

Submission on Tobacco and Smoking Production Order, ban on flavoured e-cigarettes

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I give permission for this submission to be made public.

Introduction

This submission on the Netherlands government Tobacco and Smoking Production Order banning flavoured e-cigarettes is made by Professor Marewa Glover, Director of the Centre of Research Excellence: Indigenous Sovereignty & Smoking (the Centre), Auckland, New Zealand (NZ). The Centre is a NZ-registered limited liability company. We are an independent research company with a mission to build knowledge and research skills to reduce the harms associated with tobacco smoking, especially in Indigenous people and other 'left behind' groups¹, which include ethnic minorities in European countries such as the Netherlands².

Disclosure of Funding: I have never received funding from any tobacco or vaping industry company. Over 10 years ago I did receive payment from some pharmaceutical companies for advice on stop-smoking medications. I prepared this submission in my role as Director of the Centre of Research Excellence: Indigenous Sovereignty & Smoking. The Centre of Research Excellence: Indigenous Sovereignty & Smoking was established, and the work of the Centre continues to be funded with a grant from the Foundation for a Smoke-Free World, a US nonprofit 501(c)(3) private foundation with a mission to end smoking in this generation. The Foundation accepts charitable gifts from PMI Global Services Inc. (PMI); under the Foundation's Bylaws and Pledge Agreement with PMI, the Foundation is independent from PMI and the tobacco industry. The contents, selection, and presentation of facts, as well as any opinions expressed herein are the sole responsibility of the authors and under no circumstances shall be regarded as reflecting the positions of the Foundation for a Smoke-Free World, Inc. The funder had no role in my decision to make this submission, nor did they have any role in determining the content, preparing, reviewing or approving of the content.

Summary of concerns

I oppose the ban on flavoured e-cigarettes. In this submission I want to highlight the importance of supporting evidence-informed methods that can more rapidly assist people to stop smoking. While this ban is well meaning in its intent to reduce dependency on an addictive product, the ban will have the opposite effect to that intended, for the following reasons.

1. Increasing dependency on smoked tobacco. Smoking tobacco is a dependency forming behaviour that is at least 20 times as harmful as e-cigarettes. Research as outlined below demonstrates the role of flavours in increasing smoking cessation and reducing cigarettes smoked per day.
2. Associated black-market activity. Banning flavoured e-liquids increases the risk of robberies and associated injury (another public health concern) from violence perpetrated by offenders.
3. There are dangers in making any new laws prohibiting, restricting, or regulating drugs. Marginalised groups are disproportionately affected. The harm inflicted by 'sharp legal things' is detailed below

1. Increasing dependency on smoked tobacco

The use of e-cigarettes (vaping) has been found to be an effective way to support people to stop smoking.^{3 4} People who vaped daily had a greater likelihood of quitting or reducing smoking. Those who vaped only occasionally did not show the same effect⁵. Vaping is a more effective aid to quitting than other nicotine delivery systems such as dipping tobacco and Heat-not-Burn (HNB) devices. It has even found to be more effective than Nicotine Replacement Therapy⁶.

The potential harm from vaping has been calculated as being less than 5% as harmful as smoking, due to the far lower concentrations of carcinogenic and other harmful materials from tobacco smoke (tar). It is almost as harmless as nicotine replacement therapies⁷.

The use of vaping liquid containing flavours other than tobacco or menthol (hereinafter 'flavoured liquid'), has increased in popularity from 2011-2016⁸. The use of flavoured liquid has been associated

with greater success in smoking cessation and tobacco consumption reduction than the use of tobacco or menthol flavours⁹.

A recent systematic review describes clinical and epidemiological trials demonstrating that numbers of cigarettes smoked per day are lower in dual tobacco-vaping users who vape with flavoured liquid. Epidemiological surveys revealed that the availability of flavoured e-liquids were often cited as a reason for being able to stop smoking¹⁰

A ban on flavoured liquid may act as a barrier to smoking cessation, as has happened in San Francisco after they enacted a flavour ban¹¹.

A better approach is one taken by the New Zealand government. Its solution is to allow unrestricted access to flavoured liquids to adults while minimizing the exposure of flavoured vape liquid to young people under 18 years old. I suggest that this policy be put in place by the Netherlands government as an alternative approach to a ban on flavoured liquid.

2. Associated black market activity

The increase in aggravated robberies to obtain cigarettes from shops in New Zealand^{12 13} shows what happens when a product is made less accessible.

Vape stores are also starting to become the target of robberies. In a robbery reported on 8 August 2022, thieves targeted a vape store to steal vapes, not money.¹⁴ This suggests that further scarcity could turn vape products such as flavoured liquid into a black-market product like tobacco. A survey of vape users from a New Zealand vape expo confirmed that if liquids were unavailable, 57% of respondents would circumvent a ban by mixing their own and/or buying liquids from overseas or the black market¹⁵.

An almost complete ban on tobacco, except for small amounts for personal use, was implemented in Bhutan in 2004. This resulted in a decline in passive smoking, but the policy failed to reduce smoking prevalence, largely because tobacco could be smuggled from India and sold on the black-market.^{16 17} Al Jazeera news report that during the COVID-19 pandemic, the policy was repealed due to spread of

coronavirus from illicit cross-border trade.¹⁸ The Netherlands is like Bhutan in that it shares a land border with other countries, so illicit contraband would be hard to control.

3. Sharp legal things

Laws, regulations and legal instruments generally impact more greatly on the less financially advantaged sectors of society. As Greene (2018)¹⁹ states (quoting a poverty lawyer from the 70s):

“Poverty creates an abrasive interface with society; poor people are always bumping into sharp legal things.”

An example of the way that excessive and unnecessary regulations bump up against the poorest members of society is the ‘war on drugs’ in the US. This has led to racial profiling of African Americans. It has resulted in increased rates of incarceration generally, and of African Americans in particular, even though racial discrimination was not the stated intent of the policy.²⁰ Regulations that encourage black-market purchase and use of vaping products, could have the same negative effect among disadvantaged groups in the Netherlands, such as the Roma and Sinti people.

Conclusion

The proposed ban on flavoured e-liquid takes a neo-prohibitionist approach such as the proposed blanket ban on flavoured liquids. Prohibitionist (aka prevalence reduction) policies start with an ideological assumption that any substance use is bad, and the only solution is for everyone to stop using it.

I support a harm reduction approach as an alternative means to meet the objectives of reducing harm caused by substance abuse. This is an approach that may allow for continued use of substances, but in a way that reduces harm to all those affected, including reducing harm caused by policies.²¹

¹ Glover M, Patwardhan P, Selket K. (2020) Tobacco smoking in three “left behind” subgroups: Indigenous, the rainbow community and people with mental health conditions. *Drugs and Alcohol Today* DOI 10.1108/DAT-02-2020-0004

² Zajc Petranović, M., Rizzieri, A. E., Sivaraj, D., Smolej Narančić, N., Škarić-Jurić, T., Celinščak, Ž., ... & Rizzieri, D. A. (2021). CVD Risk Factors in the Ukrainian Roma and Meta-Analysis of Their Prevalence in Roma Populations Worldwide. *Journal of personalized medicine*, 11(11), 1138.

³ Hartmann-Boyce, J., McRobbie, H., Butler AR, Lindson, Bullen, C., Begh, A. et al. (2021). Electronic cigarettes for smoking cessation. *Cochrane Database Systematic Review*, 9 (9).

⁴ Chan, GCK, Stjepanović D, Lim C, Sun T, Shanmuga Anandan A, Connor JP, et al. (2021). A systematic review of randomized controlled trials and network meta-analysis of e-cigarettes for smoking cessation. *Addict Behav.*119:106912. doi: 10.1016/j.addbeh.2021.106912. Epub 2021 Mar 15. PMID: 33798919.

⁵ Gravely S., Meng G., Hammond D, Hyland AK, Cummings M, Borland R., et al. (2022). Differences in cigarette smoking quit attempts and cessation between adults who did and did not take up nicotine vaping: Findings from the ITC four country smoking and vaping surveys. *Addictive Behaviors* 132, <https://doi.org/10.1016/j.addbeh.2022.107339>.

⁶ Chan, GCK, Stjepanović D, Lim C, Sun T, Shanmuga Anandan A, Connor JP, et al. (2021). A systematic review of randomized controlled trials and network meta-analysis of e-cigarettes for smoking cessation. *Addict Behav.*119:106912. doi: 10.1016/j.addbeh.2021.106912. Epub 2021 Mar 15. PMID: 33798919

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⁹ Friedman AS, Xu S. Associations of Flavored e-Cigarette Uptake With Subsequent Smoking Initiation and Cessation. *JAMA Netw Open*. 2020 Jun 1;3(6):e203826. doi: 10.1001/jamanetworkopen.2020.3826. PMID: 32501490; PMCID: PMC7275248.

¹⁰ Mari S Gades, BA, Aleksandra Alcheva, MD, MPH, Amy L Riegelman, MLIS, Dorothy K Hatsukami, PhD, The Role of Nicotine and Flavor in the Abuse Potential and Appeal of Electronic Cigarettes for Adult Current and Former Cigarette and Electronic Cigarette Users: A Systematic Review, *Nicotine & Tobacco Research*, Volume 24, Issue 9, September 2022, Pages 1332–1343, <https://doi.org/10.1093/ntr/ntac073>

¹¹ Friedman AS. (2021). A Difference-in-Differences Analysis of Youth Smoking and a Ban on Sales of Flavored Tobacco Products in San Francisco, California. *JAMA Pediatr*. 175(8):863–865. doi:10.1001/jamapediatrics.2021.0922.

¹² Glover, M, Shepherd, R, Selket, K., & Paramanathen, SK. (2021). Price hikes, crime fad or political football? What caused a spike in store robberies for cigarettes in New Zealand: Analysis of news reports (2009-2018). *Safer Communities*.

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¹⁴ <https://www.nzherald.co.nz/nz/auckland-crime-six-retail-stores-targeted-by-thieves-overnight/K5WSUVFIWVKO5WIHPQKUGSCGHY/>

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¹⁸ Aljazeera News (2020). *Bhutan lifts tobacco ban amid coronavirus measures*.
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²⁰ Alexander, M. (2011). The new Jim Crow. *Ohio St. J. Crim. L.*, 9.

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