



Associate Minister of Health

Smokefree 2025: Progressing Coalition Agreement Commitments

23 May 2024

These documents have been proactively released by the Ministry of Health on behalf of the Associate Minister of Health, Hon Casey Costello.

Title of Cabinet paper:

- Smokefree 2025: Progressing Coalition Agreement Commitments

Titles of minutes:

- Smokefree 2025: Progressing Coalition Agreements Commitments (CAB-24-MIN-0071.01)
- Report of the Cabinet Social Outcomes Committee: Period Ended 8 March 2024 (CAB-24-MIN-0071)

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Key to redaction codes:

- Out of scope of this proactive release
- S 9(2)(f)(iv) to maintain the constitutional conventions that protect the confidentiality of advice tendered by Ministers and officials.
- S 9(2)(h) to maintain legal professional privilege.



Cabinet

Minute of Decision

This document contains information for the New Zealand Cabinet. It must be treated in confidence and handled in accordance with any security classification, or other endorsement. The information can only be released, including under the Official Information Act 1982, by persons with the appropriate authority.

Smokefree 2025: Progressing Coalition Agreements Commitments

Portfolio Health

On 11 March 2024, following reference from the Cabinet Social Outcomes Committee, Cabinet:

- 1 **noted** the discussion on the paper under SOU-24-SUB-0007;
- 2 **invited** the Associate Minister of Health (Hon Casey Costello) to submit new advice to the Cabinet Social Outcomes Committee in due course, reflecting the matters raised at the meeting, s 9(2)(f)(iv)
[REDACTED] and on the proposed strengthening of the broader regulatory framework.

Rachel Hayward
Secretary of the Cabinet

Secretary's Note: This minute replaces SOU-24-MIN-0007. Cabinet agreed to amend paragraph 2.



Cabinet

Minute of Decision

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Report of the Cabinet Social Outcomes Committee: Period Ended 8 March 2024

On 11 March 2024, Cabinet made the following decisions on the work of the Cabinet Social Outcomes Committee for the period ended 8 March 2024:

SOU-24-MIN-0007 **Smokefree 2025: Progressing Coalition Agreements Commitments**
Portfolio: Associate Health

Separate minute:
CAB-24-MIN-0071.01

Out of scope



Rachel Hayward
Secretary of the Cabinet

In Confidence

Office of the Associate Minister of Health
Cabinet Social Outcomes Committee

Smokefree 2025: progressing Coalition Agreement commitments

Proposal

1. This paper seeks Cabinet's agreement to progress Coalition Agreement commitments relating to vaping and other nicotine products.

Relation to government priorities

2. The Coalition Agreements between the National Party and the New Zealand First and Act New Zealand parties respectively refer to:
 - 2.1 *"Repeal amendments to the Smokefree Environments and Regulated Products Act 1990 and regulations before March 2024, removing requirements for denicotisation, removing the reduction in retail outlets and the generation ban, while also amending vaping product requirements and taxing smoked products only"* and *"reform the regulation of vaping, smokeless tobacco and oral nicotine products while banning disposable vaping products and increasing penalties for illegal sales to those under 18."*
 - 2.2 *"Repeal the Smokefree Environments and Regulated Products (Smoked Tobacco) Amendment Act 2022 to remove the requirements for denicotisation and the reduction in retail outlets"* and *"introduce serious penalties for selling vapes to under 18s, and consider requiring a liquor licence to sell vapes."*
3. The Smokefree Environments and Regulated Products Amendment Act 2024 fulfils the agreement to remove "requirements for denicotisation, removing the reduction in retail outlets, and the generation ban".
4. At its meeting on 18 December 2023, Cabinet noted (inter alia) "that the Associate Minister of Health (Hon Casey Costello) will report back to Cabinet... before 8 March 2024 on further changes needed to further strengthen the regulation of vaping and other nicotine products [CAB-23-MIN-0500 refers]."

Executive Summary

5. Good progress is being made towards the Smokefree 2025 goal of less than 5% of New Zealanders smoking daily, with 6.8% of New Zealand adults smoking daily in 2022/23.

6. However regular vaping among 15-17 year olds has increased from 8.3% in 2021/22 to 15.4% in 2022/23 which equates to 32,000 young people in this age group vaping daily.
7. The Government supports a change in approach to the regulation of smoked tobacco products, the first stage of which was repealing the previous government's new smoked tobacco laws [CAB-23-MIN-0500 refers].
8. The regulatory framework for vaping needs strengthening to address youth vaping while also allowing access to vaping as a cessation tool for adult smokers, particularly in older age groups. Reducing the visibility and proximity of products to young people, while improving compliance of retailers by increasing penalties for sale to minors, will better protect young people.
9. In this paper, I seek Cabinet's agreement on proposals to progress commitments contained in the Coalition Agreements to set a new legislative direction towards achieving Smokefree 2025:
 - 9.1 "before March 2024" ... "amending vaping product requirements and taxing smoked products only" and
 - 9.2 "reform the regulation of vaping, smokeless tobacco and oral nicotine products while banning disposable vaping products and increasing penalties for illegal sales to those under 18." (NZ First)
 - 9.3 "introduce serious penalties for selling vapes to under 18s", and
 - 9.4 "consider requiring a liquor licence to sell vapes." (ACT).
10. Proposals would be progressed through amendments to the Smokefree Environments and Regulated Products Act 1990 and the Customs and Excise Act 2018.
11. I propose a plan be developed to strengthen the Government's approach to achieving Smokefree 2025 through non-regulatory measures. This will ensure we have effective practical measures to support smokers to quit and prevent youth vaping. I have asked my officials for an update on this by May 2024.
12. I want to ensure proportionality across the various products that are regulated under the Smokefree Environments and Regulated Products Act 1990. Smoked tobacco is the most harmful product and I have asked for advice on what further regulatory steps could be undertaken.
13. Further work will be undertaken to ensure that any future tobacco and vaping initiatives are designed and implemented in ways that are effective for Māori so that smoking rates can continue to come down.

Background

14. The Government remains committed to reducing smoking rates and achieving the Smokefree 2025 goal of less than 5% of New Zealanders smoking daily.

15. The Government supports a change in approach to the regulation of smoked tobacco. Progressing the Coalition Agreement commitments and a comprehensive plan for non-regulatory measures is needed to ensure we are providing people with practical tools and support to help them quit smoking, and to maintain the progress being made in reducing smoking rates.
16. In recent years, New Zealand has seen some of the largest drops in smoking rates across the world. The New Zealand Health Survey shows 6.8% of New Zealanders were smoking daily in 2022/23, down from 8.6% the previous year and 16.4% in 2011/12.
17. Some groups, where smoking rates remain higher than the general population, need additional support. These groups include those who are heavily addicted, Māori, and low-income earners. Officials are reviewing our smokefree initiatives to ensure they are designed and implemented in ways that are effective for these groups, so smoking rates can continue to come down across the population.
18. Many people have switched to vaping and we can expect this to continue. This has been a likely contributing factor to recent drops in our smoking rate.
19. However, youth vaping is at undesirable levels. In 2023, 10% of Year 10 students (14-15 year olds) reported vaping daily, with 26.6% of Māori girls and 18% of Māori boys vaping daily.
20. There are some positive signs. Rapid increases in youth vaping in recent years have plateaued, and weekly, monthly and regular vaping rates have started to decrease. However, vaping among school students in low-socioeconomic areas has continued to increase.

Government Priorities for Smokefree 2025

Crackdown on youth vaping and vape store prevalence

21. Too many young people are vaping. This, and the number of vape stores, is causing concern among many in our communities. The Government will prioritise a crackdown on youth vaping. Proposals below include increasing penalties for unlawful sales of vapes to minors, banning disposable vapes, and restricting new vape stores from opening near early childhood education centres.

Supporting smokers to quit through harm-reduction alternatives

22. Vaping has played an important role in reducing New Zealand's smoking rates. The Government continues to support vaping as a useful tool to help smokers to quit. There are other products on the international market that could contribute to further reducing our smoking rates if they were available here.
23. These approaches are inter-linked. Technology has provided additional tools to help people who smoke to quit. A responsible government must

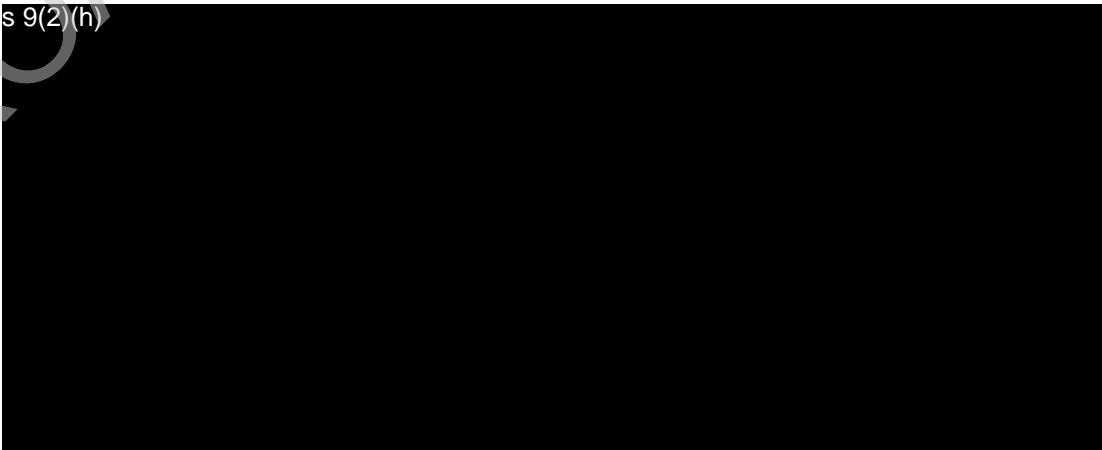
not stand in the way of adult smokers accessing products that will reduce the number of cigarettes they smoke.

24. At the same time, we must ensure vaping and other alternative products do not become normalised, particularly for youth.
25. Implementation of Coalition Agreement commitments requires legislative change. In some cases, further work is needed to develop detailed proposals, and, for some areas, I recommend consultation.

Ban disposable vaping products

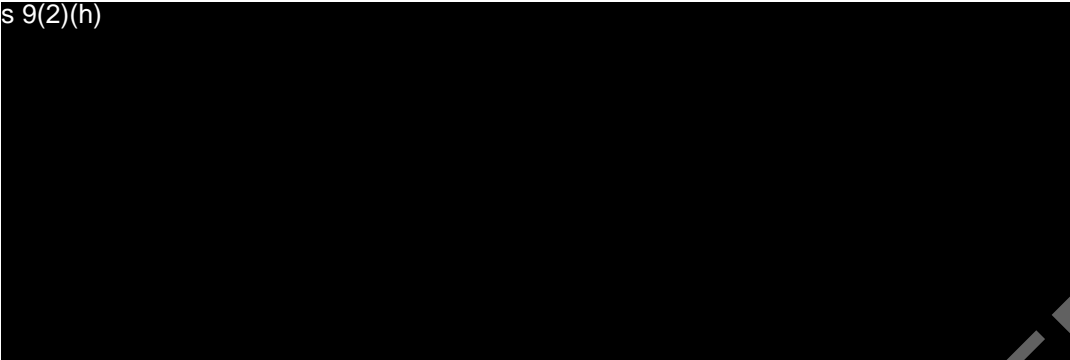
26. The Coalition Agreement between National and New Zealand First commits to “banning disposable vaping products”.
27. Disposable vapes have quickly become the most popular vaping product used by young people in New Zealand and internationally. I consider that a ban on disposable vapes, and an increase in penalties for those that supply to under-18s, will make it harder for young people to take up vaping.
28. Banning disposables will support the government’s plan to reduce youth vaping. Some young people may switch to reusables if disposables are unavailable, but as these are generally more expensive, the overall effect should be to discourage youth vaping.
29. Disposables can be banned through amendments to the Smokefree Act.. Several of our major trade partners have recently announced they intend to impose, or are considering bans on the devices including the United Kingdom and France. Australia banned disposable devices from 1 January 2024.
30. I propose that Cabinet agree in principle to ban disposable vaping products, noting that further work will be undertaken on the most appropriate way to do so. This includes further work with Customs to consider the intersection of this policy with the importation and exportation regime.
31. I also propose that targeted consultation with industry would be needed to develop detailed proposals to ensure that any ban would be effective, and not easily circumvented.

32. s 9(2)(h)



33.

s 9(2)(h)



Increase penalties for selling to minors

34. The Coalition Agreements between the National Party and the NZ First Party and the ACT Party respectively commit to “increasing penalties for illegal sales to those under 18” and “introduce serious penalties for selling vapes to under 18s”.
35. Minors typically access vaping products through retail stores, or from friends (social supply). In New Zealand, social supply is the main way Year 10 students who vape daily access vaping products (at 40.1%).
36. Penalty levels for unlawful sales to minors are currently:
- 36.1 Fines of \$10,000 for a body corporate (including most retailers) and \$5,000 for others (including sales assistants) on conviction before a court.
- 36.2 Infringement fees (ie, on the spot fines) of \$1,000 for a manufacturer, importer, or distributor, and \$500 for others (eg, sales assistants, and retailers in this instance).
37. Controlled purchase operations (CPOs) are carried out in retailers as a key compliance activity. In 2023, around 10% of general vape retailers (eg, dairies, supermarkets) and 17% of SVRs sold to minors in CPOs, compared to around 5% for tobacco sales. To date, just one prosecution that included vape sales to minors has commenced, although others are under consideration. It is unlikely that current penalty levels are a strong deterrent compared to the potential gains from non-compliance.
38. I am seeking Cabinet’s agreement to increase maximum fines for body corporates from \$10,000 to \$100,000 and fines for others (eg, sales assistants) from \$5,000 to \$10,000. Differing fines, up to a maximum of \$100,000, better account for the range in potential offenders, from sales assistants to large corporates such as supermarkets.
39. In addition, I propose increasing the existing infringement fees so that retailers are subject to a fee of \$2,000 (up from \$500) and sales assistants to a fee of \$1,000 (up from \$500) for any sales to minors that occur in their store. Many sales assistants are young people, so this policy may have a disproportionate impact on youth. However, it will have a positive impact on minors who should not be sold vaping products.
40. I propose these penalties apply to the sale of all regulated products to minors (ie, vaping products, smoked tobacco products, smokeless

tobacco products, herbal products for smoking). This is important, as one of the purposes of the Act (post the repeal coming into force) will be to minimise the harm from regulated products, in particular to children and young people.

Amend vaping products requirements

41. The Coalition Agreement between New Zealand First and National commits to amend “vaping product requirements” before March 2024.
42. The previous government introduced regulations around nicotine strength, product names and packaging of vaping products. I do not propose amendment to these regulations.
43. The previous government also introduced product requirements for vaping devices, including removable batteries and particular child safety mechanisms, aimed at stopping the availability of single-use vapes. These were unsuccessful. These product rules took effect for the retail sale of single-use (ie, disposable) vapes in December 2023. New low-cost vape devices conforming with the new requirements were immediately available in the market in December 2023.
44. I am yet to see evidence that the previous Government’s product requirements will be effective in reducing the prevalence of youth vaping.¹
45. The removable battery and child safety requirements are planned take effect on 21 March 2024 for the retail sale of all reusable vaping devices. The regulations for removable batteries and specific types of child-proof lock are unique to New Zealand and dissimilar to all overseas jurisdictions including European Union nations.
46. It is likely that higher quality vaping devices used by former adult smokers will soon be unavailable domestically as high-end manufacturers that cater to international markets may not make New Zealand specific models. The market for reusable devices may instead become more weighted towards low-end devices designed for our unique regulations. These devices may be relatively more appealing to young people through price, but are less effective for adults trying to permanently quit smoking.
47. As noted in paragraph 22, the Coalition Government’s Smokefree priorities are to address youth vaping and support adult smokers to quit.
48. I do not believe the previous Government’s vaping product requirements are consistent with the Coalition’s Government’s smokefree priorities. I propose to defer the regulations relating to vaping product requirements for two years for review to ensure they align with the Coalition Government’s objectives.
49. It is possible that deferring this change may cause further uncertainty for businesses that have been preparing for the regulations. However, there is already a high level of uncertainty in the sector. After the regulations had already taken effect for single-use devices and product notifications, the Ministry of Health issued further guidance on vaping product

¹ <https://www.1news.co.nz/2024/02/16/nz-regulations-around-vapes-ineffective-smoke-free-advocate/>

regulations on January 19 2024.² Delaying and reviewing the regulations will allow more workable rules to be devised that do not impose unnecessary costs on businesses.

50. In accordance with the Coalition agreement, I propose the regulations relating to *reusable* vaping devices that were to take effect on 21 March 2024 be deferred for 2 years, and that have been in place for new products notifications since 21 October 2023 be suspended, while further review of the regulations is undertaken. The regulations cover:
- 50.1 that all vaping products must have a mechanism to prevent the device being activated or accidentally operated by a child
 - 50.2 that all vaping products must have removeable batteries.
51. With a wider review of vaping regulations planned, I do not believe in imposing regulation and costs on businesses until I am satisfied that it reflects the best policy approach. I note that the regulations have applied to new reusable product notifications (or re-notifications) since 21 October 2023.

s 9(2)(f)(iv)

52. s 9(2)(f)(iv)

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² <https://www.health.govt.nz/our-work/regulation-health-and-disability-system/vaping-herbal-smoking-and-smokeless-tobacco-products-regulation/information-manufacturers-and-importers-notifiers/removable-batteries-vaping-devices>

s 9(2)(f)(iv)

s 9(2)(f)(iv)

56.

57.

Reform the regulation of vaping, smokeless tobacco and oral nicotine products

58. The Coalition Agreement between New Zealand First and National commits to “reform the regulation of vaping, smokeless tobacco and oral nicotine products”.
59. Vaping has supported many New Zealanders to quit smoking, but it may not work for everyone. There are other products on the international market that could contribute to achieving our Smokefree 2025 goal.
60. Most smokeless tobacco and nicotine products are unlawful in New Zealand, including chewing tobacco, snus and nicotine pouches. Chewing tobacco, which is associated with mouth cancers, should remain unlawful. However, if there are products with a similar risk profile to vaping, then I consider they should be available as options for people who smoke.
61. Swedish snus is a smokeless nicotine product for oral use that is made from pasteurised finely ground tobacco leaves and food-grade additives, including flavourings. Its relevance to the New Zealand population is unknown, but it may appeal to some smokers.
62. Nicotine pouches are another form of smokeless tobacco product for oral use. They are relatively new to the international market and, as such, evidence of their safety, and their effectiveness to help people stop smoking is limited. Most published data is from industry and suggests that nicotine pouches have substantially lower levels of toxicants compared to smoked tobacco. Like all nicotine products there is a risk of addiction. There are increasing concerns internationally of their promotion to young people.
63. I propose the Committee agree in principle to allow the sale of smokeless tobacco and nicotine products where the evidence shows they are significantly less harmful than smoking (ie, they have a similar risk profile to vaping), and meet safety requirements and regulatory controls to prevent youth access.
64. Further work is needed, including to determine the best way to certify these products for sale in New Zealand. I have directed officials to

examine certification processes in other developed countries where these products are sold. Should overseas regimes be compatible with the New Zealand market, it may not be necessary to develop our own certification regime. This includes considerations around the application of the Customs permit regime, which has an important risk management function and would enable monitoring of changes in the market.

65. I propose to report back to Cabinet by the end of 2024 for further decisions on this work.

Review licensing regime

66. The Coalition Agreement between the National Party and the ACT Party commits to “consider requiring a liquor licence to sell vapes”.

67. I intend to review the licensing regime for specialist vape stores with a focus on providing local oversight of vape store retailers, as is the case for liquor licensing. I am looking to empower local communities to determine the number and location of vape stores in their communities rather than central government.

68. There are other aspects of liquor licensing that could be used to improve the regulation of vaping and other regulated products, including:

68.1 significantly strengthened requirements for operator competence, including duty managers who are trained and present at all times, and suitability of the applicant requirements

68.2 1-year probationary periods for new operators

68.3 licences (for all types of retailers) that expire and must be proactively reapplied for

68.4 improving the effectiveness of suspensions and cancellations of licences as an enforcement mechanism (eg, by extending to all types of retailers and including stand down periods)

68.5 strengthened decision-making processes, and greater opportunity for input from communities or relevant experts.

69. I propose to report back to Cabinet by the end of 2024 for further decisions on this work.

70. I want to ensure proportionality across the various products that are regulated under the Smokefree Environments and Regulated Products Act 1990. Smoked tobacco is the most harmful product and I have asked officials for advice on what further regulatory steps could also be undertaken for smoked tobacco to ensure consistency across the suite of regulated products.

71. s 9(2)(h)
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Vape Retailing

72. I propose the following changes to the way vapes are sold:
- 72.1 Restrict the displays and storefronts of specialist vape stores to reduce appeal to under-18s.
 - 72.2 Institute a physical staffing requirement for specialist vape stores to be open and/or a minimum floorspace requirement. A “specialist” vaping store needs to be just that, not an unstaffed ‘store within a store’.
 - 72.3 Review the vape store compliance system and further amend legislation if necessary to ensure compliance is occurring.
 - 72.4 Allow retail staff to encourage customers buying cigarettes to try vaping.
73. As these proposals impact businesses, I am seeking Cabinet’s agreement to targeted consultation with representative business organisations.
74. I am also seeking Cabinet approval to include registered ECE centres within vape store proximity limits⁴ (ie, 300m as is the case for schools).

Practical support for smokers and young people

75. I have asked officials to provide me with a comprehensive plan by May 2024 to strengthen our approach to achieving Smokefree 2025 through non-legislative measures. The plan will be evidence-based and focused on those with the highest rates (eg, Māori and people living in low-income areas). Engagement with smokers and health providers from these communities will be required. The plan will also be costed where possible and include implementation timeframes. Areas of focus will include:
- 75.1 *education and communication* (eg, health promotion campaigns to encourage smokers to quit and to use stop smoking services, more support for schools to reduce youth vaping)
 - 75.2 *insights and research* (eg, updated qualitative and quantitative data analysis including better understanding people’s lived experience)
 - 75.3 *practical support* (eg, consider options to fund vape starter kits for current smokers)
 - 75.4 *stop smoking services* (eg, review the effectiveness of services, strengthen guidance to include harm reduction measures such as vaping, strengthen services’ accountability to deliver for priority groups)
 - 75.5 *workforce training and education* (redesign to make sure it is fit for purpose)

⁴ There are almost 4,500 ECEs on the Ministry of Education database, and just over 2,500 schools. Inclusion of ECEs in proximity limits will likely significantly decrease the number of applications for new SVRs that can be approved.

- 75.6 *community led innovations* (support and monitor initiatives to support people to quit smoking and prevent youth uptake of vaping).

Cost-of-living Implications

- 76. The average person who smokes is estimated to spend between \$5,200 - \$7,800 on tobacco products per year (based on an average of 9.6 cigarettes per day). For many households, this is likely to account for a significant proportion of their discretionary income. By contrast, vaping products are relatively inexpensive.
- 77. Vaping is more cost effective than smoked tobacco, however the savings can't be directly quantified due to the different ways the products are used. In 2022 cigarette prices ranged from \$29.90 - \$49.90, (the most common individually sold product, Rothmans Royal Red 20 pack, cost \$29.90.) Commonly sold single-use vaping products in the same time period were around \$8.50 - \$10, for a minimum of 2500 puffs. Prices appear to have increased since recent regulatory changes, however they are still cheaper than smoked tobacco, (eg, the Salty Pulse Bar strawberry at \$34.99 for 4500 puffs, which delivers significantly more nicotine than one pack of cigarettes).
- 78. Increased infringement fines will impact sales assistants, many of whom are young and low-income, if they are caught selling to minors.

Financial Implications

- 79. Financial implications of these proposals, for retailers and manufacturers, consumers and government will depend on final options selected.

80. s 9(2)(f)(iv) [Redacted]

81. s 9(2)(f)(iv) [Redacted]

Legislative Implications

82. Legislative amendment would be needed to implement these proposals. A Smokefree Environments and Regulated Products Amendment Bill (No 2) is included in Health bids for the 2024 legislation Programme, with a proposed priority 5 (to proceed to Select Committee by the end of 2024).
83. s 9(2)(f)(iv)
84. A waiver to the 28-day rule will be required so that proposed changes relating to vaping product requirements and excise duty can come into force by 20 March 2024 and 1 April 2024 respectively.

Impact Analysis

85. Cabinet's impact analysis requirements apply to the proposals to progress a new legislative direction towards achieving Smokefree 2025, but there is no accompanying Regulatory Impact Statement, and the Treasury has not exempted the proposal from the impact analysis requirements. Therefore, it does not meet Cabinet's requirements for regulatory proposals.
86. The Regulatory Impact Analysis team at the Treasury and the Ministry of Health have agreed that supplementary analysis or a post-implementation assessment will be developed and provided to Cabinet later in the year.

Population Implications

87. Some population groups have higher rates of smoking, therefore, the harm from tobacco affects these groups disproportionately (both in terms of direct health impact, and the indirect impact that smoking can have on household disposable incomes). Priority groups include Māori, low-income earners, and those who are heavily addicted to smoking. More support is needed to support these groups to quit smoking.
88. Vaping products are also used unevenly across society. Pacific (15+) are 1.5 times more likely to vape than non-Pacific. Māori (15+) are more than twice as likely to vape daily as non-Māori. Regulating vaping products in a way that reduces access for those wishing to use a less harmful product than smoked tobacco would likely have a disproportionately negative effect on those populations (which also have higher smoking rates).
89. New Zealand has seen a rapid increase in youth vaping in recent years, including among young people who smoke. While this is slowing, clear inequities remain in youth vaping, with Māori students and students in low-income areas vaping more than others. Reducing access to and use of vaping products by young people is likely to reduce inequities.

Te Tiriti o Waitangi/The Treaty of Waitangi

90. Article 2 of Te Tiriti o Waitangi guarantees active protection of taonga, including wellbeing and tiaki whakapapa. The principle of active protection requires the Crown to act, to the fullest extent practicable, to achieve

equitable health outcomes for Māori. This means we must go beyond a business-as-usual approach, to ensure the actions we take will increase equity.

91. Section 6 of the Pae Ora (Healthy Futures) Act 2022 requires the Government to give effect to Te Tiriti o Waitangi. This includes that the Minister, the Ministry, and all health agencies be guided by the health sector principles, which, among other things, are aimed at improving the health sector for Māori and improving hauora Māori outcomes.
92. Further and more substantive Te Tiriti analysis will be undertaken before Cabinet makes policy decisions on other matters later in the year.

Human Rights

93. Some proposals may have New Zealand Bill of Rights Act 1990 (NZBORA) implications. A NZBORA vet will be completed as part of any future legislative process.

Use of external Resources

94. No contractors have been involved in developing this paper.

Consultation

95. The following agencies were consulted: the Crown Law Office, the Department of the Prime Minister and Cabinet, Health New Zealand | Te Whatu Ora, Ministry for Ethnic Communities, Ministry for Pacific Peoples, Ministry of Business, Innovation, and Employment, Ministry of Disabled People | Whaikaha, Ministry of Education, Ministry of Foreign Affairs and Trade, Ministry of Justice, Ministry of Social Development, New Zealand Customs Service, New Zealand Police, Oranga Tamariki, Parliamentary Counsel Office, Te Aka Whai Ora | Māori Health Authority, Te Arawhiti | Office for Māori Crown Relations, Te Puni Kokiri | Ministry of Māori Development, Ministry for the Environment, the Treasury.

Communications

96. My office will work with officials to ensure timely communications as required.

Proactive Release

97. I intend to proactively release this Cabinet paper in whole within 30 business days of decisions being confirmed by Cabinet (subject to redactions on standard withholding grounds, such as maintaining legal privilege).

Recommendations

The Associate Minister of Health recommends that Cabinet:

- 1 **note** Coalition Agreements between the National Party and the New Zealand First and Act New Zealand parties respectively refer to:
 - 1.1 “Repeal amendments to the Smokefree Environments and Regulated Products Act 1990 and regulations before March 2024, removing requirements for denicotisation, removing the reduction in retail outlets and the generation ban, while also amending vaping product requirements and taxing smoked products only” and “reform the regulation of vaping, smokeless tobacco and oral nicotine products while banning disposable vaping products and increasing penalties for illegal sales to those under 18.”
 - 1.2 “Repeal the Smokefree Environments and Regulated Products (Smoked Tobacco) Amendment Act 2022 to remove the requirements for denicotisation and the reduction in retail outlets” and “introduce serious penalties for selling vapes to under 18s, and consider requiring a liquor licence to sell vapes.”
- 2 **note** the Government remains committed to reducing smoking rates and achieving the Smokefree 2025 goal of less than 5% of New Zealanders smoking daily
- 3 **note** at its meeting on 18 December 2023, Cabinet noted (inter alia) “the Associate Minister of Health, Hon Casey Costello, will report back to Cabinet... before 8 March 2024 on further changes needed to... strengthen the regulation of vaping and other nicotine products [CAB-23-MIN-0500 refers].”

Ban disposable vaping products

- 4 **note** the National Party-New Zealand First coalition agreement to ban “disposable vaping products”
- 5 **agree** in principle to ban disposable vaping products, and
- 6 **note** s 9(2)(h) [REDACTED]
- 7 **note** that further work, including targeted consultation with industry, is needed to ensure that a ban on disposable vape products will be effective, and
- 8 **invite** the Associate Minister of Health to report back to Cabinet at the end of 2024 with detailed proposals to ban disposable vaping products

Increase penalties for unlawful vape and other regulated product sales to minors

- 9 **note** the Coalition Agreements between the National Party and the NZ First Party and the ACT Party respectively commit to “increasing penalties for illegal sales to those under 18” and “introduce serious penalties for selling vapes to under 18s”,
- 10 **agree** to amend the Smokefree Environments and Regulated Products Act 1990 increase penalties for unlawful sales of regulated products to minors, as follows:
 - 10.1 set the maximum penalty for illegal sales of regulated products to minors at \$100,000 for a body corporate (from \$10,000) and \$10,000 for an individual (from \$5,000), and
 - 10.2 set related infringement offences at \$1,000 for individuals (from \$500) and \$2,000 for a manufacturer, importer, distributor or retailer (from \$500)

Amend vaping product requirements

- 11 **note** the National Party-New Zealand First coalition agreement to amend “vaping product requirements” “before March 2024”.
- 12 **agree** to defer commencement until 21 March 2026 of the following vaping regulations which are due to come into effect on 21 March 2024:
 - 12.1 all reusable vaping products must have a mechanism to prevent the device being activated or accidentally operated by a child
 - 12.2 all reusable vaping products must have removeable batteries
- 13 **agree** to suspend the application of the following vaping regulations that have been in place for new products notifications since 21 October 2023, until 21 March 2026:
 - 13.1 all reusable vaping products must have a mechanism to prevent the device being activated or accidentally operated by a child
 - 13.2 all reusable vaping products must have removeable batteries
- 14 **agree** that the regulations relating to *disposable* (single-use) vaping devices remain in place until the Government bans the devices outright

s 9(2)(f)(iv)

15 s 9(2)(f)(iv)

16 s 9(2)(f)(iv)

- 17 s 9(2)(f)(iv) [REDACTED]
[REDACTED]
[REDACTED]
- 18 s 9(2)(f)(iv) [REDACTED]
[REDACTED]
- 19 s 9(2)(f)(iv) [REDACTED]
[REDACTED]
[REDACTED]
- 20 s 9(2)(f)(iv) [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

Reform the regulation of vaping, smokeless tobacco and oral nicotine products

- 21 **note** the National Party-New Zealand First coalition agreement to “reform the regulation of vaping, smokeless tobacco and oral nicotine products”
- 22 **agree** in principle to allow the sale of reduced harm smokeless tobacco and oral nicotine products (eg, Swedish snus and nicotine pouches), subject to products meeting safety requirements and regulatory controls to prevent youth access
- 23 **invite** the Associate Minister of Health to report back to Cabinet at the end of 2024 with detailed proposals, including the best way to certify these products for sale in New Zealand

Consider the licensing regime for nicotine products

- 24 **note** the National Party-ACT Party coalition agreement to “consider requiring a liquor licence to sell vapes”
- 25 **note** that further work is needed before any decisions can be taken on amending the vaping licensing regime
- 26 **invite** the Associate Minister of Health to report back to Cabinet with detailed proposals at the end of 2024

Vape retailing

- 27 **agree** in principle to the following changes to vape retailing:
- 27.1 restrict the displays and storefronts of specialist vape stores to reduce appeal to under-18s
 - 27.2 institute a physical staffing requirement for specialist vape stores to be open and/or a minimum floorspace requirement
 - 27.3 allow retail staff to encourage customers buying cigarettes to try vaping

- 28 **note** that officials will undertake targeted consultation on these proposals, given their impact on business
- 29 **agree** to a review of the vape store compliance system, with a view to further amending legislation if necessary to ensure compliance
- 30 **invite** the Associate Minister of Health to report back to Cabinet at the end of 2024 with substantive recommendations
- 31 **agree** to include registered ECE centres within vape store proximity limits (ie, 300m as is the case for schools)

Report-back

- 32 **note** that the Associate Minister of Health will report back to Cabinet at the end of 2024 with proposals for recommendations 8, 23, 26 and 30

Drafting instructions

- 33 **authorise** the Associate Minister of Health to issue drafting instructions to the Parliamentary Counsel Office and s 9(2)(f)(iv) to give effect to recommendations 10, 12, 13, s 9(2)(f)(iv) and 31
- 34 **note** that amendments to secondary legislation giving effect to recommendations 12, 13 and s 9(2)(f)(iv) will be carried out urgently
- 35 **authorise** the Parliamentary Counsel Office s 9(2)(f)(iv) to make necessary consequential changes to relevant legislation and regulations and other minor and technical amendments as required
- 36 **agree** that amendment regulations are submitted directly to Cabinet, for authorisation to submit to Executive Council.

Authorised for lodgement

Hon Casey Costello

Associate Minister of Health