

Senate Committee on Tobacco Harm Reduction

Introduction

My name is Robert Beaglehole. I am a New Zealand public health physician with a longstanding professional interest in the prevention and management of chronic diseases, especially heart disease, stroke, cancer and diabetes. I was professor of public health at the University of Auckland before taking up a position at WHO, Geneva where I became the Director of the Department of Chronic Diseases and Health Promotion. I have been involved in tobacco control in New Zealand and globally for over four decades. In 1982 I established ASH (NZ) and now Chair the ASH Board.

Tobacco control in New Zealand

The key tobacco challenge in New Zealand is accelerating progress towards the Smokefree 2025 goal (an adult daily prevalence of <5%) and thus reducing the enormous burden of premature death and disease caused by cigarette smoking. Daily adult cigarette smoking rates in New Zealand are now 13% with large ethnic and socio-economic inequalities. It is noteworthy that New Zealand has implemented all the WHO recommendations on tobacco control including restrictions on age of sales, smokefree environments, regular tax increases, bans on advertising and sponsorship, plain packaging and smokefree cars.

The availability of a range of innovative reduced harm products for the delivery of nicotine without the toxic cigarette smoke presents a welcome opportunity to accelerate progress towards the Smokefree 2025 goal. These products are widely acceptable to people who smoke cigarettes and want to switch to less harmful products, are much cheaper than cigarettes and are undoubtedly effective in helping many people to switch from cigarette smoking.

In August of this year the Government passed the Smokefree Environments and Regulated Products (Vaping) Amendment Legislation (“Vaping legislation” for short) with support of all parliamentary parties.

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This submission describes and analyses the 2020 New Zealand vaping legislation and draws lessons which might be of interest to the Senate. I note that Australian approaches to tobacco control have often been of assistance in helping New Zealand develop effective tobacco control responses, for example and most recently, the Australian plain packaging experience.

Purpose of the New Zealand Vaping Legislation

The key aim of the legislation is to provide a balanced approach to the regulation of vaping and smokeless tobacco products. Importantly, the legislation acknowledges that these products are less harmful than cigarette smoking and that they may help some people to quit smoking. At the same time, it reflects concerns about young people's access to and use of these products.

The New Zealand legislative approach

There was no suggestion that new legislation would be prepared to focus only on vaping and heated tobacco products. The legislation extends many of the existing provision of the Smoke-free Environments Act (1990) to vaping products and heated tobacco devices. The legislation enables the Act to regulate vaping products in the same manner as tobacco products. Many detailed provisions covered by the legislation are left for regulation.

Main provisions of the legislation

Regulated products

This is a new category of products introduced to provide flexibility to include new reduced harm products that might come onto the market. The term means a tobacco product, vaping product, smokeless tobacco product, or herbal smoking product

Sales to minors

Sales of regulated products (including tobacco products, vaping products, and smokeless tobacco products) are prohibited to people under 18 years of age, in line with the age restrictions on cigarettes.

Advertising and sponsorship

Advertising and sponsorship of regulated products are prohibited. Public health campaigns approved by the DGH are allowed. Retailers may display point of sale signs which do no more than communicate health information or warnings.

Smokefree areas

Regulated product use is prohibited in legislated smokefree areas and local authorities can make their own decisions on vaping in outdoor smokefree areas.

Vape free cars was added to the recently passed "Smokefree cars with children" legislation

Labelling and packaging

These requirements will be established by regulations after public consultation.

Display

Regulations will be established for display of vaping products within retail sites or on an associated internet site

Product safety rules

Will be established in regulations which will be consulted on before finalisation.

Reporting of adverse effects

Manufacturers and importers must advise the Ministry of Health of any adverse effects

Flavours

Generic retailers may only sell tobacco, mint and menthol flavoured vaping liquids. Further flavours may be allowed by an "order in council".

Specialist vape stores may sell any flavours that have not been prohibited.

Rules for retailers

Generic retailers (dairies, convenience stores, supermarkets, petrol stations)

- No limits on access.
- No give-aways, discounting or loyalty points.
- Vaping prohibited in store.
- Retailer may, in response to a request, identify the regulated products available for sale

Specialist vape retailers.

- Must have 70% of turnover from vaping (down from the original 85% proposal). An alternative threshold of 60% applies if the Director-General is satisfied that the lower threshold is appropriate in the circumstances after having regard to: the geographic location of the retail premises; the population in relation to which the retailer carries out their business; and any other prescribed criteria.
- Entry only to people over the age of 18 years.
- Vaping allowed in store
- Give-aways, discounting and loyalty points allowed.
- Retailers may provide advice, recommendations and demonstration of regulated products to customers.

Community "cessation" programmes

Community cessation activities are allowed by a registered health practitioner; or a person who has completed a Stop Smoking Practitioners Programme or is undertaking such a programme under appropriate supervision or with the approval of the DGH. Smoking cessation programmes are allowed to distribute vaping products for free or at a reduced price.

Oral nicotine products

Oral non-tobacco nicotine products are prohibited from sale. Oral tobacco nicotine products were already banned

Nicotine concentrations of vaping liquids

Not specified in legislation and not, apparently, to be determined by regulation.

Implementation of the legislation

The Act comes into force on 11 November 2020. However, several provisions of the legislation come into effect in a phased manner until 11 February 2022.

Lessons from the New Zealand vaping legislation

Positive outcomes:

- It recognizes vaping and other harm reduced products as having a role in helping people stop smoking
- Many aspects will be settled by regulations after public consultation
- nicotine concentrations have not been limited
- The limited number of flavours available in generic retailers can be expanded by an Order in Council
- Public health information campaigns are allowed under the direction of the Director General of Health.

Flaws which may have unintended consequences, for example, it:

- Does not adopt a risk proportionate approach to regulated products, that is it often conflates vaping with cigarette smoking, e.g., smokefree environments; advertising/promotion; prohibiting oral non-tobacco products;
- Over emphasizes the youth vaping “epidemic” and thus limits the opportunities available to adult cigarette smokers who may want to switch to a less harmful nicotine delivery product; and
- Bans oral nicotine pouches whether or not they contain tobacco; and
- Legislates for vape-free cars

Next steps in ensuring the legislation is fully effective include:

- Preparation of regulations which will be open to public consultation;
- Promoting vaping and the use of other reduced harm products to adult cigarette smokers; and
- Monitoring the impact of the legislation on the cigarettes smoking and vaping behaviours of adults and youth.

Summary

The recently passed New Zealand legislation adopts, at least in part, an evidence-based approach to nicotine delivery products guided by the fact that these products are much less harmful, cheaper, and proven to help cigarette smokers who want to switch. The New Zealand legislation and the forthcoming regulations will provide important lessons for the Senate Committee as it considers opportunities for further reducing cigarette smoking rates in Australia. Australia could easily improve upon the New Zealand legislation and ensure that reducing the enormous toll of cigarettes on the health of adult cigarette smokers becomes the over-riding focus and that concerns about youth vaping do not unduly influence the legislation.

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