

TOBACCO /E-CIGARETTE INDUSTRY AND FRONT GROUPS DISTORT HUMAN RIGHTS AND CONSUMER RIGHTS

Southeast Asia Tobacco Control Alliance

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Do these claims have any real basis?

Tobacco Industry Claims:

Claim #1

It is a consumer's right to choose less harmful products such as electronic smoking devices (ESD), specifically heated tobacco products (HTPs), electronic nicotine delivery systems (ENDS), and electronic non-nicotine delivery systems (ENNDS).

Claim #2

Banning ESDs violates the right to health of users, especially those who want to use them to quit cigarette smoking.

Claim #3

Tobacco control advocates do not acknowledge the scientific evidence that shows ESDs are safer and should be used as the basis for regulation.

What are **THE FACTS?**

Consumer Rights

The United Nations (UN) Guidelines for Consumer Protection (UNGCP) are “a valuable set of principles that set out the main characteristics of effective consumer protection legislation, enforcement institutions and redress systems.” One of the legitimate needs which the guidelines are intended to meet is “the protection of consumers from hazards to their health and safety”.¹

The ASEAN Committee on Consumer Protection (ACCP) states that “The prevalence of deceptive practices and irregularities in the market means that governments have to intervene to safeguard the interests of consumers by recognizing and upholding their rights in various legal instruments, including consumer protection laws.”² Governments therefore have a duty to regulate all products and their suppliers in the interest of individual and public health and safety. Such regulation can range from minimal to severe restrictions to outright prohibition, as appropriate to each country’s context, to protect citizens from harmful products.

A right to choose and use less harmful products, as claimed by the tobacco/e-cigarette industry and its front groups, incorrectly implies that there is also a right to

choose and use more harmful products, or in simpler terms, a right to choose and use any and all products, regardless of being more or less harmful. From a business or commercial perspective, this is misinterpreted as having a right to manufacture, market, and sell. Those who claim this “right” pretend as if this is an absolute right, which is patently untrue. For example, everyone other than makers and users of methamphetamine acknowledge that there is no human right to make and use this harmful drug, which is banned or very restricted in most countries, as agreed in the UN Convention on Psychotropic Substances.³

Also, consumer rights are not only about the right of consumers to choose which product to buy; **consumers have a right to be protected from harmful products and misleading product information; in other words, consumers have a right to be provided with safe products and with accurate information about product safety or the lack of it.** Consumer rights relative to products that impact health are therefore intrinsically linked to and cannot be interpreted without considering the right to health and safety.



Right to Health

The preamble of the World Health Organization (WHO) Constitution affirms that “health is a state of complete physical, mental, and social well-being and not merely the absence of a disease or infirmity” and that “the enjoyment of the highest attainable standard of health is one of the fundamental rights of every human being”.⁴ The right to health is therefore about protecting and promoting health to the fullest extent possible, i.e. eliminating harm whenever possible and not simply reducing harm.

The WHO Framework Convention on Tobacco Control (FCTC) is an evidence-based treaty that reaffirms people’s right to the highest standard of health, and State Parties to the WHO FCTC are “determined to give priority to their right to protect public health” (preamble). Based on available scientific evidence, the Conference of Parties to the WHO FCTC (a) recognized and affirmed that **heated tobacco products (HTPs) are tobacco products and should be regulated in the same way as other tobacco products**,⁵ and (b) invited Parties to **regulate, by prohibiting or restricting, the manufacture, importation, distribution, presentation, sale and use of electronic nicotine delivery systems (ENDS) and electronic non-nicotine delivery systems (ENNDS)**⁶ to achieve four agreed objectives:⁷

- I. prevent the initiation of ENDS/ENNDS by non-smokers and youth with special attention to vulnerable groups;
- II. minimize as far as possible potential health risks to ENDS/ENNDS users and protect non-users from exposure to their emissions;
- III. prevent unproven health claims from being made about ENDS/ENNDS; and
- IV. protect tobacco-control activities from all commercial and other vested interests related to ENDS/ENNDS, including interests of the tobacco industry.

This clearly illustrates the convergence of consumer rights and the right to health, and within this space, we need to examine if the

regulatory proposals of Electronic Smoking Device (ESD) proponents regarding tobacco harm reduction fulfill these objectives or not.

Are non-smokers and youths prevented from initiation to ESD use?

Everyone agrees how important it is that youths should not be smoking or vaping. Even tobacco companies have said so publicly for decades, although internal tobacco company documents clearly show that they targeted teenagers with flavors,⁸ referred to 14-to-18-year-olds as “young adult smokers,” studied teen smoking patterns (differentiating between “presmokers”, “learners” and “confirmed smokers”), admitted that “the base of our business is the high school student,”⁹ and that “today’s teenager is tomorrow’s potential regular customer,”¹⁰ and concluded that “the ability to attract new smokers and develop them into a young adult franchise is key to brand development.”¹¹ In order to survive and prosper over the long term, tobacco companies have seen the need to capture the youth market, developing new products and brands that appeal to youths, because “younger adult smokers are the only source of replacement smokers... If younger adults turn away from smoking, the industry must decline, just as a population which does not give birth will eventually dwindle.”¹²

This history lesson is fully applicable to ESDs. Regardless of what manufacturers say, it would be naïve to believe that these new products aren’t designed to be attractive to youths or non-smokers, even while appealing to current smokers. Conventional cigarettes allegedly aren’t designed or intended to attract youths and new smokers either, but, despite stringent regulations against underage sales, teen smokers are still able to obtain and use them, because the industry opposes tobacco control measures aimed at discouraging tobacco uptake: higher taxes, marketing bans, public smoking bans, large pictorial health warnings, banning flavors, and raising the minimum age of sale to at least 21 years.

In December 2018, the US Surgeon General declared an epidemic of e-cigarette use among American youths after e-cigarette use increased 78% among high school students during the past year, from 11.7% in 2017 to 20.8% in 2018.¹³ In ASEAN, there are already a significant number of teens using e-cigarettes: 11.7% in the Philippines,¹⁴ 10.9% in Indonesia,¹⁵ and 9.8% in Malaysia.¹⁶

It is no secret that ESDs are also sold to adult non-smokers, despite the industry rhetoric that these devices are intended only as “less harmful alternative products” for smokers of conventional cigarettes. If ESD proponents were sincere about consumer and health rights, i.e. helping smokers and not selling to non-smokers, they would not oppose government regulation of ESDs to make them available only to smokers, such as requirements for medical prescriptions of ESDs or tobacco-free generation policies that prohibit sales to anyone below the minimum age of sale even when they reach the minimum age.

Are potential health risks to ESD users minimized, and are non-users protected from exposure to their emissions?

Like cigarettes and other tobacco products, ESDs are highly engineered to create and maintain nicotine addiction, and many of the chemical compounds in the aerosol they produce are pharmacologically active, toxic, mutagenic and carcinogenic.

In order to minimize potential health risks as far as possible, those risks must be identified and quantified. Many studies already demonstrate that ESDs cause serious health harms,^{17 18} and even ESD manufacturers admit that ESDs are not harmless. In fact, ESD manufacturers also admit that the best choice is to not use ESDs, i.e. smokers should quit tobacco and nicotine altogether, and non-smokers should not start using tobacco or nicotine products.

Health risks are therefore minimized by cessation of all tobacco and nicotine products rather than substituting with other harmful

products, but as one Philip Morris International (PMI) salesman of IQOS (PMI’s flagship HTP) admitted, “It’s not designed to help stop people from smoking. It’s designed to be a replacement.”¹⁹

In addition, while ESD proponents provide individual anecdotes of ESDs as effective smoking cessation aids, various studies indicate that ESD use has had no significant contribution to tobacco cessation at a population level and may even hamper or prevent cessation. Even in the UK where ENDS use is heavily promoted, a 2006–2016 time series study to assess the population-level impact of the use of nicotine replacement therapy (NRT) and ENDS for harm reduction on cigarette consumption concluded that “if use of e-cigarettes and licensed NRT while smoking acted to reduce cigarette consumption in England between 2006 and 2016, the effect was likely very small at a population level.”²⁰

Various studies also demonstrate that dual or triple use of cigarettes, HTPs, and ENDS is more harmful than smoking cigarettes alone; yet many ESD users continue to smoke cigarettes, and dual or triple use is quite common. Majority (72%) of HTP users in Japan are dual users;²¹ in South Korea, 57.1% to 85.3% of ENDS users were dual users of conventional cigarettes and ENDS, and 82.4% of HTP users were triple users of cigarettes, ENDS, and HTPs.^{22 23} In the UK, dual use among ENDS users was as high as 86% in 2013²⁴ and remains significant at 38.3% as of early 2020.²⁵

Despite admitting ESDs are harmful and having no evidence proving that secondhand exposure to ESD aerosol is safe, ESD proponents deceptively describe these products as “smoke-free” to give the false impression that ESD emissions are safe. On this basis, they oppose regulations that ban ESD use in public places in much the same way that tobacco companies and its front groups oppose cigarette smoking bans. Apparently, they deem their so-called consumer right to use these products more important than the fundamental right to health of others to breathe clean air.

Right to Information

Are unproven health claims prevented from being made about ESDs?

The right to be informed and provided complete and accurate information about a consumer product is a key component of consumer rights.

Contrary to the misleading perception promoted by ESD proponents that ESDs only generate steam or water vapor, these products actually emit chemical aerosols (smoke is also a chemical aerosol) composed of particulate matter suspended in gas. Even if temperatures applied are lower than in conventional cigarettes, heating e-liquids and/or tobacco results in pyrolysis or thermal decomposition and creates many of the same toxic chemicals found in cigarette aerosol, as well as new compounds with still unknown health risks. Describing ESDs as “smoke-free” is deceptive.

Still, ESD proponents aggressively argue and continue to claim that ESDs are “95% less harmful” than conventional cigarettes and therefore generally harmless and safe to use, despite this factoid having been debunked.²⁶ In reality, cigarettes are so harmful, that if they were introduced into the market today, they would never be allowed, and thus anything is potentially less harmful than cigarettes.

The “reduced harm” claim is made by ESD proponents on the basis of lower concentrations of some (not all) toxicants found in ESD aerosols as compared to conventional cigarette aerosol. However, reduced exposure to these toxicants does not necessarily equate to reduced risk of harm (a little poison is still poison), and there is still no long-term scientific evidence to support this claim. In fact, the WHO has consistently warned that all tobacco products, including HTPs, are harmful²⁷ and that ENDS are “undoubtedly harmful” and not safer alternatives to conventional cigarettes.²⁸

Because there is a non-linear dose-response relationship between exposure and health risks, it remains unproven that lower exposure will

result to reduced risks or reduced harm. This is why the US Food and Drug Administration (FDA) authorization for sale of IQOS in the US allows only a reduced exposure claim and prohibits claims about reduced risk or harm. Of course, that has not stopped PMI from promoting IQOS outside the US with unproven health claims that IQOS is safer than cigarettes.

ESD proponents also routinely make the health claim (and now a consumer and human rights claim) that ESDs should be made available to help smokers quit smoking; yet ESD manufacturers resist and have never applied for these products to be regulated as smoking cessation aids. ESD manufacturers are quick to state that their products are switching products (from smoking conventional cigarettes to smoking electronic ones) and not intended for smoking cessation. WHO has also pointed out that HTPs are not cessation aids and that scientific evidence on ENDS as cessation aids is inconclusive, and there is a lack of clarity as to whether these products have any role to play in smoking cessation.²⁹



Are tobacco-control activities protected from all commercial and other vested interests related to ESDs, including interests of the tobacco industry?

Many of the research reports claiming and promoting that ESDs are less harmful than cigarettes are funded and/or carried out by the tobacco and ESD industry including grantees of the wholly PMI-funded (USD 80M per year) Foundation for a Smoke-Free World. As such, they are highly suspect to be biased, manipulated, and unreliable.

The industry and its front groups also aggressively lobby policy makers for lax ESD regulatory policies and oppose proven tobacco control measures, such as higher taxes, comprehensive advertising and marketing bans, public smoking bans, large pictorial health warning labels, plain/standardized packaging, flavor bans, and raising the minimum age of sale to at least 21 years of age. At the same time, they publicly attack and undermine public health and tobacco control advocates that support these evidence-based measures. They even absurdly claim that tobacco control advocates want to keep people smoking.

SUMMARY

Tobacco products and ESDs are harmful to human and environmental health. Governments are duty-bound to implement appropriately strict regulations to protect citizens from such harmful products.

The tobacco and ESD industry and its front groups are misleading policy makers and society with incorrect, incomplete, and misleading information, including twisting consumer and human rights to suit their own commercial agenda without regard for public health. Such deception and interference in public health policy violates consumer rights and the fundamental right of all people to the highest standard of health.

To protect consumers and the public, including our youths, from addiction and other health harms, these tactics by the tobacco and ESD industry to undermine or subvert tobacco control efforts must be exposed and rejected, and effective stringent regulatory policies must be fully implemented.

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