

Submission form

Your details

This submission was completed by: *(name)* Candace Bagnall
Email: cbagnall@akcansoc.org.nz
Phone number: 0220311849
Organisation *(if applicable)*: Cancer Society
Organisation address: *(street/box number)* 1 Boyle Crescent Grafton
(town/city) Auckland
Role *(if applicable)*: Senior Analyst

Additional information

I am, or I represent an organisation that is, based in:

New Zealand Australia Other *(please specify)*:
Click or tap here to enter text.

I am, or I represent, a: *(tick all that apply)*

Overseas manufacturer New Zealand-based manufacturer
 Importer Exporter
 Retailer Government
 Wholesaler or distributor Institution (eg, university, hospital)
 Member of the public Non-governmental organisation
 Other *(please specify)*:
Click or tap here to enter text.

Privacy

We intend to publish the submissions from this consultation, but **we will only publish your submission if you give permission**. We will remove personal details such as contact details and the names of individuals.

If you do not want your submission published on the Ministry's website, please tick this box:

Do not publish this submission.

Your submission will be subject to requests made under the Official Information Act (even if it hasn't been published). If you want your personal details removed from your submission, please tick this box:

Remove my personal details from responses to Official Information Act requests.

Commercial interests

Do you have any commercial interests?

- I have a commercial interest in tobacco products
- I have a commercial interest in vaping products
- I have commercial interests in tobacco and vaping products
- I do not have any commercial interests in tobacco or vaping products

Commercially sensitive information

We will redact commercially sensitive information before publishing submissions or releasing them under the Official Information Act.

If your submission contains commercially sensitive information, please tick this box:

- This submission contains commercially sensitive information.

If so, please let us know where.

Click or tap here to enter text.

Protection from commercial and other vested interests of the tobacco industry

New Zealand has an obligation under Article 5.3 of the World Health Organisation Framework Convention on Tobacco Control (FCTC) when 'setting and implementing public health policies with respect to tobacco control ... to protect these policies from the commercial and other vested interests of the tobacco industry'.

The internationally agreed Guidelines for Implementation of Article 5.3 recommend that parties to the treaty 'should interact with the tobacco industry only when and to the extent strictly necessary to enable them to effectively regulate the tobacco industry and tobacco products'.

The proposals in this discussion document are relevant to the tobacco industry and we expect to receive feedback from companies in this industry. We will consider all feedback when analysing submissions.

To help us meet our obligations under the FCTC and ensure transparency, all respondents are asked to disclose whether they have any direct or indirect links to, or receive funding from, the tobacco industry.

Please provide details of any tobacco company links or vested interests below.

Click or tap here to enter text.

Please return this form:

By email to: vaping@health.govt.nz

By post to: Vaping Regulatory Authority, PO Box 5013, Wellington 6140.

Consultation questions

The Ministry of Health is seeking comments on the following.

Regulatory proposal 1: Defining an internal area

1. Which option do you support for the definition of an internal area and why?

CSNZ supports Option B – the Ministry’s preferred option (completely or partially enclosed with a roof or overhead structure) as this is the simplest and easiest to understand by the public and premises and the easiest to enforce.

We support making **all** hospitality areas Smokefree through legislation, as requested by Local Government NZ in their national remit in 2015.¹

We support the inclusion of roof and all roof coverings (including umbrellas), whether permeable or not, in the definition. Any openings in a roof structure should be deemed as part of the roof unless the owner or lessee can provide evidence (beyond reasonable doubt) to the contrary. CSNZ would like the word “substantially” removed from the definition in option B as this is subjective and has been problematic for enforcement.

Removal of the word ‘substantially’ enclosed; as this is subjective and has historically been problematic for enforcement. Requirements for substantial or complete enclosure could possibly contradict the intent of the regulation.

We don’t support the status quo (option A) as there have been several unsuccessful court cases where judgements have highlighted legal complexities and practical difficulties with the current ‘internal area’ or ‘open areas’ definitions. Judgements in both the Shearwater Hotels Ltd and Drewmond Hard Hospitality cases showed the current legislation is inadequate to determine these areas.

We do not support Option C (% of roof or wall coverage) nor D (using air quality measures) as there is no international precedent that these approaches will work for hospitality areas (in contrast to laws in many jurisdictions internationally that give distance limits such as no smoking within 10 metres of doors or windows of hospitality venues).

¹ Local Government New Zealand 2015 Remit with majority support: “That LGNZ requests that the Government develops and implements legislation to prohibit smoking outside cafes, restaurants and bars”

Both options C&D are more difficult for the public and retailers to understand and go against the principle of “law breaches being easily understandable by the public” and hence reportable by the public.

Feedback to CSNZ from Smokefree Compliance Officers within some Public Health Units is that Options C and D would both be more difficult to monitor and enforce than Option B. They would likely generate extra costs for DHB compliance monitoring staff. For example, option D enforcement officers would need air monitors that are typically expensive and need regular calibration. They also need to potentially sample the venues at multiple times given variable conditions for air quality. Options C and D would more likely result in complicated and expensive disputes in court.

We strongly recommend that the legislation be extended in the near future to ensure all hospitality areas (cafes, restaurants and bars) are completely smokefree. The Smokefree Environments and Regulated Products Act purpose is to protect all workers and the public from exposure to second-hand smoke. Making all hospitality areas smokefree will achieve this and protect both workers and the public from the harms of second-hand smoke.

In a 2018 New Zealand survey 78% supported a ban on smoking in all outdoor public dining areas with support increasing significantly over the previous ten years.²

In 2019 CSNZ conducted 1481 electronic and paper-based surveys/ submissions at our Relay for Life and other events nationwide to gauge public support for smokefree outdoor hospitality areas. There was very high support (92%) nationally for the legislation to be strengthened to ensure all outdoor areas of cafes, bars and restaurants are smokefree. Across all regions there was very high support for this: Otago/ Southland 92% (total number of participants n = 521) Auckland/Northland 95% (n = 367), Wellington/ Marlborough 93% (n=140), Canterbury/West Coast 92% (n = 95), Central Districts/Waikato 89% (n=358).

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?

CSNZ does not support Option C as it is open to different interpretations, more difficult to measure and is more difficult to both monitor and enforce. This could result in more time consuming and unnecessary court cases. (See comments above.) Option C would also go against the WHO principle that no level of second-hand smoke exposure is safe. The US Surgeon General’s report 2006 noted there is no risk-free level of exposure to second-hand smoke.

² Health Promotion Agency Health and Lifestyles Survey 2018

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?

No. Many people access vaping products online and at this stage it is not clear whether rurality is a barrier to access for people using vaping to quit. The definition of 'rural' could be problematic given population distribution is changing quickly in many parts of NZ. It is also unclear whether providing for a slightly lower threshold will make any difference to access.

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?

This question appears to only relate to SVRs meeting the lower threshold of 60% of sales from vaping products, or all SVRs. **CSNZ recommends additional 'special criteria' for all specialist vape retailer (SVR) approvals**, as outlined below.

- (a) CSNZ would like 'suitability of applicant' to be included as criteria. This could include experience, previous convictions, character and reputation, relevant training and knowledge of the Act and concerns about previous sale of tobacco to minors.
 - (b) SVRs should not be approved within a certain distance of schools and ECCs.
 - (c) The density of SVR outlets needs to be restricted to avoid saturating communities with outlets.
 - (d) SVRs should be required to employ suitably trained workers and/or facilitate access to suitably qualified health workers (as outlined at 3.7) to provide advice to people wanting to use vaping to quit smoking.
5. Do you agree that regulations are not necessary at this stage? If not, what do you propose should be put in regulations?

No. See proposed criteria for SVRs at 4 above.

CSNZ supports the licensing of all retailers selling regulated products (all sellers of tobacco and vaping products should be required to obtain a licence). It is unfair that

specialist vape stores must be registered while retailers selling smoked tobacco products, which pose far greater health risks, do not.

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?

CSNZ does not agree that the display of vaping products should not be regulated at this stage.

CSNZ supports the regulation of vaping products display at this stage for both generic and specialist retailers.

CSNZ supports differentiating in some respects between requirements for specialist vape stores and those for generic retailers, as follows.

(a) All vape retailers

CSNZ strongly supports **restricting the visibility of vaping products from outside any retail premise**. Our divisions have noticed that vape shops around the country are using new tactics since marketing was restricted under the new Act. SHOSHA for example has been using bright lights and colours to enhance the displays of products, and some vape shops have utilised graffiti walls near their shops to advertise. The products themselves are attractive in window displays and ought not to be able to be seen from the outside

of any shop (see photo of full window promotion below taken in January 2021 in Henderson, Auckland and a pre-Xmas 2020 display in Queenstown).



Figures 1 and 2. Vaping displays visible from outside vaping shops, early 2021, Auckland (left), Queenstown (right)

Many retailers currently utilise full window displays and these are visible and attractive to children and young people, as well as adult non-smokers and ex-smokers. Such displays are inconsistent with the harm-reduction intention of the Act and ought not to be allowed.

Specifically, Section 3A 1(b) and (c) of the Act state the purpose of the Smokefree Environments and Regulated Products (Vaping) Amendment Act (2020) includes:

- (b) to prevent the normalisation of vaping; and
- (c) to regulate and control the marketing, advertising, and promotion of regulated products (whether directly, including through the appearance of regulated products and packages, or through the sponsoring of other products, services, or events) in order to improve public health by —
 - (i) discouraging people, especially children and young people, from taking up smoking; and
 - (ii) discouraging non-smokers, especially children and young people, from taking up vaping or using smokeless tobacco products;

(b) Generic vaping retailers

Regulated product devices ought not to be sold in generic vape stores because people wanting to vape to quit will not be able to receive support on quitting from generic stores, and specifically advice on types of devices. People who are already finding vaping

helpful in quitting will be familiar with the most appropriate devices for them and most will be visiting generic stores to top up their vape 'juice'.

The majority of people who visit generic stores are not the target audience for vaping to quit, and using vaping products will be increasing their risk of harm rather than reducing it. This because most people visiting generic stores will be non-smokers.

Children and non-smokers ought not to see any point-of-sale (POS) marketing in generic stores and the products should not be visible to them. New Zealand research has demonstrated that the more frequently 14-to-15-year-olds were exposed to POS displays of tobacco products, the greater their risk of smoking experimentation.³

An evaluation undertaken following the ban on POS displays in New Zealand found this risk had decreased markedly.⁴ These findings suggest exposure to POS displays of vaping products may increase the risk of experimentation with ENDS among young non-smokers. CSNZ supports regulations that would reduce this risk.

Large displays of vaping product should not be allowed in generic stores. This includes the prohibition of 'stacking' where one or more of the same product is displayed at any given time; and the prohibition of vaping products to be displayed next to large colour displays, such as confectionary.

Vaping products should not be displayed or otherwise marketed in generic stores, although the 2020 legislation allows generic retailers to have POS displays featuring

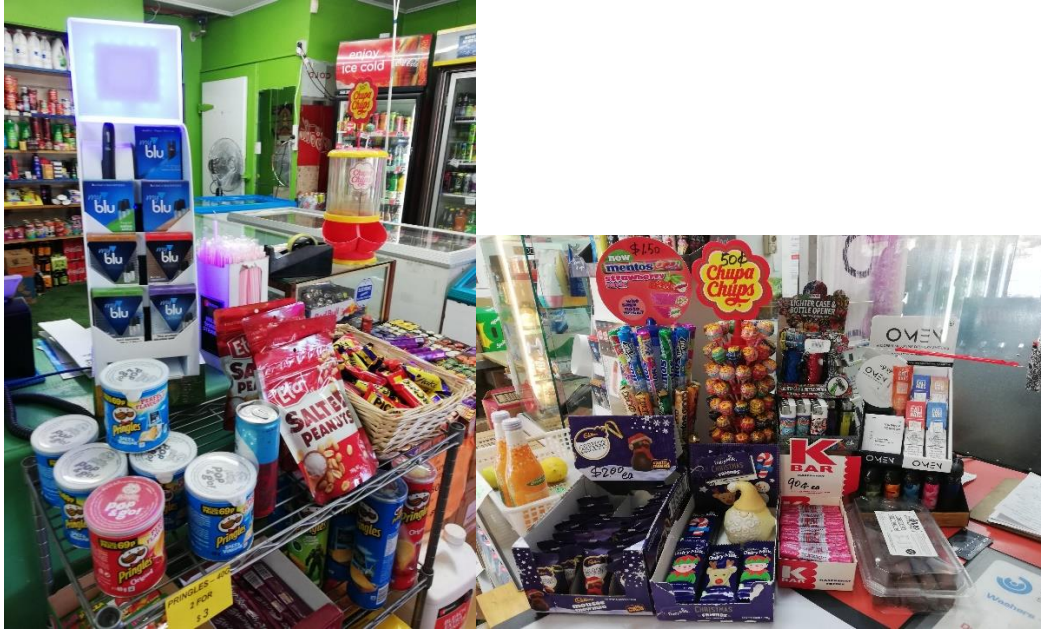
³ Paynter J, Edwards R, Schluter P, et al. Point of sale tobacco displays and smoking among 14-15 year olds in New Zealand: a cross-sectional study. *Tobacco Control* 2009;18(268-274)

⁴ Edwards R, Ajmal A, Healey B, et al. Impact of removing point-of-sale tobacco displays: data from a New Zealand youth survey. *Tobacco Control* 2017;26(4):392-98. doi: 10.1136/tobaccocontrol-2015-052764

vaping products. This appears to be in conflict with the purpose of the Act as cited above – especially the intention not to ‘normalise’ vaping.

Given the evidence from smoked tobacco products, **we are concerned that the Act allows generic retailers to display vaping products in POS displays.**

The images below were taken in generic stores (dairies in Christchurch) photographed in early 2021. It illustrates the problems of allowing unrestricted POS marketing of vaping products alongside lollies and snack food at eye-level for children.



Figures 3 and 4. POS vaping displays inside dairies, Christchurch, early 2021

We assume that the intention of allowing POS displays in generic stores is to facilitate vaping to quit at a community level by making it easier for people who smoke to access e-cigarettes and encourage their uptake with this group.

However, NZ research⁵ suggests there are many barriers to quitting through vaping, and generic stores will be unable to provide the practical advice and support needed. More importantly, displays of vaping products in generic stores will expose minors and non-smokers to the risk of nicotine addiction through vaping.

We support **standardised packaging for vaping products** as this has been successful in reducing the attractiveness of smoking products to young people. There is certainly a very strong argument for vaping products sold in generic stores to have standardised packaging as they are more visible and accessible to children than conventional tobacco products. This approach would also prevent new product merchandising designed to appeal to young people eg by creating opportunities for them to personalise their device and increase the social attractiveness of the product.

(c) Specialist Vape Retailers

The majority of visitors to SVRs are likely to be people who smoke, and hopefully either already in the process of quitting or motivated to try the products to help them quit. Displays that provide useful product information for these people and advice on using

⁵ Māori women's perspectives and experiences with smoking and vaping | Te Hiringa Hauora/Health Promotion Agency (hpa.org.nz)

the products to quit would be helpful and consistent with the purpose of the Act. It is appropriate that SVRs provide harm reduction messages.

Displays inside SVRs that are not visible from outside the shop would still potentially attract adult non-smokers or ex-smokers who were curious enough to enter the R18 stores. NZHS data for 2020 shows that a large proportion of people who have tried and now use e-cigarettes are ex-smokers (see Figure 1 below).

NZ ITC: E-cigarette ever, current and daily use – by smoking status (W2)

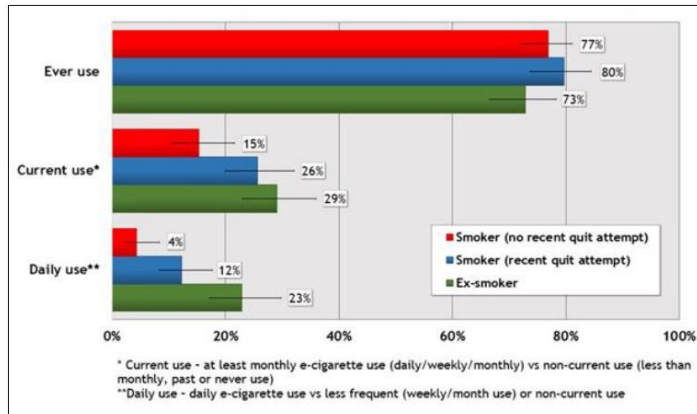


Figure 5. Presentation slide from Otago University Summer School February 2021 (Edwards, R.)

CSNZ would therefore like to see restrictions on POS advertising in SVRs to minimise the risk that adult non-smokers and ex-smokers are attracted to start using the products, as this will increase their risk of harm.

Regulations also need to **treat products with higher risk profiles, such as heated tobacco products (HTPs), differently**. These products have not been shown to be helpful in quitting smoking, or less dangerous than smoking⁶. It is clear from tobacco industry communications to shareholders that these products are designed to recruit non-smokers and increase the tobacco market. We support regulations that allow only specialist vape retailers to sell HTPs⁷.

We recommend that **regulated product devices are sold only at specialist vape stores and that all people selling these devices have training in smoking cessation**.

3.2 Price lists given to retailers for tobacco only

- Do you support the proposal to restrict the information allowed on manufacturers' price lists for tobacco products?

Yes, and this needs to include all tobacco products including smokeless tobacco products.

⁶ Glantz SA. (2018) Heated tobacco products: the example of IQOS. *Tobacco control*; **27**(Suppl 1): s1-s6.

⁷ 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? 2020.

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?

Information must be restricted to prevent any kind of marketing of products by manufacturers. However, we would support inclusion of the products' nicotine levels so that lower nicotine cigarettes are easily identified.

The consultation document states that the Ministry does not propose 'to regulate manufacturer's price lists to retailers for vaping products because vaping products are exempt from many of the restrictions on promotion that apply to tobacco products.' It is unclear whether smokeless tobacco products are included in the definition of 'tobacco' or 'vaping' products.

CSNZ supports restricting advertising/promotional material between manufacturers and distributors, and retailers. Trade publications should not be promotional in nature and should contain only factual information regarding price, availability, pack size, nicotine levels and name of the product.

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?

CSNZ considers that **consistency with current material on Vaping Facts needs to be updated as priority as it does not enable sufficient protection for children and young people and needs to reflect new evidence of potential harms to non-smokers.**

It is the Ministry's role (in this case via HPA) to provide authoritative guidance on health issues and there are practical reasons for aligning messaging requirements with this source of information.

However, Vaping Facts messages focus almost entirely on encouraging people who smoke to vape and (a) provide minimal information on the potential risks to young people from vaping; (b) are based on outdated sources of information regarding potential harms to non-smokers from vaping; and (c) are silent on the risks of dual vaping and smoking.

Vaping retailers are already using material from Vaping Facts to promote their products, as shown in Figure 8 below. Given that there is nothing in the proposed approach to stop them suggesting that their products will help reach SFA 2025 (for which there is no evidence), while also selling conventional cigarettes. Perhaps a more restrictive licensing approach would be appropriate as it would provide leverage for

<https://blogs.otago.ac.nz/pubhealthexpert/2020/03/27/regulating-vaping-and-new-nicotine-products-are-tobacco-companies-goals-aligned-with-public-health-objectives/>.

preventing commercial interests to capitalise on public good tobacco control campaigns.



Figure 6. Vape shop in Invercargill aligning its products with SFA 2025. March 2025. The shop also sells conventional cigarettes.

CSNZ supports different relative risk messages and communication approaches for people who smoke from those who don't. While vaping is likely to reduce health risk in people who smoke and use vaping to quit, it is likely to increase risk of harm in those who don't smoke. Vaping Facts material is primarily targeting people who smoke, with the intention of encouraging vaping as a quit tool. As a general population information source about vaping, it is not balanced in terms of communicating risk to non-smokers and young people, for whom vaping is likely to be harmful^{8 9}.

(a) Messaging to young people and parents

There is minimal information for young people or parents on the Vaping Facts website. Telling children that they shouldn't vape without telling them why is unlikely to be effective when their friends, older kids at school, and their parents may be vaping. The overwhelming harm reduction messaging on the website aimed at people who smoke, only confirm young people's belief that vaping is harmless.

⁸ Wills, T. A., Soneji, S. S., Choi, K., Jaspers, I., & Tam, E. K. (2021). E-cigarette use and respiratory disorders: an integrative review of converging evidence from epidemiological and laboratory studies. *European Respiratory Journal*, 57(1).

⁹ Keller-Hamilton, B., Lu, B., Roberts, M. E., Berman, M. L., Root, E. D., & Ferketich, A. K. (2020). Electronic cigarette use and risk of cigarette and smokeless tobacco initiation among adolescent boys: A propensity score matched analysis. *Addictive Behaviors*, 114, 106770.

Furthermore, it provides parents who vape with no incentive to prevent their children from vaping.

We note that the material on youth vaping prevalence in the background section of the consultation document does not provide the most recent NZ data and somewhat downplays what is happening in youth vaping. It refers to 2018 rates of daily and regular vaping prevalence in 14-15-year olds: "...repeated use of vaping products amongst young people is low (1.9 percent vape daily, 8 percent vape at least monthly)". Walker and colleagues (2020) analysed 2019 Year10 data and found that daily vaping was 3.1% and identified "a statistically significant increase over time in the proportion of year 10 students regularly using e-cigarettes (from 3.5% in 2015 to 12.0% in 2019)".¹⁰

The Youth19 survey¹¹ of 13-18-year olds ($n=7,700$) found that 38 percent had tried vaping, 10% were vaping regularly and six percent weekly or more often. Nearly two-thirds (65%) of students who had ever vaped, and nearly half (48%) of regular vapers had never smoked cigarettes.

Because there is no 2020 youth data it is not known whether the upward trend for both daily and regular vaping in young people has continued, but given aggressive industry marketing up until the legislation was passed in November 2020, it is very likely.

New Zealand now has a cohort of young people who have had easy access to podvapes with very high levels of nicotine (up to 60mg/ml) for at least two years. This is a very different scenario from that in Europe and the UK, countries where nicotine levels have been limited to 20mg/ml and much less aggressive marketing allowed. It is therefore important to make every effort to protect this age group until there is more current information about vaping and smoking prevalence, and what impact vaping is having on young New Zealanders.

¹⁰ Walker, N., Parag, V., Wong, S. F., Youdan, B., Broughton, B., Bullen, C., & Beaglehole, R. (2020). 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*, 5(4), e204-e212.

¹¹Youth-19 Vaping Fact Sheet retrieved from <https://www.youth19.ac.nz/publications/2020/3/27/vaping-fact-sheet> on 27 March 2020.

Some of the relative harm messaging is also misleading and inaccurate, as evidenced by the graph on the left below, currently on the Vaping Facts website.

RELATIVE HARM

Smoking



Smoking less and vaping



Vaping only



Not smoking or vaping



Figures 7 and 8. Vaping Facts graph (left) and vape retailer messaging used to promote vaping products in Invercargill, 2021 (right).

Young people and parents looking at the graph could be forgiven for concluding that vaping is harmless. The graph also suggests that smoking less while vaping reduces harm; but evidence suggests that ‘smoking less and vaping’ continues to expose people to significant risk of smoking-related diseases¹².

The poster above photographed at a vape store in Invercargill in early 2021 provides an example of the potential risks of aligning industry marketing with current information on Vaping Facts. The industry is already using this non-evidence-based relative harm graph to promote and legitimise their products.

More detailed information about potential health risk including the risk of nicotine addiction and associated increased risk of smoking in young people needs to be provided urgently, to deter dual use and uptake by young people and non-smokers. The current material implies that vaping can be continued indefinitely and says very little about the risks of dual use - vaping and smoking which NZ research suggests is very common with over 60 percent of vapers also smoking¹³. There is no information about the impact of vaping on children and young people.

We suggest that qualitative research is undertaken to understand how young people are interpreting Vaping Facts messages, and that changes are made in response to such information and recent research that suggests young people are more responsive to health messaging about “brain” and “chemicals” warnings compared to

¹² Chang, J. T., Anic, G. M., Rostron, B. L., Tanwar, M., & Chang, C. M. (2020). Cigarette Smoking Reduction and Health Risks: A Systematic Review and Meta-Analysis. *Nicotine & Tobacco Research*.

¹³ Robertson, L., Hoek, J., Blank, M. L., Richards, R., Ling, P., & Popova, L. (2019). Dual use of electronic nicotine delivery systems (ENDS) and smoked tobacco: a qualitative analysis. *Tobacco control*, 28(1), 13-19.

warnings about addiction. Warnings with relative harm statements were perceived as less believable and credible¹⁴.

(b) Need to differentiate between relative harm messages for people who smoke from those who do not.

The long-term risks of vaping are largely unknown but emerging evidence suggests the need for a precautionary approach. The current messaging on this website is primarily targeting adults who want to quit smoking using vaping, and this **messaging does not sufficiently encourage quitting vaping as a third stage in the quit process.**

An example of new evidence that is not reflected in Vaping Facts is a recent systematic review¹⁵ that concluded while there were improved respiratory health outcomes from switching completely from smoking to vaping, switching from smoking to e-cigarettes does not appear to significantly lower odds of cardiovascular outcomes.

In summary, many of the sources cited on the website are outdated (eg a 2016 Cochrane Review) given how much research has been done in this area in recent years. The relative harm messaging is not based on research evidence and is misleading. Overall, the information is simplistic and open to interpretation, which will make it difficult to assess/monitor whether those with commercial interests are publishing messages 'consistent with' those on the website and respond to questionable industry interpretation of the rule.

CSNZ recommends investment in media communications focused on deterring young people from both smoking and vaping, to counter the damage done by aggressive industry marketing promoting vaping in young people over the last few years.

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, but our preference is to avoid using the term 'smoker' in messages as it can be stigmatising. For example, rather than saying 'If you are a smoker, switching completely to vaping is a much less harmful option', change to 'If you smoke, switching completely to vaping is a much less harmful option'.

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

The proposed 'harm reduction' messages should include wording about the need to quit vaping as well as smoking. Non-smokers should be provided with

¹⁴ Wackowski, O. A., Sontag, J. M., Hammond, D., O'connor, R. J., Ohman-Strickland, P. A., Strasser, A. A., ... & Delnevo, C. D. (2019). The impact of E-cigarette warnings, warning themes and inclusion of relative harm statements on young adults' E-cigarette perceptions and use intentions. *International journal of environmental research and public health*, 16(2), 184.

¹⁵ Goniewicz, M. L., Miller, C. R., Sutanto, E., & Li, D. (2020). How effective are electronic cigarettes for reducing respiratory and cardiovascular risk in smokers? A systematic review. *Harm reduction journal*, 17(1), 1-9.

information about the health risks from vaping and that the product contains nicotine which is an addictive substance. As they stand, the message is that vaping is relatively harmless and can continue indefinitely. The current messages suggest that ongoing addiction to nicotine through vaping is the end of the journey for people who want to quit, rather than the second stage of a three-stage quitting process. Research suggests that continued addiction to nicotine through vaping will make people more likely to start smoking again and that the majority of people who vape with the intention of quitting, become dual users¹⁶. Dual use is unlikely to reduce smoking-related health risk¹⁷.

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. CSNZ also supports proof of age requirements for both classes of retailer and online purchases (at sale and delivery) as a minimum protection for children and young people. It is currently very easy for minors to purchase vaping products online.

¹⁶ Brandon, K. O., Simmons, V. N., Meltzer, L. R., Drobes, D. J., Martínez, Ú., Sutton, S. K., ... & Brandon, T. H. (2019). Vaping characteristics and expectancies are associated with smoking cessation propensity among dual users of combustible and electronic cigarettes. *Addiction*.

¹⁷ Chang, J. T., Anic, G. M., Rostron, B. L., Tanwar, M., & Chang, C. M. (2020). Cigarette Smoking Reduction and Health Risks: A Systematic Review and Meta-Analysis. *Nicotine & Tobacco Research*.

There is now a large cohort of minors who are already, or at risk of becoming addicted to vaping and know how to access the products. As 2020 youth vaping data was not collected, we do not know how big this cohort is.

Many public health units are under-resourced to undertake routine monitoring and enforcement of conventional tobacco product sales to minors and related infringements, and most have insufficient capacity to monitor and enforce vaping sales to minors.

More consideration needs to be given to protecting minors through regulation and additional resources are needed for monitoring and enforcement for both generic retailing and online purchase sites. If vaping prevalence in school students continues to increase at a similar rate as that recording between 2018 and 2019, it will be important to establish where and how they are accessing vaping products. Monitoring will provide essential information in this respect.

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?

Yes. However it is not clear what obligations SVRs will have to employ such people. As previously suggested, CSNZ would like to see the employment of suitably qualified health workers, or the provision of access to these workers as a criterion for being classified as a SVR. Making it necessary for all staff at SVRs to have some basic smoking cessation training would support the harm reduction purpose of the Act.

Regulatory proposal 4: Packaging

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

Yes. In addition we suggest a warning about unknown health effects of long-term use and advice to quit vaping after quitting smoking.

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

Yes, with some additional suggestions as follows.

All packaging needs to include the Quitline phone number and website URL.

The positioning of the warnings has been shown to be important in tobacco packaging studies¹⁸, and we suggest that in addition to proposed requirements, warnings are placed at the top of the package.

In addition to the wording proposed, we suggest a way for consumers to report any adverse effects from using the product, including a phone number and/or email address for the relevant authority. Calls to the Poisons Centre should be regularly monitored by the Vaping Authority.

CSNZ supports a risk communication approach that provides messages about ENDS having reduced risk for people who smoke, but increased risk for non-smokers. New Zealand research suggests that for non-smokers, addiction messages were less effective than other health warnings¹⁹.

Health messages need to be on the bottles as well as the packs – e-liquid packs will likely be discarded so if bottles don't have warnings, there will be no information on the packaging users see regularly.

CSNZ supports plain (non-branded) packaging for ENDS and Smokeless tobacco products

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

Yes. In addition to the wording proposed, we suggest a way for consumers to report any adverse effects from using the product, including a phone number and/or email address for the relevant authority.

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

¹⁸ Hwang J-E, Yang Y-S, Oh Y-M, Lee S-Y, Lee J-E, Cho S-I. Differences in visual fixation duration according to the position of graphic health warning labels: An eye-tracking approach. *Tobacco induced diseases* 2018; **16**: 39-.

¹⁹ Hoek J, Gendall P, Eckert C, *et al.* (2021) Analysis of on-pack messages for e-liquids: a discrete choice study. *Tobacco Control*

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

Yes

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

Yes. We support standardised packaging for smokeless tobacco. These products are tobacco products and manufactured by the tobacco industry. There is no independent evidence suggesting that these products are effective in smoking cessation and they should be treated similarly to smoked tobacco.

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.

As little time as possible, preferable six months, and no longer than that provided for standardised packaging of conventional smoked tobacco products (one year).

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

The packaging should not contain information about correct use or handling as it effectively markets the product to users. We suggest that only the consequences of incorrect use should appear on smokeless tobacco products. We also recommend that smokeless tobacco products contain the Quitline phone number and website.

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

Yes however any system developed should be government designed and managed, given recent evidence that tobacco companies have been complicit in the illegal trade of tobacco products²⁰.

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.

As little time as possible, preferably six months, and no longer than that provided for standardised packaging of conventional smoked tobacco products (one year).

²⁰ LeGresley E, Lee K, Muggli ME, Patel P, Collin J, Hurt RD. British American Tobacco and the “insidious impact of illicit trade” in cigarettes across Africa. *Tobacco Control* 2008; **17**(5): 339-46.

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 and it should be the responsibility of the retailer to prove they are meeting the requirements of the Act.

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?

We support basing product safety requirements on the EU legislation and guidance in general, specifically relating to the limit on nicotine levels in ENDS products of 20mg/ml. However, NZ is in a very different situation here from the UK and this needs to be taken into account. For example the UK has had many years of EU restrictions on nicotine levels and marketing that has maintained youth vaping at a relatively low level compared with other countries including NZ. If the UK guidance changes following Brexit then it would need to be reconsidered as it may not be appropriate here.

We note the Ministry proposes to limit e-liquid nicotine levels to 20mg/ml, but nicotine salts to 50mg/ml. The proposed NZ product safety regulations are described as being largely based on EU and UK legislation and guidance. As part of the EU, the UK complied with these regulations, which limited nicotine levels for all products to 20mg/ml. This discrepancy from the EU approach is not explained in the proposal.

The current regulations in the UK are summarised in the table below.

Table 1: Summary of the nicotine-containing vaping product regulations

<p>Notification requirements</p> <ul style="list-style-type: none"> • EC manufacturers must submit a range of details to MHRA before putting a product on the market and update when products are manufactured or withdrawn
<p>Maximum capacities and nicotine strength allowed</p> <ul style="list-style-type: none"> • Tank capacity: 2mL • E-liquid refill container capacity: 10mL • Strength of e-liquid: 20mg/mL
<p>Other safety and quality standards</p> <ul style="list-style-type: none"> • Child-resistant and tamper evident packaging • Prohibition of certain additives such as colourings • Protection against breakage and leakage, and a mechanism for ensuring re-filling without leakage
<p>Information provision</p> <ul style="list-style-type: none"> • Health warning and provision of information on pack or device/bottle
<p>Advertising</p> <ul style="list-style-type: none"> • All broadcast media and cross-border advertising prohibited • Domestic advertising allowed such as outdoor, posters, cinema, and so on • All advertising must adhere to a Committee of Advertising Practice Code • Health claims on advertising are allowed under strict conditions (see below)
<p>Age of sale law</p> <ul style="list-style-type: none"> • 18 years and proxy purchasing also prohibited
<p>Public places</p> <ul style="list-style-type: none"> • No legislation but local proprietors or organisations can decide

Figure 9. From Public Health England (2021) p.24

As is shown in the slides below using ITC data to compare the UK with Canada and the US (Hammond 2020), nicotine salt-based products such as JUUL have had a much

greater uptake among young people in the US where nicotine levels were not restricted, than in England, where the nicotine levels were limited to 20mg/ml.

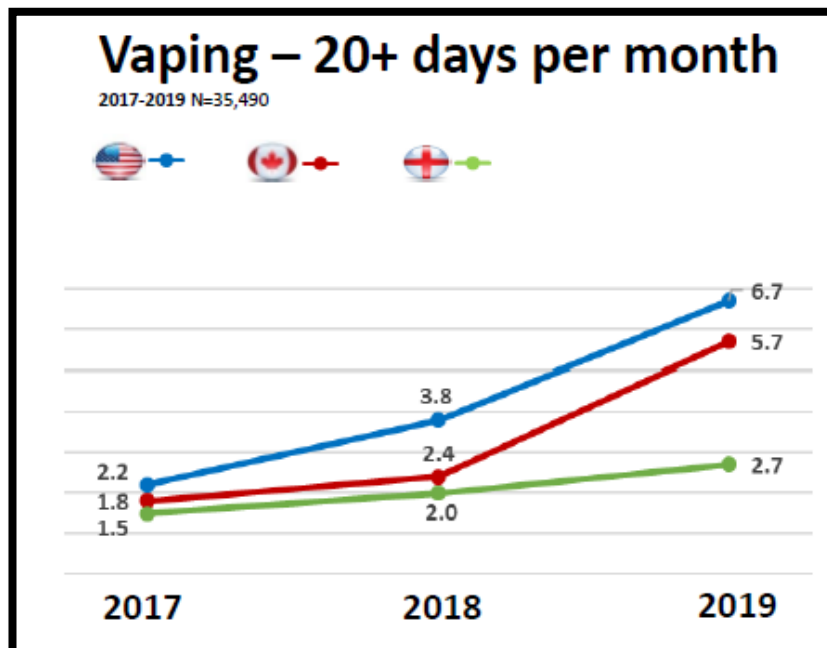


Figure 10: Comparison between US, Canada and UK on youth vaping prevalence (Hammond 2020)

Vapers in the US and Canada were also more likely to use salt-based nicotine products than those in the UK (12% in the UK compared with 28% in Canada and 23% in the US).

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?

CSNZ agree with most of the product controls however we do not support the proposed nicotine strength proposal. We strongly support limiting the strength of nicotine allowed to 20mg/ml for both free-base nicotine AND nicotine salt.

CSNZ also supports reducing levels of nicotine in smoked tobacco to assist people to quit.

Products with nicotine salts (e.g. podvapes) have seen a significant increase in uptake by young people in both overseas and local markets. Nicotine salt-based products are typically sold in NZ with relatively high levels of nicotine, up to 60mg/ml and have been associated

with greater urges and perceived addiction (see David Hammond webinar presentation slide 2020 below).

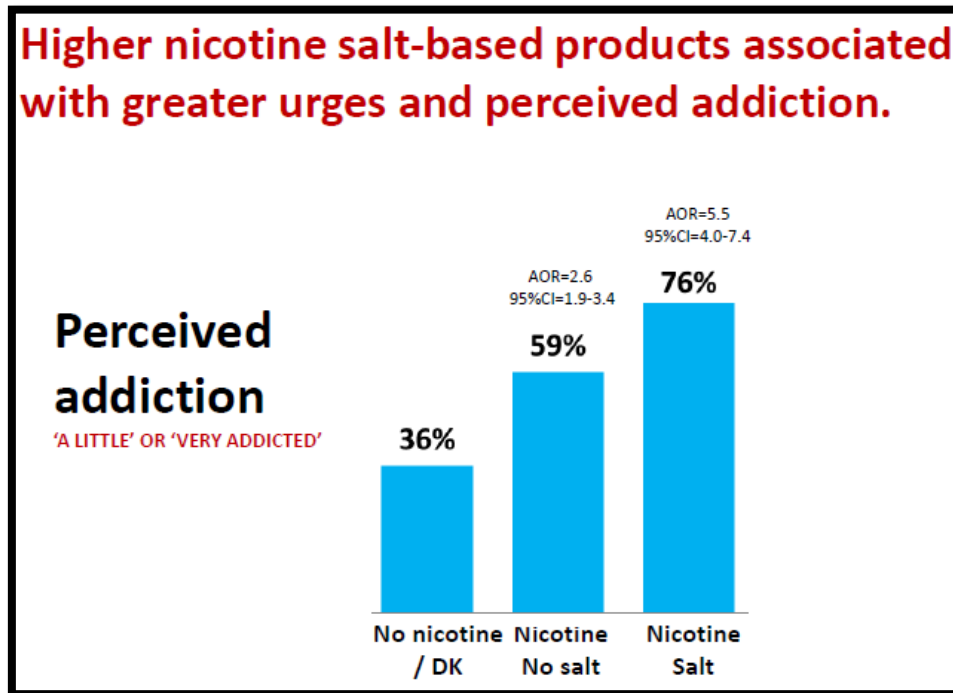


Figure 11. Association of higher nicotine salt-based products with perceived addiction (Hammond 2020)

In countries where nicotine levels in nicotine salts have been higher youth uptake has increased more rapidly (see above).

In the US, CDC data shows vaping prevalence in young people has dropped recently to 2018 levels (20%) - thought to be due to publicity about vaping-related lung injury and death in young people. The US does not restrict nicotine levels and the data suggests a larger share of those vaping (39%) are 'heavy users' – vaping daily and likely to be addicted to high-nicotine products popular with young people.²¹

Canada is currently considering reducing their nicotine to 20mg/ml for all products because of concerns about youth uptake of vaping.

NZ is in a similar position to North America in terms of marketing and access to young people.

Limiting the strength of nicotine-containing vaping products will create an anomaly in which vaping products are more rigorously regulated than smoked tobacco products. We suggest the

²¹ Vaping among teens falls for the first time in three years - The Washington Post

more harmful conventional tobacco products should be more tightly regulated than new generation products like vaping.

We strongly recommend that the restrictions on nicotine concentrations on vaping products are accompanied by a clear commitment to introduce mandated very low-nicotine cigarettes as part of the upcoming national tobacco plan, to reduce their addictiveness.

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?

Yes CSNZ supports regular reviews of the product safety requirements to allow for changes based on new evidence of harm.

CSNZ argues for investment in sufficient monitoring activities to identify and allow prompt corrective action in the event that actual or potential adverse impacts of vaping products emerge. A monitoring system should include an ‘early warning system’ (similar to the Yellow Card system in the UK) to ensure rare but severe adverse events are recognised promptly.

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 and strongly recommend generic retailers also be required to provide annual sales reports. We note that annual sales reports are not required for much more harmful smoked tobacco products. We support correcting this anomaly and that all retailers who sell vaping or tobacco products should be licensed and required to provide annual sales returns reports for both product types.

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 CSNZ supports a licensing regime and fee for all tobacco and regulated products.

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

Yes

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?

We support charging additional fees to contribute to additional investment in monitoring and enforcement of the regulations, and particularly in relation to compliance with R18 restrictions on sales.

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

We do not have enough information to comment.

42. How many products do you anticipate notifying yourself?

None, we are not a manufacturer nor a retailer.

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

Yes we strongly support a fee structure for generic retailers including a licensing fee to sell regulated products including cigarettes, tobacco, and vaping products. Without licensing mechanisms and annual sales returns we have no information about which generic retailers are selling regulated products nor their annual turnover. The fee structure needs to be standardised across all regulated products including tobacco.

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?

No, we disagree. We don't want retailers trying to use this as a loophole to avoid higher fees by holding low numbers of multiple products. A flat fee structure could be tried and reviewed after a specified period of time. We would support the waiving of fees for pharmacies and stop smoking services if they are operating as organisations with no commercial interests in the sale of vaping products.

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

While we do not support reduced fees for low volume products if the Ministry does consider a reduction then we recommend it be measured in percentage of sales rather than raw numbers of products.

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?

CSNZ does not support any fee exemptions but suggest a maximum of 10 products if they are considered. For administrative efficiency we support an online national database recording sales numbers and notification of products. This would simplify monitoring and enforcement.