

24 August 2022
Health Committee Secretariat
Health Committee
Parliament Buildings
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**RE: SMOKEFREE ENVIRONMENTS AND REGULATED PRODUCTS (SMOKED TOBACCO)
AMENDMENT BILL**

INTRODUCTION

Imperial Brands Australasia (Imperial) welcomes the opportunity to participate in the Health Committee's consultation for *Smokefree Environments and Regulated Products (Smoked Tobacco) Amendment Bill*. Imperial participates in a range of government consultations that are relevant to our business. We do this on the basis that our views will be considered in an objective manner and that the evidence and views we provide will be properly evaluated, with due regard given to relevant legal and legislative requirements and the principles of best practice regulation.

Imperial is a trading subsidiary in the Imperial Brands PLC group of companies, an international fast-moving consumer goods business specialising in tobacco and other nicotine products. Imperial entered the New Zealand market in 1999, through the acquisition of several cigarette and tobacco brands and a factory in Petone from British American Tobacco (BAT).

We would like to respectfully draw the Committee's attention to the lack of clarity surrounding regulations that give effect to the Bill. In the absence of clear regulatory guidelines, we have provided commentary where appropriate as to our recommendations for consideration and inclusion. We believe there is insufficient detail (and a lack of scientific research) on the exact nature of the proposals to reduce the retail availability and nicotine content of smoked tobacco products. This is especially concerning considering tobacco manufacturers are well placed to comment on the feasibility of such proposals given the technical industry expertise and product knowledge available. Imperial requests the opportunity to provide further feedback on these proposals at the time when more material regulatory guidelines are determined.

The remainder of this submission will focus more generally on; low nicotine thresholds, reduced retail availability and the 'smokefree generation'.

REDUCING THE NICOTINE IN SMOKED TOBACCO PRODUCTS TO 'VERY LOW LEVELS'

No cigarette is considered safe. Given the common misperceptions about the harmfulness of nicotine, which are frequently equated with the harms of smoking tobacco, the proposals to reduce the nicotine content in smoked tobacco products to very low levels could further confuse smokers and non-smokers by reinforcing the idea that reduced level nicotine cigarettes are less harmful than traditional cigarettes. Reduced nicotine content will ultimately drive smokers to smoke more, and/or exacerbate the illicit tobacco market.

Imperial Brands is concerned with the quality, and lack of, scientific research supporting calls for very low levels of nicotine content in smoked tobacco products. We encourage policymakers to look to proven approaches to tobacco harm reduction, such as increased educational outreach and the promotion of potentially reduced harm products such as electronic vapour products to existing adult smokers.

The NZ Ministry of Health has highlighted the importance of employing "*evidence-based measures to stamp out smoking*"¹. The suite of proposed measures under the Smokefree Aotearoa 2025 designed to target the appeal and addictiveness, retail availability and access are not supported by current scientific consensus. The Smokefree Aotearoa Action Plan Regulatory Impact statement reiterates this concern; "*Most of the measures being considered have yet to be widely implemented internationally, and in some cases, New Zealand would be the first in the world to implement them. There is therefore significant uncertainty in the outcomes*".

The Hon Dr Ayesha Verrall has previously acknowledged that "*Overall smoking rates are heading in the right direction*"². We recommend the Government continue embracing tobacco harm reduction (providing access to potentially less harmful nicotine products like e-cigarettes and further investment in education and awareness) as the most effective way to get existing smokers

¹ <https://www.health.govt.nz/our-work/preventative-health-wellness/tobacco-control/smokefree-aotearoa-2025-action-plan>

² <https://www.beehive.govt.nz/release/new-legislation-puts-new-zealand-path-smokefree-future>

to move away from cigarettes. The concept of tobacco harm reduction is finding growing support amongst harm reduction advocates in New Zealand and internationally. Potentially less harmful products like electronic cigarettes, recently made legal in New Zealand, are incredibly effective among smokers who have otherwise been uninterested, or unwilling to quit and are a significant contributor to the accelerated decline in smoking in recent years. The *New Zealand Health Survey Annual Update of Key Results 2020/21* provides statistical evidence of the increased decline in smoking rates in recent years as more adult smokers transition to less harmful next generation products; “*While smoking rates have been declining for many years, the decrease over the last year was larger than usual. From 2019/20 to 2020/21, current smoking declined from 13.7% to 10.9% and daily smoking declined from 11.9% to 9.4%³.*”

Key considerations for the proposal to reduce nicotine content in smoked tobacco products to ‘very low levels’:

1. Nicotine is not the primary cause of smoking-related disease. The NZ Ministry of Health has acknowledged “*The nicotine found in tobacco does not cause the adverse health effects associated with smoking*”⁴. The primary cause of smoking-related disease is the inhalation of smoke from burning tobacco. Low nicotine cigarettes burn tobacco and create the same toxicants as regular cigarettes. As such, they do little to address smoking-related harm, are not a “safer” or a less harmful alternative to regular cigarettes and do not represent a tobacco harm reduction tool for adult smokers.

2. There is insufficient scientific research, and no clear consensus, into what would constitute a “non-addictive” level of nicotine in tobacco. There is an absence of real-world use data that shows that very low nicotine limits would promote smoking cessation or reduce smoking-related morbidity and mortality. It is likely that there is no single threshold of nicotine sufficient to sustain or prevent addiction. Any threshold will likely also be impacted by individual differences in non-physiological (e.g., behavioural) aspects of smoking with no two people smoking for the same reasons. Determining a universal threshold which suits all smokers is complex and it is important

³ <https://www.health.govt.nz/publication/annual-update-key-results-2020-21-new-zealand-health-survey>

⁴ <https://www.health.govt.nz/our-work/preventative-health-wellness/tobacco-control/tobacco-control-information-practitioners/vaping-products-information-health-care-workers-and-stop-smoking-services>

that these inter-individual differences are understood, and any wider implications fully considered prior to implementing any formal regulation or policy.

3. There is a risk that smokers may be confused into thinking low nicotine cigarettes are “safer” than regular cigarettes. Partly due to misleading campaigns by tobacco control advocates over many years, the general public (both smokers and non-smokers) mistakenly believe that nicotine is the hazardous component of cigarettes. Mandating very low nicotine limits further confuses this inaccurate messaging. Several studies have found that smokers hold inaccurate beliefs about low nicotine cigarettes in general, believing they are safer than other cigarettes. In the US, a nationally representative survey of smokers found that over half believed that low nicotine cigarettes were less dangerous than regular cigarettes⁵. Further, an experimental study found that smokers assigned to view ads for one brand of low nicotine cigarettes believed them to be healthier and safer, and believed that switching to them could reduce exposure to tar, carcinogens, and other chemicals⁶.

In 2017, the US Food and Drug Administration announced a comprehensive approach to tobacco and nicotine regulation that included moving toward a very low nicotine content standard for cigarettes. At the time, the FDA acknowledged that here was a common misperception that very low nicotine cigarettes are safer to smoke than normal nicotine content cigarettes and that this misperception could potentially lead to lower quit rates⁷.

4. Consumers may reject these products and turn to the illicit trade. Mandating very low nicotine levels is equivalent to prohibiting the regular cigarettes currently consumed by millions of adult smokers. Prohibition fuels criminal supply networks that have no interest in product quality, no qualms about selling to children, and no desire to pay taxes. The growth of a black market can also create a gateway to other illicit substances, and fund networks involved in terrorism. Adult smokers may also seek DIY solutions, such as adding nicotine containing liquids to cigarettes or removing filters, potentially exposing them to more hazardous substances. The availability of

⁵ Cummings et al 2004

⁶ Strasser et al 2008

⁷ <https://www.fda.gov/tobacco-products/research/correcting-public-misperceptions-about-very-low-nicotine-content-cigarettes>

home-grown tobacco in New Zealand also opens the door to creating a potential new supplementary market for illicit tobacco supply.

5. Some consumers may compensate for lower nicotine levels by smoking more, or in more harmful ways. Consumers who do purchase lower nicotine cigarettes may adopt compensatory behaviour, such as inhaling more deeply, or by smoking more cigarettes to achieve their desired level of nicotine satisfaction. When combined with the fact that lower nicotine cigarettes produce the same level of toxicants due to the combustion process, the result could be greater levels of smoking-related harm.

6. As nicotine is a component of the tobacco leaf, very low nicotine caps applied to tobacco would likely require the use of genetically modified tobacco, which raises a range of legal, competitive, and environmental concerns. Some of the thresholds discussed could only be reached by genetically altering tobacco plants to shut down the pathways that produce nicotine. This would only be possible in jurisdictions where genetic modification (GM) is legal and has public support. Intellectual property related to gene-edited tobacco is also contested, which could lead to significant barriers to competition. Moreover, reducing the nicotine content in leaf, which functions as a natural pesticide in the tobacco plant crop, would require a huge increase in the use of artificial pesticides in the growing process.

Historically, public perception of GMO in New Zealand has been one of trepidation.

In addition, relevant legislative frameworks, including the Hazardous Substances and New Organisms Act 1996, become relevant in the context of GMOs. Imperial is concerned at the possibility of overlapping regulatory regimes bringing with unforeseen legal implications with respect to the importing of genetically modified tobacco products into New Zealand that make production, supply, and consequently, access to, these products prohibitive. Imperial recommends, at the least, the Committee seeks legislative clarity as to the interaction of these potentially overlapping regimes.

7. There are alternative public health policies that have been proven to offer tobacco harm reduction benefits without these risks.

Public education and government support of non-combustible nicotine containing next generation products (including heated tobacco, oral nicotine, and e-cigarettes) has been recognised by a growing number of governments and public health bodies to be an effective public health intervention that can accelerate declines in smoking prevalence. In addition, there is no evidence that low nicotine cigarettes will cause consumers to leave the category. Importantly, no regulator or public health body has authorised or endorsed low nicotine cigarettes as a smoking cessation tool and there is no data to support the role of low nicotine cigarettes in long-term smoking abstinence.

8. Going against education. Young people are rightly educated about the addictive nature of nicotine, and as a result many avoid experimenting with cigarettes which is reflected in the historically low youth smoking rates. Unverified claims that very low nicotine cigarettes are "non-addictive" may remove a significant psychological barrier to youth uptake and lead to increased youth experimentation with combustible cigarettes.

Mandating a reduction of nicotine levels in smoked tobacco products to 'very low levels' will ultimately drive adult smokers to consume more cigarettes and exacerbate an already burgeoning illicit tobacco market. If the Government proceeds to adopt a policy, Imperial recommends the introduction of reduced nicotine cigarettes alongside traditional tobacco products to provide consumers with a choice. Access to low nicotine cigarettes within the current market parameters will allow regulatory authorities to monitor their effectiveness, and contribution if any, in supporting smoking cessation in a real-world setting.

LIMITING THE NUMBER OF TOBACCO RETAILERS

Imperial is not aware of any credible evidence to support the view that limiting the accessibility and availability of tobacco products would reduce the consumption of tobacco products or smoking initiation. Measures that seek to limit the accessibility and availability of tobacco products would eliminate legitimate purchasing opportunities. As demand for tobacco products is unlikely to decline at the same rate, there is a danger that consumers would increasingly turn to illicit goods which are often readily available, thus creating greater exposure to illicit networks while reducing future excise payments to government and bypassing current legislation intended to protect consumers such as age restrictions.

Such measures are likely to have a severe impact on smokers and retailers, especially small independent ones which are already under considerable pressure in the current economic climate. Depending on the exact nature of this proposal, small retailers would struggle to pay punitive licence fees or be banned from stocking tobacco products altogether if government were to reduce the number or type of retail outlets that could sell tobacco products. Given that tobacco products sales account for a significant portion of sales and profit (50-60%)⁸, there is a high likelihood that a considerable number of small retailers may be driven out of business. Furthermore, consumers are very likely to be confused as to where they can still purchase legitimate tobacco products and may turn to more readily available illicit products, thus reducing legitimate retail sales and shop owner profitability/viability.

The proposal to ban certain types of retail outlets from selling tobacco products raises serious competition concerns. It would disadvantage an entire retail channel and re-distribute these volumes and profits to other channels. Consolidating tobacco stock into a reduced number of outlets also increases the risk of store identification as a target for theft and robbery.

The Associate Minister of Health has acknowledged the significant burden that this proposal would have on small retailers, in particular referencing this in the foreword of the consultation paper and must carefully consider the wider social and economic impacts of these decisions. Dairy stores are a cornerstone of many New Zealand communities and the removal of a significant portion of their sales revenue will see many of them close their doors, leaving them and their respective communities worse off.

SMOKEFREE GENERATION

The age at which people can smoke is ultimately a question for societies and their governments to decide. We always comply with the laws of countries within which we operate. Where experimental “smoke-free generation” trials are implemented, we will work with governments, retailers, and other stakeholders to ensure compliance, overcome the enforcement, and proxy purchase challenges, and manage the illicit trade risk – even though such policies go against our belief in informed adult choice.

⁸ Dairy Business Owners Association

The central tenet of a large proportion of tobacco regulation is that a restriction of supply will – contrary to the fundamental principles of economics – result in a contraction in demand. The concept that curtailing supply automatically cancels demand is both logically and factually absurd. Prohibition of alcohol in the United States (and in Russia and Scandinavia) famously didn't work.

We are concerned that despite our efforts, a creeping prohibition of tobacco will follow the pattern of all other prohibitions: shifting consumption to illegal products, benefitting criminals and depriving economies of legitimate revenue.

There are also a number of practicality and workability concerns associated with the introduction of a 'smokefree generation'.

The policy will likely see a significant increase in the compliance burden placed upon small business retailers who are already struggling against unprecedented headwinds. The proposal's enforcement will inevitably fall on small businesses who would now be tasked with regulating a new tiered definition of adulthood.

The impracticality of the proposal is evident when third party supply is considered. Circumvention of the measure is near impossible to prevent with proposed non 'smokefree generation' consumers purchasing tobacco products and then supplying to a member of the smokefree generation.

New Zealand is not the first jurisdiction to consider age-based prohibition. The proposal has been considered overseas previously in Australia. The Tobacco Free Generation (TFG) proposal was introduced into Tasmanian Parliament in 2014 and was subsequently referred to a Parliamentary Committee.

The Committee report included a number of key findings including;

- 2) *The Parliament should take a measured and cautious approach in considering a Bill which could limit or 'extinguish' fundamental rights relating to age, equality, and liberty, and;*
- 3) *The Bill raises some practical legal issues in relation to online sales and the impact of the Bill on tourism/tourists.*

The TFG proposal was ultimately dropped after failing to get Government support. A public health approach that assumes more intensive regulation will drive behavioural change is condemned to fail. Imperial would like to reiterate that we support strong regulation to prohibit supply or use of tobacco products by those underage and education about tobacco products to ensure informed choices are made.

ILLICIT TOBACCO IN NEW ZEALAND

Proposed measures under the Smokefree Aotearoa 2025 Action Plan will ultimately lead to unintended consequences which have been well canvassed in recent times by a number of stakeholders across the public and private sector. The most problematic of these will be an explosion in the black market for cigarettes.

Recently, Customs Minister Meka Whaitiri expressed concerns over the Smokefree 2025 plan in a cabinet meeting in April 2021. Cabinet notes show that while the Minister supported what the plan was trying to achieve; she was also concerned the plan did not discuss the growing problem of illicit tobacco in New Zealand.

The KPMG Illicit Tobacco in New Zealand Report for 2019, was published in May 2020. The report showed that illicit consumption had increased from 10.2% to 11.5%, meaning over 1 in every 10 cigarettes consumed in NZ is illegal. There are a number of measures in the public arena and in a recent meeting of the Foreign Affairs, Defence and Trade Committee on 23 June 2022 the Acting Comptroller of Customs, Bill Perry noted *“There are a number of organisations that do an estimation of the illicit market, and it ranges somewhere between 10 and 20 percent. ASH do one; Deloitte’s do one as well. And they all seem to fall within that same bracket of 10 to 20 percent of illicit market”*. It is a growing issue, which is following the trend in Australia where illicit consumption in the 2021 KPMG report was at 19.4%.

The sole beneficiary of an increased black market will be organised criminal syndicates who already generate a significant cash flow from these products. This in turn this is redirected to drive other income streams such as illicit drugs.

The other side of tobacco related criminal activity is the ongoing stream of violent robberies and assaults of which 'ram raids' are a key feature. These have been well documented in the media over a number of years with the brunt of them being borne by dairy stores. This will only intensify if the number of businesses selling tobacco is reduced significantly. Those left retailing tobacco will become more attractive targets to gangs due to their larger stock holdings. Implications for independent retail outlets include:

- Increased threat from criminal gangs to their business and welfare, which in turn will lead to increased costs to protect themselves.
- Greater stock levels will also bring new financial pressures as they will be required to outlay significantly more, which has the potential to lead to cash flow pressures.
- Finally, insurance costs will go up significantly if indeed they can even get the required level of cover.

Imperial requests the Government consider the ramifications of a growing illicit tobacco market when implementing new tobacco control measures and strengthen enforcement activity to crack down on the illegal trade.

CONCLUSION

Imperial supports sensible, evidence-based regulation of tobacco products. We would discourage an approach that is based more heavily on unproven regulation than on education. With such an approach, rather than educate people about the health risks associated with smoking, there is a fundamental assumption that more intensive regulation will drive behavioural change. There is also an assumption that people can be driven to quit smoking, through increasing regulation, to force behavioural change.

Smoking rates are declining at accelerated rates in countries where tobacco harm reduction and next generation products are; available and accessible, supported by public health experts, assisted by pragmatic risk proportionate regulation, and marketed responsibly to adult smokers. In the UK, electronic vapour products have contributed to the significant decline in smoking rates,

down to 13.8%⁹ from 19.3% in 2011¹⁰. Sweden boasts a 5% daily smoking rate, the lowest in Europe. This is largely due to the popularity of snus and other oral products that deliver nicotine without combustion¹¹. New Zealand's experience with electronic vapour products has produced similarly impressive outcomes with the country witnessing a statistically significant decline in smoking rates from 13.7% in 2019/20 to 10.9% in 2020/21.

The scientific evidence for a mandated reduction of nicotine is limited and inconclusive. There is also a clear absence of scientific evidence or data to indicate how these products will perform in real-world settings. There is no single threshold of nicotine sufficient to sustain or prevent addiction. The process to reach low levels of nicotine is complex and would require significant field work (plant breeding, gene editing) over many years to have tobaccos that are agronomically acceptable. Technical achievability stands as a significant hurdle to implementation. While there have been attempts by manufacturers to market 'very low nicotine' cigarettes and by other stakeholders to develop and grow tobacco with reduced nicotine levels, these products have yet to find success in their respective markets¹². A recent pilot in Chicago has seen a very low consumer uptake of reduced nicotine cigarettes, with the product only achieving a 0.22% share of market after four months¹³.

New Zealand's economy is forecasted to enter a recession next year with inflation currently at 7.3%, applying serious pressure and hardship on the population. According to estimates, there are between 5,000 to 8,000 outlets across the country that sell tobacco and forcing the majority of these stores to stop selling these products will only apply further pressure on the businesses and the people that run them. Owners of dairies have expressed their distress regarding this Bill, with some stating their businesses will not survive while others highlight the significant foot traffic that cigarettes bring. The Government should endeavour to support businesses at this time, instead of limiting their sales in an already tough economic climate.

⁹ Office for National statistics, Smoking Prevalence in the UK and the impact of data collection changes :2020

¹⁰ Office for National Statistics 2020, Adult Smoking Habits in Great Britain

¹¹ The European Commission 2017, Special Eurobarometer 458, Attitudes of Europeans towards tobacco and electronic cigarettes

¹² See for example; Vector Tobacco <https://www.stuff.co.nz/business/opinion-analysis/300644727/prohibition-approach-to-smoking-unlikely-to-succeed>

¹³ Source: Internal I&I SoM US Data



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Legislating for a smoke free future, while noble, is at best misguided and unnecessary. Indeed, other regulations have been shown to be more effective in achieving smoking cessation goals like better education, a stronger awareness of personal health, and adoption of potentially less harmful products like e-cigarettes supported by a harm reduction approach to smoking cessation. These factors have helped put New Zealand on the cusp of attaining a smokefree generation. Smoking rates for young adults are already below 5%, the mandated target for Smokefree 2025.

Imperial would welcome the opportunity to appear before the Select Committee to discuss this submission in further detail and clarify any questions that the Committee may have.