

The huff and puff surrounding e-cigarette regulation in South Africa

By [Jeanette Visagie](#)

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Cigarettes and smoke have “no place in modern life”. This was the message conveyed to South Africans by the Minister of Health, Dr. Aaron Motsoaledi, on World No Tobacco Day 2016. The Minister went on to emphasise that, on an international level, there is a worldwide movement by governments towards a smoking-free society, and that he is confident that, within his lifetime still, there will be no smoking anywhere in the world.



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There is currently no specific legislation that regulates the composition, labelling, marketing and sale of e-cigarettes in South Africa. The Tobacco Products Control Act of 1993 (“Tobacco Products Act”), which regulates the sale and use of traditional cigarettes and other tobacco products (and strictly prohibits the advertising and promotion of these products), does not extend to e-cigarettes. The reason for this is that, as a general rule, the vape solutions used in e-cigarettes do not contain tobacco and, therefore, these products do not qualify as tobacco products in terms of the Tobacco Products Act.

In terms of the Medicines and Related Substances Act of 1965 (“Medicines Act”), nicotine-containing e-cigarettes that are sold as a substitute for tobacco products (or as a medicinal aid to quit smoking) require registration with the Medicines Control Council for lawful sale, and may only be sold in pharmacies, on prescription. However, in practice, this is not the case. E-cigarettes are marketed in South Africa as consumer products, as opposed to medical devices. They are widely available at kiosks in many shopping malls, tobacconists and other retail outlets.

E-cigarettes are considered to be a relatively new technology, which has gained increased popularity in the past few years. As such, there appears to be a divide, worldwide, on the pros and cons of these products, particularly as it has not been possible to determine the long-term health consequences of use or secondary exposure.

In April 2016, the UK Tobacco Advisory Group of the Royal College of Physicians published a report, which suggests that, based on the available data, the use of e-cigarettes may be 95% less harmful than smoking tobacco products. A report published by the WHO in August 2016 on this topic paints a somewhat different picture on the potential health risks for e-cigarette users, and emphasises that second-hand exposure to e-cigarette vape has the potential to cause adverse health effects for bystanders.

On a national level, the Vapour Product Association (“VPA”), which is a self-regulated body that represents the local vape products’ industry, recognises that there is a need for proper regulation of the industry. It strives to work with the Government to develop appropriate industry legislation. In January 2017, the VPA hosted a round table discussion by a panel of experts on the topic of building policy consensus on achieving a smoke free South Africa. In considering and discussing the views expressed by both the WHO and the UK’s Royal College of Physicians, the panel was in agreement that the use of e-cigarettes is a safer alternative to smoking tobacco products. As such, the recommendation was made to implement local legislation with sufficient safety measures on the one hand, but ensuring the continued availability, accessibility and affordability of e-cigarettes as an attractive alternative for smokers.

In conclusion, it is clear that the Government is serious about curbing the smoking habits of South Africans in order to save lives. Recent indications suggest that the Department of Health views vaping in the same light as smoking, and proposes to amend the Tobacco Products Act to regulate e-cigarettes (both nicotine-containing and nicotine-free variants). While the vaping industry and experts agree that appropriate regulation is required, they believe that it would be in the public’s best interest to implement regulations that maintain accessibility to and affordability of e-cigarettes, in combination with setting the necessary product safety requirements. Whether or not the Government will take heed of these suggestions remains to be seen.

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