

Response to consultation queries

Proposal to clarify how nicotine levels for vaping products are expressed in the Smokefree Environments and Regulated Products Regulations 2021

We are seeking feedback on proposed amendments to the regulations that set the maximum allowable nicotine concentration in some vaping products sold in Aotearoa.

We have received queries from some stakeholders seeking further information on some aspects of the consultation. These queries are set out below.

1 Additional information on how proposed regulation would be applied to the concentration of nicotine

- 1.1 As we noted in the consultation, there has been confusion as to whether the existing regulation restricts the concentration of nicotine salt or the concentration of nicotine in products that contain nicotine salts.
- 1.2 While the Ministry has taken the view that the concentration of nicotine salt is restricted, it recognises that clause 15 of Schedule 5 of the Smokefree Environments and Regulated Products Regulations 2021 (clause 15) is not as clear as it could be. To provide clarity, the Ministry proposes that the regulation should relate to the concentration of nicotine instead.
- 1.3 It is important the regulations around vaping products are accessible and easily understood by the public, the industry and consumers of vaping products. Regulating the concentration of nicotine rather than nicotine salt will be easier for people to understand and cross check against the labelling on products. Accordingly, the Ministry's proposal is to amend the regulation to make this clear.

2 Reasons for proposing 28.5mg/mL concentration of nicotine in products containing nicotine salts

- 2.1 As part of the amendment to regulation 15 above, the Ministry proposes to set the concentration of nicotine in products containing nicotine salt at 28.5mg/mL. The Ministry is of the view that 28.5mg/mL provides a balance for smokers who wish to use vaping as a smoking

cessation tool and the need to minimise harm to young people. Other considerations are discussed below.

- 2.2 The Ministry is aware of competing considerations around the appropriate concentration of nicotine. Those competing considerations include enabling products with a sufficiently high concentration of nicotine to be purchased as a smoking cessation tool as well as limiting the availability of products with a high concentration of nicotine given their potential to increase addiction in people who have not previously smoked.
- 2.3 The public health considerations for setting maximum levels of nicotine concentration go beyond providing a current smoker with what would be an equivalent hit of nicotine. They must also take account of the risk to young people that comes with making very high levels of nicotine concentration available. International precedents of lower limits are also a consideration (the UK, EU and Canada have set the nicotine concentration for all products at 20mg/mL). The Ministry proposes setting a concentration of nicotine level that is slightly higher than the 20mg/mL set in those other countries as this may be more effective for people wishing to vape to quit smoking. The proposed nicotine concentration level of 28.5mg/mL is intended to give a nicotine hit that is closer to a cigarette, rather than equivalent.
- 2.4 The Ministry is of the view that this proposal aligns with the purposes of the Smokefree Act, to provide for the regulation of notifiable products in a way that seeks to minimise harm, especially harm to young people and children by making sure that products do not have excessive levels of nicotine, which is the addictive substance in vaping products.

3 Timeframe for consultation

- 3.1 While we appreciate that this consultation period is shorter than other consultation periods conducted in relation to vaping products, the subject of this process is much more targeted than previous processes and relates to one proposal.
- 3.2 We thank those who have already made their submissions. We will consider these submissions, and you do not need to submit your submission again.



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