



Public submission from the World Vapers' Alliance to the Kenyan Senate

About the World Vapers' Alliance

The World Vapers' Alliance (WVA) amplifies the voices of vapers worldwide and empowers them to make a difference in their communities. Our members are vapers associations and individual vapers from all over the world. More information can be found on www.worldvapersalliance.com

About this consultation and why the World Vapers' Alliance is responding to it

The Kenyan Senate has invited the public to submit their memoranda on the [tobacco control \(amendment\) bill](#), 2024 (Senate Bills No. 35 of 2024), which aims to further regulate the production, sale, advertisement and use of nicotine products, including nicotine pouches and electronic nicotine delivery systems such as heated tobacco products and vapes. Among the measures included in the law are a ban on flavours, a requirement to include excessive health warnings on the packaging of the products and increased taxation.

The World Vapers' Alliance considers that these restrictions would make it harder for current users to stay away from smoking and for smokers to switch to less harmful alternatives by making them less accessible and attractive, thus exacerbating the public health problem that smoking poses in Kenya. The World Vapers' Alliance participates in this consultation to provide scientific evidence and comments on the proposed restrictions and their potential impact on public health to the Kenyan Senate.

How to read this document:

We respond directly to a each measure separately.

Equating nicotine products to traditional tobacco products: The Bill amends the definition of the word “smoking” to include the inhalation of synthetic nicotine whether by electronic means or ignition and amends the definition of the word “tobacco product” to include synthetic nicotine.

WVA’s response:

Vaping, this is, inhaling nicotine through a vaporiser that contains no tobacco and requires no combustion, is completely different from smoking and should be categorized and regulated separately from smoking. Similarly, nicotine products that do not contain tobacco, such as nicotine pouches or vaping products, simply cannot be categorised as a ‘tobacco product’.

Equating less harmful nicotine products to traditional cigarettes and their use to smoking only serves to confuse smokers and prevent them from being aware of the existence of less harmful alternatives to consuming nicotine.

The fact is that nicotine pouches are the [least harmful](#) alternative to smoking and vaping is [95% less harmful](#) than smoking as well as the most effective smoking cessation method. 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.

Although neither are entirely risk-free, the lack of combustion and the carcinogenic components found in traditional cigarettes make them much preferable methods of nicotine consumption compared to smoking. As products targeted at nicotine users, their risk should be addressed in comparison to that of traditional cigarettes. According to [King’s College London](#), the exposure to toxicants that promote cancer, lung disease and cardiovascular disease in the use of vaping products is substantially lower than that of smoking. This translates into a significantly reduced risk of cancer (a lifetime excess cancer risk of [0.0095%](#), only 0.4% of that from smoking), [substantial improvements](#) in cardiovascular health and even a [higher probability](#) of picking up healthier routines and exercising when switching. Similarly, nicotine pouches can deliver high amounts of nicotine quickly with [no significant adverse effects](#).

These features of vaping and nicotine pouches make them ideal tobacco harm reduction products. According to the [Royal College of Physicians](#), “*they (vapes) can in principle deliver a high dose of nicotine, in the absence of the vast majority of the harmful constituents of tobacco smoke.*” In this regard, the highly regarded healthcare NGO [Cochrane](#), in a review of 78 trials with 22,052 participants, concluded that “there is high-certainty evidence that ECs with nicotine increase quit rates compared to NRT and moderate-certainty evidence that they increase quit rates compared to ECs without nicotine.” Researchers at [Queen Mary University’s Health and Lifestyle Research Unit](#), in a clinical trial of nearly 900 smokers, quantified this difference and concluded that vaping is twice as effective as traditional nicotine replacement therapies in quitting smoking.

These factors - their relatively low risk and their effectiveness as smoking cessation tools - should be considered pragmatically by Kenyan policy makers, who should reconsider their proposal of equating the use safer nicotine products with smoking. Instead of focusing on preventing

smokers to be aware and switch to less harmful alternatives, Kenyan legislators should promote them following the approach already being implemented in countries like [France](#), the [United Kingdom](#), [Canada](#), and [New Zealand](#) – where vaping is a recommended means of quitting for smokers – with great success.

Increasing taxation: The Bill empowers the Cabinet Secretary for finance to implement tax policies and price policies on nicotine pouches and vaping products.

WVA’s response:

Taxation of safer nicotine products should be implemented in relation to its risk and the differences in risk with combustible cigarettes to incentivise smokers to switch. Moreover, the burden of smoking-related illnesses disproportionately falls on the poor. In order to reduce the disproportionate impact of smoking in lower- and middle-income groups, it is essential to keep alternative nicotine products available at affordable prices for everyone. Keeping a tax differential between cigarettes and alternative nicotine products is key to maintain alternative products available at affordable prices and incentivize smokers to switch.

Scientific evidence shows that demand and sales of vaping products are very responsive to price changes and tax increases. Policies increasing retail prices, such as taxes on vaping products, can lead to [significant reductions](#) in sales. But, due to the [substitutability](#) of e-cigarettes and traditional cigarettes, we can expect increases in vaping products prices to be followed by increases in traditional cigarettes’ sales. For example, a study who found that a \$1 increase in vaping taxes yielded an [increase](#) in recent smoking, primarily reflecting greater dual use. Evidence on this unintended consequence of vaping taxation can be found in several studies. Similarly, researchers studied the effects of traditional cigarettes and vaping product taxes on the use of both products in the United States and found that higher vaping product tax rates [increased](#) traditional cigarette use.

Crucially, the effect mentioned above appears to be particularly relevant for young adults. Researchers studied young adults’ responses to traditional cigarettes and vaping taxes and found that: “higher ENDS tax rates are associated with decreased ENDS use, but [increased cigarette smoking among 18- to 25-year-olds](#), with associations reversed for cigarette taxes.” Similarly, another [study](#) concluded: “we estimate sizable positive cigarette cross-tax effects, suggesting economic substitution between cigarettes and ENDS for youth. (...) We conclude that the unintended effects of ENDS taxation may considerably undercut or even outweigh any public health gains.”

We therefore recommend Kenyan policymakers that taxes on alternative products are set in accordance with their risk relative to that of cigarettes. From an incentives point of view, it does not make sense to tax traditional cigarettes and alternative products the same way. Taxes on traditional cigarettes are meant to cover the healthcare costs and negative externalities derived from smoking. Since vaping is 95% less harmful – and nicotine pouches even more – for the user and does not have negative effects to those around him, it is only proportional that taxes are 95% lower too. This will not only be enough to cover the healthcare costs derived from vaping, but the price differential with traditional cigarettes will be yet another incentive for smokers to switch and improve public health and their own. Moreover, this is the best way to make sure

that those groups disproportionately hit by tobacco, the lower and middle classes that make up a large part of the Kenyan population, have enough incentives to switch and reduce their smoking burden.

Limiting e-liquid bottles sizes and nicotine concentration: The Bill requires refill e-liquid containers to not exceed a volume of 10 milliliters and nicotine concentration to not exceed 10 milliliters per milligram.

WVA's response:

Establishing limits to the size of e-cigarette tanks to 2ml, the capacity of nicotine-containing e-liquid bottles to 10ml and the nicotine strength of e-liquids to 10mg/ml make it more difficult and expensive for many smokers to switch, forcing them to buy more devices and bottles of e-liquid and not allowing them to consume the levels of nicotine they need to stay away from smoking. They also generate an unnecessary amount of waste that severely damages the environment.

The level of nicotine strength in vape liquids should not be restricted at such a low level, as every smoker needs a different level of nicotine in his vape to quit smoking, depending on the amount of cigarettes he smokes. Moreover, low restrictions are not justified, given that nicotine is [virtually harmless](#). We recommend Kenyan policymakers to reject this limit or, to at least increase it up to 20mg/ml such as in the European Union, to abolish the e-liquid bottles' size limit to make it easier and cheaper for smokers to switch and to abolish the e-cigarette tanks' size limit to make it easier for smokers to switch by having a wider array of product choices.

Banning flavours: The Bill bans additives which result in a characterising flavour in tobacco products, including nicotine pouches and vaping products.

WVA's response:

Banning flavours in vaping products and nicotine pouches is a disproportionate measure that will only push users to the black market or back to smoking.

Flavours are not only instrumental in helping smokers switch, but also ensure that they do not return to cigarettes. They allows users to not only enjoy the experience of vaping, but to forget about the taste and smell of tobacco, which helps them to stay away from the old habit of smoking. According to Yale School of Public Health, flavoured vaping devices are associated with an [230% increase in the odds of adult smoking cessation](#). Similarly, [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".

On the other hand, experiences of recent flavour bans have shown that their impact on public health is negative, as they not only make it more difficult for more smokers to switch to vaping,

but also push many vapers back to smoking or to getting their flavoured liquids on the black market or making them themselves. 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. A [flavour ban in San Francisco](#) resulted in rising smoking rates among teenagers for the first time in decades, while [a flavour ban in Massachusetts](#) resulted in higher sales of cigarettes. Similarly [a flavour ban implemented in Estonia](#) in 2020 led to 60% of vapers mixing their own liquids or obtaining them from the black market without any quality or safety control. Surveys in [Germany](#), [Denmark](#), [Slovenia](#), Estonia, the [Netherlands](#) and [Sweden](#) show similar.

Similarly, as with vaping flavours, the proposed ban on flavoured nicotine pouches presents a similarly overly restrictive measure that could derail smoking cessation efforts. Like in vaping, flavours in nicotine pouches significantly enhance their appeal help smokers' transition away from cigarettes. The variety of flavours plays a crucial role in disassociating users from the taste and smell of tobacco, which is vital for preventing relapse into smoking habits.

In summary, flavours increase the likelihood of quitting smoking significantly, making vaping a much more effective harm reduction tool when combined with flavours other than tobacco. [Flavours save lives](#) and it is crucial that they are kept available so that smokers can switch and consume nicotine in a much less harmful way. We therefore urge the Kenyan authorities to revert all flavour bans and make sure as many options as possible are kept available for adults.

WVA's conclusion remarks:

Vaping and using nicotine pouches have been proven to be substantially less harmful than smoking and an efficient way to quit smoking, with flavours playing a vital role in the process. Therefore, we urge the Kenyan Government to consider all the evidence and establish the necessary measures to keep vaping and nicotine pouches (including all flavours, sizes and nicotine concentrations) available for adult smokers.

A comprehensive review of the literature can be found in our Vaping and Harm Reduction Fact Sheet here: <https://worldvapersalliance.com/harm-reduction-vaping-fact-sheet/>