



NEW ZEALAND  
LAW SOCIETY

NZLS EST 1869

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# Smokefree Environments and Regulated Products (Vaping) Amendment Bill

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*01/04/2020*

## Submission on the Smokefree Environments and Regulated Products (Vaping) Amendment Bill

### Introduction

1. The New Zealand Law Society | Te Kāhui Ture o Aotearoa (**Law Society**) welcomes the opportunity to make a submission on the Smokefree Environments and Regulated Products (Vaping) Amendment Bill (**the Bill**).
2. The Bill amends the Smoke-free Environments Act 1990 (**the Act**) to bring certain provisions of the Act up-to-date and “to ensure that all regulated products (tobacco smoking products, herbal smoking products, smokeless tobacco products, and vaping products) are adequately covered”.<sup>1</sup>
3. The Law Society’s submission is confined to comments on the timeframe for making a submission and the Attorney-General’s report (**Report**) under section 7 of the New Zealand Bill of Rights Act 1990 (**Bill of Rights**).
4. The Law Society does not wish to be heard.

### Truncated select committee consultation

5. The Law Society is concerned at the truncated time period for submissions to the Health Select Committee on this Bill. Although the Bill was introduced on 24 February 2020, it did not receive its first reading until 11 March 2020 at which point it was referred to the Health Select Committee with submissions due by 1 April 2020, providing only a three week submission period for public input.
6. The Law Society has previously expressed concerns as to truncated submission timeframes, both in submissions on bills<sup>2</sup> and in recent submissions to the Standing Orders Committee during the 2017 review of Standing Orders<sup>3</sup> and the 2020 review.<sup>4</sup>
7. The Standing Orders Committee in its 2017 Report endorsed the Law Society’s observations, and indicated desirable time frames for closing dates for submissions including:<sup>5</sup>
  - generally, a minimum of six weeks is appropriate;
  - a lesser (but still realistic) period is permissible in exceptional circumstances;
  - longer is desirable for large or complex bills;

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<sup>1</sup> Smokefree Environments and Regulated Products (Vaping) Amendment Bill, explanatory note, p1.

<sup>2</sup> See the Law Society’s submissions on the Christ Church Cathedral Reinstatement Bill, Crown Minerals (Petroleum) Amendment Bill, Misuse of Drugs Amendment Bill, Racing Reform Bill and Education (Pastoral Care) Amendment Bill, found here: <https://www.lawsociety.org.nz/news-andcommunications/law-reform-submissions/submissions-on-bills>.

<sup>3</sup> See here: [https://www.lawsociety.org.nz/\\_data/assets/pdf\\_file/0016/107062/Standing-Orders-Review-25-11-16.pdf](https://www.lawsociety.org.nz/_data/assets/pdf_file/0016/107062/Standing-Orders-Review-25-11-16.pdf).

<sup>4</sup> See here: [https://www.lawsociety.org.nz/\\_data/assets/pdf\\_file/0017/141029/I-SO-Committee-Review-of-Standing-Orders-31-10-19.pdf](https://www.lawsociety.org.nz/_data/assets/pdf_file/0017/141029/I-SO-Committee-Review-of-Standing-Orders-31-10-19.pdf).

<sup>5</sup> Standing Orders Committee, *Review of Standing Orders* (2014-2017) AJHR 1.18A, at p 28, found here: [https://www.parliament.nz/resource/en-NZ/SCR\\_74675/70c7a3972ff528fea2a062cc9aad17b6507200c3](https://www.parliament.nz/resource/en-NZ/SCR_74675/70c7a3972ff528fea2a062cc9aad17b6507200c3).

- committees must allow sufficient time for proper drafting and consideration of amendments and commentaries.
8. The 2017 report only provided general guidance to select committees and the Standing Orders do not, as they stand, prescribe any standard minimum period to be allowed for submissions.
  9. The Law Society is unable to see why the period for public submissions has been restricted to three weeks. It cannot fairly be described as so urgent as to be exceptional and to justify a period shorter than six weeks.
  10. The opportunity that select committee procedure generally allows for input by members of the public and affected groups is rightly seen as a centerpiece of New Zealand’s parliamentary democracy. It should not routinely be restricted. The process surrounding this Bill should not serve as a precedent.

### **Restrictions on freedom of expression**

11. The Law Society agrees with the view, expressed by the Attorney-General in his Report to the House of Representatives pursuant to section 7 of the Bill of Rights, that the restrictions in the Bill on packaging, advertising and promoting vaping products are inconsistent with the right to freedom of expression.<sup>6</sup>
12. That right includes the freedom of people in New Zealand to receive information, as much as it does the right of suppliers to impart that information.
13. The Attorney-General’s primary reason for his view is the unavailability of any conclusive evidence suggesting that harm is associated with vaping.<sup>7</sup> The Attorney-General cites several points from the Regulatory Impact Statement associated with the Bill. This includes (for example) the observations that there is inconclusive evidence on there being a gateway from young persons’ vaping to regular smoking and vaping, and that there is “no robust evidence to support [the] concern” that young people who do not smoke will become regular vapers.<sup>8</sup>
14. The point is a significant one, as the restrictions placed around vaping might be said to represent an incursion into the general liberty of people in New Zealand to avail themselves of generally lawful products and pastimes. While that general liberty is not itself a right in the Bill of Rights, the right to express and receive information about vaping is protected. Importantly, according to scientific consensus, vaping is recognised to be a 95% safer option than smoking tobacco.<sup>9</sup>
15. The Law Society accepts, as does the Attorney-General, that on the current state of the evidence some restrictions around vaping of the general type set out in the Bill are appropriate.

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<sup>6</sup> Section 14 of the New Zealand Bill of Rights Act 1990 states “everyone has the right to freedom of expression, including the freedom to seek, receive, and impart information and opinions of any kind in any form”.

<sup>7</sup> Report of the Attorney-General under the New Zealand Bill of Rights Act 1990 on the Smokefree Environments and Regulated Products (Vaping) Amendment Bill, at [30].

<sup>8</sup> Ibid, at [13].

<sup>9</sup> Regulatory Impact Statement: Support smokers to switch to alternatives (Ministry of Health) January 2019, at p 10.

16. However, the Law Society endorses the Attorney-General's conclusion that, on the available evidence, the limits on freedom of expression identified in the Report do not meet the standard of being "demonstrably justified" as set out in section 5 of the Bill of Rights.

A handwritten signature in black ink, appearing to read 'H. Visagie', written in a cursive style with a large, sweeping flourish at the end.

Herman Visagie  
**NZLS Vice President**  
1 April 2020