

# Regulated Products Appeals Committee (RPAC)

## 1 Terms of Reference

This document sets out the Terms of Reference for the Regulated Products Appeals Committee (**the Committee**).

## 2 Mandate

The Committee is established under section 79 of the Smokefree Environments and Regulated Products Act 1990 (**the Act**). The Committee's function is to determine appeals against decisions of the Director-General of Health (**the Director-General**) to cancel or suspend a product notification.

The Committee may, subject to any provision of the Act or the regulations, regulate its own procedure.

## 3 Background

The Director-General may suspend or cancel a product notification in accordance with section 74 or 75 of the Act.

Before suspending or cancelling a product notification, the Director-General must give the notifier a reasonable opportunity to be heard.

If, after hearing the notifier, the Director-General suspends or cancels a product notification, section 76 of the Act provides the notifier with a right to appeal to the Committee against the decision. Any such appeal must be lodged within 60 days after the Director-General's decision, or within any further period that the Committee allows.

The Director-General's decision remains in force unless and until the Committee orders otherwise.

A party may only appeal to the High Court against a decision of the Committee on a question of law.

## 4 Authority

Day-to-day administration of the Act is carried out by the Vaping Regulatory Authority (**the Authority**) within the Ministry of Health (**the Ministry**) under delegation from the Director-General.

## 5 Secretariat

The Committee is assisted by a Secretariat (**the Secretariat**) comprising such Ministry staff as required and as appointed by the Authority.

The Secretariat can be contacted by emailed at: [rpappealscommittee@health.govt.nz](mailto:rpappealscommittee@health.govt.nz).

## **6 Functions**

### **6.1 Rehear a notifier in relation to a decision by the Director-General**

The Committee will only hear and determine a notifier's appeal in relation to a decision to suspend or cancel a product notification.

[Note: It is not the Committee's function to review any decision, or any part of a decision, not under appeal.]

### **6.2 Confirm, reverse or modify a decision of the Director-General**

On hearing the appeal, the Committee may confirm, reverse, or modify the Director-General's decision under appeal.

## **7 Membership**

### **7.1 Composition of Committee**

The Committee consists of 3 members, with each appointed by the responsible Minister (**the Minister**) on any terms and conditions that the Minister thinks fit.

### **7.2 Appointment and reappointment of members**

Members will be appointed by notice in writing by the Minister for a term of 3 years but can be reappointed for further terms by the Authority. It is envisaged that, as a general rule, members will serve for one or two terms.

### **7.3 Chairperson**

The Minister shall appoint one member as Chairperson of the Committee.

It is the responsibility of the Chairperson to ensure that:

- discussions remain on-topic
- discussions are completed within allocated discussion time
- all votes are accounted for, and
- a decision is reached by majority or consensus.

The Chairperson shall not have the right of a casting vote to break deadlocked decisions.

### **7.4 Resignation and removal of members**

Any member can resign from the Committee by giving written notice to the Secretariat.

Any member who has resigned may continue in office until their replacement is appointed, if this is agreed upon by the Chairperson.

The Minister can remove any member from the Committee, and the Chairperson from their position as Chairperson, by notice in writing.

## **8 Meetings of the Committee**

The Secretariat will schedule meetings as necessary to hear appeal requests. If and where practicable, meetings will be by video conference or teleconference.

Members are expected to make every effort to attend all scheduled meetings and devote sufficient time to become familiar with its affairs and the wider environment within which it operates. Members are expected to prepare for meetings by reviewing any material provided and must advise the Chairperson, in advance, if they are unable to attend a meeting.

Members may be asked by the Chairperson to lead discussions on any agenda item. Members are expected to review draft meeting minutes and provide comment to the Secretariat.

## 9 Fees and allowances

Members of any Ministry committee may be paid fees for attendance at meetings in accordance with the Public Service Commission's framework for fees for statutory bodies.

Fees have been estimated based on Cabinet Office Circular CO(19)1 *Fees framework for members appointed to bodies in which the Crown has an interest*.

The Committee is classified as *All Other Committees and Other Bodies*, and the fee scale was evaluated under Group 4.

| Role        | Fee (\$/day*) |
|-------------|---------------|
| Chairperson | 250-365       |
| Member      | 190-270       |

\* before tax

Members will also be paid for meeting preparation time at the daily rate on a pro rata basis. The Ministry will cover actual and reasonable costs associated with attending in-person meetings.

## 10 Conduct

### 10.1 Requirement under the Act

In performing its functions or exercising its powers under the Act, the Committee must act independently and comply with the principles of natural justice.

### 10.2 Ministry conflict of interest rules and guidelines

Members of the committee are expected to adhere to the Ministry's conflict of interest rules and guidelines.

The Ministry's business rules applicable to committee members are:

- Anyone representing the Ministry in an official role needs to understand what a conflict of interest is.
- Any actual, perceived or potential conflicts must be reported to the Secretariat and/or chairperson without delay.
- Personal or private interests that have the potential to cause a perceived conflict of interest must be formally declared, following the Ministry's process.
- The Chairperson with the support of the responsible Ministry manager, must determine the steps that should be taken to deal with or manage an actual, perceived or potential conflict of interest.

- The offer or acceptance of a gift to you in connection with your official duties may be deemed a conflict of interest. Any gifts you receive need to be declared in accordance with the relevant rules and guidelines.
- All committee, board or advisory group members must declare all personal and private interests to their chairperson prior to each official meeting.

The Ministry's guidelines for committees, working parties, advisory groups and panels are:

- Managers in charge of these groupings have responsibility for ensuring members are made aware of their responsibilities.
- Members of committees, working parties, advisory groups and tender evaluation panels need to complete a declaration form, irrespective of whether they have a conflict of interest.
- Any actual, perceived or potential conflicts of interest must be disclosed on the declaration form.
- External parties with known conflicts of interest should only be appointed if it is in the clear interests of the Ministry to do so and with appropriate management strategies in place.
- All committees, working parties, advisory groups and tender evaluation panels must have conflicts of interest as the first item on their meeting agenda to accommodate disclosure and to ensure the Conflicts of Interest Register is kept up-to-date and accurate.
- Conflicts of interest must be considered with every agenda item, the extent of any conflict/s assessed and fully documented in the minutes including action taken to manage the conflict.
- Conflicts of interest requirements applicable to the appointment of board members are also contained in the New Zealand Public Health and Disability Act 2000, the Crown Entities Act 2004 and the State Services Commission's Board Appointment and Induction Guidelines.

### ***10.3 Notice of conflicts of interest prior to appointment***

Before members can be appointed to the Committee, they must sign the Ministry Declaration Form regarding whether the appointee:

- has read and understands the Ministry's Conflicts of Interest Rules and Guidelines, and related material
- has no interests that would potentially impact on their obligations to the Ministry in the role applied for, and
- will notify the Authority of any actual, potential or perceived conflicts of interest that may arise, or that they become aware of, while a member of the Committee.

### ***10.4 Conflicts of interest arising after appointment***

If, during the course of the Committee's business, any member finds that they have a conflict of interest in any matter being considered by the Committee they must disclose the nature of the conflict of interest to the Committee as soon as it is practicable after the facts have come to the member's knowledge.

To aid this process the Secretariat will circulate a conflict of interest form with subsequent agendas to allow members to disclose new potential conflicts of interest, if they arise (and have not previously been disclosed).

Any conflict of interest disclosure will be recorded in a register maintained by the Secretariat.

If a member has disclosed a potential conflict of interest, they may still participate in the discussions and decisions of the Committee, subject to approval of other Committee members. If this is the case the minutes shall reflect the situation.

### **10.5 Disclosure of confidential information**

Meetings, including agenda material and minutes, are confidential. Members must ensure that the confidentiality of Committee business is maintained.

Members are free to express their own views within the context of meetings, or the Committee's general business. Irrespective of their own views, members must publicly support a course of action decided by the Committee, or if unable to do that, must not publicly comment on such decisions.

At no time shall members individually divulge details of Committee matters or decisions to people who are not members, or Ministry of Health employees. A decision to disclose Committee business outside the Ministry must be the Authority's decision made in liaison with the Chairperson.

Members must ensure that documents are kept securely to ensure that confidentiality is maintained. At the end of a member's term, all Committee information must be returned to the Secretariat.

### **10.6 Media releases and public comment**

Members should notify the Chairperson and the Secretariat if they are approached for comment on any issue related to the Committee, past or present.

Any media release by the Committee or members must be issued under the authority of the Chairperson. Members must not issue media releases or public comments related to issues before the Committee, either in their personal or professional capacity, except as authorised by the Chairperson. The Chairperson must clear any media release with the Authority prior to making the media release.

### **10.7 Liability**

Members are not liable for any act or omission done or omitted in their capacity as a Committee member, if they acted in good faith, and with reasonable care, in pursuance of the Committee's functions.

## Regulated Products Appeals Committee Membership Agreement

I, \_\_\_\_\_ (full name) agree to the terms and conditions of appointment as a member to the **Regulatory Products Appeals Committee** as set out in the Committee Terms of Reference.

\_\_\_\_\_ (signature)

\_\_\_\_\_ (date)

Please return to the RPAC Secretariat:

[rpappealscommittee@health.govt.nz](mailto:rpappealscommittee@health.govt.nz).

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