

9 March 2021

Ministry of Health

By email: vaping@health.govt.nz

Smokefree Environments and Regulated Products Act 1990 Proposals for Regulations

Dear Colleague

The New Zealand Medical Association (NZMA) wishes to provide feedback on the above consultation. The NZMA is New Zealand's largest medical organisation, with about 5,000 members from all areas of medicine. The NZMA aims to provide leadership of the medical profession, and to promote professional unity and values, and the health of all New Zealanders. We recognise the principles of te Tiriti o Waitangi and the special obligations to Māori, particularly to ensure equity and active protection. Current disparities in health outcomes between Māori and non-Māori are unacceptable. The NZMA is committed to advocating for policies in health and the social and wider determinants of health that urgently address these disparities and contribute to equity of health outcomes. Our submission has been informed by feedback from our Board, members and Advisory Councils.

Our statement on Smokefree 2025 New Zealand summarises the NZMA's position on vaping.¹ We have also previously endorsed the following joint position on vaping:²

- the best thing you can do for your health is be smokefree and vape free
- vaping is not for children or young people
- vaping can help some people quit smoking
- vaping is not harmless but it is much less harmful than smoking
- vaping is not for non-smokers.

In March last year, we submitted on the Smokefree Environments and Regulated Products (Vaping) Amendment Bill.³ We note the Ministry of Health is now seeking views on regulatory proposals that will provide the operational detail to help achieve the intent of the new provisions of the Act. That intent is to: i) better support smokers to switch to regulated products that are less harmful than smoking, and ii) protect children, young people and non-smokers from the risks associated with vaping and smokeless tobacco products. While we welcome the development of these regulations, the increasing uptake of youth vaping in non smokers in Aotearoa is particularly concerning. Our view is that the balance in the regulations needs to shift towards

¹ Position statement available from <https://bit.ly/33MJkmj>

² <https://vapingfacts.health.nz/our-position-on-vaping.html>

³ Submission available from <https://bit.ly/3e30rY8>

giving greater emphasis towards discouraging young people and non smokers from taking up vaping. While it is important to support people to switch from smoking to vaping, the ultimate goal of regulation should be to support people not to smoke and not to vape. A key aim of regulation should be to counter an apparent widespread misperception that vaping is safe. Our feedback on selected specific aspects in the regulations is provided below.

Public health messages

While we support the information on the Vaping Facts website, we suggest that there is a need to strengthen public health messaging that vaping is still harmful to health instead of continuing to mainly emphasise that it is safer than smoking. This rebalancing of public health messaging is especially important for young people and to counter the apparent widespread misperception that vaping is safe.

Display of vaping products in retail settings

We note that the Ministry considers that existing displays of vaping products within retail premises is not problematic and is not proposing to make regulations to control the display of vaping products. We disagree with the Ministry's assessment. In light of increasing youth uptake of vaping, we believe that controls on retail displays of vaping products are necessary and should include the following measures:

- vaping products should not be visible from outside any retail premise;
- window displays of vaping products should be prohibited to protect young people from being attracted to them;
- there should be constraints on how vaping products are displayed in generic retail stores—for example, prohibiting them from being placed next to confectionary and limiting large colourful displays that may be attractive to children and young people.

Packaging requirements for vaping products

We strongly support the requirement for health warnings for vaping products but consider the proposed wording (*'this product contains nicotine which is a highly addictive substance'*) to be inadequate. We believe the health warning should also allude to the uncertainties over possible other serious health harms of vaping such as lung damage as well as the lack of data about the longer-term health impacts of vaping. Also of note is the observation that vaping causes significant airway irritation on any airway manipulation under anaesthesia.

Product safety requirements

We welcome the product safety requirements that are being proposed. We suggest the addition of a requirement specifying tamper proof packaging for vaping substance containers to mitigate the risk of vials being refilled with other substances. We also believe that the Ministry of Health should mandate the reporting of vaping substance content test results.

Smoking cessation training

Given that a key intent of the regulations is to help people quit smoking, our view is that specialist vape retailers need to have smoking cessation training. Dual use must be discouraged, and quitting vaping must be the eventual goal.

Annual reporting and returns

We are supportive of the proposed requirements for specialist vape retailers to report sales of vaping products by brand of device and liquid. We also support the proposals for manufacturers' and importers' sales reports. These reports will be useful to compare with sales reports for cigarettes.

Flavours

In our 2020 submission on the Bill, we flagged the importance of carefully evaluating the impacts of the availability of flavours on both vaping and smoking patterns, and to make adjustments if necessary. While the availability of flavours is set in the primary legislation and outside the scope of the current consultation, there is increasing concern that the wide range of available flavours are attracting non-smokers to vaping. Given the observed increases in youth vaping, our view is that restrictions on the availability of flavours under the Act are too permissive. We ask the Government to consider amending the primary legislation to limit the availability of flavours to deter youth vaping and new non-smokers from taking up vaping.

We hope our feedback is helpful and look forward to seeing the finalised regulations.

Yours sincerely

A handwritten signature in blue ink that reads "K. Baddock". The signature is written in a cursive style with a large initial 'K' and a long, sweeping underline.

Dr Kate Baddock
NZMA Chair