



Comments on the Draft Control of Tobacco and Electronic Delivery Systems Bill 2018

Julian Morris

ICLE Innovation & the New Economy Research Program

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Submitted by Julian Morris¹

Executive Director, International Center for Law and Economics

Senior Fellow, Reason Foundation

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To the Director-General of Health
Private Bag X 828
Pretoria, 0001
For the attention of Chief Director:
Health Promotion, Nutrition, Oral Health and Food Control
Ms Lynn Moen-Mahalngu

By email

Dear Ms Lynn Moen-Mahalngu

Thank you for the opportunity to comment on the Draft Control of Tobacco and Electronic Delivery Systems Bill 2018.

I have written and spoken widely on the matter of tobacco harm reduction² and hope that the insights in these comments are a valuable contribution to your deliberations. My comments are given in a personal capacity and do not necessarily reflect the views of the International Center for Law and Economics or Reason Foundation. The comments focus primarily on the opportunity to reduce smoking by enabling greater access to harm reduction products, South Africa's leadership role in harm reduction, and ways that this might be implemented through legislation.

Smoking, the FCTC and Harm Reduction

Smoking causes a wide range of non-communicable diseases, including lung cancer, chronic obstructive lung disease, peripheral arterial disease, and heart disease. These diseases are caused by regular, long-term inhalation of smoke from burnt tobacco. That smoke contains around 7,000 chemicals, over 200 of which are known carcinogens. Approximately half of all smokers will die prematurely as a result of their habit. Smoking regularly from the age of 19 reduces a person's life

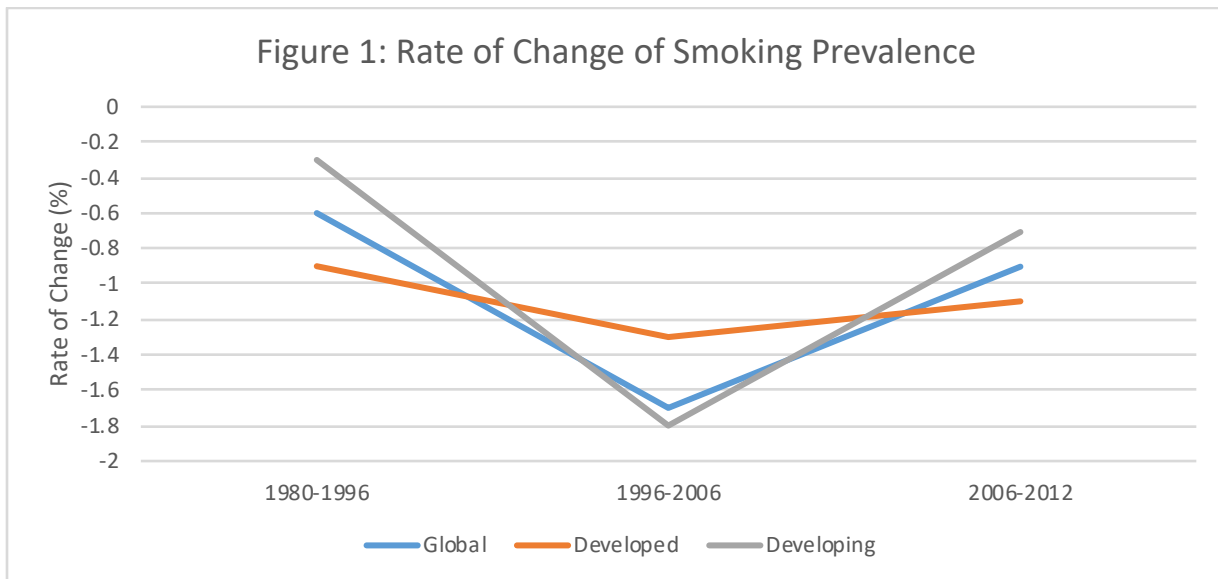
¹ Email: jmorris@laweconcenter.org. Phone: +1 347 746 6403

² See for example: https://reason.org/wp-content/uploads/2016/08/vapour_revolution_working_paper.pdf and https://reason.org/wp-content/uploads/2016/09/pb136_tobacco_harm_reduction.pdf.

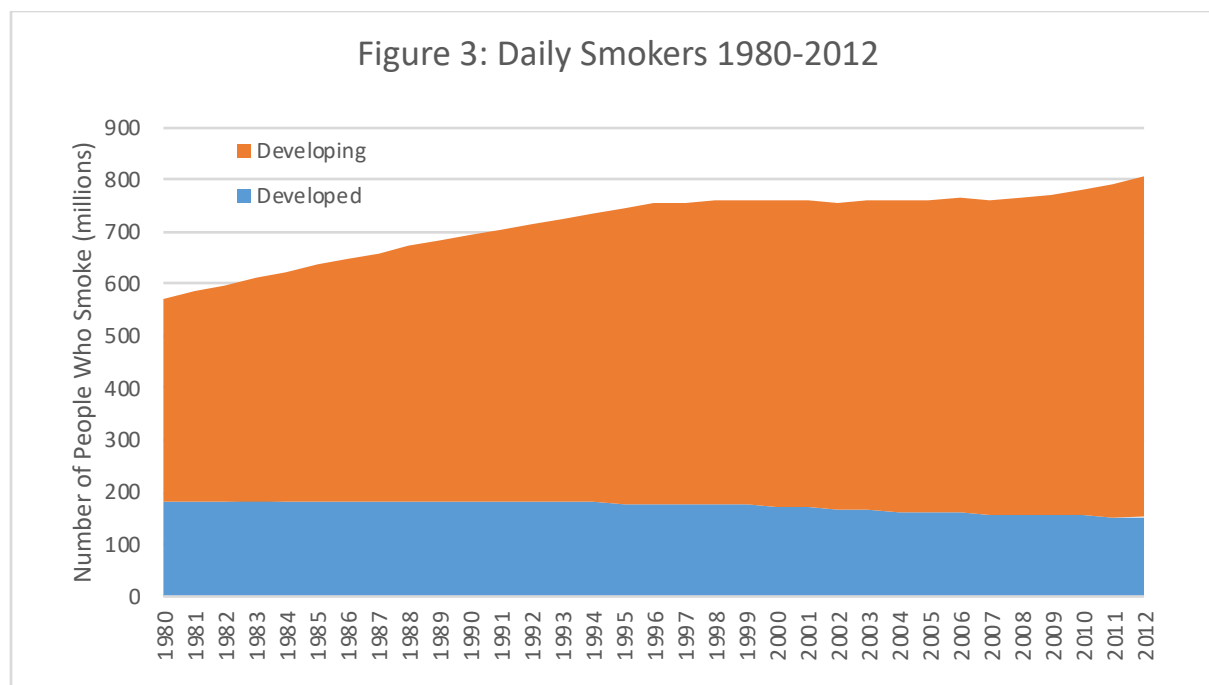
expectancy by about ten years. The World Health Organization estimates that smoking kills nearly 6 million people per year worldwide, making it the largest cause of preventable premature death.

In spite of its dangers, however, hundreds of millions of people continue to smoke, and more take up the habit every day. During the 20th Century, approximately 100 million people died from smoking related diseases, most of them in more developed countries. If current smoking patterns and trends continue, a billion people might die from such diseases in the 21st century, about 80% of them in countries that are currently less developed.

In an attempt to reduce this enormous toll, the WHO established the Framework Convention on Tobacco Control (FCTC). In the six years following the introduction into force of the FCTC, the prevalence of smokers continued to fall but at a lower rate than previously (Fig. 1). In spite of falling prevalence, the number of smokers increased, especially in developing countries (Fig. 2).



Source: Data from M. Ng, M.K. Freeman, T.D. Fleming, et al., Smoking prevalence and cigarette consumption in 187 countries, 1980-2012. JAMA, 2014.



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An analysis of WHO indicators published by *The Lancet* in 2015 concluded:

“During the most recent decade (2000–10), the prevalence of tobacco smoking in men fell in 125 (72%) countries, and in women fell in 155 (87%) countries. If these trends continue, only 37 (21%) countries are on track to achieve their targets for men and 88 (49%) are on track for women, and there would be an estimated 1.1 billion current tobacco smokers (95% credible interval 700 million to 1.6 billion) in 2025. Rapid increases are predicted in Africa for men and in the eastern Mediterranean for both men and women, suggesting the need for enhanced measures for tobacco control in these regions.”³

The World Bank estimates that adult smoking rates in Cameroon and the Congo rose from below 10% in 2000 to over 20% in 2015. Rates have also risen in Nigeria, Mali, and Lesotho.

Tobacco Harm Reduction

The challenge for those who want to reduce the scourge of smoking-related diseases is how to persuade and enable people who currently smoke to stop – and how to discourage people who don’t

³ Ver Bilano, Stuart Gilmour, Trevor Moffiet, Edouard Tursan d'Espaignet, Gretchen A Stevens, Alison Commar, Frank Tuyl, Irene Hudson, Kenji Shibuya, “Global trends and projections for tobacco use, 1990–2025: an analysis of smoking indicators from the WHO Comprehensive Information Systems for Tobacco Control,” *The Lancet*, Volume 385, No. 9972, pp. 966–976, 14 March 2015. DOI: [http://dx.doi.org/10.1016/S0140-6736\(15\)60264-1](http://dx.doi.org/10.1016/S0140-6736(15)60264-1)

yet smoke from taking up the habit. The FCTC approach has to date focused on the kinds of policies adopted in wealthy countries that have helped reduce demand for cigarettes, such as public information campaigns and taxes on cigarettes. These can work but should not be seen as a cure-all. A strong case can be made that these policies should be supplemented with an acceptance of products that offer smokers less harmful alternatives. Such policies are explicitly included in the FCTC under the rubric of “harm reduction”.

In the 1960s, great hope was placed on the idea that a “safer cigarette” would provide an effective alternative that would reduce the harm of smoking. Millions of dollars were spent by governments and cigarette manufacturers to develop such alternatives. Unfortunately, these early efforts failed, leading to skepticism on the part of many members of the public health community, some of whom came to reject harm reduction as a viable strategy; they emphasized instead the mantra, “quit or die.”

In spite of the failure of the “safer cigarette” some nations persisted with harm reduction efforts. In Sweden, a less harmful form of oral tobacco, snus, was developed. Swedish snus conforms to a standard called Gothiatek, which dramatically reduces the formation of harmful nitrosamines compared with conventional smokeless tobacco products. Beginning in the 1970s, Swedish men began switching from smoking to using snus. By the early 2000s, the benefits of this switch were becoming clear, with smoking rates in Sweden falling more rapidly than in other OECD countries (Fig. 4). Meanwhile, the incidence of both lung cancer (Fig. 5) and oral cancer (Fig. 6) in Sweden have fallen more rapidly than in other comparable countries.

Figure 4: Adult Smoking Rates, OECD and Sweden, 1960-2014

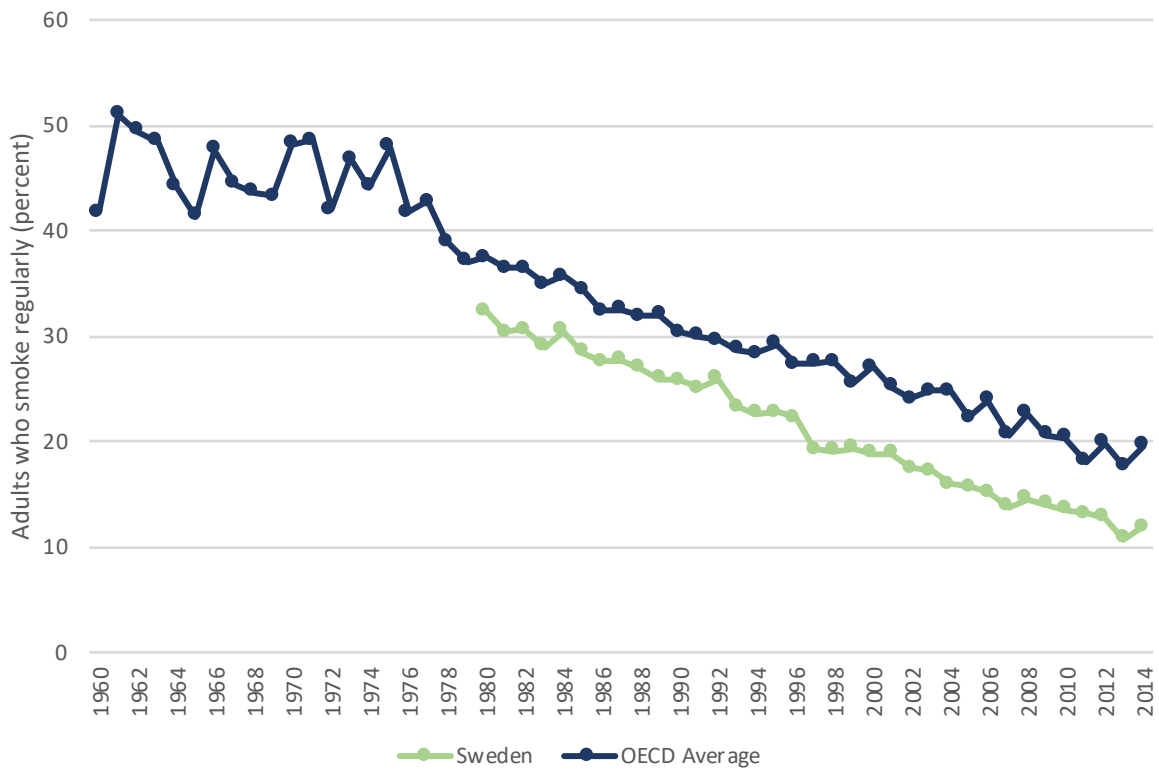
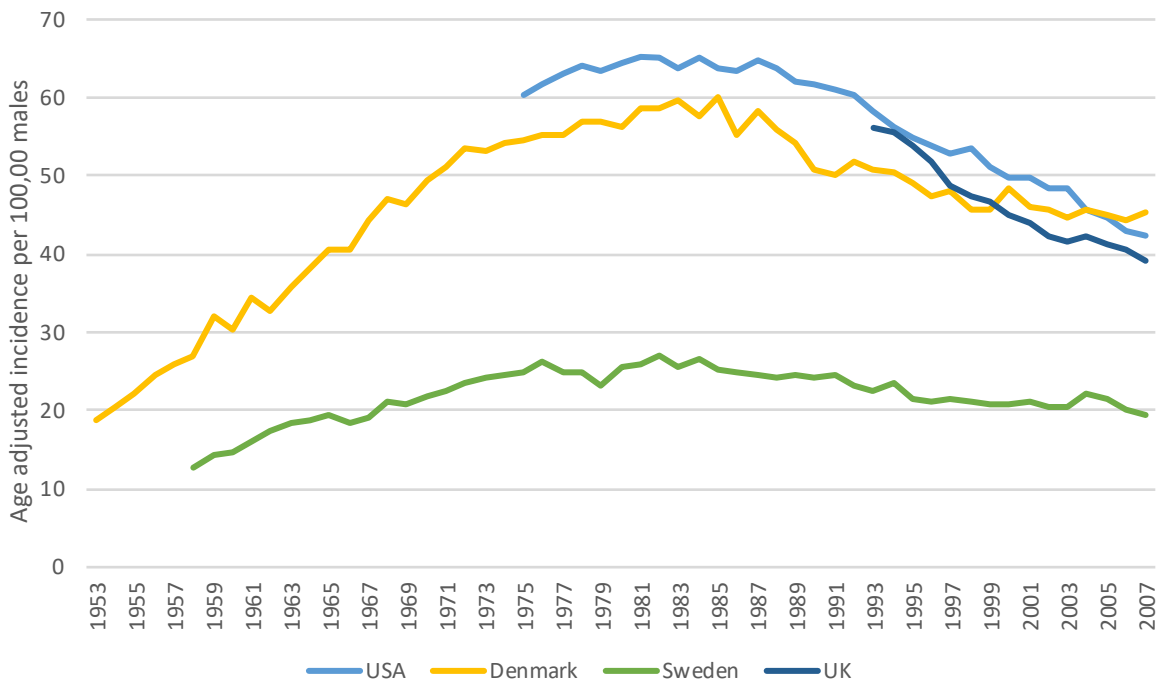
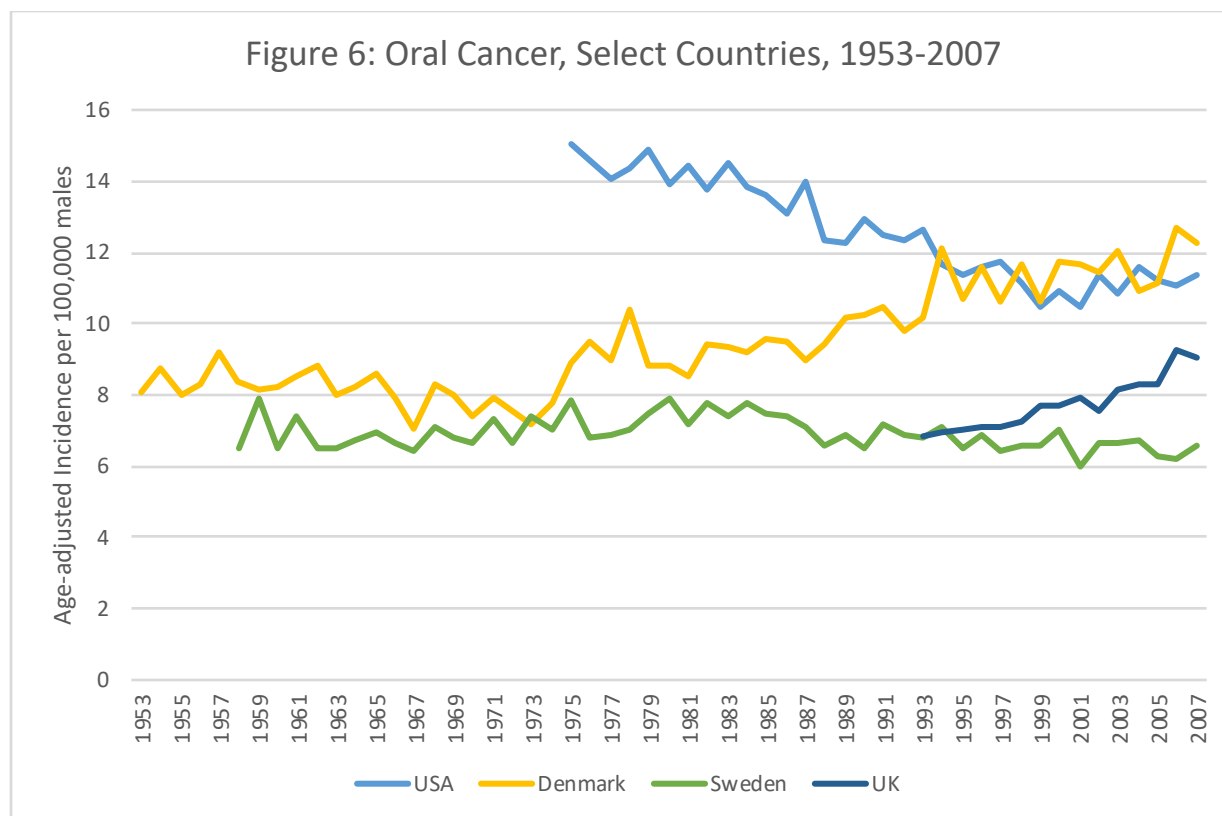


Figure 5: Lung cancer incidence, Select Countries, 1993-2007





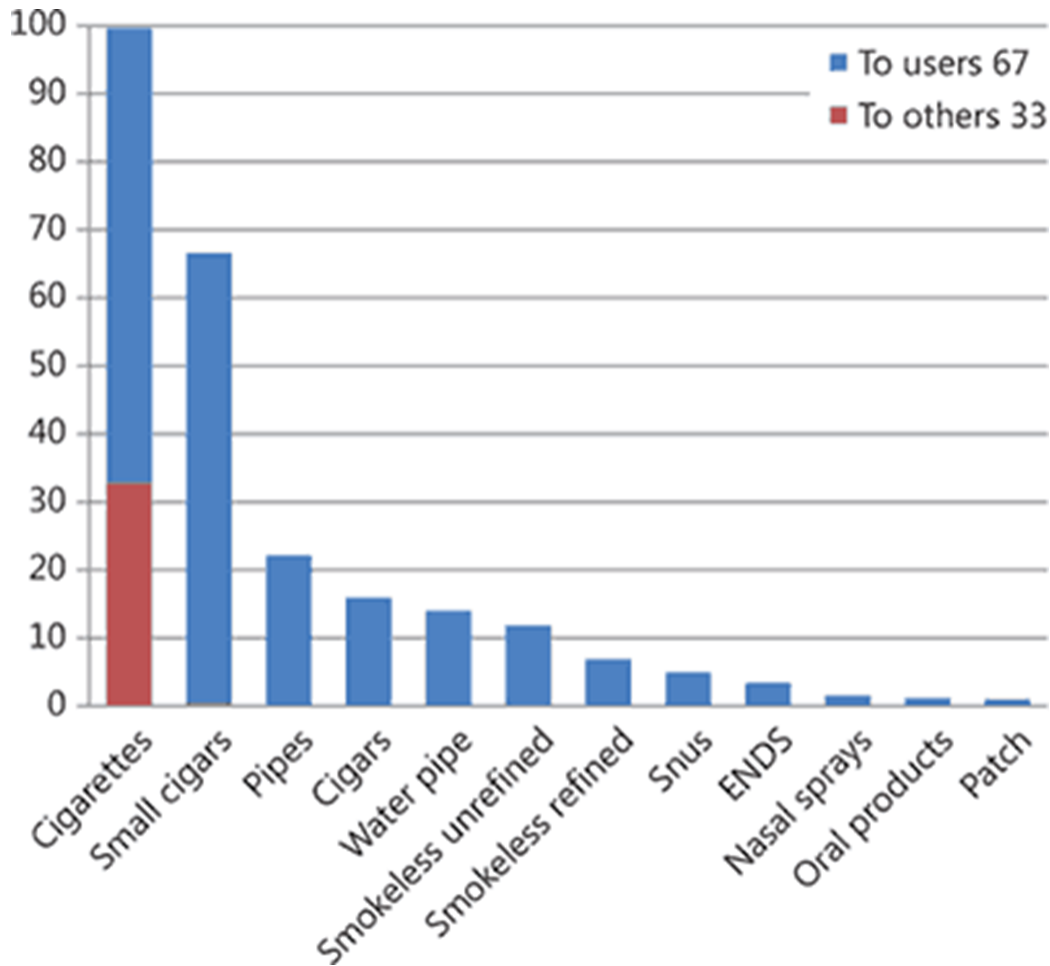
One reason for the success of snus as a harm reduction product in Sweden was the cultural acceptance of oral tobacco use in that country. (More recently, Norway also has had considerable success, for similar reasons.) In other countries, where oral tobacco use is less culturally accepted, other alternatives may be more effective.

Fortunately, over the past 15 years, new technologies have emerged that offers smokers ways to retain the rituals and pleasures of smoking with far fewer risks. One such technology is the “electronic cigarette,” which has some of the look and feel of a cigarette and delivers nicotine, with only a tiny fraction of the number and amounts of toxic chemicals. The device works by heating a solution of nicotine mixed with propylene glycol and flavors, to create a vapor.

While early e-cigarettes were only moderately effective, dramatic improvements have since been made, with larger batteries, more powerful heating coils, and an explosion of “e-liquids” in all manner of flavors. Many of these innovations came from users modifying their devices and sharing their experience in online forums. Rapid feedback from consumers has resulted in products that are not only more effective and less expensive but also safer. For example, concerns about over-heating of liquids, which has the potential to generate some toxic by-products, led to the development of devices with microprocessors that prevent overheating. Producers and retailers of liquids responded to safety concern by sourcing pharmaceutical grade nicotine, with minimal contaminants, and by removing toxic chemicals from their formulations.

The vapor from e-cigarettes and personal vaporizers (the name given to larger, more powerful devices) contains very low levels of carcinogens and other harmful chemicals. Even nicotine itself is largely benign – contrary to widespread misconceptions. A 2014 analysis by several noted experts on harm reduction and disease, including Kgosi Letlape, found that the harm associated with using e-cigarettes (or “Electronic Nicotine Delivery Systems”—ENDS) is less than 5% that of smoking cigarettes.⁴ As the Royal College of Physicians put it recently, vaping “is at least 95 per cent safer” than smoking.

Figure : Relative Harm of Various Nicotine Containing Products



Source: Nutt et al. 2014.

And vape products are an effective quit aid. In the past decade, use of these vape products has increased dramatically in many countries, including South Africa. At least ten million people have quit smoking by switching entirely to vaping and millions more have dramatically reduced the

⁴ David Nutt, Martin Dockrell, Kgosi Letlape, et al. “Estimating the Harms of Nicotine-Containing Products Using the MCDA Approach,” *European Addiction Research*, 2014.

amount that they smoke. That's why in the UK, the National Health Service now encourages doctors to recommend that patients who smoke should switch to vaping.

At the same time, vaping is reducing the number of people who take up smoking: where vape products are readily available, smoking is declining at a faster rate than in locations where vape products are not so readily available.

Electronic cigarettes, personal vaporizers and other similar products – such as the new generation of heat-not-burn products that vaporize tobacco – have enormous potential to reduce the burden of tobacco-related disease in South Africa. Given individual differences and cultural norms, experimentation is likely to play an important part in the process of discovering which products are most effective alternatives. So it is very important that governments do not impose undue restrictions on the development and use of these products.

Competition and choice have been highly effective in driving improvements in vape products. To the extent that safety remains an issue, the best approach is product standards such as those being developed by the International Standards Organization. If vape products are regulated in this way, competition is likely to drive the development and marketing of products that appeal to local tastes.

Harm Reduction in South Africa

Harm reduction is widely acknowledged to be an effective approach in other areas and South Africa has considerable experience with such policies. In its fourth Strategic Plan for HIV, TB, and STIs, the Government of South Africa has identified harm reduction as a key component, including it as Objective 4.4, which reads:

“Objective 4.4: Implement and scale up a package of harm reduction interventions to address the harmful use of alcohol and drugs in all districts.”⁵

The Strategic Plan also notes that the new National Drug Master Plan “will contain a substantial focus on harm reduction services.”⁶ Specifically, it notes:

“Alcohol abuse and drug use increases HIV, hepatitis B and C, and TB risk and vulnerability, and also undermines adherence. The National Drug Master Plan deals with demand and supply issues, as well as a comprehensive approach to rehabilitation and harm reduction. Interventions to prevent HIV, TB and STIs among young people who use drugs will be scaled up and harm reduction services will be expanded. These efforts will be supported by SBCC campaigns that include information about the harmful effects of alcohol and drug use. Targeted provision of condoms and other biomedical prevention commodities and, as

⁵ *Let Our Actions Count: South Africa's National Strategic Plan For HIV, TB and STIs 2017-2022.*

⁶ *Id* at 27

appropriate, testing, screening, vaccination and treatment for HIV, TB, STIs and hepatitis B and C will be delivered. Linkage to services will include adherence and psychosocial support and rehabilitation services.”⁷

Given the leadership role South Africa plays both across the African continent and more widely, including at the FCTC, your government has an opportunity to establish policies that not only can benefit the people of South Africa but also influence the establishment of better policies across the developing world.

⁷ Id at 29.

Implementing Tobacco Harm Reduction in South Africa

South Africa is already leading the continent in its acceptance of tobacco harm reduction. Numerous harm reduction products, especially e-cigarettes, are on the market and demand appears to be strong. This shows that many South African smokers value the availability of these products and are using them in preference to smoking cigarettes.

Unfortunately, the Draft Control of Tobacco and Electronic Delivery Systems Bill 2018 (“Draft Bill”) appears to conflate smoking and vaping (and indeed, smoking and “tobacco use”). As a result, many of the elements included in the proposal would have the effect of reducing the availability and attractiveness of e-cigarettes and other harm reduction products. This would likely have the perverse effect of reducing the rate of decline of smoking.

Several options are open to the South African government. One would be to follow the advice contained in the comments from David Abrams et al. viz. changing the language in the Draft Bill to reflect the fact that non-combustible forms of nicotine delivery are less harmful than cigarettes and other forms of combusted tobacco.⁸

Alternatively, the Government could remove reference to e-cigarettes and other non-combustible tobacco products from the Draft Bill altogether and focus the bill more narrowly on combustible tobacco products, while initiating a separate Bill to address the regulation of non-combustible tobacco products. This option would have the advantage of affording the Government time to consider the most effective way to regulate non-combustible tobacco products taking into account the experience and best practices in other countries, as well as local circumstances.

Respectfully,

Julian Morris

⁸ <https://www.clivebates.com/documents/SouthAfricaBillAugust2018.pdf>