

# Policy Options for the Regulation of Electronic Cigarettes

## Consultation submission

### Your details

|                                   |                     |   |
|-----------------------------------|---------------------|---|
| This submission was completed by: | (name)              | Richard Edwards                               |
| Address:                          | (street/box number) | Department of Public Health, Mein St, Newtown |
|                                   | (town/city)         | Wellington                                    |
| Email:                            |                     | richard.edwards@otago.ac.nz                   |
| Organisation (if applicable):     |                     | University of Otago                           |
| Position (if applicable):         |                     | Professor of Public Health                    |

(Tick one box only in this section)

Are you submitting this:

- as an individual or individuals (not on behalf of an organisation)?
- on behalf of a group, organisation(s) or business?

Submission is on behalf of Professors Robert Beaglehole, Chris Bullen, Natalie Walker and Janet Hoek authors of the document "E-cigarettes and their potential contribution to achieving the Smokefree 2025 goal" which has been submitted together with this submission.

(You may tick more than one box in this section)

Please indicate which sector(s) your submission represents:

- Commercial interests, including e-cigarette manufacturer, importer, distributor and/or retailer
- Tobacco control non-government organisation
- Academic/research
- Cessation support service provider
- Health professional
- Māori provider
- Pacific provider
- Other sector(s) (please specify):

(You may tick more than one box in this section)

Please indicate your e-cigarette use status:

- I am using nicotine e-cigarettes.

- I am using nicotine-free e-cigarettes.
- I currently smoke as well as use e-cigarettes.
- I am not an e-cigarette user.
- I have tried e-cigarettes.

## Privacy

We intend to publish all submissions on the Ministry's website. If you are submitting as an individual, we will automatically remove your personal details and any identifiable information.

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- Do not publish this submission.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. 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.

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

- This submission contains commercially sensitive information.

## Declaration of tobacco industry links or vested interest

As a party to the global tobacco control treaty, the World Health Organization Framework Convention on Tobacco Control, New Zealand has an obligation to protect the development of public health policy from the vested interests of the tobacco industry. To help meet this obligation, the Ministry of Health asks all respondents to disclose whether they have any direct or indirect links to, or receive funding from, the tobacco industry. The Ministry will still carefully consider responses from the tobacco industry, and from respondents with links to the tobacco industry, alongside all other submissions. Please provide details of any tobacco company links or vested interests below.

None of the authors have any tobacco company links or other vested interests to declare.

In their roles as researchers at the University of Auckland, Chris Bullen and Natalie Walker have undertaken research on e-cigarettes that has involved either having e-cigarettes supplied by or purchasing products from e-cigarette companies for research purposes; and have also undertaken research on reduced nicotine cigarettes that were purchased from tobacco companies. In 2009 Chris Bullen led a study that tested e-cigarettes supplied by Ruyan, the Chinese company that first produced e-cigarettes; the study was funded by HealthNZ Ltd via a contract with Ruyan. Chris Bullen has also undertaken a research study that was funded by Nicinovum, a nicotine replacement development company that was subsequently (after the research study was completed) purchased by a tobacco company. They have received no personal benefits from these industries and have no other interests to declare.

Please return this form by email to:

**ecigarettes@moh.govt.nz by 5 pm, Monday 12 September 2016.**

If you are sending your submission in PDF format, please also send us the Word document.

---

# Consultation questions

Although this form provides blank spaces for your answers to questions, there is no limit to the length of your responses; you should take as much space as you need to answer or comment. Feel free to enlarge the boxes or attach additional pages.

**Q1 Do you agree that the sale and supply of nicotine e-cigarettes and nicotine liquids should be allowed on the local market, with appropriate controls?**

Yes ✓ (but see comments below) No

Reasons/additional comments:

NB Please read general comments in Q9 as context for this and the responses that follow.

The document “*E-cigarettes and their potential contribution to achieving the Smokefree 2025 goal*” that accompanies this submission outlines two preferred options for the sale and supply of nicotine e-cigarettes (henceforth ECs).

**Preferred option 1 - Maintain status quo.** Sale of nicotine-containing EC or e-liquids within NZ is prohibited, but e-liquids are legal to import for personal use (up to three months supply). However, the real status quo is that nicotine-containing EC or e-liquids have been widely available for some time in NZ (due to importation by users and illegal sales by retailers).

**Preferred option 2 - Allow restricted sale of nicotine-containing EC or e-liquids for smokers who want to quit.** Continue to allow the importation of nicotine-containing EC or e-liquids for personal use (up to 3 months supply) but also allow sales of nicotine-containing EC or e-liquids through pharmacies (including after hours e.g. for ‘emergency supplies of e-juice’) and a limited number of licensed specialist shops (with stipulations about proximity to schools, exclusion of minors from shops, and training/ competence for staff in EC use and ABC cessation support); minimum age of purchase 18 years.

We think both are defensible options, though if adopted they should be kept under review (particularly the status quo option) as further evidence emerges of the impact of ECs on smoking cessation, long term health effects, uptake of smoking and population smoking prevalence.

Regarding option 2, we note that the Ministry’s proposal is to make nicotine-containing ECs freely legally available for sale except to minors aged <18 years. We do not support this proposal. We believe that ECs should be available for sale on a restricted basis (pharmacies and specialist vape shops). This has several advantages over the proposal to make ECs freely available:

1. It minimises the likelihood of minors having access to buy ECs as proximity restrictions (e.g. around schools) can be applied, specialist shops can be designated as > 18 years premises, and a licensing regime for specialist shops (and existing mechanisms for pharmacies) will facilitate enforcement.
2. It ensures the availability of expert advice and support in use of ECs and e-liquids – specialist vape shops already have this expertise and pharmacy staff could be trained to ensure that they do.
3. There is good evidence that making behavioural support available enhances the impact of smoking cessation aids and hence the impact of ECs in supporting cessation among smokers can be maximised by requiring basic staff training in brief smoking cessation advice and referral in the licensing/approval process for specialist vape shops and pharmacies that sell ECs.
4. The experience with retail tobacco sales (which are almost wholly unregulated currently) demonstrates that tightening of retail sales restrictions is very difficult in practice. By contrast it would be relatively easy to relax retail restrictions for sale of ECs at a later date if new evidence suggested that this would help achieve the Smokefree 2025 goal.

There are precedents for restricted retail sales of products. E.g. many international jurisdictions require licenses to sell tobacco, and Hungary and San Francisco have introduced strict limits on number/density of tobacco retailers. <sup>1</sup> NZ’s 2013 Psychoactive Substances Act is a local precedent for retail controls on non-tobacco products. This required party pill retailers to have a license, introduced powers for Local Authorities to control the location of retailers, and restricted the type of retailers that could sell ‘party pills’. <sup>2</sup> Some US jurisdictions have introduced licensing requirements for tobacco and EC retailers, <sup>3</sup> and proximity restrictions (e.g. for schools, residential areas) for EC shops and hookah bars, <sup>4</sup> and for retailers selling flavoured tobacco products and ECs. <sup>5</sup>

Unpublished work surveying 30 Wellington pharmacists provides preliminary evidence for the acceptability of selling ECs among pharmacists in NZ. This study found that if the sale of nicotine-containing ECs in NZ were restricted to pharmacies, around 90% of pharmacists would be likely to sell these products (just over 30% ‘somewhat likely’ and nearly 60% ‘very to extremely likely’) - personal communication Frederieke Sanne van der Deen.

Finally, we note that as a general principle, regulation of ECs should not be more stringent than for smoked tobacco products, as otherwise this creates an anomaly where the most addictive and dangerous product is less lightly regulated than a much safer alternative. Such a situation would be impossible to justify. Hence if option 2 is implemented, it is imperative that similar or stricter measures should be introduced to control retailing of smoked tobacco products.

## References

- 1 Robertson L et al. Regulating tobacco retail in NZ. *NZMJ* 2016; 129:74-9.
2. Edwards R. Smart party pill law makes tobacco & alcohol regulation look pathetic (Blog post). Public Health Expert. Wellington: University of Otago, Wellington, 2013.
3. Figueroa T. San Marcos to license tobacco, vape retailers. San Diego Union Tribune, Jul 13 2016.
4. Nikic J. Town of North Hempstead sets rules for vape shop locations. The Island Now, Aug 11 2016.
- 5.. Tobacco Control Legal Consortium. Chicago's Regulation of Menthol Flavored Tobacco Products: a Case Study. Saint Paul, MN: Tobacco Control Legal Consortium, 2015.

### **Q2 Are there other (existing or potential) nicotine-delivery products that should be included in these controls at the same time? If so, what are they?**

Yes  No

Reasons/additional comments:

We have focused on ECs, but when other products exist/emerge with a similar risk profile and potential for aiding cessation or acting as substitute nicotine delivery devices to tobacco smoking they should be evaluated in a similar way to assess if they should be made more widely available. For example, a number of new forms of nicotine inhalers are in development, and 'heat not burn' products are currently been marketed by Phillip Morris in some jurisdictions (<https://www.pmscience.com/platform-development/platform-portfolio/heat-not-burn>)

### **Q3 Do you think it is important for legislation to prohibit the sale and supply of e-cigarettes to young people under 18 years of age in the same way as it prohibits the sale and supply of smoked tobacco products to young people?**

Yes  No

Reasons/additional comments:

Although the gateway effect from ECs to tobacco smoking is unproven, it is a theoretical possibility and there is some supporting evidence (see accompanying document for a review of this evidence). In addition, although the long term health impacts of nicotine use are probably modest (and far less than those from long term smoked tobacco use), there are some concerns about the impact of nicotine on the developing brain. <sup>1</sup> Furthermore the economic costs of lifelong use of ECs or other nicotine delivery devices will have adverse impacts on users.

There are therefore good reasons to aim to minimise the use of ECs by minors, and prohibition of sale and supply to young people is justified as a measure to help achieve that outcome. A possible exception is where ECs are used as a smoking cessation aid by youth <18 years. However, exceptions would complicate implementation, monitoring and enforcement; the numbers of minors affected could be quite small; and these individuals could use ECs in the usual way once they are 18 years. Therefore, for simplicity, allowing sales and supply to minors is probably best left as a future option, pending evidence that suggests relaxing this approach would help reduce smoking among minors < 18 years.

#### **Reference**

1. Kandel ER, Kandel DB. Shattuck Lecture. A molecular basis for nicotine as a gateway drug. *N Engl J Med.* 2014; 371:932-43.

**Q4 Do you think it is important for legislation to control advertising of e-cigarettes in the same way as it controls advertising of smoked tobacco products?**

Yes  No

Reasons/additional comments:

We believe that commercial marketing of nicotine containing EC and e-liquids products sold within NZ (if permitted) should be limited to point of sale displays regulated to avoid exposure to children and young people.

Reasons:

EC use is already widespread in NZ, and it seems likely that uptake would increase rapidly if they were made available for sale in NZ and their availability was communicated through public information campaigns (e.g. run by the MoH or HPA). The current experience in other markets such as the US and UK where EC marketing is allowed is that such marketing is often dominated by and manipulated by the tobacco industry e.g. by seeking to glamorise the use of ECs using approaches that seem likely to appeal to minors, and often promotes the use of ECs as an adjunct to smoking (e.g. through exhortations to use ECs in places where smoking is not permitted) and for long term use, rather than as an aid to quit smoking.<sup>1,2</sup> We believe therefore that allowing such advertising will not increase the contribution ECs make towards achieving the Smokefree 2025 goal, and may even undermine their positive effects.

However, to make sure that the availability of ECs is communicated to smokers and advice about using them in quit attempts is provided we recommend the following:

- The Government should consider targeted communications with smokers (e.g. through health professionals and Quitline staff, trained specialist vape shop staff) or mass media public information campaigns to provide information about the availability of ECs and their potential benefits and harms.
- Information (e.g. leaflets) giving advice to EC users trying to quit should be provided by cessation services and at point of sale in pharmacies and specialist vape shops.
- Dissemination of information at events organised by the vaping community (e.g. Vape Meets). Working with the vaping community (users and sellers) could be an important means to communicate about ECs and maximising their use to help individuals to quit smoking or substitute completely for smoked tobacco.

**References**

1. de Andrade M, Hastings G, Angus K. Promotion of electronic cigarettes: tobacco marketing reinvented? *BMJ*. 2013; 347.
2. Mantey DS, Cooper MR, Clendennen SL, Pasch KE, Perry CL. E-Cigarette Marketing Exposure Is Associated With E-Cigarette Use Among US Youth. *J Adolesc Health*. 2016; 58:686-90.

**Q5 Do you think it is important for the SFEA to prohibit vaping in designated smokefree areas in the same way as it prohibits smoking in such areas?**

Yes  No

Reasons/additional comments:

We have ticked both 'yes' and 'no' responses here because we believe the response varies with the type of designated smokefree area.

We believe that the use of ECs should be banned in all indoor workplaces and public places (including airplanes, trains, buses and other public transport) (consistent with the 1990 SFE Act), and in cars containing children. This is because although the health impacts of secondhand vapour are uncertain and likely to be modest, it is not yet known if it EC vapour is completely safe. There is therefore a rationale for protecting non-smokers, including children, from a potential adverse health effect due to exposure in enclosed spaces. There is also likely to be a considerable nuisance effect to non-smokers exposed to vaping emissions. Such an approach will be facilitated by the strong 'common courtesy' philosophy among most vapers not to expose non-vapers to vapers if they find it unpleasant or objectionable.

Use of ECs should also be prohibited in schools (buildings and grounds), in cars, and in selected outdoor locations (areas where children predominate e.g. playgrounds, parks). This approach may minimise the impact of vaping on normalising the use of ECs or smoked tobacco (although the latter may be less of a risk with 2<sup>nd</sup> and 3<sup>rd</sup> generation products that are visually dissimilar from cigarettes).

However, use of ECs might be allowed in other smokefree areas at local discretion and where public consultation suggests this is acceptable. Clear signage should indicate where vaping is permitted, and these areas should be separate to "smoking permitted" areas. The latter recommendation is based on (unpublished) feedback from vapers who generally prefer to be allocated separate areas away from smoking. This should also help minimise the risk of vapers who have quit smoking from relapsing after being exposed to the trigger of others smoking around them.

The principle should again apply that restrictions on smoked tobacco products should be at least as stringent as for ECs. To do otherwise might make EC use a less attractive option than smoked tobacco use, which would be perverse. For example, it would be impossible to justify restrictions on vaping in cars where children are present if smoking in cars is not similarly prohibited.

**Q6 Do you agree that other controls in the SFEA for smoked tobacco products should apply to e-cigarettes? For example:**

| Control   | Yes                                 | No                                  | Reasons/ additional comments  |
|---|-------------------------------------|-------------------------------------|---|
| Requirement for graphic health warnings             | <input type="checkbox"/>            | <input checked="" type="checkbox"/> | No. Given the lack of evidence for long-term health effects of ECs, we do not think GHWs would be a proportionate measure. However, we support packaging of EC products being required to carry safety warnings (e.g. dangerous to ingest, keep away from children and pets), health information (text warnings that nicotine is addictive and that the long term health effects of EC use are not known), Quitline information, and a list of constituents (see below). Some of this information may be pictorial to align with evidence that pictorial safety warnings have greater impact than text only warnings, but not graphic warnings that are intended to deter use. Inclusion of Quitline information is in line with the principle of maximising the use of ECs for cessation and to support the achievement of Smokefree 2025. |
| Prohibition on displaying products in sales outlets | <input type="checkbox"/>            | <input checked="" type="checkbox"/> | No Provided the sales of products are restricted to pharmacies and specialist vape shops (with children excluded from the latter), then POS displays would not need to be banned. There may need to be some restrictions on prominence in pharmacies to ensure the POS displays do not appeal to non-smokers, particularly children   |
| Restriction on use of vending machines              | <input checked="" type="checkbox"/> | <input type="checkbox"/>            | Yes. We can see no justification for sales through vending machines, as these may be accessible to children, and advice on correct use of ECs and use in smoking cessation would not be available. In line with the principle of equal or more rigorous regulation for smoked tobacco products, all vending machine sales of smoked tobacco products should also be prohibited at the same time. An example of restrictions on EC sales through vending machines is the recent legislation in Hawaii. <sup>1</sup><br><br><b>Reference</b><br>1. Johnson K. E-cigs now included in federal tobacco regulations. Hawaii Tribune-Herald, August 9 2016.   |

|   |   |                          |  |
|---|---|--------------------------|--|
| Requirement to provide annual returns on sales data     | ✓ | <input type="checkbox"/> | Yes. This is useful for monitoring of trends in use of different product types and the balance between independent and tobacco industry owned EC producers in the NZ market. This should include data on importation and sales (and again this requirement should be extended to smoked tobacco products).   |
| Requirement to disclose product content and composition | ✓ | <input type="checkbox"/> | <p>Yes, disclosure of ingredients/content is important consumer information (see comment above on graphic health warnings).</p> <p>We note that the Government stated that they would consider a similar requirement for smoked tobacco products in their response to the Māori Affairs Select Committee. In line with the principle of applying equal or more rigorous regulation for smoked tobacco products, disclosure rules for smoked tobacco products should be introduced at the same time as regulations for ECs.</p> |

|   |   |                          |   |
|---|---|--------------------------|---|
| Regulations concerning ingredients (eg, nicotine content and/or flavours) | ✓ | <input type="checkbox"/> | <p><b>Ingredients and flavourings</b> – Yes. We recommend excluding selected additives/flavours (e.g. those shown to be toxic or that make products appealing or palatable for children and young adults) to nicotine containing ECs and e-liquids products sold within NZ (if permitted). To be identified from review of international standards and best practice – we doubt a NZ based testing regime is a viable proposition.</p> <p>In line with the principle of equal or more rigorous regulation for smoked tobacco products, additives/flavours that enhance palatability and appeal of smoked tobacco products (e.g. menthol) should be introduced at the same time as regulations for ECs.</p> <p><b>Nicotine content.</b> Yes. We recommend aligning with internationally credible standards on the maximum concentration of nicotine e-liquid and degree of accuracy of nicotine content labelling. We doubt a NZ based testing regime is a viable proposition..</p> <p>We note no controls on nicotine content are applied to smoked tobacco products, though we believe there is a strong case for such an approach to reduce the addictiveness of these products. We recommend that the Government follows through on its undertaking to investigate this option in its response to the Māori Affairs Select Committee report.</p> |
| Requirement for annual testing of product composition                     | ✓ | <input type="checkbox"/> | Yes. We recommend aligning with credible international guidance for product composition testing.  |
| Prohibition on free distribution and awards associated with sales         | ✓ | <input type="checkbox"/> | Yes. We view such incentives to retailers to maximise sales as unnecessary and having potential unintended adverse consequences and recommend that they are prohibited.   |
| Prohibition on discounting  | ✓ | <input type="checkbox"/> | Yes. We believe such price incentives are likely to promote increased volume of sales and that they are likely to encourage more intensive and longer term use of ECs (beyond use as a cessation aid), rather than trial of ECs for quitting. We recommend that they are prohibited. However, this could be an area for research and if targeted price incentives could be shown to enhance the impact of ECs on quitting or substitution among smokers who are unable to quit, this prohibition could be revised.  |

|  |                                     |                                     |  |
|--|-------------------------------------|-------------------------------------|--|
| Prohibition on advertising and sponsorship | <input checked="" type="checkbox"/> | <input type="checkbox"/>            | See response to Q4.  |
| Requirement for standardised packaging     | <input type="checkbox"/>            | <input checked="" type="checkbox"/> | No. Given the lack of evidence for long-term health effects of ECs, most of the authors do not think this would be a proportionate measure. However, we support regulation to ensure that packaging or product names that are appealing to children and young people are prohibited in order to minimise the use of ECs by minors. A minority view within the group is that plain packaging would be justified, given the influence packaging has on gaining attention at the point-of-sale and its potential to stimulate impulse purchases. The example of plain packaging of pharmaceutical products could be applied to ECs. |
| Other                                      | <input type="checkbox"/>            | <input type="checkbox"/>            |  |

**Q7 Do you think it is important for legislation to impose some form of excise or excise-equivalent duty on nicotine e-liquid, as it does on tobacco products?**

Yes  No

Reasons/additional comments:

We recommend that the *status quo* on excise/taxation of ECs should apply i.e. no additional tax or excise should be applied to nicotine-containing ECs and e-liquids. Maintaining a price differential between smoked tobacco products and ECs is an important strategy to maximise the positive impact of ECs on reducing smoking prevalence and encourage the use of ECs to support quitting and as a long term substitute nicotine delivery mechanism (for smokers who cannot or do not want to quit).

However, this stance should be reviewed if there is evidence of substantial uptake of nicotine-containing ECs by children and young people, and proportionate tax/excise increases considered (whilst maintaining price incentives for switching from smoked tobacco products to ECs) as part of a strategy to minimise EC use by minors.

**Q8 Do you think quality control of and safety standards for e-cigarettes are needed?**

Yes  No

**Additional comments:** Our view on quality control and safety standards is that it would usually be impractical and should be unnecessary to develop specific NZ standards. We should seek instead to align with international best practice standards and mandate that products available in New Zealand should comply with these standards in order for their distribution and sale to be permitted. This is because other jurisdictions are likely to have more resources available to develop robust standards, and resources to implement a comprehensive high quality testing regime in New Zealand are unlikely to be available. There should also be consultation with the specialist vape vendor community on these standards, as they may be able to identify existing standards and codes of conduct that may be applicable. However, the Ministry should reserve the right to introduce any additional standards deemed appropriate and necessary regardless of the information received in such consultation.

| Area of concern  | Yes                                 | No                                  | Reasons/additional comments   |
|--|-------------------------------------|-------------------------------------|---|
| Childproof containers  | <input checked="" type="checkbox"/> | <input type="checkbox"/>            | Yes. We recommend that packaging requirements for ECs and e-liquids sold within NZ (if permitted) include minimum standards of child safety, aligned with best international practice, and that compliance with these standards is a condition for products to be approved for sale in New Zealand.   |
| Safe disposal of e-cigarette devices and liquids               | <input checked="" type="checkbox"/> | <input type="checkbox"/>            | Yes. We recommend that requirements for safe disposal of EC devices and liquids are introduced aligned with best international practice.  |
| Ability of device to prevent accidents                         | <input checked="" type="checkbox"/> | <input type="checkbox"/>            | Yes. We recommend that requirements for safety of EC devices are introduced aligned with best international practice, and that compliance with these standards is a condition for products to be approved for sale in New Zealand.  |
| Good manufacturing practice                                    | <input type="checkbox"/>            | <input checked="" type="checkbox"/> | No. We do not recommend that full pharmaceutical industry GMP standards should be required, as this is unlikely to be feasible for EC manufacturers (particularly independent manufacturers) in NZ or elsewhere. An alternative that has been proposed is that EC specific standards are developed that are practicable whilst still ensuring a reasonable standard of specific EC manufacturing practices such as handling of chemicals, levels of nicotine purity etc. This would again require an analysis of best international practice, and requiring compliance with these standards as a condition for products to be approved for sale in New Zealand. |
| Purity and grade of nicotine                                   | <input checked="" type="checkbox"/> | <input type="checkbox"/>            | Yes. We recommend that requirements for purity and grade of nicotine are introduced aligned with best international practice, and that compliance with these standards is a condition for products to be approved for sale in New Zealand.  |
| Registration of products                                       | <input checked="" type="checkbox"/> | <input type="checkbox"/>            | Yes We recommend that registration of products and demonstration of compliance with international standards is a condition for products to be approved for sale in New Zealand.   |
| A testing regime to confirm product safety and contents purity | <input type="checkbox"/>            | <input checked="" type="checkbox"/> | No. Resources to implement a comprehensive high quality testing regime in New Zealand are unlikely to be available.   |

|  |                                     |                                     |   |
|--|-------------------------------------|-------------------------------------|---|
| Maximum allowable volume of e-liquid in retail sales | <input checked="" type="checkbox"/> | <input type="checkbox"/>            | Yes. We recommend a maximum purchase/sale regulation is introduced in line with what is reasonable for personal use. The rationale for this is that bulk purchase is likely to be for the purposes of supplying/selling to others, which would circumvent the restrictions on sales and supply (particularly to minors) and the requirement that sales staff can provide expert advice in use of ECs and brief smoking cessation advice and referral.   |
| Maximum concentration of nicotine e-liquid           | <input checked="" type="checkbox"/> | <input type="checkbox"/>            | Yes We recommend that requirements for maximum concentration of nicotine are introduced aligned with best international practice, and that compliance with these standards is a condition for products to be approved for sale in New Zealand.<br><br>We note no controls on nicotine content are applied to smoked tobacco products, though we believe there is a strong case for developing such controls. We recommend that the Government follows through on its undertaking to investigate this option in its response to the Māori Affairs Select Committee report. |
| Mixing of e-liquids at (or before) point of sale     | <input type="checkbox"/>            | <input checked="" type="checkbox"/> | No. This could be investigated, but we believe this is probably mostly unnecessary as-liquids are generally mixed prior to distribution to the point of sale. However, if mixing of e-liquids at point of sale does occur, then best practice standards could be identified (possibly in consultation with the specialist vaping retail community) and implemented.   |
| Other  | <input type="checkbox"/>            | <input type="checkbox"/>            |   |

## Q9 Are there any other comments you would like to make?

We believe that there are some principles that should apply to any regulatory regime for ECs in New Zealand:

- The primary aim of the EC policy should be to support the achievement of the Smokefree 2025 goal for all population groups in NZ;
- New Zealand's tobacco control efforts should be maintained and intensified;
- E-cigarette policy should minimise the risks initiation of nicotine use by non-smokers (particularly children and young adults) either through long term EC use and/or via EC use to smoking;
- Regulation of ECs should not be more stringent than regulatory measures in place for smoked tobacco products; and
- The Ministry of Health should continue to monitor emerging evidence on EC and the potential impacts of these products on smoking prevalence in New Zealand. Policy and practice should be updated in light of new evidence.

We are concerned that such principles are not clearly articulated in the current consultation document. For example, the first policy objective of EC regulation is stated as “reduction of harm from tobacco smoking”. We believe there should be a clear statement that the goal of EC regulation is to support achievement of the Government's Smokefree 2025 goal for all population groups. We also believe it should be a clear principle that regulation of ECs should not be more stringent than regulatory measures in place for smoked tobacco products. Not to do so would introduce anomalies where a far less harmful and addictive product group that is a potential substitute nicotine delivery device and smoking quitting aid is more rigorously controlled than smoked tobacco products. We think that is an impossible situation to justify and defend.

One issue that is not mentioned in the consultation document is the position of ECs in smoking cessation and the degree to which ECs are supported as quitting aids. There is a strong consensus among smokefree practitioners that smokers quitting using ECs should have access to advice and support. We recommend that cessation service providers receive resources and training in use of EC to support quitting, based, for example, on recent Public Health England advice. Healthcare providers should not recommend or support specific EC products unless these have been licensed for cessation through MedSafe.

Finally, given the current state of uncertainty about many issues in relation to ECs – e.g. efficacy as quitting aids, long term health effects, ‘gateway’ effects on minors, and overall impact on smoking prevalence at population level – introducing a systematic approach to monitoring current and emerging evidence should be a high priority. We recommend that the Ministry of Health develops a framework for monitoring and evaluating emerging evidence on ECs, including their efficacy and safety, technological evolution and use (internationally and in NZ), and impact of ECs, especially on smoking prevalence in all population groups and progress towards the Smokefree 2025 goal. The regulatory framework and standards should be adapted as necessary to respond to emerging evidence and monitoring data.

More detail on these and other points is available in the document: “*E-cigarettes and their potential contribution to achieving the Smokefree 2025 goal*”.

## Additional information on sales and use

**Q10 Can you assist us by providing information on the sale of e-cigarettes in New Zealand (for example, size of sales or range of products for sale on the local market)?**

In the accompanying document (p9) we refer to some unpublished data suggesting that the New Zealand EC market is dominated by 2<sup>nd</sup> and 3<sup>rd</sup> generation devices. We assume that national surveys such as the NZ Health Survey tobacco use module and HPA Health and Lifestyle Survey and Smoker Toolkit survey will gather detailed data on EC use in New Zealand.

In addition an extensive series of questions on EC use in the forthcoming HRC funded NZ ITC survey (data collection September to November 2016), so will have detailed information on use among NZ smokers and recent quitters who are using ECs in early to mid 2017. ASPIRE 2025 has other HRC funded studies examining the efficacy of ECs relative to existing cessation treatments, consumers' information requirements, and transition from smoked tobacco to ECs. The NIHI team will have data from a survey of vapers that is currently underway.

**Q11 Would the Ministry of Health's proposed amendments have any impact on your business? If so, please quantify/explain that impact.**

Not applicable

**Q12 If you are using nicotine e-cigarettes: how long have you been using them, how often do you use them, how much do you spend on them per week and where do you buy them?**

Not applicable

| How long have you been using them? | How often do you use them? | How much do you spend on them per week? | Where do you buy them? |
|------------------------------------|----------------------------|---|------------------------|
|                                    |                            |   |                        |