

Auckland Regional Public Health Service

Rātonga Hauora ā Iwi o Tamaki Makaurau



Working with the people of Auckland, Counties Manukau and Waitemata

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Submission on Standardised Tobacco Products and Packaging Draft Regulations

Thank you for the opportunity for Auckland Regional Public Health Service (ARPHS) to provide a submission on the Standardised Tobacco Products and Packaging Draft Regulations.

The following submission represents the views of the Auckland Regional Public Health Service and does not necessarily reflect the views of the three District Health Boards it serves. Please refer to **Appendix 1** for more information on ARPHS.

Yours sincerely,

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Summary:

1. ARPHS thanks the Ministry of Health for the opportunity to submit on the proposed regulations for the Standardised Tobacco Product Packaging and overall supports the regulations.
2. ARPHS has a strong role in advocating for smoke-free environments and advancement of demand and supply interventions to reduce smoking incidence and prevalence in Tamaki Makaurau. Our enforcement officers monitor the supply of tobacco products by retailers.
3. This submission provides general recommendations to the regulations proposed.

ARPHS suggests the regulations contain provisions that reflect the following recommendations:

1. That the use of dissuasive sticks should be considered.
2. The filter tip of the cigarette sticks be consistent with the packaging colour Pantone 448C instead of a plain white or imitation cork.
3. The inner surface of cigarette packs is changed from white to a Pantone 448C colour to match the outside colour of the pack.
4. The foil linings of cigarette packs should not be detachable from the package.
5. The regulations should restrict the ability of tobacco companies using misleading variant names and slogans to attract consumers.
6. Clearly define in the regulations that the variant names cannot be changed or modified after the publication of the regulations.
7. Change the packaging of loose tobacco from soft plastic pouches to proper rigid containers with large graphic health warnings (consistent with other packaging).
8. The regulations make a decision regarding how many cigars are permitted in one pack to promote a more standardised packet.
9. The surface colour of cigars and their packaging is consistent with the colour (Pantone 448C) of cigarette and loose tobacco packaging.
10. The regulations require the printing of the country of manufacture on tobacco product and packaging.
11. The words "unaltered" or "unchanged" be used to describe the permitted colour of all tobacco products rather than "natural".
12. Powers of enforcement officers need to be looked at closely so that they can feasibly enforce/ monitor the regulations; it is suggested that the offense be defined as

possession of tobacco in packaging in an amount not for personal use (i.e an amount over two packets).

13. The regulations include a section for standardising shisha product packaging. Shisha packaging containing tobacco should be compliant with the standardised packaging regulations.
14. Recognise the online tobacco product sales market, and that this is included within the regulations.

Questions and Recommendations:

Question 1: Do you agree with the proposal to limit the number of cigarettes in a pack to either 20 or 25, and the amount of loose tobacco to 30grams or 50grams.

1. ARPHS agrees with the proposed regulations to standardise the shape and colour of cigarette, loose tobacco and cigar products and packages. However we recommend that the following points should be considered in relation to the size and quantity of cigarettes, loose tobacco and cigars in packages.
 - The regulations should offer only one pack size instead of two options. This is consistent with the rationale to restrict choice.
 - The subsequent increased price of tobacco products also discourages consumers from purchasing tobacco products alongside increased size of health warnings.^{1,2}
 - Standardised packaging in Australia sold packs of 20 to 25 cigarettes between the prices of \$15 and \$17, and found there was a slight risk caused by a super-value allure to consumers.³ Consumers were likely to purchase a different brand to their usual because it was a cheaper price, or was a super value pack containing more cigarettes for a cheaper price. Therefore, the regulations under the new section 36A must account for the price retailers sell super value tobacco products i.e. supermarkets that can purchase in bulk can negotiate a lower price for tobacco products from manufacturers and therefore can set the retail price lower than recommended (especially for value packs).²
 - It is also important that the standard pack size should be met with the continuation and increase of services designed to support smokers to quit and stay quit.⁴
2. ARPHS suggests that the use of dissuasive sticks should be considered by the regulations. For example making the entire cigarette stick including the filter tip

¹ Blakely, T., Cobiac, L. J., Cleghorn, C. L., Pearson, A. L., van der Deen, F. S., Kvizhinadze, G., ... & Wilson, N. (2015). Health, health inequality, and cost impacts of annual increases in tobacco tax: Multistate life table modeling in New Zealand. *PLoS Med*, *12*(7), e1001856.

² Wilson, N., Thomson, G., & Edwards, R. (2008). Use of four major tobacco control interventions in New Zealand: a review. *NZ Med J*, *121*(1276), 71-86.

³ Scollo, M., Zacher, M., Coomber, K., Bayly, M., & Wakefield, M. (2015). Changes in use of types of tobacco products by pack sizes and price segments, prices paid and consumption following the introduction of plain packaging in Australia. *Tobacco control*, *24*(Suppl 2), ii66-ii75.

⁴ Thomson, G. (2007). Report on Tobacco Taxation in New Zealand.

Pantone 448C has the potential to effectively further the purpose of standardised packaging by reducing the appeal to smoke tobacco products.⁵

Question 2: Do you agree with the proposals to restrict the dimensions of cigarette sticks by setting minimum and maximum length and diameter?

3. ARPHS supports the proposed regulations to restrict the dimensions of cigarette sticks by setting minimum and maximum length and diameter restrictions.
4. We recommend the filter tip of the cigarette sticks be consistent with the packaging colour Pantone 448C instead of a plain white or imitation cork.

Question 3: Do you agree with the proposals setting minimum and maximum height, width and depth of cigarette packs, consistent with the limits on the number and size of the cigarette sticks they include?

5. ARPHS is in support of the proposed regulations to restrict the dimensions of the cigarette packs. However we recommend the regulations consider the following recommendations to improve the packaging of cigarettes:

Inner Surface Colour

6. To further reduce any appeal of the product we recommend that the inner surface of cigarette packs is changed from white to a Pantone 448C colour to match the outside colour of the pack.

Foil Lining

7. Regulation 25(d) should be strengthened by removing the word "*easily*" and state packs cannot be detachable. Insuring the lining is non-removable from the package restricts consumers from disposing of the standardised package and using the foil lining as an attractive package.

Variant Names

8. Variant names are used by manufacturers to mislead consumers with descriptive words including the mention of colour i.e. Red or misleading slogans i.e. Optimum

⁵ Hoek, Janet, Philip Gendall, Christine Eckert, and Jordan Louviere. "Dissuasive cigarette sticks: the next step in standardised ('plain') packaging?." *Tobacco control* (2015): tobaccocontrol-2015.

Crush Sky. ARPHS suggests the regulations restrict the ability of tobacco companies using misleading variant names and slogans to attract consumers.⁶

9. We also recommend clearly defining in the regulations that the variant names cannot be changed or modified after the publication of the regulations.

Question 4: Do you agree with the proposal that loose tobacco should be sold in rectangular pouches made of soft plastic?

10. ARPHS recommends changing the packaging of loose tobacco from soft plastic pouches to proper rigid containers with large graphic health warnings.

- Loose tobacco (roll your own) is an attractive method of consuming tobacco by itself or in combination with factory made tobacco products for a large proportion of New Zealand smokers. Disadvantaged groups and young people who smoke are the highest consumer of tobacco in the form of roll your own cigarettes.⁷
- Evidence suggests that though health warnings size and design are the same as on cigarette packages, the soft plastic pouches are not effective in keeping the warnings intact as they tend to tear and fade quicker over time.⁸

Question 5: Do you agree with the proposals to standardise cigar packaging, including the proposal to limit the number of cigars that may be sold in a pack?

11. ARPHS suggests the regulations make a decision regarding how many cigars are permitted in one pack rather than providing an option of single, five or ten cigars. The standardisation of a number in each pack ensures the consumption of cigars is restricted & consumer choice is limited.

Question 7: Do you have any other suggestions for regulatory requirements to standardise the shape and size of tobacco products and tobacco product changes?

12. The proposed regulations state the appearance of barcodes on cigar packs will be a Pantone 448C but does not mention the exact colour of cigars and their packs.

⁶ Greenland, S. J. (2013). Cigarette brand variant portfolio strategy and the use of colour in a darkening market. *Tobacco control*, tobaccocontrol-2013.

⁷ Young, D., Wilson, N., Borland, R., Edwards, R., & Weerasekera, D. (2010). Prevalence, correlates of, and reasons for using roll-your-own tobacco in a high RYO use country: findings from the ITC New Zealand survey. *Nicotine & tobacco research*, ntq155.

⁸ Li, J. M. C. (2015). *The Effects of Tobacco Graphic Health Warnings on Smokers* (Doctoral dissertation, University of Otago).

ARPHS recommends the surface colour of cigars and their packaging is consistent with the colour (Pantone 448C) of cigarette and loose tobacco packaging.

Question 11: Should the regulations allow for the country of manufacturer to be printed on tobacco products or packages?

13. ARPHS recommends the regulations require the printing of the country of manufacture on tobacco product and packaging.

- The World Health Organisation (WHO) Framework Convention on Tobacco Control (FCTC) article 15 on illicit trade states that retail packets and packages carry on them some sort of tracking mark belonging to a database or system that allows authorities and manufacturers to track origin and reduce counterfeiting marks on products.⁹ If the Ministry decided to adopt this FCTC recommendation, it needs to have an appropriate monitoring process and system to track tobacco packages and products consistently.¹⁰ This could also support policing and addressing concerns with the illegal trade and black market supply of tobacco in NZ.

Additional features

Question 12: Are there any additional features within the scope of the regulation-making powers in the smoke-free environments amendment bill that might increase the effectiveness of standardised tobacco products and packaging? If so, what is the rationale and can you provide supporting evidence?

Wording Used to Describe Tobacco

14. ARPHS suggests the regulations be aware of the wording used to describe the colour of tobacco products in part 1(7). The use of the word "natural" to describe tobacco products does not mean that the product has been unchanged. We suggest the words "unaltered" or "unchanged" to describe the permitted colour of all tobacco products.

⁹ Paynter, J., Ester, U., Jooseens, L. (2010). *Illicit Tobacco Trade: Monitoring and Mitigating Risk in New Zealand*. Action on Smoking and Health (ASH). Retrieved from: http://www.ash.org.nz/wp-content/uploads/2015/03/Illicit_Tobacco_Trade.pdf

¹⁰ World Health Organisation. (2003). WHO Framework Convention on Tobacco Control. Geneva, Switzerland. World Health Organisation.

Enforcement

15. The regulations aim to cover both compliance and enforcement of products. However, the proposed regulations focus heavily on the packaging of tobacco products and lack detail on the role of enforcing compliance of standardised packaging. Powers of enforcement officers need to be looked at closely so that they can feasibly enforce/ monitor the regulations. For example, power to require retailers to show all their stock available for sale. This would help combat retailers ordering tobacco products online, and importing packaged tobacco products from overseas that are non-compliant with the regulations.
16. The proposed Bill should also be clear regarding the nature of the offense, whether it is the stocking of tobacco that does not comply with the proposed Bill, or the sale and supply. ARPHS recommends that burden of proof for intent to sell is sometimes difficult to establish and that the intent of the revision would be best implemented if it is an offense to possess tobacco that does not meet the Bill's requirements in a greater quantity than is permitted for personal use. The quantity allowed for personal use should be defined by the Bill and preferably in a manner that limits opportunities to circumvent the intent of the Bill (i.e personal use is the quantity of two packets or less).

Inclusion of Tobacco Shisha Products

17. One of the main aims articulated in the smoke-free environments amendment bill for the standardisation of tobacco product packaging is to stop misleading consumers on the health impacts of tobacco.
18. Currently shisha product packaging in New Zealand is similar to non-standardised cigarette packaging in attracting consumers with colourful packaging, fruity scents and flavours. The marketing of shisha products misleads consumers on the amount of tobacco inhaled through it, and the resulting effects including respiratory diseases, heart problems, oral, lung and stomach cancer.^{11,12}
19. ARPHS recommends that the regulations include a section for standardising shisha product packaging. Shisha packaging containing tobacco should be compliant with the standardised packaging regulations.

¹¹ Centers for Disease Control and Prevention. *Smoking & Tobacco Use*. Retrieved from: http://www.cdc.gov/tobacco/data_statistics/fact_sheets/tobacco_industry/hookahs/

¹² British Heart Foundation. *Shisha*. Retrieved from: <https://www.bhf.org.uk/heart-health/risk-factors/smoking/shisha>

20. We suggest standardised packaging regulations for shisha products containing tobacco similar to the proposed regulations for cigarette packaging. This includes restricting:

- The dimensions of pack size to restrict the amount available to smoke.
- The colour of packs to be changed to Pantone 448C.
- The typeface of packages to be Lucida Sans.
- Health warnings to cover at least 75% of front surface space.
- Health warnings to cover at least 75% of back surface space.
- No embellishments on package or wrapper.
- No added inserts on package or product wrapper inside to market the product.

21. The standardisation of Shisha product packaging will help reduce manufacturers and retailers from misleading people on the safety of consuming shisha containing tobacco.¹³

Online Tobacco Products

22. ARPHS also recommends the regulations recognise the online tobacco product sales market. Currently there are no regulations or mechanisms in place to monitor online selling and purchasing of tobacco products. There is no mention of the online market and the risk it can pose to normalising tobacco consumption for younger generations who are more likely to utilise online forums to sell and swap tobacco products.^{14,15} Therefore, tobacco products sold online should be compliant with the standardised tobacco product packaging regulations.

23. ARPHS recommended wording regarding the offense relating to standardised packaging, paragraph 14, could support concerns of online trade undermining the intent of the proposed Bill. A personal use limit of two packets or less would prohibit the online purchase and import of cigarettes packs not compliant with the proposed Bill.

¹³ World Health Organisation Study Group on Tobacco Product Regulation. Waterpipe Tobacco Smoking: Health Effects, Research Needs and Recommended Actions by Regulators.

¹⁴ Tobacco Control Legal Consultation. (2016). E-Cigarettes and Other Tobacco Products Online: Preventing Sales to Kids. United States of America: Mitchell Hamline School of Law, Public Health Law Center.

¹⁵ Ribisl, K. M. (2003). The potential of the internet as a medium to encourage and discourage youth tobacco use. *Tobacco control*, 12(suppl 1), i48-i59.

Appendix 1 - Auckland Regional Public Health Service

Auckland Regional Public Health Service (ARPHS) provides public health services for the three district health boards (DHBs) in the Auckland region (Auckland, Counties Manukau and Waitemata District Health Boards).

ARPHS has a statutory obligation under the New Zealand Public Health and Disability Act 2000 to improve, promote and protect the health of people and communities in the Auckland region. The Medical Officer of Health has an enforcement and regulatory role under the Health Act 1956 and other legislative designations to protect the health of the community.

ARPHS' primary role is to improve population health. It actively seeks to influence any initiatives or proposals that may affect population health in the Auckland region to maximise their positive impact and minimise possible negative effects on population health.

The Auckland region faces a number of public health challenges through changing demographics, increasingly diverse communities, increasing incidence of lifestyle-related health conditions such as obesity and type 2 diabetes, infrastructure requirements, the balancing of transport needs, and the reconciliation of urban design and urban intensification issues.