise than vape store staff, appropriate training would be able to fill this knowledge gap.

Recommendations

17. That nicotine e-cigarettes are made legally available for sale and supply in New Zealand, with appropriate controls.
18. That those appropriate controls:
- Allow restricted sale of nicotine-containing e-cigarettes or e-liquids for smokers who want to quit
 - Allow sales of nicotine-containing e-cigarettes or e-liquids through pharmacies only with stipulations about the exclusion of minors from point of sale displays, and training/competence for staff in e-cigarette use and ABC cessation support
 - Discontinue to allow the importation of nicotine-containing e-cigarettes or e-liquids for personal use (currently up to 3 months supply is permitted)

⁴ Wilson N, Hoek J, Sanne van der Deen F, Thomson G, Edwards R. 2016. *Perspective: Options for licensed retailing of nicotine-containing e-cigarettes in New Zealand*. Public Health Expert. Wellington: University of Otago <https://blogs.otago.ac.nz/pubhealthexpert/2016/09/08/perspective-options-for-licensed-retailing-of-nicotine-containing-e-cigarettes-in-nz/>

- Require a minimum age of purchase of 18 years unless prescribed or a suitable form of approval (similar to a quit card, for example, but without the need to identify a specific e-cigarette product in line with the recommendation at paragraph 24 of this submission) is obtained through a doctor, healthcare provider or quit coach e.g. for the instance where a 16 year old smoker would like to quit
19. That equivalent or more stringent regulatory controls are applied to the supply and availability of smoked tobacco products, including introduction of retailer licensing (which is shown to make businesses more likely to comply with regulations, and may reduce the number of outlets selling smoked tobacco⁴), restrictions on proximity to schools, and ideally raising the age of purchase to 21 years.

Smoking cessation advice and support for e-cigarettes as quit aids

20. NMH strongly supports the Ministry of Health developing guidance for health professionals and stop-smoking support workers on how to support smokers who want to use e-cigarettes to quit smoking, as outlined in the consultation document.
21. As noted above, NMH is aware that some smokers are already independently using e-cigarettes to support quitting. NMH believes that providing appropriate resources and training will enable health professionals and quit coaches to offer effective support and guidance specific to e-cigarettes. This could avoid or minimise ad-hoc or detrimental approaches such as sustained dual use of smoked tobacco and e-cigarettes⁵, and may in turn increase the success of quit attempts and maximise health benefits.
22. However, NMH considers that healthcare providers and quit coaches should not recommend or support specific e-cigarette products unless these have a Medsafe approval for therapeutic use.

Recommendations

23. That the Ministry of Health develops the proposed guidance for health professionals and stop-smoking support workers on how to support smokers who want to use e-cigarettes to quit smoking.
24. That this guidance stipulates that healthcare providers and quit coaches are not to recommend or support specific e-cigarette products unless these have Medsafe approval for therapeutic use.
25. That the Ministry of Health develops information (e.g. leaflets) giving advice to e-cigarette users trying to quit (to support the recommendation at paragraph 30 of this submission).

⁵ Wilson N, Gartner C. 2016. *What does recent biomarker literature say about the likely harm from e-cigarettes?* Public Health Expert. Wellington: University of Otago <https://blogs.otago.ac.nz/pubhealthexpert/tag/e-cigarettes/>

Marketing, packaging and consumer information

26. In relation to marketing, packaging and public information, NMH supports the preferred options of the NSFVG background paper which place restrictions around marketing, provide targeted information and advice to e-cigarette users and includes safety information on packaging (with some minor amendments as set out under recommendations below – namely in relation to mass media campaigns).
27. NMH considers that these approaches are most likely to help some smokers to quit whilst minimising increased e-cigarette uptake by minors and non-smokers who otherwise would not have used nicotine. It is also considered that the recommended marketing restrictions are unambiguous and easily enforceable.
28. Additionally, the Ministry's consultation document notes that policy options may result in amendments to existing legislation which regulates the sale and supply of e-cigarettes. NMH considers there should be a continued prohibition on producers and suppliers making therapeutic claims about their e-cigarette products (e.g. that they are smoking cessation aids), unless they have Medsafe approval for therapeutic use.

Recommendations

29. That commercial marketing of nicotine containing e-cigarettes and e-liquids products sold within NZ is limited to point of sale displays that are regulated to avoid exposure to children and young people.
30. That information (e.g. leaflets) giving advice to e-cigarette users trying to quit is provided by cessation services and at point of sale.
31. That mass media campaigns informing the availability of e-cigarettes are not undertaken and instead, a more conservative approach is taken by the dissemination of information through health professionals or targeted campaigns.
32. That packaging requirements for e-cigarettes and e-liquids products sold within New Zealand include minimum standards of child safety, safety warnings, health warnings and Quitline information, and list of constituents. Additionally, that packaging or product names which are appealing to children and young people are prohibited.
33. That there is a continued prohibition on producers and suppliers making therapeutic claims about their e-cigarette products (e.g. that they are smoking cessation aids), unless they have Medsafe approval for therapeutic use.
34. That equivalent or more stringent regulatory controls are applied to smoked tobacco marketing, packaging and consumer information, including the implementation of intensified and targeted mass media smokefree campaigns, and that all smoked tobacco products provide a list of constituents on the packaging.

Product additives and flavours

35. NMH considers that quality control and safety standards should be introduced for additives and flavours in e-cigarettes and e-liquids sold in New Zealand including maximum nicotine concentrations and the banning of flavourings that have demonstrated health risks.
36. As an example, the flavouring chemical diacetyl has been shown to be associated with bronchiolitis obliterans and other severe respiratory diseases within workers at microwave popcorn facilities and as such, warrants further evaluation for potential health risks caused by its incorporation in e-cigarettes.⁶

Recommendations

37. That quality control and safety standards are introduced for additives and flavours in e-cigarettes and e-liquids sold in New Zealand including maximum nicotine concentrations and the banning of flavourings that have demonstrated health risks.
38. That equivalent or more stringent regulatory controls are applied to smoked tobacco product additives and flavours, for example, regulating the nicotine content of cigarettes to very low levels so that they are no longer addictive (or less addictive), and making cigarettes unappealing to children and young people (e.g. changing the pH of tobacco, or banning particular additives such as menthol and sugar).

Use of e-cigarettes in workplaces and public places

39. In relation to the use of e-cigarettes in workplaces and public places, NMH supports the preferred option of the NSFVG background paper which places restrictions around where vaping is allowed (as set out under recommendations below).
40. As discussed by both the Ministry's consultation document and the NSFVG background paper, there is a general consensus that the impact on others from second-hand vapour poses significantly less health risks than from smoked tobacco. However, given that there remains very little evidence on the impacts of second-hand exposure from e-cigarettes (particularly in relation to longer duration exposure and exposure in children), ongoing concern remains.
41. Additionally, NMH believes that placing restrictions around where vaping is allowed will reduce the risk of normalising e-cigarette use.

Recommendations

42. That the use of e-cigarettes is banned in all indoor workplaces and public places (consistent with the Smokefree Environments Act 1990), and all schools, in cars, and in selected outdoor locations

⁶ Allen JG, Flanigan SS, LeBlanc M, Vallarino J, MacNaughton P, Stewart JH, Christiani DC. 2016. *Flavouring chemicals in e-cigarettes: Diacetyl, 2,3-pentanedione, and acetoin in a sample of 51 products, including fruit-, candy- and cocktail-flavoured e-cigarettes*. *Environ Health Perspect* 124:733-739.

(areas where children predominate, e.g. playgrounds, parks) but allowed in “vaping permitted” areas at local discretion and where public consultation suggests this is acceptable.

43. That clear signage indicates where vaping is permitted, and that these areas are separate to “smoking permitted” areas e.g. to minimise the risk of smokers who have quit from relapsing.
44. That equivalent or more stringent regulatory controls are applied to smoked tobacco use in cars and outdoor spaces, including legislation which bans smoking in cars and national legislation to ban smoking in children-focused outdoor areas such as playgrounds, sports fields and parks.

Tax and excise for e-cigarettes

45. As discussed within the NSFWG background paper’s evaluation of options for e-cigarette tax, balance needs to ensure that e-cigarettes are cheaper to use than smoked tobacco to promote substitution. However, consideration also needs to be given to ensuring the price is sufficient to deter use by youth and young adult never smokers.
46. Accordingly, NMH supports the preferred option of the NSFWG background paper (with some minor additions as set out under recommendations below – namely in relation to inequalities).

Recommendations

47. That the status quo is maintained i.e. no additional tax or excise is applied to nicotine-containing e-cigarettes or e-liquids.
48. That the above status is reviewed if there is evidence of substantial uptake of nicotine-containing e-cigarettes by children and young people, and/or where evidence demonstrates substantial inequalities in the uptake of nicotine e-cigarettes by never smokers e.g. a disproportionate proportion of Maori or people living in low socioeconomic areas.
49. That equivalent or more stringent regulatory controls are applied to smoked tobacco, such as the Government’s past and ongoing efforts to increase excise tax on smoked tobacco products.

Monitoring, research and legislative reviews

50. Given the current uncertainties about the risks and benefits of e-cigarettes and that it is a rapidly evolving area, NMH considers it imperative that a framework for monitoring and evaluating emerging evidence on e-cigarettes is established, and that those findings are incorporated into regular policy and legislative reviews.

Recommendations

51. That a framework for monitoring and evaluating emerging evidence on e-cigarette use is developed and implemented including on:

- the evolution and use of e-cigarettes (both internationally and in New Zealand) including within population groups (e.g. young people, never-smokers, dual smokers, ethnicity, socio-economic status)
- the impacts (positive and negative) of e-cigarette use on health, smoking prevalence and progress towards the Smokefree 2025 goal.

52. That the findings of monitoring and evaluating emerging evidence are used to inform regular reviews of any e-cigarette or smoked tobacco policy and regulations made by the Government.

Conclusion

53. The NMH thanks the Ministry of Health for the opportunity to comment on its consultation document on Policy Options for the Regulation of Electronic Cigarettes.

54. NMH supports the Government's position that nicotine e-cigarettes should be made legally available for sale and supply in New Zealand, with appropriate controls.

55. With respect to appropriate controls, NMH believes that its recommendations set out in this submission will support the Smokefree 2025 goal, address the conflicting matters pertaining to public health as set out in the submission's introduction, and result in better public health outcomes than the current situation.

Yours sincerely



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