

E-cigarettes, vaping and a Smokefree Aotearoa: where to next?

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This edition of the *Journal* includes a commentary by Burrowes et al¹ discussing the validity of the claim that e-cigarettes are 95% safer than smoking. The commentary is highly topical as legislation to introduce a regulatory framework for these and related products is (finally) before Parliament. It is thus timely to take stock and discuss outstanding issues, including next steps and priorities, both with the current Bill and the Smokefree Aotearoa 2025 goal of minimising use and availability of smoked tobacco products for all peoples.

Debate about the impacts of vaping and how it should be regulated have been fuelled by uncertainty about three key points. First, the harmfulness of vaping (as highlighted by Burrowes et al).¹ Second, the balance between the potential positive (eg, supporting smokers to switch from smoking to (less harmful) vaping, or helping smokers quit smoking and nicotine use completely) and negative impacts (eg, initiation of vaping among non-smokers and a possible 'gateway' effect in youth by increasing subsequent smoking uptake). Third, impacts on reducing health inequalities, a major consideration given the huge disparities in smoking and in the physical, social and economic harms it causes Māori and Pacific peoples. Philosophical differences in the priority accorded to protecting children compared to helping smokers stop smoking add further complications.²

Internationally approaches to regulation of vaping products vary. Some countries, like Australia have highly restrictive policies on availability, marketing and use while others, such as the UK, fully embrace harm reduction approaches and have much more permissive regulatory environments.

The urgency of introducing a regulatory framework in New Zealand increased

recently. First, in March 2018 a court judgement determining that heated tobacco products could be legally sold in New Zealand led to a rapid and largely unregulated increase in the availability and marketing of nicotine-containing vaping products. Second, some school principals began reporting concerns about increases in vaping among pupils and ASH Year 10 data showed trial and regular use of vaping products was growing among adolescents.^{3,4}

In February of this year the Smokefree Environments and Regulated Products (Vaping) Amendment Bill (henceforth the 'Bill') was introduced to Parliament. Key provisions include:

- Sale of vaping devices and e-liquids allowed only to adults (≥18 years) at:
 - registered specialist R18 stores (full range of flavours available)
 - non-specialist stores (mint, menthol and tobacco flavours only)
- Prohibition of advertising and sponsorship of vaping products
- Prohibition of vaping in legislated smokefree areas, except for trying products in specialist stores
- Systems for product notification and early warning of adverse effects
- Director General can issue warnings, recall or cancel product notifications, and prohibit constituents

The Health Select Committee reported on the Bill on 2 June and was largely supportive.⁵ Recommended amendments included reducing the proportion of sales from vaping products required to be designated a specialist store, and some additional exemptions to the restrictions on advertising and marketing of vaping products.

At least one proposed amendment appears problematic. The Select Committee proposed deleting a clause that allowed specialist vaping store staff to provide advice and recommendations about vaping products to their in-store customers. The Committee's logic is difficult to follow as one of the justifications for having different regulations for specialist and non-specialist retailers is that the former usually have greater expertise, and hence are better positioned to advise smokers new to vaping about the most suitable products.

However, assuming the current Bill passes into law largely unchanged, what should be the next steps?

Firstly, some of the Bill's provisions require consultation and development of regulations. For example, regulations will specify packaging, flavour descriptors and warning label requirements. Regulations will also set out product safety standards for allowed constituents and flavours and maximum concentrations where these are specified.

Key issues to resolve include whether to introduce a maximum nicotine concentration for e-liquids, as occurs in the European Union and the UK; and whether vaping products should have warnings labels and be sold in standardised (plain) packaging, like smoked tobacco products. Another will be whether regulations should vary between product types. For example, heated tobacco products are likely to be more harmful than vaping products,⁶ and sleek, discreet, high nicotine content 'pod' devices may appeal particularly to adolescents.⁷ More stringent regulations for packaging, warning labels and maximum nicotine content for these products seems sensible.

Secondly, comprehensive monitoring and rigorous and ongoing evaluation and review of the Bill's implementation and impact should occur. Thorough evaluation of major policy and legislative interventions is vital to generate evidence about feasibility, effectiveness and possible unintended consequences. The findings will inform decision-making in other jurisdictions and in New Zealand should help determine whether to continue, discontinue or change policy. Such monitoring, evaluation and review is especially important for vaping regulation given the dynamic market,

rapidly evolving technologies, and uncertain and contested impacts. Unfortunately, New Zealand Governments have a lamentable record of evaluating new policies. For example, the Government evaluated neither the 2012 point-of-sale tobacco product display ban nor the introduction of standardised packaging and revised pictorial warning labels for smoked tobacco products in 2018.

Surveillance is also required to monitor the actions and tactics of the tobacco industry. The New Zealand vaping product market currently comprises independent manufacturers and retailers, and the tobacco companies. However, recent advertising blitzes for tobacco industry vaping products (eg, Vype, BAT), and strenuous efforts to promote heated tobacco products (eg, IQoS, Phillip Morris International), suggest the tobacco companies are striving to gain greater market share. A key concern is that the tobacco industry will focus on promoting heated tobacco products, where their profit margin is greatest and they can monopolise the market.⁸ Another concern is the tobacco industry's long history of duplicity and deceit, particularly over promotion of its products to youth.⁹

A third priority is to build on the opportunity that the Bill creates to implement complementary interventions targeting smoked tobacco products. Crucial initiatives would see smoked tobacco products made much less available, as well as less appealing, palatable and addictive, for example, by prohibiting flavours and additives and minimising their nicotine content.¹⁰ Widespread availability of vaping products makes it more feasible to strengthen the regulation of smoked tobacco products, and may increase the impact of such measures in reducing smoking prevalence, by providing smokers with an acceptable and accessible alternative to smoking. For example, mandated denicotinisation of tobacco products would 'push' smokers away from smoking, as cigarettes with no or minimal nicotine content are much less satisfying,¹¹ and 'pull' them towards vaping products which deliver nicotine effectively.

Finally, the Bill will create some perplexing anomalies that will need addressing. For example, dairies, gas stations and supermarkets will only be

able to sell a restricted range of flavoured vaping products but any flavour of smoked tobacco product. Specialist vaping stores will have to be registered and provide the Government with product sales data, but stores selling much more harmful smoked tobacco products will not. The principle of proportionate regulation in relation to harm espoused by the Ministry of Health¹² surely dictates that the most harmful nicotine delivery products are the most tightly regulated, not the reverse?

In conclusion, although the vaping Bill probably satisfies few people completely, it is undoubtedly much better than the current unregulated free-for-all that key stakeholders, except possibly the tobacco companies, agree is untenable. Once the

Bill and its associated regulations are finalised, an immediate priority should be to introduce a robust monitoring and evaluation framework. The Government and the smokefree sector should then focus on developing and implementing the promised Smokefree 2025 action plan,¹³ including a comprehensive set of measures to encourage and support all smokers to quit and discourage young people from starting to smoke. In the longer term, it is important to recognise that the Māori leaders who paved the way for the Smokefree 2025 goal envisaged a Tupeka Kore Aotearoa, where the harm caused by tobacco use has been eliminated and the social and economic harm that nicotine addiction causes no longer exists.

Competing interests:

Nil.

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REFERENCES:

- Burrowes KS, Beckert L, Jones S. Human lungs are created to breathe clean air: the questionable quantification of vaping safety “95% less harmful”. *N Z Med J*. 2020; 133(1517):100–106.
- Fairchild AL, Bayer R, Lee JS. The E-Cigarette Debate: What Counts as Evidence? *Am J Public Health*. 2019; 109:1000–6.
- Walker N, Parag V, Wong SF, et al. Use of e-cigarettes and smoked tobacco in youth aged 14–15 years in New Zealand: findings from repeated cross-sectional studies (2014–19). *The Lancet Public Health*. 2020; 5:e204–e12.
- Hoek J, Edwards R, Gendall P, et al. Is Youth Vaping a Problem in New Zealand? *Public Health Expert*. Wellington: Department of Public Health, University of Otago, 2019. Available at: <http://blogs.otago.ac.nz/pubhealthexpert/2019/12/02/is-youth-vaping-a-problem-in-new-zealand/> (Accessed June 22 2020).
- New Zealand Parliament. Smokefree Environments and Regulated products (Vaping) Amendment Bill Government Bill: As reported from the Health Committee. Wellington: New Zealand Parliament, 2020.
- Jankowski M, Brozek GM, Lawson J, Skoczynski S, Majek P, Zejda JE. New ideas, old problems? Heated tobacco products - a systematic review. *Int J Occup Med Environ Health*. 2019; 32:595–634.

7. Lee SJ, Rees VW, Yossefy N, Emmons KM, Tan ASL. Youth and Young Adult Use of Pod-Based Electronic Cigarettes From 2015 to 2019: A Systematic Review. *JAMA Pediatr.* 2020.
8. Robertson L, Hoek J, Gilmore A, Edwards R, Waa A. Regulating vaping and new nicotine products: Are tobacco companies' goals aligned with public health objectives? *Public Health Expert.* Wellington: Department of Public Health, University of Otago, 2019. Available at: <http://blogs.otago.ac.nz/pubhealthexpert/2020/05/29/how-the-tobacco-industry-targets-young-people-to-achieve-a-new-generation-of-smokers/> (Accessed June 20 2020).
9. Ling P, Glantz SA. Why and how the tobacco industry sells cigarettes to young adults: evidence from industry documents. *Am J Public Health.* 2002; 92:908–16.
10. Thornley L, Edwards R, Waa A, Thomson G. Achieving Smokefree Aotearoa by 2025 (ASAP). Wellington: University of Otago (ASPIRE 2025), 2017.
11. Donny EC, Walker N, Hatsukami D, Bullen C. Reducing the nicotine content of combusted tobacco products sold in New Zealand. *Tob Control.* 2017:e37–e42.
12. Ministry of Health. Ministry to consider risk-proportionate regulation for vaping and heated tobacco products. Wellington: Ministry of Health, 2018. Available at: <http://www.health.govt.nz/news-media/news-items/ministry-consider-risk-proportionate-regulation-vaping-and-heated-tobacco-products> (Accessed June 20 2020).
13. Thomas R. No room for complacency if we are to kick smoking by 2025, Helen Clark says. Wellington: Stuff, March 27 2018. Available at: <http://www.stuff.co.nz/national/102608415/no-room-for-complacency-if-were-to-reach-kick-smoking-by-2025-helen-clark-says> (Accessed June 20 2020).