

SUBMISSION ON THE TOBACCO PRODUCTS AND ELECTRONIC DELIVERY SYSTEMS CONTROL BILL, 2022

For attention:

Honourable Chairperson and Honourable Members
Portfolio Committee on Health
Parliament of South Africa
Cape Town 8001

Attention: Ms Vuyokazi Majalamba,

Dear Honourable Chairperson and Honourable Members,

The proposed regulation, [Tobacco Products and Electronic Delivery Systems Control Bill](#), includes several measures that would impair public health in South Africa and harm consumers. On behalf of 19 international harm reduction consumer groups, we are responding to the consultation on the Bill to offer science-based, evidence-driven arguments with regards to the points of the proposed articles.

Smoking is a global problem and needs to be addressed urgently and accordingly. Only in South Africa, [42,181 people die every year](#) due to tobacco smoking. Yet, the provisions offered by the South African government include several provisions which will halt the progress that South Africa has made in combating the smoking epidemic, and will thus endanger lives of all those who have successfully quit smoking due to wide availability of alternative nicotine products.

As stated in the preamble of the Bill, the legislation aims to regulate smoking through regulatory provisions over advertising, sale, manufacturing, packaging, distribution and export, and consumption of alternative nicotine products and combustible products:

To regulate smoking; to regulate the sale and advertising of tobacco products and electronic delivery systems; to regulate the packaging and appearance of tobacco products and electronic delivery systems and to make provision for the standardisation of their packaging; to provide for standards in respect of the manufacturing and export of tobacco products and electronic delivery systems; to prohibit the sale of tobacco products and electronic delivery systems to children; to prohibit the free distribution of tobacco products and electronic delivery systems; to prohibit the sale of tobacco products and electronic delivery systems by means of vending machines; and to provide for matters connected therewith.

Overall provisions of the Bill propose equal rules for both combustible tobacco products and alternative nicotine products (such as vaping and heated tobacco). Such regulation can potentially endanger the health and wellbeing of the South African population and lead to the public health disaster.

This alliance of 19 consumer organisations joins the consultation to the South African Parliament's Portfolio Committee on Health to provide extensive scientific evidence on the dangers of regulating smoking and vaping under the same provisions and offer a perspective on adopting a coherent harm reduction strategy.

Vaping is not the same as smoking

Vaping should not be equated to smoking. In **Provision of Section 2, 2.2 “Smoking includes inhaling, exhaling, holding or otherwise being responsible for a relevant product or electronic non-nicotine delivery system producing any emission,”** the legislation does not distinguish between combustible cigarette smoking and vaping.

Vaping has been recognised as a less harmful alternative to smoking by more than a 100 governmental and non-governmental agencies as a harm reduction tool, and is a recommended smoking cessation aid in many countries, including [the United Kingdom](#), [Canada](#), [New Zealand](#), and [France](#).

Public Health England stated that vaping is [95% less harmful](#) than smoking. Recently the [largest literature review of its kind by Kings College reconfirmed](#) this and found that “the use of vaping products rather than smoking leads to a substantial reduction in exposure to toxicants that promote cancer, lung disease and cardiovascular disease.”

Dr Debbie Robson, one of the report's authors of the review, says: “The levels of exposure to cancer-causing and other toxicants are drastically lower in people who vape compared with those who smoke.”

E-cigarette vapour and cigarette smoke may look similar, but they are considerably different. Smoke results from combustion, releasing thousands of harmful chemicals. Vapour, on the other hand, contains the same chemicals found in the vaporized substance. Vape liquids' compounds are common food ingredients and are safe to ingest, unlike cigarettes which create over [7,000 chemicals](#), many of which are carcinogenic. The [cancer risk](#) from vaping is 0.4% compared to 2.4% from smoking.

Flavours are essential in helping smokers quit

Provision in **Section 8 states that “The Minister may make regulations regarding the standards for the manufacturing, testing, measuring and processing of the relevant products and the related products, including the—(d) ingredients, additives, colourants and characterised flavourings;”** imposing a possibility of a flavour ban over e-cigarette liquids.

E-cigarette flavours are not only instrumental in helping smokers switch, but also ensure that they do not return to cigarettes. Different studies show that flavours are [commonly used among regular vapers of all age groups](#). In the United States and Canada, it is estimated that around [two thirds of adult vapers use flavours](#). In Europe, the latest [Eurobarometer on the Attitudes of Europeans towards tobacco and electronic cigarettes](#) shows that, among those who vape at least on a monthly basis, almost half (48%) use fruity flavours, and 20%

use candy flavours. Another recent [study](#) found that "only 2.1% reported tobacco as the single most often used" flavour.

According to Yale School of Public Health, flavoured vaping devices are associated with an [230% increase in the odds of adult smoking cessation](#).

When banned, the University of Waterloo found that [5 out of 10 of vapers would turn to illegal sources to buy flavoured devices or would go back to smoking cigarettes](#). Flavour bans run the risk of increasing tobacco consumption and cancer incidence by limiting smoking cessation and forcing vapers back to smoking cigarettes.

[Friedman, A.S. et al](#) found that "Adults who vaped flavoured e-cigarettes were more likely to subsequently quit smoking than those who used unflavored e-cigarettes" and "adults who began vaping non-tobacco-flavoured e-cigarettes were more likely to quit smoking than those who vaped tobacco flavours".

Additionally, the EU's [SCHEER report](#) recently concluded: *"To date, there is no specific data that specific flavourings used in the EU pose health risks for electronic cigarette users following repeated exposure."*

Banning vaping in public places can lead to unintended consequences.

Provision in **Section 2. Control over smoking states that "No person may smoke in— (a) an enclosed public place, enclosed workplace, or in or on a public 10 conveyance"**. A ban on outdoor vaping or tobacco heating, aimed to protect non-smokers from secondhand or passive smoking, poses several unintended consequences as it discourages smokers of combustible cigarettes to switch to less harmful alternatives.

The aerosols from e-cigarettes contain nicotine that can be assimilated by bystanders, but they do not carry carcinogenic substances like the smoke of tobacco does. According to the [Royal College of Physicians](#), "Although nicotine delivery from e-cigarettes depends on a number of factors, [...], they can in principle deliver a high dose of nicotine, in the absence of the vast majority of the harmful constituents of tobacco smoke". And, as the [Yorkshire Cancer Research](#) states, "Nicotine is not a carcinogen; there is no evidence that sustained use of nicotine alone increases the risk of cancer". Moreover, [research](#) showed that "those near a 'vaper' inhale 100 times less nicotine than a passive smoker (...) negligible levels that rule out the existence of the passive vaper". When these results are considered together, it is possible to conclude that the risk of inhaling e-cigarette vapour is very limited, and the probability of it being harmful is minimal.

Extending the smoke-free areas' regulation to e-cigarettes and heated tobacco would make cigarette alternatives less appealing for smokers and would make it more likely for vapers to go back to smoking. First, if smokers could vape in more areas than they can smoke, this would be yet another incentive for them to switch to this less harmful alternative. Second, if vapers were forced to vape in the same spaces where smokers consume cigarettes, the probability that they go back to smoking would increase.

Overregulation creates an even bigger illicit market.

Several provisions of the proposed Bill create regulatory burden over not only combustible cigarette products, but also products that serve as a harm mitigation solution, including advertisement restrictions, plain packaging, ban on public use of vaping products, potential flavour ban and manufacturing standards, and more. Recently, the [sin tax on vaping products](#) also came into force, even before the Tobacco Products and Electronic Delivery Systems Control Bill was voted on. Such overregulation can not only push people back to smoking but also create an even larger black market (which [already exceeds 50%](#) in South Africa).

The South African Revenue Service (SARS) is losing as much as R19-billion annually from illicit cigarette sales. The planned measures will make it even easier for bad actors to offer their products to consumers, will put consumers at risk, and increase funding sources for organised crime.

The research shows that 5 out of 10 vapers would find a way to get their banned flavour on the black market or take up smoking again. For example, the 2018 [flavour ban in San Francisco](#) resulted in rising smoking rates among teenagers for the first time in decades. Estonia banned flavours in 2020, and the result was that [60% of vapers kept using them](#) by mixing their own liquids or obtaining them from the black market without any quality or safety control. A comprehensive flavour ban in Massachusetts resulted in [higher sales of cigarettes](#).

Last year, WVA [conducted a survey](#) among its members about the perception of consumer interest representation among policymakers and regulatory changes in regards to vaping, including potential flavour ban and tax increases. 28% of respondents claimed they will address the black market should the tax be increased over vaping products.

Conclusion: Risk-based regulation is needed. For the purposes of the legislation, smoking and vaping should be clearly distinguished and regulated in separate provisions where vaping is acknowledged as a smoking-reduction tool. Nicotine products should be regulated according to their risk profile.

For the South African success in combating smoking rates it is essential to create opportunities that will encourage smokers to quit combustible cigarettes. So far vaping and similar alternative nicotine products (such as nicotine pouches and heated tobacco) have been proven the most effective in achieving this goal.

Therefore, we urge you to listen to science and consumer experience and start embracing harm reduction products instead of over-regulating them and creating a larger black market.

###

Representatives of the global World Vapers' Alliance community are eager to participate in the oral submission held via web-cam during the future hearings on the topics of the Tobacco Products and Electronic Delivery Systems Control Bill 2022.

Contact details:

Michael Landl,
Director of the World Vapers' Alliance
michael@worldvapersalliance.com
+43 664 8412957

Signatories to the submission:

Korean Vapers' Alliance - South Korea
Ohms do Vapor - Portugal
Direta - Diretório de Informações para Redução dos Danos do Tabagismo - Brazil
Campaign for Safer Alternatives - Africa
THR Kenya - Kenya
THR Sierra Leone - Sierra Leone
THR Congo - Democratic Republic of Congo
THR Malawi - Malawi
Malaysian Vapers' Alliance - Malaysia
Legalise Vaping - Australia
Association of Vapers India - India
Turkish Vapers' Alliance - Turkey
Asovape Colombia - Colombia
THR Brasil - Brazil
Asovape Argentina - Argentina
All Vape México - Mexico
Asovape Chile - Chile
Asovape Perú - Peru
World Vapers' Alliance - International