

MMA Questions Sudden Government Claim Tobacco GEG ‘Unconstitutional’

By CodeBlue | 7 November 2023

The gov't's sudden claim that GEG is “unconstitutional” and must be decoupled is yet another delay tactic against the Control of Smoking Products for Public Health Bill, says MMA, noting that any ministry would have consulted the AGC before tabling a bill.



Malaysian Medical Association (MMA) president Dr Azizan Abdul Aziz. Photo courtesy of MMA.

KUALA LUMPUR, Nov 7 – The Malaysian Medical Association (MMA) today questioned if the government only decided last week that the generational tobacco and vape prohibition was unconstitutional and should be decoupled from the Control of Smoking Products for Public Health Bill 2023.

The doctors' group pointed out that the government had months to study all angles related to the bill and that both the 2022 and 2023 versions of the tobacco bill – which contain the

generational end game (GEG) ban proposal – had been deliberated by both the previous and current governments.

In fact, the Control of Tobacco Product and Smoking Bill 2022 made it to second reading for debate before the dissolution of the 14th Parliament. The Control of Smoking Products for Public Health Bill 2023 was tabled for first reading in the Dewan Rakyat last June.

“Any ministry, before the tabling of such an important bill in Parliament, would have consulted their legal team or even the Attorney-General’s Chambers (AGC) for their views and advice,” MMA president Dr Azizan Abdul Aziz said in a statement.

“Claiming that the GEG is ‘unconstitutional’ now – when the bill’s second reading was earlier scheduled to be tabled on Oct 10th – smacks of yet another tactic by the government to delay or stymie the tabling of the bill.

“It makes one wonder where the government’s priorities are. So far, their actions seem to be benefiting the vape industry the most.”

CodeBlue broke the news yesterday that a [Cabinet meeting last Friday decided to decouple the tobacco and vape GEG from the Control of Smoking Products for Public Health Bill](#), due to Attorney-General Ahmad Terrirudin Mohd Salleh’s advice that the cohort-based prohibition was unconstitutional. As such, the bill may only be tabled in the next Dewan Rakyat meeting in 2024.

The tobacco and vape control bill also lacked support from the AGC overall that, according to a source, had “strong views” about contravention of Article 8 of the Federal Constitution that guarantees equality before the law.

Unlike the current legal age of 18 for smoking, the GEG is a proposal to ban the sale of tobacco and vape products, as well as the act of smoking and vaping, to people born in or after a certain year – 2007 – throughout their entire lifetime.

Besides the fact that both the 2022 and 2023 versions of the tobacco and vape control bill contain the GEG, the AGC had also worked directly with the Health parliamentary special select committee (PSSC) chaired by Kuala Selangor MP Dzulkefly Ahmad in the current 15th Parliament to propose revisions to the Control of Smoking Products for Public Health Bill.

The [report tabled in the Dewan Rakyat last October 9 by the Health PSSC](#) – which held meetings from June 27 to October 3 – did not recommend decoupling the GEG from the bill, but to simply reduce the maximum fine for GEG offenders caught smoking or vaping to RM250 and to retain the alternative punishment of community service. In fact, the Health PSSC explicitly recommended retaining the GEG proposal in the bill.

Ahmad Terrirudin was appointed as Attorney-General last September 6, replacing Idrus Harun.

Former Health Minister Khairy Jamaluddin, who proposed the tobacco and vape GEG to Parliament last year, posted on Instagram Stories that he hoped *CodeBlue’s* report on Cabinet’s decision on the GEG decoupling was not true.

“If true: Big Tobacco – 10, Future generations – 0”.

Reinstate Liquid Nicotine Into Poisons List, Parents Should Sue Government Over Evali Cases

“In view of these latest developments, and the fact that the e-cigarette and vaping industry remains unregulated, the Ministry of Health (MOH) must take the responsible step of immediately re-listing nicotine gels and liquids under the Poisons Act or risk eroding public trust,” MMA said.

“We wish to remind the government of its moral and ethical obligation in preventing harm to human health. The MOH and, by extension, the government has ignored expert advice, warning them of the consequences of removing nicotine gels and liquids from the Poisons Act.

“As a result of its decision (to delist nicotine from the Poisons Act), e-cigarette and vaping products including those with nicotine, can be legally sold to children of any age.”

MMA further urged parents of under-18 children who suffered health effects from vaping to consider suing the government for “ignoring expert advice and for failing in its duties to adequately protect citizens, especially young children against the health dangers of vaping”.

Citing data from the Health director-general, Dr Azizan noted that 17 cases of e-cigarette or vaping-use associated lung injury (Evali) were reported last June alone. According to the National Health and Morbidity Survey: Adolescent Health Survey 2022, e-cigarette use among teens aged 13 to 17 increased to nearly 15 per cent last year.

Health Minister Dr Zaliha Mustafa exempted liquid and gel nicotine used in e-cigarettes and vaporisers from the Poisons List as a scheduled poison last March 31, using her ministerial authority to override unanimous objection from the Poisons Board.

“The MMA takes a serious view of the government’s delisting of nicotine gels and liquids from the Poisons Act. We strongly oppose this move and urge the people of Malaysia to hold the government responsible for every case of Evali among minors.”

Next December 6, the High Court is set to hear a judicial review application by three civil society groups, including the Malaysian Council for Tobacco Control, to nullify the exemption of liquid nicotine from the Poisons List.