LETTER

Could New Zealand’s law on “New Psychoactive Substances” provide lessons for achieving the Smokefree 2025 Goal?

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In response to the growing use of new psychoactive substances (NPS), including products such as synthetic cannabis, the New Zealand Government passed a law in 2013 to establish a regulated legal market for ‘low-risk’ NPS. The new law attracted significant academic interest, with comments suggesting potential benefits, but also outlining possible limitations. We consider the possible lessons from this novel legislation for limiting supply of another drug: tobacco. In particular, we aimed to consider the relevance of aspects of this new NPS legislation to achieving the New Zealand Government’s Smokefree 2025 Goal.

In August 2015 we reviewed published literature commenting on the Psychoactive Substances Act [PSA] 2013, since its enactment. Our work was informed by previous work some of us have done, including a blog by one of us, a conference presentation, and other work on legal frameworks to advance tobacco control in New Zealand.

We identified several components of the PSA that could be relevant to a new tobacco control law, as outlined in Table 1.

We suspect that all these components could promote incremental advances toward the Smokefree 2025 Goal, which from a health burden perspective is far more important than enhanced control of new psychoactive substances. Even so, to increase the chances of achieving the Smokefree 2025 Goal, New Zealand probably requires additional measures, such as regular large tobacco tax increases, a sinking lid on supply, or more comprehensive legal solutions.

Some of the ‘in-field experience’ of the PSA in New Zealand suggests that novel features of this law have had impacts on NPS access and use. For example, as a result of the licensing requirements in the PSA, the “number of NPS retail outlets fell from 3,000–4,000 largely convenience stores to 156 specialty stores, and the number of legally available NPS products fell from 200 to fewer than 46”.

The reduced availability also appears to have reduced some NPS-related harm, as emergency psychiatric services reported fewer incidents associated with synthetic cannabinoids in the months after the PSA was passed.

Nevertheless, the PSA has not yet facilitated a ‘low-risk’ NPS market that can compete with the illegal substances market. This may partly reflect a 2014 amendment to the PSA, which further increased requirements for NPS suppliers (ie, it prohibited use of animal testing to demonstrate a ‘low risk’ of NPS harm). This, along with such other factors as the associated costs to producers of the approval process, may explain why the PSA has not actually approved any products to date (as of February 2016). But from a tobacco control perspective, this is not an issue since the goal is a smokefree New Zealand rather than allowing a market for ‘low-risk’ tobacco products.
Table 1: Components of the Psychoactive Substances Act 2013 that may have relevance to advancing tobacco control in New Zealand.

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<th>Component of the PSA</th>
<th>Possible relevance to tobacco control in New Zealand</th>
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<td>New products cannot be introduced to the market unless manufacturers demonstrate to an “Expert Advisory Committee”, that they pose only a low risk of harm to users and to public health.</td>
<td>This component could potentially be used to stop the introduction of any product innovation which was aimed at increasing sales of tobacco products eg, products with new flavours, thin cigarettes, etc. New products continue to appear in the New Zealand market.</td>
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<td>Introducing detailed licencing requirements and comprehensive restrictions on retail supply.</td>
<td>Such restrictions in the PSA include shops not employing people less than 18 years; selling to those under 18 years; no sales in: dairies, convenience stores, grocery stores/supermarkets, petrol stations, temporary structures (eg, tent/marquees) and any place where alcohol is sold. Internet sales are also prohibited. If applied to tobacco, these requirements would help with enforcement of restrictions on sales to youth and reduce their exposure to tobacco products. This component would also allow for outlet restriction over time, which New Zealand modelling work suggests could help lower smoking prevalence. It could even facilitate adoption of the “tobacco-free generation” proposal by allowing licences to be removed from retailers involved in illegal sales to those born after a certain date (eg, the year 2000).</td>
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<td>Requirements around packaging and labelling (including health warnings).</td>
<td>This component of the PSA is consistent with current plans for enhanced controls on standardised packaging for tobacco which are currently before the New Zealand Parliament (as of February 2016). Nevertheless, the proposed legislation could either be modified, or subsequent regulations be developed, to cover further improvements. These could include: (i) adding regulations that explicitly prevent the proliferation of brand variant names or descriptors (a problem that occurred in Australia) and that enhances the appeal of tobacco products; (ii) allowing for unattractive colours and warnings to be required on the actual cigarette sticks (as per New Zealand research) and (iii) requiring improvements to how Quitline information is presented on packs (as per other New Zealand research).</td>
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New Zealand's PSA law has features that could potentially be part of new tobacco control legislation to advance the Government’s Smokefree 2025 Goal. Particularly promising aspects include components that have the effect of greatly reducing retail supply and restricting the development of new tobacco products.

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