End Smoking NZ

Creating a smokefree future for all New Zealanders

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25 January 2010

Maori Affairs Select Committee
Committee Secretariat
Bowen House
Parliament Buildings
WELLINGTON

Re: Inquiry into the tobacco industry in Aotearoa and the consequences of tobacco use for Maori.

Kia ora,

Thank you for launching this Inquiry.

About us:

End Smoking NZ is a charitable trust which works to research and advocate on policies to better tobacco policy. We have five members, all hands-on in policy writing.

Our main aim is to end sales of cigarettes and other smoking tobacco products by 2020.

End Smoking NZ has studied current trends carefully before realizing net progress is absent or extremely slow. On this basis it was decided far more effective policies were needed, which Parliament should be persuaded to adopt.

Competency. The five trustees who have signed this paper have between us, a century of experience in national health policy, tobacco control and addiction treatment, smoking cessation, community prevention research, and product research in how most effectively to reduce smoking.

Financial disclosures. We receive no money from the Ministry of Health, and are not financed by any industry group, (tobacco, nicotine or pharmaceutical industries). We do not have any financial interests in these groups.

Overview

We particularly appreciate this historic inquiry into the tobacco industry and tobacco use in Aotearoa. This highlights a major concern of Maori (and Pakeha) for better health and better quality of life, and enables inquiry into policy solutions for the NZ Parliament to consider in this decade, instead of waiting for guidance from overseas.

Health services cannot be relied on to reduce smoking deaths much, as lung cancer, and emphysema are mostly incurable.

Health Education. Graphic warnings are helpful, but education in health matters does not make every smoker quit.

Commercial manufactured cigarettes and RYOs are the problem

Cigarette making machines were invented in the 1880s, but cigarettes did not replace pipes for men until about the time of the first World War (WW1). Maori women took up pipe smoking soon after tobacco was introduced, as early art shows. Cigarette smoking in women increased after WW2 when filter cigarettes became popular. Lung cancer takes over 20 years to develop and lung cancer became increasingly common from the 1950s onwards.

The tobacco smoking deaths epidemic has arisen since *commercial cigarettes* became popular in the first half of the 20th century, and ending this epidemic requires that commercial cigarettes be phased out.

Appendices 5, then 1 and 2 more briefly, are appended in that order, numbered according to the Points of Reference we address.

Almost all our focus is on Appendix 5, which now follows. The executive summary is followed by two policy papers 5A and 5B, which explain how the proposed policies would be implemented.

Request for Oral submission We would like the opportunity to speak to the Committee and answer their questions on Appendix 5, and any others, in either Auckland, or Christchurch, preferably Christchurch.

Sincerely

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Appendix 5 What policy and legislative measures would be necessary to address the findings of the inquiry.

Executive Summary.

Appendices 5A and 5B (appended) contain detailed policies for ending the sale of cigarettes and other smoking tobacco products by 2020.

Current situation – in control mode. The Smokefree Environments Act is "successfully" controlling smoking prevalence at around 20%, cigarette consumption steady at 1260 per adult per year from 2003 to

2008, and deaths at between 4000 and 5000 deaths annually. The Act acts as a *Tobacco **Control** Act.*

Government programmes predict over 30% Maori still smoking in 2020. Carrying on as we are, (comprehensive tobacco control, business as usual) will see smoking rates staying high for many years. Even the current enhanced emphasis on stopping smoking means no more than another 3 percentage points below the 20% now smoking. This presumably means Maori smoking would be over 30%.

We now need a strengthened Smokefree Environments Act, strong enough to begin to end this smoking deaths epidemic in this decade. In the attached papers, 5A and 5B, we describe the key policies needed for writing the Amendment bill to achieve the end of sales of cigarettes and tobacco for smoking by 2020.

Minimum policy prescription package. Others will ask for other policies (for example banning of smoking in cars, ending of tobacco packet displays in shops, plain cigarette packaging), which we approve, but which we do not expect to bring about the end of cigarette sales.

For ending cigarette sales, the attached four policies are powerful, effective, adequate and sufficient on their own if implemented together, to end sales of cigarettes and smoking tobacco.

Two stages. We envisage ending sales of cigarettes and tobacco in two stages:

a) obtaining parliamentary majority support for consideration and then passage of an amendment bill. The attached papers are written to provide policies for incorporation in the amendment bill.

New Zealand has already ended tobacco advertising and smoking in bars, and we believe New Zealand can end cigarette sales also.

b) In a series of 10 or 20 steps, over 5 to 10 years, legislation gradually:

1) increases cigarette prices,

2) reduces cigarette supply,

3) lowers nicotine per cigarette, and

4) increases supply of substitute nicotine cigarettes.

These four policies in unison can reduce smoking to enable sales to be phased out by 2020.

Attachments. Please find two papers explaining feasibility of these approaches for your consideration.

5A. ***Cigarettes and smoking tobacco no longer sold by 2020: here's how*** (submitted to NZ Medical Journal for publication).

5B. ***Nicotine electronic cigarettes can and should be sold as permitted by the Smokefree Environments Act.***

Appendix 5A

Cigarettes and smoking tobacco no longer sold by 2020: here's how

Murray Laugesen, Marewa Glover, Trish Fraser, Ross McCormick, John Scott.

Abstract

Aim To phase out the sales of cigarettes and tobacco for smoking by 2020.

Current situation Despite graphic disease warnings on tobacco packets, bans on tobacco advertising and promotions, bans on indoor workplace smoking, subsidies on medicinal nicotine, and despite one third of smokers making serious attempts to quit in a year, one in five of New Zealand adults smoke, two in five Maori adults smoke, and cigarette consumption per adult remains unchanged since 2003. Four in five smokers regret they ever started. Cigarettes are highly addictive, lethal, and cannot be made safer. Since 1950 commercial cigarettes have prematurely killed over 160,000 New Zealanders.

Proposed policies. We propose four policies to change the balance of price, availability and addictiveness between tobacco and nicotine products. This means increasing excise on all cigarettes equally; and a bill to strengthen the Smoke-free Environments Act, to: gradually

lower cigarette sales quotas (thereby also increasing cigarette prices); gradually lower the nicotine content of cigarettes; and regulate for the sale of more effective nicotine products as alternatives to smoking. These four policies with media support, will be able to reduce cigarette sales by 95%, reduce smoking to 1% of adults, stop most young people starting to smoke, and decrease national death rates. Macro-economic effects will be gradual, as smokers gradually quit and shift their spending to other items, and government recoups its excise revenue elsewhere. Current freedoms of adults to smoke, and cultivate tobacco for personal use would be preserved.

Conclusion: Support from the health sector, and from a member of parliament or from government to promote an amendment bill, is now needed.

Background

The Maori Affairs Parliamentary Select Committee is conducting an Inquiry into the tobacco industry and the consequences of tobacco use for Maori, and has called for submissions on policy and legislative measures needed to address the findings of that Inquiry. Board members of End Smoking New Zealand, a charitable trust, here present a way forward with policies designed to phase out the sale of cigarettes and smoking tobacco by 2020.

End Smoking NZ board members have come to independently agree on the views expressed here, first published in this journal in 2007[1], and now revised to include 'cap and trade' as an alternative method for reducing the cigarette supply; and to favour non-smoked nicotine products (over oral tobacco snuff) to replace cigarettes.

In 2007 we said "This epidemic is spread by commercial cigarettes, and will persist until society demands legislation to outlaw their sale,"[1] and in 2010

this remains true. As the signs grow that society will demand such legislation, we describe the legislative changes needed. Innovative policies are always challenged, particularly if they appear to restrict freedom of choice or liberty, but the freedom of the next generation from tobacco addiction is at stake.

Commercial cigarettes are not only lethal - killing one in two persistent smokers[2] – they cannot be made safe,[3, 4, 5] despite tobacco company research and development efforts. Even if per-cigarette risk could be halved, one in four smokers would die early. Since per cigarette harm cannot be lowered to an acceptable level, and manufacturers wish to sell more not less, reducing harm depends on society reducing the numbers of cigarettes sold.

Smoking, however, is addictive, quitting is difficult; 94% of serious attempts of 24 hours or more were estimated by the Ministry as likely to be unsuccessful on 2008 data.[6] One in four New Zealand students in Year 10 (age 14-15 years) show signs of addiction to smoking after just one cigarette.[7] Four out of five New Zealand smokers say they are addicted (to tobacco),[8] whereas medicinal nicotine gum for example, addicts less than one in ten.[9] For the satisfaction of cravings (the desire to smoke another cigarette right now) smoking a cigarette is more effective with more rapid effect than say nicotine gum. To assist smokers quit, we need policies and products to weaken the hold of cigarettes, and increase the satisfaction provided by substitute nicotine products.

The cigarette deaths epidemic is man-made, and needs effective government policy to end it. The Smokefree Environments Act (the SFE Act) was in 1990 the means of ending tobacco advertising and sponsorship, and of ending smoking in offices and shops; and in 2004, of ending smoking in restaurants, bars, remaining workplaces and indoor public places. Until late in the

parliamentary process these changes were considered impossible to achieve, but now enjoy high public support.

The current situation

New Zealand's tobacco control programme has been more comprehensive and better funded since 2003, yet one in five adults were smoking daily or at least monthly in 2008.[10] Cigarette smoking in the 2002-2006 period killed an estimated 4,500 to 5,000 New Zealanders each year.[10] Since 1950, the early deaths of over 160,000 New Zealanders are attributable to smoking cigarettes.[11]

Two in five Maori adults smoke[10] and over one fifth of all cigarettes smoked are smoked by Maori.[10, 12] Only their preference for the less-taxed cheaper RYO cigarettes prevents them paying one fifth of the tobacco tax revenue. The national Maori lung cancer mortality rate runs at three times the non-Maori rate[12], and similarly the hospitalisation rate for chronic obstructive respiratory disease (often called smokers' lung) was three times the non-Maori rate in Canterbury - based on the ethnic classification used by Canterbury's largest primary health organisation for hospital patients and its enrolled population for 2006-7. (Prof L Malcolm, pers. comm. 2009).

One-third (over 200,000 smokers) said they had quit for more than 24 hours in 2008, (median number of attempts =2, or some 1000 serious quit attempts every day),[13] yet cigarette consumption is not reducing. From 2003 to 2008, the number of cigarettes released for sale (counting 0.5 g tobacco per RYO cigarette) actually increased from 3.96 to 4.29 billion annually,[14] while consumption per adult (smoker or not) remained the same, each year. In 2006, the Census reported that 654,000 were daily smokers, that is 20.7% of the adult population age 15 and over.[15]

The proportion of adolescents aged 14-15 years, smoking daily, weekly or monthly, declined from 29% in 1999 to 14% in 2008.[16] Many, however,

begin smoking in late adolescence, so that 16,000 youth each year enter their twenties as smokers.[15] In 2008, 19,600 adults said they quit smoking successfully (that is, for 6 to 12 months)[13] but the volumes of cigarettes and tobacco released for sale in 2008-2009 suggest most quitters relapsed.

No main political party is yet in support of ending tobacco sales. Hone Harawira MP and the Maori Party wish to phase out tobacco product sales over the next decade, and half the public agree,[17], as do one in four smokers,[18] and if effective nicotine substitutes are made available, nearly half of smokers would agree 'cigarettes and tobacco should not be sold in New Zealand in 10 years time'.[19]

The proposed intervention

With the aim of phasing out sales of cigarettes and tobacco for smoking by 2020, we propose a set of policies to change the balance of price, availability and addictiveness between tobacco and nicotine products.

Cigarette tobacco, cigars, cigarillos, and pipe tobacco would all be phased out gradually during this ten-year countdown period, by means of an increase in cigarette excise tax in 2010, and a bill to amend the Smoke-free Environments Act, which would provide for 10 or 20 steps, to:

- Lower the sales quotas on cigarettes, to progressively reduce supply;
- Lower the nicotine in cigarettes to reduce addictiveness;
- Fast-track approvals to increase availability and minimise price for effective nicotine substitutes for smokers.

Tobacco products for smoking would be defined in the Act as toxic, and no longer a permitted item for commerce and trade, not to be imported, sold or supplied to others within New Zealand, and by the same token, not to be exported to other nations.

The proposed intervention, however, would not restrict current freedoms in law for people to smoke, possess or grow tobacco for private use. Smokers would not be criminalised for smoking.

The bill's legislated timetable would encourage smokers to organise their own quit attempts. On a population basis, smokers would gradually switch the $1.5 billion they now spend on tobacco for its smoke, into buying other goods and services. Agencies would be able to plan supportive media campaigns, and manufacturers would be encouraged to import innovative nicotine-only products to aid the national quitting effort.

Increasing excise and price is a strategic priority for 2010, to kickstart the countdown, discourage youth from starting to smoke, encourage more smokers to quit, and discourage relapse in recent quitters. The first task is to harmonise the excise rates for factory-made and roll-your-own (RYO) cigarettes.[5, 20.] Smokers currently pay 31 cents per factory-made cigarette but only 20 cents excise per RYO cigarette, based on the idea that smokers use 1.0 g of tobacco per RYO cigarette (as they used to), rather than the current 0.5 g.[5] RYO smokers inhale no less carbon monoxide than factory-made cigarette smokers;[5] the harm per cigarette is the same for each type of cigarette. Indeed, the cigarette is the unit of smoking harm, regardless of type, and excise needs to be logically reset to be the same per cigarette, (whether factory-made containing 0.8 g of tobacco or RYO containing 0.5 g tobacco).[5] The excise rate per gram for loose tobacco in RYO cigarettes would need to rise from 39 cents in 2009, to 62 cents.

The second task, once excise is on parity for both RYO and factory-made cigarettes, is to increase excise rates across all cigarettes and smoking tobacco products. New Zealand smokers support increased excise on

cigarettes if it is used to help them quit smoking and for health promotion.[19] A 25% increase in excise, (assuming this triggers the trade to implement a similar increase in the price, and assuming a cigarette price elasticity of minus 0.5) would raise the price per 20-cigarette pack, from $10 to $12.50, lower overall cigarette consumption 12.5% and increase excise revenue by some $85 million in the following 12 months.

Further increases in tobacco excise cannot lower consumption more than 25% below current levels without decreasing revenue. A 50% excise increase in pack price from $10 at present to $15, would maximally increase revenue, whereas any increase above 50% would diminish it. Indeed if excise doubled, (and packet price increased to $20) consumption would be halved, and the revenue gain would be nil – much pain for no gain in revenue. After the increases currently asked for, further increases in tobacco excise are likely to be impractical. At that point, raising price further will require a different approach.

Decreasing the supply of cigarettes is arguably the most essential of the four policies we advocate. Allocation of national sales quotas to each supplier, with step-wise reduction of quotas, will increase cigarette price, and increase the pressure on smokers to quit smoking or smoke fewer cigarettes, and reducing second-hand smoke. Implementation would be low cost, as manufacturers and importer-suppliers are fewer than 20, and annually report their sales to the Ministry of Health.

The reduction can be implemented in one of two ways, each requiring an amendment to the Act, and each cutting sales quotas to suppliers by a prescribed percentage, say 5% every 6 months. The initial permits for 6 to 12 months could be either sold or given away. Economic modeling will be needed to compare the two approaches, and help to anticipate whether, for example, smokers would buy up scarce cigarette supplies.

The Mandated Targets method is straightforward, in that government simply allocates decreasing sales quotas each year, and scarcity sets the price, which in turn lowers demand.

With 'Cap and Trade', government caps the quotas while manufacturers set the market price and trade their quota permits. 'Cap and trade' is an accepted method in environmental economics for reducing polluting emissions. Manufacturers profit from the increased prices, and by trading the permits, expedite the decline in supply. Cap and trade was first proposed for lowering cigarette consumption by Senator Enzi in the United States in 2007,[21] – a bill which by now if passed would have reduced US cigarette consumption considerably. For New Zealand, cigarette prices would rise without any change in excise rates. Reducing supply would reduce demand. Once the scheme began, cigarette consumption would reduce more rapidly and by more than from sporadic tax increases or mandated targets. The proposed bill would use research-based optimal caps and a timetable for applying them. The 'cap' could fix sales quotas at 5% below the 4 billion cigarettes annually sold now, and lower these quotas by another 5% every 6 months or so. This method, according to its inventor, economist Thomas Crocker, is not a panacea, and is best suited to fixing discrete problems, like acid rain in the United States, where a government has the power to apply it and obtain a rapid fix to limit known harm.[22] His comments suggest the policy could be suitable for reducing cigarette sales in New Zealand.

Lowered sales quotas may encourage smuggling attempts, but smuggling is more easily detectable than across a land border. High excise rates mean that even in 2010 border security staff have to be vigilant against attempted tax evasions of millions of dollars per shipping container of cigarettes. The tobacco industry and others will raise the spectre of a gang-led black market. As an illicit cigarette factory would be difficult to conceal, any machine-finished cigarettes could only come from smuggling, and smoking any cigarettes not home grown will attract questions as to their origin. Freedom

to grow tobacco for oneself, and the availability of alternative inhaled nicotine “cigarettes” that simulate smoking, will help damp any black market.

Reducing the addictiveness of cigarettes is supported by 85% of New Zealand smokers.[19] It can be achieved by lowering the cigarette’s unburnt nicotine content, ensuring genuinely less nicotine in the smoke, eventually making it easier for smokers to quit. The policy would aim to reduce average nicotine content from 13 mg per cigarette[23] in a series of steps over ten years, towards 0.17 mg per cigarette by 2020, which ensures that absorption eventually falls below 5 mg nicotine per day, the estimated threshold for maintaining addiction.[24] The policy was adopted by the American Medical Association in 1998,[25] but has not been implemented in any jurisdiction. Compensatory smoking, a concern at that time, can be avoided, and nicotine content can be safely lowered to near zero without increasing the intake of smoke, carcinogens or other toxicants.[26, 27]

Manufacturers currently determine the nicotine content of cigarettes, for example, by choice of leaf blend. Commercial cigarettes are designed to contain ample nicotine, so that the smoker stays addicted even on one or two cigarettes a day. Government has regulatory powers in Section 31 of the Act to reduce the nicotine in cigarettes and could ask the Ministry of Health to draft regulations for initial reductions in nicotine. Eventually, substantial reductions will be needed, and a bill is needed to prescribe the reduction of nicotine content across all brands sold, at a steady rate, for example, 5% every 6 months. Once nicotine content has reduced substantially, quitting will become easier. When nicotine content is less than 20% of current levels, cigarettes will lose much of their appeal.

Regulating for more effective nicotine products Firstly, we need a regulated framework under the Smokefree Environments Act to facilitate sale

of recreational nicotine products of proven efficacy and safety. Inhaled non-medicinal nicotine, pleasant enough to use recreationally or for quitting, as the smoker sees fit, is now available by means of the electronic cigarette, a cigarette-simulating nicotine inhaler, sold in many countries, but not New Zealand, and which requires further research. For smokers, the electronic cigarette is a lifestyle alternative to smoking, providing nicotine and reducing cravings for cigarettes.[28] Nicotine is 99% used in tobacco, for recreational use as governed by the Smokefree Environments Act. Nicotine in nicotine 'cigarettes', provided it makes no therapeutic claim, because it is made from tobacco (though not containing tobacco), falls within the tobacco products definition found in the Smokefree Environments Act.

We also need more effective medicinal nicotine products sold under the Medicines Act. Ministry of Health estimates show that medicinal nicotine replacement is used in 20% of serious quit attempts[13] but probably results in 92% relapsing.[6]

Patents have been registered, and one of us has trialled products, which suggest that within five years, an increased range of nicotine vaporiser- type products will be available on the world market, which smokers will want to use non-medicinally, or recreationally, at low cost, like cigarettes, and buy at lowest cost from any shop. Some firms will also want to sell them as medicines. To this end, a more flexible, permissive and less burdensome regulatory arrangement is desirable, as has been proposed for Britain,[29] while retaining the approvals system for nicotine medicines under the Medicines Act.

Effectiveness of the intervention The proposed intervention, with its four policies increasing their effect every six months or so, is capable of reducing cigarette consumption to 5% of current levels within ten years. Cigarette prices would need to increase substantially, depending on price elasticity; however, reducing supply in tandem with nicotine reduction, could see many smokers quitting long before current prices double, provided effective nicotine substitutes are also available. Reduction of prevalence from 21% of

adults smoking daily in 2006[15] to 1% in 2020, appears feasible once nicotine satisfaction decreases to equate with that from ultra-low yield cigarettes. Importantly, the intervention's effect does not depend on persuading unwilling smokers to quit. Instead, the four policies are designed to impinge on those willing to quit, or who have begun to quit, who must decide today to either stay quit, or relapse. Every day about 1000 smokers make a serious quit attempt lasting 24 hours or more,[13] and each day the four policies will impinge on a somewhat different 1000 smokers trying to quit. Spontaneous relapse to smoking will be less attractive once cigarettes provide little nicotine.

Follow-up of thousands of individual smokers for decades after quitting smoking suggests that when a whole nation quits smoking, deaths due to smoking will decrease within 5 years and return to never-smoker rates within 10 to 15 years after stopping smoking.[30]

The benefits of the whole nation quitting smoking are substantial.

If all current smokers quit and became ex-smokers, mortality rates would reduce by 11% for men and 5% for women, based on 1996-9 data. If everyone was a never smoker (i.e. a historically nonsmoking society), all-cause mortality rates would have been 26% lower for men and 25% lower for women.[31]

Conclusion

We conclude that cigarette and tobacco sales can be ended within ten years, by political and legislative means, and this would in effect be the beginning of the end the smoking deaths epidemic. The alternative is to let commercial cigarettes continue to wreck havoc on the health of smokers, while four out of five smokers continue to regret they ever started.[13] We conclude that the sale and supply of cigarettes and smoking tobacco can no longer go unquestioned. A legislated countdown for this decade now needs to begin, based on a rational economic method of reducing cigarette sales, together

with safe effective substitutes for smokers unable or unwilling to quit using current methods.

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Competing interests. None declared. None of the authors has any financial interest in any nicotine, pharmaceutical or tobacco company. ML has had research testing contracts for several types of nicotine “cigarette”.

References

1 Laugesen M. Snuffing out cigarette sales and the cigarette smoking epidemic. NZ Med J 15-June-2007, Vol 120 No 1256 http://www.nzma.org.nz/journal/120-1256/2587/-

2 Doll R, Peto R, Wheatley K, et al. Mortality in relation to smoking: 40 years observations on male British doctors. Brit Med J 1994; 309: 901-11.

3 Laugesen M, Fowles J. Scope for regulation of cigarette smoke toxicity: the case for including charcoal filters. NZMJ 15 April 2005; 118: (1213).

4 Laugesen M, Fowles J. Marlboro Ultra Smooth: a potentially reduced exposure cigarette? Tobacco Control 2006;15:430-435; doi:10.1136/tc.2006.016055.

5 Laugesen M, Epton, M., Frampton, C., et al. Hand-rolled cigarette smoking patterns, compared with factory-made cigarette smoking in New Zealand men. BMC Public Health 2009, 9:194. http://www.biomedcentral.com/1471-2458/9/194

6 Evison K. Achieving a Smokefree Aotearoa : the afterburners are on. Oceania 2009 conference Darwin. October 2009. http://www.oceaniatc2009.org/images/stories/events/evison%20karen.pdf

7 Scragg R, Wellman R, Laugesen M. DiFranza J. 'Diminished Autonomy over Tobacco Can Appear With the First Cigarettes' Addictive Behaviours 2008. Doi:10.1016/j.addbeh.2007.12.002. http://www.healthnz.co.nz/Addiction1stcigFeb08.pdf

8 National Research Bureau. Environmental tobacco smoke study. Wellington: Ministry of Health 1996.

9 West R, Hajek P, Foulds J, Nilsson F, May S, Meadows A. A comparison of the abuse liability and dependence potential of nicotine patch, gum, spray, and inhaler. Psychopharmacology (Berl) 2000; 149: 198-202.

10 Ministry of Health 2009. Tobacco Trends 2008. A brief update of tobacco use in New Zealand. Wellington: MOH. http://www.moh.govt.nz/moh.nsf/pagesmh/9081/$File/tobacco-trends-2008.pdf

11 Peto R, Lopez AD, Boreham J, et al. Mortality from smoking in developed countries 1950-2000. Oxford University Press, 2004.

12 Robson B, Harris R. (eds). 2007. Hauora: Māori Standards of Health IV. A study of the years 2000-2005. Wellington: Te Rōpū Rangahau Hauora a Eru Pomare. http://www.hauora.maori.nz/downloads/hauora_chapter04_web.pdf

13 Ministry of Health 2009. Tobacco Use Survey 2008. Quitting Results. Wellington: Ministry of Health. http://www.moh.govt.nz/moh.nsf/pagesmh/9665/$File/2008-nztus-quitting-results-nov09-v2.pdf

14 Statistics New Zealand. Alcohol and Tobacco available for consumption. Tables. February 2009. http://search.stats.govt.nz/nav/ct1/alcoholandtobaccoavailability/

15 District Health Board Area and Cigarette Smoking Status by Age group and Sex, 2006 Census. http://www.stats.govt.nz/NR/rdonlyres/7010C24E-D738-4227-93E6-CF37AAE382C6/0/DHBtables.xls

16 Paynter J. National year 10 ASH snapshot survey, 1999-2008; trends in tobacco use by students aged 14-15 years. Auckland: Action on Smoking and Health.

http://www.ash.org.nz/site_resources/library/ASH_Year_10/ASH_Year_10_Snapshot_Survey_2008.pdf
17 Telephone poll 'Do you support a ban on the sale of all tobacco products in New Zealand?' March 2006 TNS poll for TV3, released 2 April 2006. www.endsmoking.org.nz/polls1.htm
18 Edwards R, Wilson N, Weerasekera D, Thomson G. Most smokers support more tobacco product regulation and more government action on tobacco control. (ITC project NZ data). Poster 1-19. SRNT Conference, Dublin April 2009.
19 Edwards R, Wilson N, Weerasekera D, Thomson G. Majority support by Maori and non-Maori smokers for many aspects of increased tobacco control regulation: national survey data. NZ Med J 2009; 122:1307.
20 Wilson N, Young D, Weerasekera D, et al. The importance of tobacco prices to roll-your-own (RYO) smokers (national survey data): higher tax needed on RYO. NZ Med J 2009; 122(1305)92-96.
21 Laugesen M. Put a cap on a lethal habit. NZ Herald 2007, Aug. 6. Perspectives page. http://www.endsmoking.org.nz/NZHerald6Aug07_Enzi.htm
22 Hilsenrath J. Cap-and-Trade's Unlikely Critics: Its Creators. Wall Street J. August 13, 2009. http://online.wsj.com/article/SB125011380094927137.html
23 Blakely T. Laugesen M, Symons R, Fellows K. New Zealand cigarettes have a high nicotine content. NZ Public Health Report. 1997;4:33-34; update 1997; 4:85.
24 Hennningfield JE, Benowitz NL. Establishing a nicotine threshold for addiction. The implications for tobacco regulation. New Engl J Med. 1994;331:123-5.
25 Henningfield JE, Benowitz NL, Slade J, et al. Reducing the addictiveness of cigarettes, including recommendations adopted by the 147th meeting of the American Medical Association. Tob Control 1998; 7: 281-3.
26 Benowitz NL, Dains KM, Hall SM, et al. Progressive commercial cigarette yield reduction: biochemical exposure and behavioural assessment. Cancer Epidemiol Biomarkers Prev 2009; 18: 876-83.
27 Benowitz NL, Hall SM, Stewart S, et al. Nicotine and carcinogen exposure with smoking of progressively reduced nicotine content cigarette. Cancer Epidemiol Biomarkers Prev. 2007 Nov;16(11):2479-85.
28 Bullen C, McRobbie H, Thornley S, et al. Effect of an electronic cigarette on desire to smoke and withdrawal, user preferences and nicotine delivery: randomised cross-over trial. Tobacco Control first on line, early 2010.

29 Royal College of Physicians. Ending tobacco smoking in Britain: radical strategies for prevention and harm reduction in nicotine addiction. A report by the Tobacco Advisory Group of the Royal College of Physicians. London: RCP, 2008. ISBN 978-1-86016-345-6

30 US Department of Health and Human Services. The health benefits of smoking cessation. A report of the Surgeon general, USHHS. Centers for Disease Control. Office of Smoking and Health.1990.

31 Blakely T, Wilson N. The contribution of smoking to inequalities in mortality by education varies over time and by sex: two national cohort studies, 1981-4 and 1996-9. Int J Epidemiol 2005; 34: 1054-62.

Appendix 5 B

Nicotine electronic cigarettes can and should be sold as permitted by the Smokefree Environments Act

20 January 2010

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End Smoking NZ is a charitable trust dedicated to end the sale of traditional tobacco-containing tobacco products for smoking by 2020, and supportive of safer nicotine alternatives to smoking. The ideas canvassed include new thinking on tobacco and nicotine law.

Executive summary

End Smoking NZ supports the general sale of approved nicotine-containing electronic cigarettes as safer alternatives to smoking tobacco products, within 18 months, under the Smokefree Environments Act, subject to regulation with respect to safety.

Background

Smoking cessation is a Ministry of Health priority, but the Ministry's enhanced cessation programme now embarked on, is not expected to prevent more than a small fraction of cigarette-attributable deaths.

Most smokers, most of the time, do not want medicines or want to see the doctor about their smoking. Most regard themselves as healthy. Even when they quit, only 30% use medicinal nicotine. Except for a few days per year

when under half make a serious quit attempt, smokers want to smoke, and it is nicotine they smoke for. So why not let them inhale the nicotine without the toxic smoke? Electronic cigarettes emit about 100 times less toxicant than a regular cigarette. So how could it be done?

Tobacco products in the Smokefree Environments (SFE) Act 1990 are defined as products made from tobacco, and tobacco content is not required.

Nicotine is manufactured exclusively from tobacco, and so the nicotine in nicotine 'cigarettes' such as nicotine electronic cigarettes fits the definition of tobacco products in the SFE Act. This means nicotine-containing electronic cigarettes can be sold as tobacco products, - even though such products contain no tobacco.

Electronic cigarettes vaporise nicotine, contain no tobacco and emit no smoke. They can be sold under the SFE Act as recreational tobacco(-derived) products, without negating the powers of Medsafe to approve and license the sale of medicinal nicotine products under the Medicines Act 1981.

Current situation Until now, the Medicines Act 1981 has been interpreted without reference to the Smokefree Environments Act 1990, with respect to nicotine, with the bizarre result that nicotine must be regarded as medicine, Thus non-nicotine electronic cigarettes can be sold - but if they contain nicotine, a medicine, nicotine electronic cigarettes cannot be sold, unless first approved as a medicine (and none is, so far). Some are imported for personal use. With fresh eyes, 99% of nicotine is recreational nicotine, already regulated under the SFE Act. The import of nicotine e-cigarettes for commercial sale and recreational use under the SFE Act seems perfectly legitimate. In fact it is expected to help eliminate the sale of cigarettes.

The proposal:

At street level That nicotine containing electronic cigarettes be on general sale by the end of 2010, under the SFE Act. This timetable allows for passage

of the necessary Regulations in 2010, ensuring street sales before the 2011 election.

a) Be a very popular move with smokers,

b) Widen the choices in the cigarette market for the better.

c) Be a proper antidote to the unpopularity of any increase in tobacco tax

d) Further reduce the number of tobacco cigarettes smoked.

e) Provide a permanent alternative to continued cigarette sales in future.

By the Minister of Health: That the Minister accept that nicotine cigarettes (whether electronic or not) are tobacco products under the SFE Act, while retaining the classification of medicinal nicotine products under the Medicines Act.

At Cabinet level: Nicotine Product Regulations are desirable to regulate for the safety of nicotine cigarettes under the SFE Act. Ample regulatory powers of Section 31 of the SFE Act allow for Regulations to be drafted to remove or control hazardous substances in all tobacco products, whether the product contains tobacco or not.

At Parliamentary level: Because no tobacco products can be advertised, it may be desirable for the SFE Act to be amended in due course, to permit certain advertising claims to be made for non-tobacco-containing electronic cigarettes and other nicotine products, while retaining advertising bans on traditional tobacco-containing tobacco products.

For human consumption, we have two Acts for nicotine, and two Acts for tobacco; the SFE Act applies to each type of product:

For nicotine, the two Acts are the Medicines Act and the SFE Act.

- The SFE Act provides for recreational (non-medicinal) use of nicotine, either for smoking or inhalation or mastication, in products which may or may not contain tobacco. No therapeutic claims are allowed. Sale of cigarettes and electronic cigarettes are permitted.

- The Medicines Act providing for the medicinal use of nicotine by various routes; which allows therapeutic claims about giving up smoking (example, nicotine patch).

For tobacco the two Acts are the SFE Act, and Customs Act.

- The Customs Act which imposes tobacco tax based on kilograms of tobacco content. (Thus electronic cigarettes would attract no tax.)
- The SFE Act allows the sale for recreational (as opposed to medicinal) purposes, of tobacco products (traditionally cigarettes and smoking tobacco products containing tobacco), and of other products made from tobacco, containing nicotine, but not necessarily containing tobacco (such as electronic cigarettes). To limit harm from smoking tobacco, the Act restricts tobacco smoking of lit smoking products, and bans tobacco product advertising, promotion and sponsorship.

Definition of a tobacco product The SFE Act 1990 defines tobacco product thus:

"Tobacco product means any product manufactured from tobacco and intended for use by smoking, inhalation, or mastication; and includes nasal and oral snuff; but does not include any medicine (being a medicine in respect of which there is in force a consent or provisional consent given under Section 20 or Section 23 of the Medicines Act 1981) that is sold or supplied wholly or principally for use as an aid in giving up smoking "[1]

The definitional wording states that it is *the intention of the seller or supplier* that determines whether it is wholly or principally for use as an aid in giving up smoking. The intention of the sellers or suppliers could be inferred from their behaviour in selling and supplying: For example it is not a medicine if:

1) No claim is made that the e-cigarette helps smokers give up smoking
2) The emphasis is on the product as an alternative to smoking
3) It is sold in places where traditional tobacco products might be sold rather than in a pharmacy where medicines are sold.

Regulations to control for possible hazardous substances in nicotine electronic cigarettes

The regulatory standards required under the Medicines Act, with a licensing fee thereafter of $89,000 per brand per year,[3] are expensive and no supplier has applied, so that over the past three years, smokers are denied a safer way of smoking. Regulation can be also achieved under Section 31 the Smokefree Environments Act, which permits Regulations to set standards as to permissible amounts of certain hazardous substances of concern. The Ministry would have to write Regulations for Cabinet approval.

Regulations to prevent adulteration are particularly needed. Regulatory control of the consistency of dose may not be as essential for tobacco products as for medicines, as smokers are used to controlling their puffing.

Also, although in the one brand studied (Ruyan), few hazardous substances were identified, and only in small amount,[2] this cannot be assumed to apply to all brands without a monitoring system.

Regulations could:

- Nominate NZ laboratories to carry out most of the tests, in cooperation with other countries, as many brands sold have common factory origins.
- Request evidence that the nicotine and propylene glycol used is of pharmaceutical grade.
- Incur less cost once enforcement of patents limit the brands sold.
- Ensure ongoing, regular and random monitoring.
- Be financed from charges on products licensed for sale.

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1 Smoke-free Environments Act 1990, Reprint as at 1 February 2005. http://www.legislation.govt.nz/act/public/1990/0108/latest/DLM223196.html

2. Laugesen M. Ruyan e-cigarette bench top tests. Poster. Society for Research on Nicotine and Tobacco. 15th Annual Conference Dublin April 2009. www.healthnz.co.nz/DublinEcigBenchtopHandout.pdf

3 Medsafe website under Fees. www.medsafe.govt.nz