

QoN 002-02 Is it appropriate for nicotine to be regulated within a health department rather than commercial setting?

I understand this question is asking whether the regulation of nicotine should sit within health legislation rather than consumer legislation. My answer is that it depends on the context, on the scope and flexibility of existing legislation and the aims that the regulatory authorities are trying to achieve.

In NZ, nicotine is treated differently according to the delivery device: if nicotine is delivered by tobacco or e-cigarettes, the Smokefree Environments and Regulated Products (Vaping) Amendment Act now applies. If delivered by nicotine replacement therapy, nicotine regulations is under the Medicine Act and is subject to the regulations that apply to products that make therapeutic claims.

Bringing the regulation of e-cigarettes in as an amendment under the existing Smokefree Environments Act was an efficient approach, and recognises that these products are fundamentally more like consumer products, such as cigarettes, than medicines.

The goal in NZ has been to improve public health, by enabling smokers to access e-cigarettes to quit or cut down tobacco smoking, while not promoting their use and uptake by non-smokers, especially young people.

If the goal in Australia is also to improve public health, then the various regulatory levers available, such as taxation, packaging, contents, advertising, sales to minors, flavours, standards and so on, are in common with many consumer products, and could be invoked that way.

A risk of regulating e-cigarettes as medical products would be that it could prevent product development and innovation that enhanced the quitting potential of these products. On the other hand, in time, some e-cigarette products could meet the TGA standards and be regulated as medical products as with NRT products. However, the cost of applying for this approval is likely to be beyond the resources of small, 'boutique', non-tobacco industry affiliated, companies. It is worth noting that NRT products are widely available as over-the-counter products in supermarkets and similar outlets. Perhaps this will be the future for some e-cigarettes.