

# **ASPIRE2025**

## **Submission on the Smoke-free (Standardisation of Tobacco Packaging and Tobacco Products) Regulations**

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### **Executive Summary**

We congratulate the New Zealand Government for its commitment to expedite standardised packaging, which is a scientifically well-supported, logical, proportionate, and important step in preventing children and young people from experimenting with smoking and becoming addicted to nicotine. The research evidence on likely impact, tobacco industry documents, marketing theory, and findings from Australia, including the Australian Government's post-implementation review, all suggest that standardised packaging will help protect the health of New Zealanders. Standardised packaging is a pivotal measure that will help progress the Government's Smokefree Aotearoa/New Zealand 2025 Goal.

We comment on submission questions but also note New Zealand has an opportunity to develop unique regulations that set a new standard in best practice by incorporating new research findings. We submit that the standardised packaging regulations could be improved in seven key areas without raising substantial concerns about legislative challenges:

- stronger limits on the use of variant names,
- changes to the cigarette stick appearance;
- improved on-pack warnings;
- use of rigid containers for RYO tobacco;
- greater prominence of Quitline and cessation information;
- inclusion of inserts providing cessation information in all tobacco product packages, and
- prevention of product diversification, particularly innovations in capsule cigarettes.

We recommend:

1. Introducing further restrictions on variant names so no new variant names can be introduced to the market.
2. Requiring all cigarette sticks and rolling papers to be coloured Pantone shade 448C.
3. Developing a wider range of warning labels, ensuring these have high salience to different priority populations, and implementing a more rapid rotation cycle and on-going development of new warnings.
4. Requiring all RYO tobacco to be sold in rigid containers of specified sizes and dimensions.
5. Re-developing the format of Quitline and cessation information provided on tobacco packages so this has greater visual impact.

6. Including inserts that provide more detailed warning and cessation support information in all tobacco packages, and packages containing rolling papers and filters used to make roll-your-own cigarettes.
7. Disallowing capsule cigarettes, which recent research concludes have a particular appeal to young people.
8. Developing a comprehensive evaluation programme to assess the impact of standardised packaging.

In summary, proposed standardised packaging regulations represent **an important step towards preventing future harm from tobacco to New Zealand's children and young people. However, we have suggested how these regulations could be strengthened to align with current and emerging evidence and theory without creating significant additional risks of legal or WTO-related challenges by tobacco companies.**

### **Submitter Background**

The ASPIRE2025 collaboration is a University of Otago Research Theme, recognised for its research excellence in tobacco control. ASPIRE2025 includes researchers from the University of Otago, Massey University, AUT University, and Whakauae Research for Māori Health and Development. Team members represent multiple disciplines, including marketing, public health, clinical medicine, Māori and Pacific health, and public policy. We have an extensive and longstanding interest in tobacco control research and in the last five years, we have published more than 100 peer-reviewed journal articles on tobacco control. Members have given invited keynote and plenary speeches on tobacco control to national and international audiences.

Our collaboration is the leading New Zealand source of research examining limits on tobacco marketing and we have undertaken numerous studies evaluating tobacco control policy measures. We have published five refereed journal articles on plain packaging, presented several papers at international conferences, organised a seminar about plain packaging with a leading international speaker, and received HRC funding to investigate plain packaging. Team members have attracted further funding to support tobacco control research from the Royal Society of New Zealand's Marsden Fund, the Health Research Council, Heart Foundation, Asthma Foundation and Cancer Society. We have provided expert advice on tobacco control to New Zealand Government Select Committees, international governments, and NGOs.

We provided detailed submissions in response to earlier consultations undertaken by the Ministry of Health and Health Select Committee and we refer the Ministry of Health to research outlined in these submissions.

This submission draws on knowledge gained through research and collaborations with leading international researchers. The arguments we advance do not necessarily represent official views held by the University of Otago, Massey University, AUT University, or the University of Auckland. To discuss this submission, please contact Professor Janet Hoek (janet.hoek@otago.ac.nz).

## Introduction

Members of the ASPIRE2025 collaboration unanimously support the standardised packaging of tobacco products. Tobacco is a uniquely harmful consumer product responsible for the premature death of at least half its long-term users;<sup>1,2</sup> no other legal consumer product causes such widespread harm when used as intended.<sup>3</sup> Within New Zealand, smoking remains a leading cause of preventable morbidity and mortality, and of health inequalities; directly and indirectly, smoking causes between 4500 and 5000 deaths every year.<sup>4,5</sup> Globally, tobacco use causes more than five million deaths each year.<sup>6</sup>

We congratulate the Government for recognising the enormous harm tobacco use causes to New Zealanders' health and economic well-being. The Government's decision to expedite the introduction of standardised packaging will bring important health benefits. We note that the Government's decision reflects very strong scientific evidence, particularly the evaluations published by Australian tobacco control researchers<sup>7-14</sup> and the Australian Government's Post-Implementation Review of Tobacco Plain Packaging, published earlier this year.<sup>15</sup> Findings from these studies emphatically refute arguments opposing standardised packaging and show it to be a proportionate and practical policy that is very likely to contribute to further reductions in smoking prevalence.

We appreciate the opportunity to comment on the draft regulations. We outline our responses to these and recommend additional evidence-based measures for inclusion in the final regulations. Adoption of our recommendations will:

- Maximise the impact of standardised packaging;
- Eliminate opportunities for tobacco companies to undermine the intent and effect of standardised packaging;
- Enhance the potential for packaging to prompt and support cessation attempts by ensuring it functions not as a recruitment decoy but as a cessation portal, and
- Apply the principles of standardised packaging to cigarette sticks – the ultimate objects of consumption.

We do not believe our suggestions will substantially increase the risk of litigation or WTO challenge.

## **Response to Consultation Questions 1-6: Size and quantities of tobacco products**

1. We support the proposal that cigarette pack sizes are limited to either 20 or 25 cigarettes and that loose tobacco pouches are limited to either 30g or 50g. Specifying pack contents or weight and ensuring there is no opportunity to promote 'bonus' packs will prevent marketing tactics observed in Australia.
2. We support introducing minimum and maximum cigarette stick dimensions with respect to stick diameter and length. We note that the regulations specify only a maximum stick length (not a minimum length cf. section 20(c)) and recommend amending the regulations so these prescribe exact stick dimensions and eliminate any variation across cigarette brands.

We note the regulations do not apply to the rolling papers used to make cigarettes from loose tobacco and suggest the regulations include rolling papers and require these to meet standard dimensions. We also suggest that associated products, such as cigarette rolling papers and filters should be required to adopt standardised packaging, including pictorial warnings. We note that roll-your-own (RYO) tobacco is popular among young people<sup>16</sup> and extending standardised packaging to all components used to make RYO cigarettes is consistent with the legislation's purpose of reducing smoking's appeal and deterring smoking initiation.

3. As noted in response to Question 2, we support standardised pack sizes but suggest these could be further enhanced by requiring all cigarettes to have the same length and diameter.
4. We recommend that sales of RYO tobacco in soft plastic should not be allowed; instead, we suggest making rigid containers of prescribed dimensions mandatory for all tobacco products. This package design will ensure that warning labels remain visible throughout the package life, and eliminate the risk that warning labels become obscured by folding, as occurs with the current soft plastic packaging.<sup>17</sup> Recent PhD research drawing on data from the NZ arm of the International Tobacco Control study found that pictorial warning labels had less impact on RYO smokers than on smokers of tailor-made cigarettes. More specifically, RYO smokers were significantly less likely to read the warnings, think about the health risks of smoking, or forgo a cigarette as a result of exposure to health warnings.<sup>17</sup> Rigid containers will help promote warning salience among the large group of RYO smokers in New Zealand.
5. We support proposals to standardise cigar packaging and limit the number of cigars that may be sold per package.
6. We support proposals to set a minimum package size for all tobacco products, including cigars. Such a move will ensure warnings have high visual impact.
7. We outline additional suggestions for standardising the shape and size of tobacco products and tobacco product packages in response to Question 12.

## **Response to Consultation Questions 8-11: Permitted markings on tobacco packages**

8. We have no suggestions regarding additional anti-counterfeiting marks and suggest the Ministry of Health is guided by Australian regulators' advice.
9. Should the Ministry of Health require additional anti-counterfeiting marks, we strongly suggest they consult Australian regulators with respect to eliminating any potential for such marks to communicate to consumers.
10. We **do not** believe any additional marks are necessary on tobacco product packages to allow for automated manufacturing and packaging processes.
11. We **do not** support inclusion of country of manufacture information on tobacco products or packages. There is strong evidence that country of manufacture (or origin) information communicates marketing appeals to consumers.<sup>18</sup> We believe allowing this information to be featured on packages would introduce variations that appeal differentially to consumers and undermine the intent of standardised packaging.

### **Additional suggestions**

We have several suggestions that we believe would increase the effectiveness of standardising tobacco products and packaging.

1. First, we recommend that the regulations restrict the brand and variant names to those in use when the regulations were published (i.e., 31 May 2016). Australian evidence suggests tobacco companies increased the number of variant names featured on their brands following the implementation of plain packaging.<sup>19</sup> Tobacco companies' use of more evocative variant names recreates connotations formerly associated with visual brand imagery and directly undermines the intent of standardised packaging. Our research shows that variant names function as marketing devices by helping to differentiate brands so these appeal to diverse groups of consumers.<sup>20</sup> Australian researchers have also concluded that variants: "are a potential means by which product differentiation can occur. In particular, having variants differing in perceived strength while not differing in deliveries of harmful ingredients is particularly problematic. Any packaging policy should take into account the possibility that variant descriptors can mislead smokers into making inappropriate product attributions" (p.58).<sup>21</sup> Given the potential for variant names to be used to recreate marketing appeals, it is crucial that the regulations minimise this possibility.

We note that section 27 of the regulations restricts variant names to one line that is no longer than 35mm but suggest this important restriction does not prevent the introduction of new or more evocative variant names. Given the only reason why variant names would be introduced is to create a marketing appeal and point of differentiation, we strongly recommend that the regulations prevent the introduction of new variant names unless these were used prior to 31 May, 2016. This measure would not appropriate tobacco companies' intellectual property and would rely on the same principles that underpin standardised packaging.

2. We support the size of the proposed on-pack warnings set out in section 24 of the draft regulations. We recommend refreshing the warnings used so these feature more diverse

themes and better reflect the heterogeneity of the smoker population. In particular, we recommend that warnings include themes such as (but not limited to) the social unattractiveness of smoking, tobacco industry denormalisation, and the effects of second hand smoke on children and companion animals.<sup>22</sup> Recent New Zealand research suggests more diverse themes could elicit stronger responses from varied sub-groups of smokers.<sup>22-24</sup>

We further recommend that the regulations set out a regular programme to review warnings at least once every two years. Research evidence shows warning “wearout” occurs,<sup>25</sup> making regular review and refreshment of warnings imperative. We recommend that at least ten warnings are in effect at any one time, and that these are replaced with a different set of ten images every year. We recommend establishing a regular programme of warning development and review to ensure rapid translation of research evidence supporting new warnings. The regulations should allow the Ministry of Health to require new warnings on packs through a simple and straightforward regulatory process (with minimal need for consultation and no requirement for additional legal amendments). We note this measure would not appropriate any intellectual property owned by tobacco companies.

3. We support regulations that will completely standardise the appearance of cigarette sticks. We note the regulations retain the current white stick with a white or imitation cork (tan) filter. White cigarette sticks create connotations of purity and cleanliness that are the antithesis of diseases caused directly by smoking and perpetuate myths that smoking is not as harmful as health authorities suggest.<sup>26</sup> Our research shows it is possible to greatly reduce the attractiveness of cigarettes and the likelihood they would be chosen by changing the stick appearance and colour.<sup>26,27</sup> Our studies suggest unattractively coloured cigarettes could increase the dissonance smokers experience, and potentially trigger quit attempts. This measure could also reduce the likelihood intermittent smokers and susceptible non-smokers will experiment with smoking. Australian research examining elements of stick design has also concluded that attributes featured on sticks create important points of differentiation among young adults.<sup>28</sup> Given the extensive research undertaken by the Australian Government into pack colour, we strongly recommend that the regulations require all factory-made cigarettes and all rolling papers to match Pantone 448C.

We note that, as part of their draft plain packaging regulations, the Canadian Government is proposing a “Single unattractive colour for cigarette and other products that are rolled in cigarette paper (e.g. tobacco sticks, kreteks [clove cigarettes], tubes, rolling papers)”.<sup>29</sup> Adoption of this measure within New Zealand’s regulations would reflect international best practice, supported by nationally-based research. We note this measure would not appropriate any intellectual property owned by tobacco companies.

4. Standardised packaging featuring unattractive colours and larger warning labels will increase the dissonance many smokers experience, given the high levels of regret most have.<sup>30</sup> While tobacco packages currently have information about the Quitline service,

these details are not visually salient and many smokers may overlook them. Our research shows that re-formatting this information made it significantly easier to read, more visually salient, and more likely than the control (status quo) to encourage smokers to consider quitting.<sup>31</sup> We strongly recommend that one of the “two-format” designs (see Figure 1 for an example) reported on in our research is made mandatory for all tobacco packaging.<sup>31</sup>

We recommend that a post-implementation evaluation reviews the potential for including smart-phone readable QR codes on all tobacco packages; this code could provide a direct connection to the Quitline website. Again, we note that providing this information would not appropriate any intellectual property owned by tobacco companies.

**Figure 1: Current and Re-formatted Quitline Information**



5. Canadian tobacco packages include inserts featuring messages designed to promote quitting benefits and enhance smokers’ self-efficacy. Recent research evaluating the impact of these inserts found that reading of inserts increased over time (as reading of on-pack warnings decreased). Further, more frequent reading of the inserts was associated with greater response efficacy (i.e., stronger perceived benefits of quitting) and greater risk perceptions). More frequent reading of the inserts was also associated with greater self-efficacy to quit, more quit attempts, and more sustained quit attempts.<sup>32</sup> We therefore recommend the standardised packaging regulations require all tobacco packages to include inserts modelled on the Canadian regulations.<sup>29</sup>
  
6. We recommend that RYO tobacco is available only in rigid cardboard containers of prescribed sizes, weights and dimensions. This form of packaging would increase the salience of health warnings, which may be obscured when the current soft plastic packaging is folded. Furthermore, this packaging would reduce the portability of RYO tobacco, and increased inconvenience may cue cessation attempts.

7. Tobacco companies have developed new product innovations, including capsule (or “crush”) cigarettes that hold particular appeal to young people. These products have a flavour capsule within the stick filter; when squeezed, this capsule releases a flavour. Flavour capsules were first introduced in 2007, but all major international tobacco companies now have brand varieties with this design technology. Studies show these products have strongest appeal amongst young adults and adolescents.<sup>33</sup> In New Zealand, smoking prevalence peaks among 18-30 year olds<sup>34</sup> and late onset smoking initiation is a significant problem that threatens to undermine realisation of the smokefree 2025 goal.<sup>35</sup> If attractive products become more innovative and widely available in New Zealand, smoking uptake among this group could increase, and declines in prevalence among younger adolescents could be put at risk.

Australian plain packaging regulations mandate the appearance of cigarette sticks but do not preclude within-filter innovations, such as flavour capsules. Indeed, flavour capsules were introduced into Australia before plain packaging, and preference for this type of cigarette grew to approximately 3-4% in the two year period after implementation.<sup>33</sup> New Zealand regulations should prohibit capsule cigarettes design features, thus protecting young people from cues that promote smoking experimentation and the rapid addiction that typically follows.

We note that tobacco companies use filters to create distinctive attributes and recommend that New Zealand follow Canada’s proposed regulations, which do not allow “distinctive filter colours or designs (e.g. grooves, hole or recess), where a filter is present”.<sup>29</sup>

8. We strongly recommend that the Ministry of Health put in place a multi-faceted evaluation to gauge plain packaging’s effects on perceptions of smoking, impact of warnings, understanding of smoking’s harms, and smoking behaviour. We recommend basing this evaluation on the detailed programme of work undertaken by Australian researchers. Robust evaluations will help guide future New Zealand policy (e.g. with respect to the optimal refreshment period rate for new pictorial warnings) and help other countries currently progressing tobacco control policies.
9. Finally, we strongly recommend that the Ministry of Health treat with extreme scepticism any tobacco industry submissions (or those from tobacco industry collaborators allies) on the regulations. As per Article 5.3 of the Framework Convention – this industry has a “fundamental and irreconcilable” conflict with public health.

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