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Re Review of the Smoke-free Environments Regulations 1999

Attached is the submission from the Public Health Association of New Zealand.

The Public Health Association (NZ) is a non-party political voluntary association, which provides a major forum for the exchange of information and stimulation of debate about public health in New Zealand. Members take a leading part in advocating for public health through submissions, seminars, the annual conference and a communications and media strategy. PHA NZ is a member of the World Federation of Public Health Associations.

Membership of PHA NZ is open to all individuals interested in public health and covers more than 300 individual members from the public, private and voluntary sectors. Members include policy makers, providers, funders, epidemiologists, academics/researchers, health promotion and health protection professionals, public health nurses, public health physicians, managers of health services, consultants and community workers among others.

Your sincerely

G M Keating
Director

Public Health Association of New Zealand submission on the Review of the Smoke-free Environments Regulations 1999

The Public Health Association of New Zealand is concerned to improve the health of all New Zealanders. Control of tobacco products is one of the most significant things that can be done to improve the health of New Zealanders. Tobacco related illnesses are a significant feature in health inequalities, in particular the worse health status of Maori. People on lower incomes and some Pacific peoples also suffer disproportionately from tobacco-related illnesses.

General comments

Need for research and disclosure

While this document is focussed on changing regulations it highlights the importance of research as part of a multi-faceted approach to tobacco control. Many aspects of the discussion document indicate that there is insufficient information in the public domain.

More research is needed in many areas. All information that currently exists should be used, including information currently held by the tobacco industries.

Harm reduction is the area where this information is most needed, especially in relation to the likely impact of alternative strategies for Maori.

Labelling of tobacco products for export

The document is focussed on regulations concerning the sale of tobacco in New Zealand. The Public Health Association would like government to regulate exports of tobacco products from New Zealand, particularly to developing countries. New Zealand should exercise the same degree of control over exports of hazardous products as are applied in this country. It is unacceptable to allow businesses in New Zealand to engage in dangerous trade in a way that provides less protection to people overseas than in New Zealand.

Feedback on specific questions

Section 1: Introduction

From Section 1.5.5

1. *Are there other considerations that should be applied when assessing policy options for adoption (further to those set out in Section 1.5.5 above)?*

The most important consideration for policy makers is the extent to which the options are effective in achieving government objectives of improving health and reducing inequalities. In particular, the options need to be assessed for their impact on Maori.

Tobacco is a highly toxic and addictive substance, and should be subject to tight regulation.

From Section 2.5.2.2

2. *Do you support Option 2 (inserts in tobacco packs) as a means of achieving the Government's stated objectives of complying with Article 11 of the FCTC, and ensuring that optimal warnings, messages and other information are required to be placed on all tobacco products?*

3. *(For industry) What would be the costs of developing and adding inserts to all tobacco packs sold in New Zealand?*

From Section 2.5.2.3

4. *Do you support Option 3 (textual warnings) as a means of achieving the Government's stated objectives of complying with Article 11 of the FCTC, and ensuring that optimal warnings, messages and other information are required to be placed on all tobacco products?*

Yes. This proposal is totally in line with the FTCT to ensure that optimal warnings messages and other information are placed on all tobacco products. If the Ministry of Health does not have the ability to modify and target messages and formats this would not achieve the FTCT requirement that the warnings should be optimal.

The regulations must permit:

- health warnings, pictures and information to occupy a significant majority of tobacco packaging,
- graphic or horrifying images of the damage cause by tobacco
- health warnings, pictures and information to change frequently,
- a wide range of messages and formats (including pictures and language, including Te Reo)
- the Ministry to change messages and formats rapidly without further consultation on the content or format of the warning or information
- selected warning messages, pictures or information to be targeted to different tobacco forms or particular, named brands, in line with tobacco market segmentation

- attribution of the warnings to the Ministry of Health or not as determined from time to time, and from brand to brand to achieve optimal effect.
- Inclusion of information about the Quitline or not, as determined by the Ministry of Health,
- Inclusion of constituent information or not, as determined by the Ministry of Health, based on evidence or likelihood of effectiveness at reducing smoking

5. *If textual and style changes were the chosen option for regulatory changes to give effect to the Government's stated objectives, what specific changes would you like to see, including in respect of:*

- 5.1 *specific messages to be retained on tobacco packages*
- 5.2 *specific messages to be added to tobacco packages*
- 5.3 *number of messages to be rotated at any one time*
- 5.4 *colours of messages and their respective backgrounds*
- 5.5 *style of borders around health warnings?*

The regulations should be framed in such a way as to enable warnings etc to be configured and modified to be optimal in their effects, and change from time to time to ensure that they remain optimal in their ability to reduce smoking.

6. *Are there any other packaging and labelling changes under Option 3 that you think would be worthy of consideration?*

Decisions on the particular messages and formats should be made from time to time by the Ministry, based on the likelihood or evidence of effectiveness of those messages in dissuading people from smoking. Messages and information should be changed in response to their effectiveness at discouraging smoking or supporting quitting.

7. *(For industry) What are the costs of applying new textual warnings to all tobacco products? How do these costs vary depending on the number of warnings that must be rotated?*

8. *What macro policy considerations (if any) from Section 1.5 of this document do you think would support or inhibit adoption of Option 3? How would they have this effect?*

From Section 2.5.2.4

9. *Do you support Option 4 (pictorial warnings) as a means of achieving the Government's stated objectives of complying with Article 11 of the FCTC, and ensuring that optimal warnings, messages and other information are required to be placed on all tobacco products?*

The regulations must permit:

- graphic or horrifying images of the damage cause by tobacco
- health warnings, pictures and information to change frequently,
- the Ministry to change messages and formats rapidly without further consultation on the content or format of the warning or information

10. *If pictorial warnings were the chosen option for regulatory changes to give effect to the Government's stated objectives, what specific changes would you like to see, including in respect of:*

10.1 *specific messages and supporting information to be included on tobacco packages*

10.2 *number of messages to be rotated at any one time?*

The regulations must permit:

- a wide range of messages and formats (including pictures and language, including Te Reo)
- the Ministry to change messages and formats rapidly without further consultation on the content or format of the warning or information

11. *What macro policy considerations from Section 1.5 of this document do you think would support or inhibit adoption of Option 4? How would they have this effect?*

12. *(For industry) What are the cost implications of requiring the placement of pictorial health information, supported by textual information, on tobacco packaging? How is cost affected by the number of messages required?*

13. *Are there any other suggestions in relation to the adoption of Option 4 that you think would be worthy of consideration?*

From Section 2.5.3.1

14. *Which option (if any) for the area of the tobacco pack to be taken up with health information do you support? Why?*

The regulations must permit health warnings, pictures and information to occupy a significant majority of tobacco packaging,

The warnings and information achieve the objective of reducing smoking two ways. The first is by providing a counter to the tobacco industry advertising and information for smokers to help break the addiction. The second purpose is to reduce the ability of the tobacco industry to use the pack as advertising.

15. *(For industry) What are the likely costs (nature and amount of costs, initial and ongoing) of implementing each of the four options?*

From Section 2.5.3.2

16. *Which option for rotation of messages do you support? Why?*

17. *What number of warnings for inclusion on tobacco packs at any one time do you support?*

The regulations must permit

- the Ministry to change messages, information and formats rapidly without further consultation on the content or format of the warning or information

- selected warning messages, pictures or information to be targeted to different tobacco forms or particular, named brands, in line with tobacco market segmentation

18. *(For industry) What are the cost implications of the two options for rotation of health information on tobacco packaging?*

From Section 2.5.3.3

19. Which option(s) for the placement of health information in te reo Māori on tobacco packaging (if any) do you support? Why?

The regulations must permit:

- a wide range of messages and formats (including pictures and language, including Te Reo)
- the Ministry to change messages and formats rapidly without further consultation on the content or format of the warning or information

From Section 2.5.3.4

20. Do you support allowing tobacco companies to attribute the health information they are required to place on tobacco packaging to the Ministry of Health? Why or why not?

21. Should attribution of health information to the Ministry of Health be voluntary or mandatory? Why?

The regulations must permit:

- attribution of the warnings to the Ministry of Health or not as determined by the Ministry of Health from time to time, and from brand to brand to achieve optimal effect.

From Section 2.5.3.5

22. *Do you consider that the health information labelling standard for cigar packaging should be different from that for other tobacco products? Why or why not?*

23. *Do you consider that other products should also be subject to a different standard of labelling? Which products? Why or why not?*

24. *If you answered yes to either Question 22 or 23 above, what requirements do you think should apply for the labelling of cigars and/or the other products you identified?*

All tobacco products should carry warnings and information, irrespective of form or market share.

Cigars should be included in the range of tobacco products that should have compulsory labelling. However, again the Ministry should have the ability to determine the nature of labelling, and determine the extent of warning that should be used in each case. The Ministry should have the ability to vary the warning materials, including decreasing the warning s, based on likelihood or evidence of the warnings being effective.

From Section 2.5.3.6

25. Do you support retention of the 0.2 percent rule for importers of brands of tobacco with low market share? Why or why not?

All tobacco products should carry warnings and information, irrespective of form or market share. Tobacco is a dangerous substance and all sales of it should be accompanied by warnings. The absence of warnings on some brands may give the false impression that those brands are safer

From Section 2.5.3.7

26. Do you support including a referral to the Quitline on tobacco packaging?

27. What wording referring people to the Quitline would you support?

The regulations must permit:

- the Ministry to change messages and formats rapidly without further consultation on the content or format of the warning or information
- Inclusion of information about the Quitline or not, as determined by the Ministry of Health,

From Section 2.5.3.8

28. *Which option for the inclusion of constituent information on packs of manufactured cigarettes do you support? Why?*

The regulations must permit:

- the Ministry to change messages and formats rapidly without further consultation on the content or format of the warning or information
- Inclusion of constituent information or not, as determined by the Ministry of Health, based on evidence or likelihood of effectiveness at reducing smoking

29. *(For industry) What are the cost implications of the four options for including information on constituents on packs of manufactured cigarettes?*

From Section 2.5.3.9

30. *Which option for the inclusion of constituent information on packs of roll-your-own tobacco, cigars, pipe tobacco, bidis and other forms of tobacco that are not manufactured cigarettes do you support? Why?*

31. *(For industry) What are the cost implications of the various options for including information on constituents on other tobacco products?*

All tobacco products should carry warnings and information, irrespective of form or market share. Tobacco is a dangerous substance and all sales of it should be accompanied by warnings. The absence of warnings on some brands may give the false impression that those brands are safer

The regulations must permit:

- the Ministry to change messages and formats rapidly without further consultation on the content or format of the warning or information
- Inclusion of constituent information or not, as determined by the Ministry of Health, based on evidence or likelihood of effectiveness at reducing smoking

From Section 2.5.3.10

32. *What transition period should be provided for tobacco companies to implement new regulations setting requirements for the labelling of tobacco packs with health information?*

The transition period should be short, perhaps three months maximum.

33. *(For industry) Should different transition times apply for the options of pictorial versus text-only warnings? If so, what transition periods are required for the implementation of the warnings and for the phasing out of non-complying stock from retail outlets?*

34. *(For tobacco companies and retailers) Are there any aspects of the health information labelling options presented in this consultation document that raise practical implementation difficulties?*

From Section 2.5.3.11

35. *Should a formalised review period be built into the regulations that introduce new health information labelling on tobacco packaging?*

36. *How often should tobacco health labelling requirements be reviewed with a view to maintaining and enhancing their impact?*

The requirements should be required to be reviewed regularly, say five yearly, but with an option to review more frequently.

Section 3: Descriptors on tobacco packaging

From Section 3.4.1

37. *Which option or mix of options for addressing concerns about the use of misleading descriptors on tobacco product packaging do you support? Why?*

We support legislation banning misleading product descriptors.

38. *What are the policy, legislative and compliance cost issues that would need to be considered should Option 3 (banning descriptors) be taken forward?*

39. *What barriers are there to the successful implementation of a ban on misleading descriptors? What mechanisms might address those barriers?*

The major barrier is the range of techniques that the industry continually evolves to imply misleading information. Requiring tobacco companies, manufacturers and retailers to disclose their market research and other information on descriptors or distinguishing factors may help address this barrier.

Section 4: Disclosure

From Section 4.4.6

40. *Which option or options for the future disclosure of the contents of tobacco products (constituents, additives and emissions) do you support? Why?*

We support options 3, 4, and 5. Tobacco is a highly dangerous substance and all information known about it by the industry should be disclosed.

41. *If you support Option 3 (either by itself or as part of Option 4), do you consider that protections should be built in to the legislation to prevent the disclosure of commercially sensitive brand recipes for tobacco products?*

Disclosure should be full, irrespective of any professed concern for commercial sensitivity. The public should have as full access to knowledge of the constituents, emissions and effects of tobacco as the tobacco industry.

42. *What are the compliance costs associated with the disclosure options?*

Section 5: Tobacco product modification and harm reduction

From Section 5.3.2.5

43. *Which approach(es) to testing of tobacco products (if any) do you think bears further consideration? Why?*

All these options should be further considered. Far more testing, by Ministry of Health or independent agencies should be done.

44. *Are there other approaches that could be considered?*

As in 41 above, there should be full disclosure by the industry of all information that they hold of the constituents, emissions and effects of tobacco.

45. *What are the cost implications of the option of making regulations under section 33 of the Smoke-free Environments Act 1990 to require tobacco companies to undertake more extensive constituent testing of tobacco products? What laboratory capacity would be required to achieve this?*

All costs involved should be borne by the tobacco industry.

From Section 5.4.2.1

46. *Are there any other risks or benefits of a policy of regulating tar and/or nicotine in New Zealand tobacco products?*

The major risk is implementing policy without sufficient information on the effects (such as happened with low nicotine products). Until the international evidence is stronger effort should be placed on gaining more evidence and implementing measures that have good likelihood of success, such as price rises and supported quitting.

From Section 5.4.2.2

47. *Are there any other risks or benefits associated with a policy of regulating the additives that may be added to New Zealand tobacco products?*

As noted earlier, all additives now in tobacco products should be disclosed. No additives beyond those present in products now should be permitted. Any additive prohibited in other jurisdictions should also be prohibited in New Zealand. There would be value in further considering a return to the pre 1984 regime.

From Section 5.4.2.3

48. *Are there any other risks or benefits associated with a policy of regulating the design of the tobacco products to reduce their harm?*

There should be further research and debate on the use of harm reduction methods. Smoking, and tobacco related death and disability is very high in some populations in New Zealand, particularly Maori women. It is very important that there is significant research on harm-reduction options by kaupapa Maori researchers and others to inform decisions on harm-reduction strategies in relation to tobacco.

The key concern is the high risk of consumers being misled over the safety of the new products, coupled with the lack of knowledge that the newer products will be in fact less harmful or be used in a way that is less harmful.

The actions of the tobacco industry in relation to, for example, low-nicotine products, give no confidence that potentially-less-harmful products will be handled in an ethical way by the industry.

From Section 5.4.2.4

49. *Are there any other risks or benefits associated with a policy of allowing reduced smoke products to be sold (and marketed) in New Zealand?*

50. *What regulatory controls and other measures would be required to mitigate against risks of reduced smoke products?*

51. *Are there any other risks or benefits associated with a policy of allowing snus to be sold in New Zealand?*

The same risks exist for these products (Q49, 50 and 51) as above.

As with all aspects of harm reduction, there should be further research and debate on of reduced smoke tobacco products, particularly in relation to Maori.

From Section 5.4.2.5

52. *Should further consideration be given to the idea of allowing (or promoting) the marketing of alternative nicotine delivery products?*

As with all aspects of harm reduction, there should be further research and debate on the use of alternative nicotine delivery products, particularly in relation to Maori.

53. *How should such products, if permitted, be regulated?*

All nicotine-containing products should be regulated. The regulation processes should provide the same extent of control whether the nicotine is presented as tobacco, food, drink or in another delivery system.

From Section 5.5.4

54. *Do you agree with the core set of principles outlined above (principles 1 to 7) for government intervention to reduce the harm associated with tobacco products?*

55. *Do you support any of the alternative principles (principles 8 to 11) in preference to core principles 2 and 4?*

There is need for wider debate on these proposed principles.

The Public Health Association strongly supports principles 1,5,6,7.

Principles 2 and 3 need to be phrased to support the use of evidence where it exists, but not imply that there should necessarily be no action in situation where evidence is unavailable or uncertain.

The PHA strongly supports aspects of Principle 4 – *“Any consideration of strategies must include an assessment of the impacts on all population groups, including the impact on reducing inequalities in health status among population groups.”* The health of Maori is particularly relevant.

56. *Are there alternative or additional principles that you would like to see guide future government regulatory action in the area of tobacco-product harm reduction?*