TE WAIORA Nelson Marlborough Health

Ministry of Health

Smokefree Environments and Regulated Products Act 1990 - Proposals for regulations

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For more information please contact:
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Submitter details

1. Nelson Marlborough Health (Nelson Marlborough District Health Board) (NMH) is a key organisation involved in the health and wellbeing of the people within Te Tau Ihu o Te Waka a Maui. NMH appreciates the opportunity to comment from a public health perspective on the *Smokefree Environments and Regulated Products Act 1990 - Proposals for regulations*.
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.
3. NMH does not have any commercial interests and this submission does not contain any commercially sensitive information.
4. NMH would like to note that the Public Health Service has been limited to respond to this consultation due to staff being reassigned to COVID-19 work.

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?

NMH agrees with Option B to define the internal area as an area that is completely or partially enclosed with a roof or overhead structure of any kind, whether permanent or temporary. The current definition has been open to interpretation resulting in legal challenges. This has resulted in a reluctance to pursue infringements due to the costly legal process. The current definitions are not meeting the objectives to protect children, young people and non-smokers from the risks associated with vaping and smokeless tobacco products.

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?

NMH does not support a 50% coverage threshold as it is open to interpretation and difficult to assess.

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?

NMH agrees and also notes the need to consider a rural community's overall density when determining whether to approve an application.

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?

NMH suggests consideration of geographical spread and population density. While some rural areas have a large population, people and communities can be spread across a large area. This could lead to an increase in the number of outlets in a particular community that sits within a wider area. NMH also suggests consideration of regional health demographics, e.g. does this area have a high number of smokers, thus supporting the value of approving an application for a specialist vape retailer?

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

NMH does not agree. Regulations are necessary at this stage. They are easier to relax at a later stage if required. An example of this would be issues related to synthetic cannabis.

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?

NMH does not agree. NMH has concerns about the public visibility of vaping products and supports prohibition of displays next to confectionary as well as limits on large colourful displays that may be attractive to children and young people.

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?

Yes

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?

No

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?

No

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?

Yes

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

NMH supports the proposed statements. The general accepted understanding of the plural of harm is "harm" rather than "harms".

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

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

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

Yes

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?

NMH agrees

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

Yes. However NMH notes that some of the wording used in the regulations are complicated for the reader e.g. "erroneous impression". NMH recommends that the wording is simplified.

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

Yes

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

Yes

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

Yes

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

Yes

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

NMH supports the safety messaging statements. NMH recommends the addition of the statement "Use only as directed".

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

Yes

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.

NMH suggests less than a year. Manufacturers have had ample time to change the marketing to fit with anticipated legislative changes.

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

Yes

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

NMH agrees as this will likely discourage illicit importing and selling of products not regulated by New Zealand law.

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?

Yes

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.

NMH suggests less than a year. Manufacturers have had ample time to change the marketing to fit with anticipated legislative changes.

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?

Yes

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?

Yes

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?

Yes

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?

Yes

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?

Yes

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?

We strongly believe that any vaping product recommended by our Health Service should go the Medsafe approval process in order to provide: more assurance for professionals on safety, as standards for medicinal products are higher than for consumer products; more assurance for patients on safety; the opportunity for the product to be prescribed which may lead to lower costs and greater access for patients thereby improving equity and outcomes. We believe it should be a requirement that any vape recommended or prescribed by a health practitioner of a stop smoking service should go through the Medsafe approval process.

As regards the Safety requirements in Appendix A – para 8 and 15. We are very concerned that it is left to notifiers to accept what is and what is not an acceptable risk. We believe that the assessment of what is and what is not an acceptable risk should be recommended by manufacturers but assessed independently given the commercial conflict of interest of manufacturers.

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

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

Yes

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?

Yes

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

Unable to comment

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?

Unable to comment

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

Unable to comment

42. How many products do you anticipate notifying yourself?

Unable to comment

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

Unable to comment

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?

Unable to comment

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

Unable to comment

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?

Unable to comment

Conclusion

47. NMH thanks the *Ministry of Health* for the opportunity to comment on the *Smokefree Environments and Regulated Products Act 1990 - Proposals for regulations*.

Yours sincerely

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