31 August 2023

Dr KL Jacobs, MP
Chairperson of the Portfolio Committee on Health

For the attention of Ms. Vuyokazi Majalamba
By email: tobaccobill@parliament.gov.za

Dear Dr Jacobs

Written submission on the Tobacco Products and Electronic Delivery Systems Control Bill

We write as independent experts in the field of tobacco policy and science – our brief biographies are appended. We write to comment on the Tobacco Products and Electronic Delivery Systems Control Bill (B33-2022) as presented for comment.[1] We have made previous comments on tobacco policy in South Africa.[2] [3] Our aim has always been to assist the legislature and government in delivering world-class public health legislation for the benefit of the people of South Africa.

In summary, we generally support the tough measures in the Bill when applied to the most dangerous products, namely cigarettes and other combustible tobacco products. However, we are very concerned about the indiscriminate extension of these measures to much safer, smoke-free products that can substitute for smoking, displace cigarettes, and reduce the burdens of toxic exposure, serious disease, and premature death.

If enacted as written, we believe this Bill *will do more harm than good*. It will protect the cigarette trade, discourage smokers from switching to much lower-risk products, promote dangerous work-arounds, cultivate an uncontrollable criminal supply chain, undermining the legislation's purpose.

Instead, we favour legislation that implements 'risk-proportionate regulation'. This would impose the strongest controls on cigarettes and other combustible products but also encourage consumers to migrate to low-risk legal and regulated forms of consumer nicotine either as an alternative to smoking or on a journey to nicotine abstinence.

In the detailed response that follows, we provide a factual basis for our views and then draw out the implications for the Bill in general and then for each specific section. ***We would welcome the opportunity to provide oral testimony before the Committee – either online or in-person.***

Yours sincerely,

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Key factual propositions

We wish to make the following points on which to base our concerns:

- **Smoke-free products are much less harmful than cigarettes**. It is beyond reasonable doubt that smoke-free nicotine products (e.g., nicotine vapes, heated tobacco products, snus, nicotine pouches) are much less risky to health than cigarettes.[4 5 6 7] As such, they represent a pro-health challenge to the dominant incumbent consumer nicotine product. It is uncontroversial that inhaling smoke (the products of combustion of tobacco leaf) is by far the most dangerous way to take nicotine. Smoking accounts for 98 per cent of the global burden of tobacco-related mortality.[8 9] Heated tobacco products also offer greatly reduced toxicant exposure compared to cigarette smoking.[10] The United States FDA has determined a heated tobacco product to be 'appropriate for the protection of public health' and permits defined modified risk claims.[11]

- **Smoke-free products can assist in smoking cessation**. These products represent a technological advance that will ultimately drive the cigarette into obsolescence and, eventually, effectively address the burden of smoking-related disease – *providing regulators do not prevent this*. There is good trial and supportive population trend evidence that aping helps smokers quit,[12 13 14 15 16 17] including some who have no initial intention to quit.[18] In Japan, we have seen dramatic decreases in smoking that are attributable to heated tobacco products.[19 20]

- **Smoke-free products can assist in the diversion of young people from smoking initiation.** The evidence points to interactions between ENDS use and cigarettes among adolescents, with ENDS functioning *as a diversion* from smoking for adolescents.[21 22 23] This is consistent with observed US adolescent population trends, which have seen a sharp decline in smoking as ENDS use has risen.[24 25] US and UK data show that the most intensive adolescent use of ENDS is among those most likely to smoke – so-called accidental quitters.[26 27 28]

- **There is no compelling evidence of a material gateway effect in which vaping causes smoking**. There is, however, extensive misunderstanding in this area. Most of the observed data is explained by 'common liability', that is, characteristics of the individual or their circumstances that incline them to both vaping and smoking. Common liability explains both why there is no gateway effect and why vaping is likely to be beneficially concentrated in people who would otherwise smoke. [29 30 31]

- **Smoke-free products and cigarettes are economic substitutes**. Economic evidence suggests that there are pronounced substitution effects between combustibles such as cigarettes and smoke-free alternatives.[32 33 34 35 36 37 38 39 40 41 42] This should be expected and a default assumption – both categories provide nicotine and meet user demands for nicotine, one with much lower risk. These products are in competition, and lawmakers and regulators can and should favour the much safer smoke-free products over the far more dangerous combustibles. This would comply with the established regulatory principle of 'risk proportionality'.

- **Smoking cessation is easier than nicotine cessation**. The demand for the recreational stimulant nicotine goes back thousands of years. The demand for this mild stimulant is much more robust and inelastic than any particular way of taking it. It is much easier to quit smoking if the user is not also expected to quit nicotine. The strategy of going from smoking and nicotine use to

abstinence from both is a major barrier to just quitting smoking. It is quitting *smoking*, but not necessarily nicotine, that delivers the major public health benefits and reduces the burdens of non-communicable disease and other smoking-related harms. It follows that a strategy that demands both smoking and nicotine abstinence will fail for more smokers, resulting in smoking, disease and premature death. Any effort to eradicate nicotine will form a barrier to the eradication of smoking.

- **Youth vaping and smoking are both important concerns, but they must be understood in context**. Most youth vaping is likely infrequent, frivolous, experimental, and/or transient. [43] [44] [45] While a natural concern, this is mostly *inconsequential* in public health terms. More frequent, intensive, routine vaping will tend to be concentrated in young people who would otherwise be likely to smoke. For these adolescents, vaping is *beneficial* as it drives out the much more harmful behaviour, cigarette smoking.[46]

- **Policymakers must expect and understand 'unintended consequences' in nicotine regulation**. This problem is especially pronounced in regulating smoke-free products as they are alternatives to the much more dangerous smoked products. In its 2016 report, the Royal College of Physicians (London) signalled its concern about the potentially perverse consequences of otherwise well-intentioned ENDS regulation:[47]

  > *… if [a risk-averse, precautionary to e-cigarette regulation] also makes e-cigarettes less easily accessible, less palatable or acceptable, more expensive, less consumer friendly or pharmacologically less effective, or inhibits innovation and development of new and improved products,* ***then it causes harm by perpetuating smoking****. Getting this balance right is difficult. {emphasis added]*

  South Africa has recently experienced well-intentioned legislation that resulted in serious unintended consequences – the tobacco ban implemented during the COVID-19 pandemic did not lead to tobacco sales disappearing, but a sizeable criminal market emerged.[48] [49]

Implications of factual positions for the proposed legislation

General comments

- **Treating smoking and smoke-free products as equivalent will do more harm than good**. The proposed legislation generally takes an undifferentiated approach to smoking and smoke-free nicotine products. Yet these products differ enormously in risk - by one to two *orders of magnitude*. Also, safer smoke-free products can *substitute* for far more dangerous smoked products, giving a significant health benefit to those who switch. There is no rational basis for a regulatory philosophy that treats high-risk and low-risk products as though they are the same; even if this idea is promoted globally by American anti-vaping activists.

- **Excessive restrictions on any product will stimulate informal markets, illicit trade, criminal networks, and workarounds by consumers and suppliers**. Well-intentioned regulators can do more harm than good by constraining the legal market in a product with high consumer demand, thereby stimulating illicit responses that break or circumvent the law. Vulnerability to illicit trade will depend on the capacity, capabilities, corruptibility and priorities of law enforcement and the extent to which criminal supply is already established in related markets. South Africa's experience of prohibitive tobacco control measures and rapid expansion of illicit trade during the COVID-19 pandemic should be salutary and cautionary.

1. Definitions

Many of the proposed definitions will lead to violations of the principle of proportionality or other issues. The definitions ignore orders of magnitude (10-100-fold) differences in risk between different tobacco and nicotine products and set up the legislation to impose indiscriminate restrictions that will protect the riskiest products from competition from the least risky.

- **Promote**. The definition of 'promote' as written is not limited to 'commercial communications' but appears to include *any communication by anyone* positive about switching from smoking to a smoke-free product.

  > *Promote means any form of communication, advertisement, recommendation or action with the aim, effect or likely effect of increasing awareness, creating interests, generating sales and creating brand loyalty of a relevant product or a related product or the use of such product, directly or indirectly.*

  As written, this would prevent anyone (academic, health professional, public health expert, policy analyst) from discussing tobacco harm reduction positively or even a consumer conveying their personal experience in switching from smoking to vaping. It would be an extremely harmful imposition, a ban on criticism of poor policy and a violation of fundamental free speech principles. This also protects cigarette companies from product liability litigation by removing the duty to adequately inform consumers of relative risks.

- **Relevant product.** This term is used throughout the legislation. It includes combustible tobacco products, smoke-free tobacco products, and non-tobacco smoke-free products such as ENDS.

"relevant product" refers to a tobacco product, a tobacco device and an electronic nicotine delivery system, and includes any component, whether sold separately or not;

It means that products with vast differences in risk and the potential for significant harm reduction are or can be treated indiscriminately under the legislation. There is no justification for an undifferentiated approach if low-risk products substitute for high-risk products.

- **Smoke**. This appears to define the inhalation of a smoke-free aerosol also as *smoking*. It is also unclear whether the definition applies only to non-nicotine electronic delivery systems, and not to nicotine delivery systems.

  smoke means inhaling, exhaling, holding or otherwise being responsible for a relevant product or electronic non-nicotine delivery system producing any emission;

  Yet, the use of ENDS, ENNDS, or heated tobacco products does NOT involve inhaling *smoke*, which is a chemical mixture formed of products of combustion. This is important because it blurs the critical public health distinction between products that are very harmful because they involve combustion and products that are far less harmful because they do not. The definition, as worded, applies to ENNDS, not ENDS, but should apply to neither.

- **Tobacco Product and Tobacco Device**. These definitions eliminate the distinction between tobacco products that are *smoked* and *smoke-free* tobacco products that are much less risky (e.g., heated tobacco and snus) than tobacco products that are lit and produce inhalable smoke. This again sets up an undifferentiated approach to risk when these definitions are applied later in the legislation.

  In health-related legislation, the most appropriate distinction would not be between tobacco and non-tobacco products, or between traditional tobacco products and novel and emerging and nicotine products, but between combustible and non-combustible products, whether or not these are made of tobacco.

2. Control over smoking

General government-imposed bans on vaping in public places have no scientific basis and will discourage switching from cigarettes to much safer products. The definition of 'smoke' in section 1 discussed above sets up a pervasive ban on vaping and heated tobacco product use in indoor workplaces, public places and potentially some outdoor places.

The exposure and risk to bystanders to these products are very different from exposure to secondhand cigarette smoke.

- The aerosol droplets are physically and chemically very different and far less toxic.
- The vapour droplets disperse much more rapidly than viscous cigarette smoke particles.
- There is no 'sidestream' vapour to compare with sidestream smoke (smoke from the burning tip of the cigarette that is not inhaled)

There is no evidence to suggest that bystander exposure to heated aerosols creates a material risk or is remotely comparable to secondhand cigarette smoke exposure. Such risks form the justification

for a legislated pervasive ban on indoor smoking, but they do not justify a ban on products that create heated aerosols.

Excessive measures in the control of indoor vaping could discourage switching, deny opportunities for smoking cessation in disadvantaged groups, and intrude on the rights of property owners without a justification.

The alternative policy to a pervasive mandatory ban is not simply to allow the use of these products everywhere to assume a right to vape. The proper alternative is to give the owner or manager of a workplace or public space the responsibility for determining the policy towards vaping and heated tobacco product use. Such a policy could be reinforced by a legal requirement to make the policy clear through signage. For further clarity, it could be supplemented by legislated bans in specific settings, such as public transport or school facilities. However, the owners would typically do this without needing a law. Some hospitality providers, for example, may wish to accommodate vapers – that should be a business decision for them unless there is evidence of material harm to bystanders and, therefore, a justification for government intervention.

3. Advertising, promotion, sponsorship, distribution and display of relevant product or related product

Bans on advertising smoke-free products protect the cigarette trade. Advertising is an essential commercial tool in building awareness and trusted brands. For new and innovative companies determined to disrupt an established and entrenched market, advertising plays a vital role in challenging the incumbent. In this case, the incumbent is the cigarette trade. Bans on advertising new smoke-free products serve as protective barriers to entry and help sustain the dominance of the cigarette industry in the consumer nicotine market.

From a public health point of view, advertising low-risk alternatives functions as *anti-smoking promotion* paid for by the private sector.

The appropriate, risk-proportionate approach to the control of advertising, promotion and sponsorship is to impose comprehensive bans on advertising for combustible products, but place controls on themes and placement for smoke-free alternative products to allow them to compete effectively with cigarettes.

4. Standardised packaging and labelling of tobacco products

This section makes safer alternatives to smoking less appealing to smokers. The legislation imposes standardised packaging on all tobacco products (sections 4.1-4.3). Again, the problem here is the indiscriminate application of restrictive policies to products with greatly reduced risks and the means to displace smoking. This measure aims to deliberately make smoke-free products less appealing to smokers who may be inclined to switch and vapers who may be tempted to switch back. The appropriate distinction is between combustible and non-combustible products.

A further problem relates to the codification of misleading information into the law.

5(4) No person shall manufacture for sale, import or sell a tobacco product that has packaging or labelling that is false, misleading, deceptive […] or is likely to create the erroneous impression that a particular tobacco product—

(a) is less harmful than another tobacco product;

(b) reduces or aims to reduce the effect of any harmful content of the product or

This makes it a criminal offence to say something true. By omission, it creates a requirement to convey an implicit falsehood about the respective characteristics of the products. There is no realistic doubt that non-combustible, smoke-free tobacco products are far less harmful than smoked products (part (a)). Also, it established beyond doubt that these products expose users to far lower or undetectable levels of the critical hazardous agents in cigarette smoke (part (b)).

For consumers, this is essential, potentially life-saving information. It makes no sense to make it a legal requirement to conceal truthful information and an offence to communicate truthfully. It violates the consumer principle of informed choice and the public health principle of autonomy.

This section of the legislation would be improved by having a process for validating commercial risk communications or even a series of government-approved risk communications that would help consumers identify safer products with appropriate mandatory cautions and caveats.

5. Packaging and labelling of tobacco devices, electronic nicotine delivery systems and electronic non-nicotine delivery systems

6. Packaging and labelling of non-nicotine and nicotine containing products

These provisions must be used to provide reliable consumer risk communications. These sections provide powers to make regulations to determine packaging, including imposing standardised packaging for devices (5) and consumables (6). The focus is on preventing false and misleading information, which is necessary and reasonable. However, it must also apply to packaging-related information mandated under the Act, such as the warnings mandated in Section 7. Whether this provision causes more harm than good or more good than harm will depend on how ministers exercise their powers.

However, there is one obvious deficiency. There is no focus on providing truthful, actionable, consumer-relevant information that would help consumers navigate towards products with much lower risks than cigarettes.

7. Health warning and required information

The system of warnings must convey a realistic sense of the relative risk of smoking compared to vaping or other smoke-free products – otherwise it is implicitly misleading and denying consumers the important and potentially life-saving information. Behaviour follows attitudes and beliefs, and if warnings create misperceptions about relative risk, they will reduce switching and diversion to low-risk products, promoting smoking and protecting the cigarette trade from the most competitive attribute of the low-risk alternative.

Risk is not merely conveyed through literal wording but also the size, imagery, boldness, and resemblance to other warnings, especially cigarettes. Why wouldn't the consumer assume the risks

are approximately similar if the warnings look roughly similar? Under our comments on Section 15 (regulations), we suggest that this section is used to specify the powers of ministers to make regulations:

> *It would be better to allocate powers to make regulations on size and form of warnings to appropriately convey risks in section 7(1) and 7(2) by adding a clause to each: "The Minister must make regulations regarding the content, composition, design and size of messages in this subsection appropriate for the truthful communication of risk".*

8. Standards for manufacturing, processing and importing of relevant product and related product

Standards should be justified with reference to health, safety and consumer protection, not used arbitrarily or excessively. The measure provides broad powers for ministers to set manufacturing and product design standards. Such standards should be applied with care and with the objective of consumer protection, not to create *de facto* prohibitions, trade barriers, or to inhibit pro-health innovation in smoke-free products. Given that cigarettes are long-established, there is a danger that regulations will work against access to newer but much less risky products, function as a regulatory barrier to entry, and have the effect of protecting the cigarette trade. Attempting to use this type of regulation to prevent consumers from accessing products that are well-established and popular internationally would stimulate illicit trade and a more lawless and less compliant environment.

9. Restrictions of sales in respect of relevant product and related product

a. Preventing sale of ENDS in health settings

This section contains several counterproductive clauses that will offer advantages to the cigarette trade and prevent smokers from switching to much lower-risk products.

> *(4) No person shall sell or offer for sale a relevant product or related product to—*
>
> *(a) any health establishment contemplated in section 1 of the National Health Act, including any pharmacy;*

Relevant products include vaping and other low-risk alternatives to smoking. This prevents health facilities from offering these products as part of opportunistic interventions (for example, in hospital shops) to encourage users of healthcare facilities (often people sick with smoking-related diseases) or their friends and relatives to quit smoking. Equally, pharmacies may wish to support smoking cessation with non-medical consumer products shown to have greater efficacy and impact than standard medical treatments.

b. Banning online sales of ENDS

The following clauses (5 & 6) in Section 9 prevent internet sales of vaping products.

> *(5) No person shall sell, offer for sale, supply or distribute a relevant product or related product to a consumer through the postal services, courier services, internet or any other electronic medium, or by any other means as may be prescribed in furtherance of the objectives of the Act.*

(6) No person shall buy a relevant product or related product through the postal and courier services, internet or any other electronic medium, or by any other means as may be prescribed in furtherance of the objectives of the Act.

These clauses are one of the greatest gifts of the proposed legislation to the cigarette trade and tobacco companies' e-cigarette businesses. The market for ENDS is highly diverse, with multiple large and small suppliers and importers, a wide range of devices, liquids with thousands of combinations of excipient mixture, nicotine strength, and flavour, and a rapid innovation cycle. Not even the largest brick-and-mortar store could hold and turn over sufficient stock to offer the users a good selection of what is available. It is far easier to stock a few popular cigarette brands and the higher volume commodity e-cigarette products made by the tobacco companies.

10. Disclosures to Minister

11. Minister may make certain information publicly available

Data disclosures and publication should serve a definable public interest. The requirement for data disclosure and selective publication is reasonable, provided it is proportionate, has a discernible regulatory purpose, is not used as a barrier to entry or trade for novel smoke-free products, operationalised in a way that disincentivises research, or causes the release of legitimately commercially sensitive information (thus constituting a barrier to innovation).

12. Establishment of Relevant Product Monitoring Committee

13. Functions and powers of Monitoring Committee

14. Appointment of members of Monitoring Committee

The Committee should reflect diverse scientific and economic perspectives if it is to function effectively rather than promote groupthink. The challenge with establishing this committee will be selecting members to secure diverse views and insights to ensure that the advice is genuinely informative rather than decorative wrapping for policies in place and decisions already taken. We recommend that the committee should have resources to commission independent technical assessments and that, as far as possible, it conforms with the principles of open science.

While ministers may determine that industry representatives should not serve on the committee, the committee should be open to views and technical insights from industry. That does not mean that the committee should follow industry advice, only that it should consider industry views, take them into account and accept or reject them on their merits.

15. Regulations

This section duplicates some earlier provisions and is overly prescriptive in places. The idea of secondary legislation (regulations) is to allow for specific policy design that might be cumbersome if included in primary legislation. The powers to make regulations should be established in the relevant sections of the Act and should not be over-specified. This will allow technical matters to be open to consultation and comment based on technical advice and further evidence.

a. Examples of duplication

15(1)(d) relates to health warnings, but section 7 of the Act has the main clauses about health warnings. 15(1)(e) refers to product standards, but section 9 of the Act addresses product standards. It would be better to specify the purpose and powers to make regulations in the relevant section of the Act than to create a section devoted to regulations.

b. Examples of excessively specific provisions

Example 1. Section 15(1)(d)(i) specifies that warnings should cover 65% of the pack primary surfaces.

> *15. (1) The Minister must make regulations regarding—*
>
> *(d) the health warnings and other information that must appear, or information that must not appear on the packaging of any relevant product or related product, or on any informational leaflet contained in the packaging of such product, including—*
>
> *(i) the content, composition and design of a health warning, which shall be no less than 65 per cent of each principal display area of the package;*

This means that warnings of the same size would be placed on cigarettes and much safer alternatives to cigarettes (i.e., on relevant or related products). There is no justification for this, and it would convey misinformation about relative risk – something that would protect the cigarette trade and discourage smokers from making a life-saving switch from high-risk to low-risk nicotine products. It would be better to allocate powers to make regulations on size and form of warnings to appropriately convey risks in section 7(1) and 7(2) by adding a clause to each: "The Minister must make regulations regarding the content, composition, design and size of messages in this subsection appropriate for the truthful communication of risk".

Example 2. Section 15(1)(e)(iii) creates a requirement to prohibit characterising flavours and other sensory characteristics:

> *15. (1) The Minister must make regulations regarding— […]*
>
> *(e) the content, composition, ingredients, additives, colourants, characterised flavour and emissions of a relevant product or related product and components, including but not limited to—*
>
> *(iii) the prohibition of any substance or ingredient that creates a specified colour, characterised flavour, smell or effect on the consumer;*

This appears to create a flavour ban, yet all ENDS products are flavoured, including those with tobacco flavouring (a range of additives are used to create tobacco flavours in ENDS products). These are measures with very significant consequences and potential unintended consequences, for which there should be consultation and evidence synthesis to inform rulemaking. It would be better to give the minister powers to make regulations in this area (See Section 9 of the Act) and then allow due process in formulating regulations.

16. Offences and penalties

Many of the penalties are excessive and disproportionate to the likely crimes. Though the courts have discretion, the *maximum* penalties proposed for offences are extremely severe. Many of these offences should be considered misdemeanours, yet the maximum sentences are custodial and lengthy (3 months to 20 years) and comparable to serious and violent crimes.

Section 16 and maximum penalty (emphasis added)	Summary of offences (See legal text for precise application.)
16. (1) Any person who contravenes or fails to comply with section 2(1)(a), (b), (d), and (e) is guilty of an offence and liable on conviction to a fine or to **imprisonment not exceeding a period of three months** or both a fine and such imprisonment.	Section 2(1)a refers to smoking or vaping in places where smoking or vaping is prohibited – enclosed public places, workplaces and public transit. 2(1)b refers to vaping or smoking near a window or ventilation inlet to a place where smoking and vaping are banned.
(2) Any person who contravenes or fails to comply with section 2(1)(c) and (g) and (5) is guilty of an offence and liable on conviction to a fine or to **imprisonment not exceeding a period of six months** or both a fine and such imprisonment.	2(1)c is smoking or vaping in a motor vehicle or 'private enclosed space' when a child is present. 2(1)g is any outdoor place or other place defined by ministers. 2(5) refers to the offences committed by the owners or managers who do not provide signage to indicate where smoking or vaping should be banned.
(3) Any person who contravenes or fails to comply with section 2(1)(f) and (4), is guilty of an offence and liable on conviction to a fine or to **imprisonment for a period not exceeding five years or both a fine and such** imprisonment.	2(1) refers to smoking or vaping in a private dwelling used for childcare, schooling, tutoring, etc. 2(4) refers to the owner or manager who does not ensure that smoking or vaping does not happen on the premises.
(4) Any person who contravenes or fails to comply with section 2(6), 3(1), (2), (3), (5)(a) and (e), (6), section 4(3) and (4); section 5(2) and (3), section 6(3), section 7(1),(2), (3), 7(4)(b) and (5), and section 10(1) and (2), is guilty of an offence and liable on conviction to a fine or to **imprisonment for a period not exceeding 10 years** or both a fine and such imprisonment.	2(6) refers to employers' responsibility concerning the protection of employees from smoke or vape exposure. 3(1,2,3,5,6) refer to advertising offences 4(3,4) refer to packaging and labelling offences for tobacco products 5(2,3) refer to packaging and labelling offences for vaping devices 6(3) refers to packaging and labelling offences for vaping products (consumables) 7(1,2,3,4,5) refers to packaging and health warnings 10(1,2) Refers to failures to disclose required information to the minister – (10)2 includes independent researchers.
(5) Any person who contravenes or fails to comply with section 9(2) to (6) is guilty of an offence and liable on conviction to a fine or to **imprisonment for a period of not exceeding 15 years** or both a fine and such imprisonment.	9 refers to restrictions on sales of tobacco products or vapes. 9(2) refers to restrictions on sales by children. 9(3) refers to selling products that look like toys. 9(4) refers to sales of cigarettes or vapes in health facilities or educational establishments. 9(5) refers to distance sales involving post, couriers, internet 9(6) refers to buying through post, couriers, internet etc.
(6) Any person who contravenes or fails to comply with section 8(2) and (3) and section 9(1), is guilty of an offence and liable on conviction to a fine or to **imprisonment for a period of not exceeding 20 years** or both a fine and such imprisonment.	8(2,3) refers to product standards for manufacturing, processing and importing tobacco products and vapes 9(1) refers to sales to children.

In the case of using or supplying smoke-free alternatives to cigarettes, the offence may be penalising a person for contributing to a reduction in smoking with multiple individual and societal benefits. Obviously, the law must be enforced with sanctions for violations, but in a fair society, such sanctions should be *proportionate* to the harm caused by the offence. A further problem is that no defences or mitigating circumstances are detailed in the legislation.

17-20. Final provisions

No comments.

About the authors

David B. Abrams, Ph.D. holds a B.Sc. (Hons.) in Psychology and Computer Science, University of the Witwatersrand, Johannesburg, South Africa and a Ph.D. Clinical Health Psychology, Rutgers University. He was professor and founding director of the Centers for Behavioral and Preventive Medicine at Brown University and then directed the Office of Behavioral and Social Sciences Research (OBSSR), National Institutes of Health (NIH). He was the first Executive Director, The Schroeder International Institute of Tobacco Research and Policy Studies and Professor of Health Behavior and Society, The Johns Hopkins Bloomberg School of Public Health. He has published over 300 scholarly articles and been a Principal Investigator on numerous NIH research programs and at several Research Centers of Excellence. He has received the Joseph Cullen Memorial Award; American Society for Preventive Oncology award for lifetime contributions to tobacco/nicotine science; Research Laureate Award, American Academy of Health Behavior; Distinguished Alumnus, Rutgers University. He served on the Board of Scientific Advisors of the NIH National Cancer Institute. He was President of the Society for Behavioral Medicine and received its Distinguished Scientist Award.

Clive D. Bates, M.Sc., is Director of Counterfactual, a consulting and advocacy practice focussed on a pragmatic approach to sustainability and public health. He has had a diverse career in the public, private and not-for-profit sectors. After an early career in the private sector and environmental campaigning, he joined the tobacco control movement. From 1997-2003, he was Director of Action on Smoking and Health (UK), campaigning to reduce the harms caused by tobacco. From 2000, he was closely involved in the development of the Framework Convention on Tobacco Control and was a founder of the Framework Convention Alliance. In 2003, he joined Prime Minister Blair's Strategy Unit and worked in senior roles in government, regulators, and for the United Nations in Sudan. He started Counterfactual in 2013. From 2014 to April 2023, he was based in Zimbabwe then Nigeria.

Raymond S. Niaura, Ph.D., is Professor of Social and Behavioral Sciences and Epidemiology at the School of Global Public Health, New York University. From 2009-2017, he was Director of Research at the Schroeder Institute, Truth Initiative (formerly the American Legacy Foundation). He has extensive expertise in tobacco dependence and treatment, and he has published over 400 peer-reviewed articles and several book chapters in this area. His interests include studying the biobehavioral substrates of tobacco dependence; evaluating behavioral and pharmacological treatments for cessation; and understanding and addressing public health disparities in tobacco-related burdens of illness and disability. He has been Principal Investigator or co-Investigator of over 30 NIH-funded grants. He is a former President of the Society for Research on Nicotine and Tobacco. He also has a background in factors that influence adolescent/early adult tobacco use trajectories.

David T. Sweanor J.D. is Adjunct Professor of Law and Chair of the Advisory Board of the Centre for Health Law, Policy and Ethics at the University of Ottawa. He was the first lawyer in the world to work full time on policies to reduce cigarette smoking. He has worked on Canadian and global tobacco and health issues for over 40 years, helping set many global precedents, including in shaping tobacco tax policy, and drafting tobacco control legislation, in South Africa. He has worked on tobacco issues with the WHO, PAHO, World Bank and many other bodies, worked on successful litigation against cigarette companies, and spoken and published widely. He was recognised as Ottawa's outstanding individual philanthropist in 2016. In 1993, Derek Yach invited David Sweanor to visit South Africa as Trevor Manuel (then Minister of Finance) was considering increases in tobacco excise taxes. That visit had a galvanising impact on tobacco policy in South Africa.

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