

Submission form

Your details

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Role *(if applicable)*: [Click or tap here to enter text.](#)

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)*:
Public health service for the Wellington Region

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Do not publish this submission.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 and internal area

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

RPH supports option b.

Our smokefree enforcement officers (SFE0) find the current interpretation difficult to work with and improved clarity is needed.

Option b provides the greatest protection for non-smokers. This reduces exposure to second-hand smoke and detrimental health effects from exposure to others smoking.

We accept option b on the proviso that the Governments Smokefree 2025 Action Plan provides for all hospitality venues to become Smokefree and Vapefree so everyone, irrespective of where they live, work and play, can enjoy the benefits of fresh air, are protected from second-hand smoke exposure, and provides a level playing field for all hospitality venues.

We would like to see the following 'roof or overhead structures' concepts include:

- (a) Roof and all roof like coverings whether permeable or not and
- (b) Worst case scenario for roofs i.e. retractable or louver roofs are assumed closed for the purpose of the definition and
- (c) Any openings in a roof structure are deemed as part of the roof unless the owner or lease can provide evidence (beyond reasonable doubt) to the contrary. This creates a reverse onus/burden on the owner or lease rather than on the SFE0.

Legislation should be drafted around the following

- (1) An internal area which is completely or partially enclosed with a roof, overhead structure, or overhead covering of any kind, whether permanent, temporary or removable is considered an internal area.
- (2) For the purposes of (1) the permeability of the material or materials being used are presumed impermeable.
- (3) For the purposes of (1) any roof, overhead structure, or overhead covering that can be changed in coverage area are presumed to be at maximum coverage possible irrespective of whether it is at being used so at the time.
- (4) For the purposes of (1) any roof, overhead structure, or overhead covering with any openings within its form are presumed to be solid for maximum coverage.

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?

RPH does not support option c.

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?

We do not agree being in a rural location should lower the threshold from 70% to 60% to become a specialist vape retailer. Rural customers wanting vape products can purchase from general retailers who do not have to meet these thresholds. They can also opt to purchase online or from specialist vape retailers in main centres when they visit.

No specialist vape retailer (SVR) should be allowed to sell from a private dwelling e.g. a house someone lives in or a garage/container attached to a dwelling. This could become problematic for a number of reasons and a Smokefree Enforcement Officer (SFE0) could possibly be denied entry as it is part of a private dwelling. Refer to section 93(2) powers of entry and inspection

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 is not necessary if the threshold is to be 70% for all retailers.

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

No comment

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?

We do not agree. The display of vaping products **should be regulated** and we recommend the following: In all stores prohibit window displays, posters and decals. All displays should not be easily visible from outside the premises. For general retailers there should be restrictions on the size of the display and the quantity of products displayed. Regardless of where they are located in the store the products must not be near products purchased by those under 18 years and must be behind the counter, not on a counter display or on shelving that forms part of the counter. There should be provision for the removal of vape displays in general retailers by 2025.

We disagree that websites are not problematic and do not require regulation at this stage. We recommend immediate regulation. This will ameliorate existing problems and better inform the end user.

We recommend websites display a warning sign that nicotine is addictive on all web pages and that vaping should not be initiated by non-smokers. Websites should carry a link to the Vaping Facts website.

We recommend sites be restrained from using emotive language that appears to excessively promote the use of vaping and nicotine. For example, this from a New Zealand based website; 'Featuring 6 unique and mouth watering flavours... we are sure that this e-juice range will have you all CRUSHing for more'. This could simply read 'Featuring 6 flavours'. <https://www.vapo.co.nz/collections/crush>

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?

RPH supports the proposal to restrict the information allowed on manufacturers' price lists. This prevents price lists being used for promotional purposes.

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 comment

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?

The Vaping Facts website provides a sufficient message that is useful to its reader. The site will need to respond to new and emerging research from appropriate sources.

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?

RPH supports limiting information about vaping products to written authorised statements in retail premises and on websites. It is important that the public health messages are few in number, simple and consistent to ensure these messages are absorbed by the public.

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

We prefer one of the three statements over the others with some modification. If you are a smoker, switching completely to vaping is much less harmful.

We recommend an additional notice be included in retail premises and on websites. Vaping is not intended for non-smokers.

We recommend websites display a notice 'Nicotine is addictive' in addition to the point of sale requirement. We recommend websites be restrained from using emotive language and should display a link to the Vaping Facts website. There is no

opportunity for engagement with the purchaser on a website and therefore the site must display all potential risks to the viewer.

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?

We support limiting the format. It is important that public health messages are consistent in style and form, to ensure these messages are noted and absorbed by the public.

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?

We do not see the need for the 'vaping products available here notice', when the products are already allowed to be on display and there will be notices indicating the switching to vaping is less harmful than smoking.

If availability notices are to be used we support these being aligned with tobacco product notices.

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?

We support the requirement.

We recommend additional requirements for websites. All website/remote sellers must take reasonable steps to verify that both the buyer and the receiver of any vape products sold are to a person 18 years old or above. The buyer on the site must declare they are 18 years of age or over by lodging their date of birth when they first enter the site and at the point of sale repeat the date of birth entry (it must replicate the first entry before the sale can be completed). We support this stronger requirement on websites as there is not the additional protection from a retailer screening for purchase age.

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

We recommend the message be shortened to "Vaping Products may contain nicotine, which is highly addictive".

We recommend tobacco products also have mandatory R18 notices introduced at point of sale.

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?

RPH agree that no other category of person be added to the definition of 'suitably qualified health worker'.

RPH recommends New Zealand works towards a scheme where specialist vape and tobacco retailers are required to have a person on site who has undertaken a stop smoking practitioner course such as the mentioned Stop Smoking Practitioner Programme training programme or develop a shortened version of the course specific for retailers. Given staff will likely be asked questions and provide advice to customers on transitioning from smoking, they should have the knowledge and ability to deliver customer service using appropriate harm reduction advice.

Regulatory proposal 4: Packaging

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

We support this proposal. We recommend an additional warning message namely "Product intended as a quitting aid for smokers" or similar.

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

We support this proposal.

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

We support this proposal.

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

We support this proposal

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

We support this proposal

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

We support this proposal.

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

We support this proposal.

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.

We support a limited time frame. This should be as short as possible and should be achievable within 6 months.

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

We support this proposal

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

We support this proposal. Batch codes on products will assist if there is a need for a product recall.

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?

We support this proposal. It is important that smaller quantities of tobacco sticks do not become available. They may present a more accessible choice for youth.

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.

We recommend a six month timeframe as sufficient for manufacturers of vaping products and smokeless tobacco products to comply with the new requirements.

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?

No comment

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?

No comment

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?

We support this proposal

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?

We support this proposal

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 do not believe we have sufficient expertise to comment in depth. However, the UK and the EU have given significant time and effort to their legislation and guidance and we see no reason not to replicate their work.

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?

No comment

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?

No comment

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?

We support this proposal.

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

We support this proposal.

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?

RPH agrees that a fee for the regulatory activities is appropriate.

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

RPH supports the fee structure as outlined as it adopts a risk based fees approach. For clarity should any retailer wish to operate a physical premises and sell through an online website an application must be received for both.

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 are unable to comment on the exact fee required. That said any fee should be set sufficiently high to recover the costs associated with operating the system and be risk based.

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

No comment

42. How many products do you anticipate notifying yourself?

No comment

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

Tobacco use is a significantly more hazardous activity. Tobacco is estimated to kill 4500 people in Aotearoa/New Zealand every year, and as such it is the most harmful consumer product on the market. Yet at this time there is no requirement to register or be licensed to sell smoked tobacco. Increased supply controls through a licensing regime are urgently needed. We recommend the adoption of a licensing regime for all products covered in the Smokefree and Regulated Products Act 1990.

When considering a risk based fees structure including tobacco we propose the following based on the proposed vape products structure. Any retailer that sells tobacco incurs a significantly greater fee. This is adjusted downwards for retailers who also sell vapes, where for the lower fee, should be demonstrated in their sales. A vape

only retailer incurs a lower fee and has a graded response dependent on the range of products on offer and volume sold. We propose the following licenses and fees:

Grade 1. Tobacco only \$1500

Grade 2. Tobacco and iOos (heat not burn) \$1400

Grade 3. Tobacco and vapes \$750 with a proven return on vape products, eg >20%

Grade 4. Vape only general retailer \$150

Grade 5. Specialist Vape Retailer \$500

Grade 6. Applications for approved websites \$150 (must be accompanied by a specialist vape retailer application).

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 comment

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

No 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?

No comment

Further Comments

We note the proposed regulations have no controls on the location or density of tobacco and vape outlets. We have noted significant community concern with the establishment of specialist vape outlets in our more at risk communities. RPH would be very concerned if retailers concentrated in residential areas and grew extensively in number reinforcing the normalisation of vape use as opposed to supporting smoking cessation.

Māori are those most affected by tobacco use. The Smokefree 2025 goal is unachievable for Māori unless stronger controls are adopted. The uptake of vaping in youth is a concern and increasing exposure to vape outlets has the potential to reinforce uptake of the product in non-smokers.

We recommend that work is undertaken rapidly to develop and consult on a licensing regime for all products controlled in the Smokefree and Regulated Products Act 1990.