

# Briefing

## Confirming the scope of January 2024 advice on vaping and coalition agreement policies

<b>Date due to MO:</b>	18 December 2023	<b>Action required by:</b>	21 December 2023
<b>Security level:</b>	IN CONFIDENCE	<b>Health Report number:</b>	H2023033982
<b>To:</b>	Hon Casey Costello, Associate Minister of Health		
<b>Copy to:</b>	Hon Dr Shane Reti, Minister of Health		
<b>Consulted:</b>	Health New Zealand: <input type="checkbox"/> Māori Health Authority: <input type="checkbox"/>		

### Contact for telephone discussion

Name	Position	Telephone
<b>Dr Andrew Old</b>	Deputy Director-General, Public Health Agency   Te Pou Hauora Tūmatanui	s 9(2)(a)
<b>Jane Chambers</b>	Group Manager, Public Health Policy and Regulation, Public Health Agency   Te Pou Hauora Tūmatanui	s 9(2)(a)

### Minister's office to complete:

- |   |                                    |  |
|---|------------------------------------|--|
| <input type="checkbox"/> Approved             | <input type="checkbox"/> Decline   | <input type="checkbox"/> Noted               |
| <input type="checkbox"/> Needs change         | <input type="checkbox"/> Seen      | <input type="checkbox"/> Overtaken by events |
| <input type="checkbox"/> See Minister's Notes | <input type="checkbox"/> Withdrawn |  |

Comment:

# Confirming the scope of January 2024 advice on vaping and coalition agreement policies

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**Security level:** IN CONFIDENCE      **Date:** 18 December 2023

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**To:** Hon Casey Costello, Associate Minister of Health

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## Purpose of report

1. The purpose of this report is to:
  - a. provide initial advice on vaping (including coalition agreement policies), and
  - b. confirm your expectations and scope for the January 2024 report.
2. This report discloses all relevant information and implications.

## Summary

3. The coalition agreements between the National Party and the New Zealand First and Act New Zealand parties respectively refer to:
  - a. "... 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."
  - b. "introduce serious penalties for selling vapes to under 18s, and consider requiring a liquor licence to sell vapes."
4. The 100-day plan directs health officials to "provide advice in January on increasing penalties for illegal sales of vaping products to those under 18, as well as increasing oversight of the sale of vapes."
5. You have also provided officials with additional notes, containing policy proposals, to support further advice to you.
6. We provide preliminary advice on all the policies and proposals set out in the documentation listed above, and seek your confirmation on the scope of the substantive advice due at the end of January 2024.
7. We also seek confirmation of whether you would like to progress the specific vaping and other proposals as part of a broader review of the smokefree policy settings, to better align them with the Government's direction and improve coherence across the Smokefree Act and its regulations.

8. We propose that you seek Cabinet decisions in March 2024, with a view to subsequent public consultation. This would allow you to take a paper to Cabinet in July, seeking final decisions and agreement to draft an amendment bill for introduction to Parliament later in 2024.

## Recommendations

- a) **Indicate** in the body of this paper the matters on which you would like to receive substantive advice at the end of January 2024 **Yes/No**
- b) **Indicate** whether you would like officials to undertake a broader review of policy settings within which any specific policy changes would sit **Yes/No**



Dr Diana Sarfati  
**Director-General of Health**  
**Te Tumu Whakarae mō te Hauora**

Date: 18 December 2023

Hon Casey Costello  
**Associate Minister of Health**

Date:



Dr Andrew Old  
**Deputy Director-General**  
**Public Health Agency | Te Pou Hauora**  
**Tūmatanui**

Date: 18 December 2023

# Confirming the scope of January 2024 advice on vaping and coalition agreement policies

## Context

1. While vaping is less harmful than smoking, it is not harmless. It is an appropriate harm-reduction tool for people who smoke and there is evidence that vaping is effective in helping people to quit smoking. However, vaping by non-smokers increases their exposure to harm. Concern is greatest for those under the age of 18.
2. We have very little information about the use of other products, such as heated tobacco. We will provide any data that is available in advice at the end of January 2024.

## Current regulatory settings

3. Vaping products were first regulated in 2020 under the Smokefree Environments and Regulated Products Act 1990 (the Smokefree Act). This included prohibiting sales of vaping products to under-18s, introducing product safety standards, and prohibiting sponsorship and advertising, as well as vaping in legislated smokefree areas.
4. Overall, the legislative requirements set out in the Smokefree Act aim to achieve a balance between supporting people who smoke to access less harmful products, while protecting children and young people from access to and use of these products. We consider that some adjustments are needed, particularly to better protect young people.
5. While there are many similarities between the regulation of vaping and tobacco products, there are some key differences. In particular:
  - a. vaping products (and heated tobacco devices) are exempted from aspects of tobacco's comprehensive ban on promotion (eg, product visibility from outside and within stores)
  - b. vaping (and heated / smokeless tobacco and herbal smoking) products must be notified and meet product safety requirements, if any have been set. Product safety requirements have been set primarily for vaping products at this stage.
6. The Smokefree Act also provides for entry into the market via two routes: either as a specialist vape retailer (SVR) or a general vape retailer (GVR). GVRs are commonly dairies, service stations, and supermarkets, but there are no restrictions on the type of store that may sell vaping and other notifiable products.
7. SVRs must apply to the Director-General of Health and meet requirements such as operating from appropriate retail premises and that vaping products account for at least 70% of total sales (or 60% in certain circumstances). SVRs are able to sell a wide variety of vape flavours. By contrast, GVRs must simply notify the Director-General of Health that they are selling vaping products, and are only able to sell tobacco, menthol and mint flavours.

8. New vaping regulations came into force on 21 September 2023 and will progressively take effect over 6 months. Any new SVRs must now be at least 300 metres from a school or marae, and shortly, all vaping products will need to use permitted flavour descriptions and meet new product safety requirements such as reduced nicotine levels, removable batteries, child safety mechanisms, and labelling requirements.
9. There are a number of different regulated products under the Smokefree Act and we have summarised these in the attached **Appendix**.

### **Overarching considerations**

10. As a signatory to the World Health Organization Framework Convention on Tobacco Control (FCTC), New Zealand has an obligation under article 5.3 in “setting and implementing public health policies with respect to tobacco control... to protect these policies from commercial and other vested interests of the tobacco industry.”
11. In addition, regulating tobacco and vaping products is an area where legal challenge, both domestic and international, is likely.<sup>1</sup> Legal advice, including from the Ministry of Foreign Affairs and Trade where relevant, will be an essential component of all our advice.
12. The processes we recommend following, such as undertaking public consultation and being publicly transparent about the purpose of any meetings with industry, are an important aspect to mitigating potential legal risks and meeting our obligations under the FCTC.
13. An additional challenge is keeping pace with the speed of innovation from industry.

## **Advice on implementing the commitments set out in the coalition agreements and 100-Day Plan**

### **Taxing smoked tobacco products only**

14. The coalition agreements commit to taxing smoked tobacco products only. The additional information you provided to us proposes also to freeze the excise on smoked tobacco for three years.

### *Current settings*

15. New Zealand has an excise tax on tobacco products but not on nicotine vaping substances. The coalition agreements commit to taxing smoked tobacco products only. To implement this, tobacco excise would need to be removed from smokeless tobacco products, including heated tobacco. Tobacco excise is currently increased annually in line with the Consumer Price Index (CPI).

### *Comment*

16. We understand that your objective is to lower the price of smokeless tobacco compared with smoked tobacco, thus encouraging behaviour change. This could only be successful in improving health outcomes if the alternative products are less harmful than smoking.

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<sup>1</sup> We are currently awaiting the outcome of a judicial review brought against the Ministry by three New Zealand-owned vaping companies regarding an aspect of the new vaping regulations.

17. We are reviewing the available evidence on smokeless tobacco products, including heated tobacco products (HTPs), regarding their harm, particularly in comparison to traditional smoked cigarettes and vaping products. Some, but not all, smokeless tobacco products, may be appropriate reduced-harm alternatives to smoking.
18. The mechanism to remove tobacco excise from smokeless tobacco products is via the Customs and Excise Act 2018, and/or amendment of the Excise and Excise-equivalent Duties Table Order. We will work with New Zealand Customs and The Treasury to provide advice, on the implications of removing tobacco excise from smokeless tobacco products and, with your confirmation, a three-year freeze on CPI-related excise increases for smoked tobacco.

*Recommendations*

<b>Confirm</b>	the Government's intention to remove excise from smokeless tobacco products, including heated tobacco	<b>Yes/No</b>
<b>Advise</b>	whether you would like advice in January 2024 to include the implications of a three-year freeze on CPI-related excise increases for smoked tobacco	<b>Yes/No</b>

## **Reforming the regulation of vaping, smokeless tobacco and oral nicotine products**

### **Definition of vaping product**

19. The additional information you provided proposes to amend the Smokefree Act to ensure that all products that produce vapour, rather than smoke, are treated as vaping products.

*Current settings*

20. New Zealand regulates HTPs in a hybrid way, with the device classed as a vaping product, and the tobacco component classed as a notifiable/tobacco product. This classification creates the following regulatory settings:
  - a. The classification of the HTP device as a vaping product means that this part of the HTP is not subject to the full range of tobacco product controls (ie the device may be on display in stores consistent with the vaping exemptions).
  - b. The tobacco component of the HTP (ie the tobacco stick) is classed as a notifiable product (like vaping products), and a tobacco product, and is therefore subject to the full range of tobacco product advertising and display controls.
  - c. The tobacco stick is currently taxed for excise under the category of 'other tobacco' (there is a very small difference in the excise tax for HTPs versus cigarettes).
  - d. HTPs are treated like vaping products sold by general vape retailers in that only 3 flavours can be sold in New Zealand (mint, menthol and tobacco).
  - e. HTPs are also included in the vape free areas rules (ie, use is prohibited in workplaces, early childhood centres and schools).

*Comment*

21. The Smokefree Act has a complex set of inter-related definitions. Amending the classification of heated tobacco products is technically complex and could have unintended consequences. We are keen to better understand what you are aiming to achieve by making this change. It may be more efficient to give effect to your policy intention in another way.

*Recommendations*

<b>Note</b>	heated tobacco product devices are classed as vaping products, while heated tobacco sticks are a tobacco product, and a notifiable product	
<b>Advise</b>	whether you would like the January 2024 advice to include the implications of changing the classification of the tobacco component of a HTP (ie, the tobacco stick) to a vaping product, rather than a tobacco product	<b>Yes/No</b>

**Legalising the sale of reduced-harm oral tobacco and nicotine products**

22. The additional information you provided officials, proposes to make 'smokefree products' available.

*Current settings*

23. Some smokeless tobacco and all oral nicotine products are unlawful in New Zealand, including chewing tobacco, snus and dissolvables. Heated tobacco products and nasal snuff are lawful.

*Comment*

24. Different products have very different risk profiles, and not all products will be suitable as reduced-harm alternatives. There are also differences in the evidence that is available to assess different products. For example, Swedish snus has been used in Scandinavia for decades and there is a strong body of evidence on its risks and benefits. By contrast, nicotine pouches are relatively new to the market, and there will be fewer studies available.
25. The Ministry will undertake a rapid review of the risks and benefits of different types of smokeless tobacco products, prioritising snus and nicotine pouches. Officials can report to you in the January 2024 advice on options to regulate the sale of oral tobacco and nicotine products. This can include any implications of legalising the sale of oral tobacco and nicotine products, including snus and nicotine pouches.

*Recommendations*

<b>Advise</b>	whether you would like the advice in January 2024 to include options to regulate the sale of oral tobacco and nicotine products	<b>Yes/No</b>
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## Banning disposable vaping products

26. The coalition agreements commit to banning disposables. The additional information you provided officials proposes that vaping products should have child resistant mechanisms and questions the previous government's requirement for vaping product batteries to be removable.

### *Current settings*

27. Disposable vaping products are notifiable products under the Smokefree Act, regulated similarly to other vaping products.
28. Disposables have quickly become the most popular vape product used by young people in New Zealand and around the world. In 2023, disposables were used by 58.1% of Year 10 students who had ever tried vaping, and 68.1% of those who vaped daily (rapid increases from 12.2% and 9% respectively in 2021). This follows trends in other countries, such as the USA (60.7% of middle and high school students in 2023), Australia (68% of 12–17-year-olds in 2022) and the UK (69% of 11–17-year-olds in 2023). Disposable vapes are the most used device for young people across all ethnicities, with the highest rate of use among Pacific and Māori students.
29. From 21 December 2023, the maximum allowable concentration of nicotine in disposables is being reduced to 20mg/mL (from 50mg/mL). Safety regulations requiring removable batteries and child safety mechanisms are also coming into effect shortly. While these may reduce the number of disposables on the market in the short term, we are already seeing the development of new disposable products that meet these safety requirements.

### *Comment*

30. Banning disposables would likely see a reduction in youth usage. Two recent UK studies found the appeal of disposables was perceived to be related to high visibility in stores, small size and lack of long-lasting odour (and therefore convenience and discretion in terms of concealment from parents and within schools), simplicity of use, and, in one of the studies, low price (ie, 'pocket money prices'). Some young people would likely switch to reusables if disposables were unavailable, but these are more expensive, which could reduce uptake.
31. It might also make some adults who smoke less likely to switch, as disposables are viewed as cheap, convenient, and easy to use. However, reusables are likely to be more cost effective in the long run. One UK study found most participants using disposables were concerned at the high ongoing cost and planned to switch to reusable devices.
32. Other jurisdictions have taken steps to restrict the sale of disposables – France (for health and environmental reasons), Germany (environmental reasons) and Ireland (under waste management legislation). Scotland is considering a ban for primarily environmental reasons. England is considering restricting the sale of disposable vapes using powers under environmental legislation but recognises their importance to adults who smoke (31% of adult vape users now use disposables). Belgium awaits EU approval to implement its own ban, and Germany plans to push for an EU-wide ban. Australia plans to ban importation of disposables from 1 January 2024.



33. Advice in January 2024 will include options to ban disposables. It will also propose to consider ways to reduce the impact on those who have or are considering switching to vaping, but who may not have the resources to invest upfront in a reusable device.

*Recommendation*

<b>Advise</b>	Whether you would like advice in January 2024 to consider ways to reduce the impact of a ban on disposables for those who may find it difficult to meet the upfront costs of a reusable device	<b>Yes/No</b>
<b>Advise</b>	whether you would like advice in January 2024 to cover repealing the requirement in the Smokefree Regulations that all vaping devices must have removeable batteries	<b>Yes/No</b>
<b>Note</b>	a requirement for child safety mechanisms will come into effect on 21 December for single use products, and 21 March 2024 for reusable products	

**Volume of vaping substance in prefilled, sealed pods**

34. The additional information you provided officials proposes to set a maximum volume limit of 2ml for prefilled, sealed pods.

*Current settings*

35. The Smokefree Regulations do not limit the volume of prefilled sealed pods, however, they do set limits for the total volume of nicotine in a container of 1,800mg. Setting a limit of 2ml for a sealed pod may align with some international requirements, such as for the United Kingdom, and may have some product safety benefits. Substantive advice will be provided in January 2024.

*Comment*

36. Giving effect to this proposal would require an amendment to the Smokefree Environments and Regulated Products Regulations 2021 (the Smokefree Regulations).

*Recommendation*

<b>Advise</b>	whether you would like advice in January 2024 to include limiting the volume of prefilled sealed pods to no more than 2ml	<b>Yes/No</b>
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**Maximum nicotine concentration limit for vaping substances**

37. The additional information you have provided to proposes to set a maximum nicotine concentration of 30mg/ml.

*Current settings*

- 38. From 21 December 2023 the maximum nicotine concentration for single use products, which the Government proposes to ban, will be 20mg/ml nicotine. From 21 March 2024, the limit will be 28.5 mg/ml nicotine for reusable products containing nicotine only in salt form.
- 39. The limit is 20 mg/ml nicotine for all other reusable products.

*Comment*

- 40. The nicotine limit for vaping products in many comparable jurisdictions such as Canada and the UK is 20mg/ml. This proposal would require an amendment to the Smokefree Regulations and is likely to be particularly contentious as it would be increasing the nicotine concentration from current levels, and therefore the addictiveness of products.

41.

s 9(2)(h)



42.

*Recommendations*

<b>Advise</b>	whether you would like the January 2024 advice to include the implications of increasing the maximum nicotine concentration in vaping products to 30mg/mL	<b>Yes/No</b>
<b>Advise</b>	whether you would like the January 2024 advice to include other options on regulating maximum nicotine concentration in vaping products	<b>Yes/No</b>

**Staffing of Specialist Vape Retail stores**

- 43. The additional information you have provided to officials proposes that SVRs would be required to have a staff member physically within the store at all times.

*Current settings*

- 44. There is currently no specific requirement of this nature in the Act, however, s.14(2) requires that an SVR must take all practicable steps to ensure that a young person does not enter the premises.

*Comment*

45. The current requirements are not easy to meet unless a SVR has a dedicated staff member, however the law leaves it open to different interpretations of ‘all practicable steps.’ Making this a requirement would remove ambiguity.

*Recommendations*

<b>Advise</b>		<b>Yes/No</b>
	whether you would like the January 2024 advice to include the implications of, and mechanism for, requiring an SVR to have a staff member physically in the store at all times	

**Enabling dairies, petrol stations and supermarkets to ‘market’ vapes to customers buying tobacco**

46. The additional information you have provided proposes that dairies, petrol stations and supermarkets should be allowed to ‘market’ vapes to smokers whenever cigarettes are requested for purchase.

*Current settings*

47. The law does not allow retailers, other than SVRs, to verbally promote vaping to customers buying tobacco, including as a reduced-harm alternative to smoking. It does allow the placement of signs, with wording as set out in the Smokefree Regulations.

*Comment*

48. Enabling retailers to promote vaping to customers buying tobacco would require an amendment to the Act.

*Recommendation*

<b>Advise</b>		<b>Yes/No</b>
	Whether you would like the January 2024 advice to include the implications of, and options to, enable certain retailers (dairies, supermarkets and service stations) to promote vaping to customers who request tobacco products	

**Penalties for retailers caught selling to minors**

49. The coalition agreements commit to increasing penalties for selling vapes to minors, and the 100-day plan directs officials to provide advice in January 2024 on increasing penalties for illegal sales of vaping products to those under 18, as well as increasing oversight of the sale of vapes. The additional notes you provided us suggested including a fine of up to \$30,000.

*Current settings*

50. Minors access vapes through both retail and social supply (eg, buying from or being given by friends or others their own age). In New Zealand, social sources are the main way Year 10 students access vapes (at 40.1%).
51. Compliance and enforcement activity is undertaken by the Tobacco Regulatory Authority and the Vaping Regulatory Authority (units within the Ministry of Health) together with the National Public Health Service.
52. Currently, infringement fees and fines on conviction before a court are the key enforcement mechanisms to prevent sale to minors. Infringement fees are set at \$1,000 (in the case of a manufacturer, an importer, or a distributor), or \$500 (or \$200 for supply). However, because there are defences relating to taking due care and knowledge, infringements are generally only issued to the seller (ie, \$500), and not the retail business. The current fine level for selling to a minor is \$10,000 for a body corporate, and \$5,000 in any other case.
53. In the 9 months to 31 March 2023, Controlled Purchase Operations (CPOs) were used to test compliance with the Act. Minors attempted to purchase vaping products at 428 retail premises. Of these, 86.2% were compliant (90.4% for GVRs and 82.8% for SVRs). By comparison, there was 94.67% compliance for tobacco CPOs for the same period.
54. In the 9 months to 31 March 2023, 54 infringement notices were issued for vaping related offences. No warnings were issued, and no prosecutions taken. To date, no prosecutions of vape retailers have been taken for sales to minors so the existing fine levels have not been tested. We will obtain updated figures for our January 2024 advice.

#### *Comment*

55. Given the current predominance of youth supply via social sources, and the reasonably high compliance rates from retailers, the overall impact on reducing youth vaping rates from increasing the fine level may be small.
56. However, the current level of fines and infringements may not be a strong deterrent compared to the potential gains from non-compliance.
57. An increased fine level could add weight to the public interest reasons for taking a prosecution against an offending retailer.<sup>2</sup> On the other hand, an increase to \$30,000 may still not be sufficient to meet the public interest test. The costs of taking a prosecution would exceed the fine.
58. In addition, increased infringement fees may have Bill of Rights implications where they disproportionately affect young workers. Part of the Ministry's experience with existing infringement notices is that the fees are often imposed against young sellers, for whom even existing fees are significant due to their low income (as a retail worker) and limited ability to pay, and there are often adverse impacts on their employment, such as dismissal. There are also recommended limits in Ministry of Justice guidelines on

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<sup>2</sup> It is not the rule that all offences for which there are sufficient evidence must be prosecuted. Prosecutors must exercise their discretion as to whether a prosecution is required in the public interest. Just as history of recurring conduct, and harm to children and young people may weigh in favour of prosecution, the likely imposition of a very small penalty can be a reason against pursuing prosecution.

infringement fees, which should not usually exceed \$1,000 or 10% of the total fine for the offence.

59. Complementary to increasing the maximum fine, we propose considering whether related offences, penalties and linked provisions would also benefit from amendment. For example, to increase penalties, remove loopholes and update unworkable provisions. These include provisions to prevent sales by retailers convicted of selling to minors, or under a suspension or cancellation.
60. Similarly, provisions that reduce the appeal to minors and harm from these products to young people (for example in relation to advertising and restriction on sales of flavours) are not clearly drafted, which has led to loopholes and a lack of clarity for both the regulator and the importers and retailers.
61. Overall, compliance and enforcement outcomes are likely to be more effective with a wider range of tools available for officers. We therefore propose to also consider whether there is a role for other types of penalties, particularly focused on commercial imperatives against compliance – such as notices of direction by compliance officers, seizure powers, or pecuniary penalties. This would ensure a graduated enforcement approach allowing for compliance without the need to prosecute.

*Recommendations*

<b>Confirm</b>	you would like the January 2024 advice to include increasing the maximum fine for selling to minors	<b>Yes/No</b>
<b>Advise</b>	whether you would like advice on additional regulatory options to increase oversight of the sale of vapes, for example, a broader range of compliance tools	<b>Yes/No</b>
<b>Advise</b>	whether you would like advice on potential changes to other related offences and penalties.	<b>Yes/No</b>

**Consider requiring a liquor licence to sell vapes**

62. The coalition agreements commit to considering whether to require a liquor licence to sell vapes.

*Current settings*

63. As indicated above under ‘Current regulatory settings’, New Zealand has a mixed model for retail sales of vaping products. The Smokefree Act provides for entry into the market via two routes: either as a SVR or a GVR. As of November 2023, at least 7,000 stores sold vape products – over 1,242 SVRs and at least 5,760 GVRs. Similarly to tobacco stores, the density of vape stores is greater in areas of higher deprivation and higher smoking prevalence. There is currently no restriction on the number of vape stores. Providing they meet the relevant requirements, new retailers can enter the market.

*Comment*

64. To provide advice on this proposal we need to better understand the policy objective. Changing the retail model to require a liquor license to sell vapes would be a substantial undertaking and may carry risks of both domestic legal challenge and trade law challenge.

There is also opportunity to consider other shared licensing models (e.g. for tobacco and vaping together).

65. We note the Government has also committed to removing the requirement for smoked tobacco retailers to be approved to sell smoked tobacco. This change will mean that there will be no specific entry to market requirements to sell smoked tobacco.

<b>Confirm</b>	you would like the January 2024 advice to include liquor licensing to sell vapes	<b>Yes/No</b>
<b>Advise</b>	whether you would like the January 2024 advice to include a range of licensing options for vape retailers, in addition to consideration of a liquor licence requirement	<b>Yes/No</b>
<b>Advise</b>	whether you would like similar advice on options for the retail sale of smoked tobacco products	<b>Yes/No</b>

## Complementary approaches

### Education sector

66. The additional information you provided to us proposes that schools be required to report the number of vapes confiscated and brands to the Vaping Regulatory Authority (VRA) for action.

#### *Current settings*

67. There is no current relationship between schools and the VRA.

#### *Comment*

68. We would like to better understand the rationale for this proposal. The mechanism for implementing this is unclear and, on its face, this would likely pose considerable administrative costs on both the education sector and the VRA.
69. We are concerned about reports of students being stood down for vaping and consider that principals and teachers need more support to help them respond appropriately to vaping at school.
70. We propose to work with Health New Zealand | Te Whatu Ora, and the Ministry of Education in early 2024 to explore options to support schools to better respond to student vaping. We suggest this work be placed on a longer timeframe than regulatory responses to addressing youth vaping.

#### *Recommendations*

<b>Advise</b>	whether you would like our January 2024 advice to include the implications of mandating reporting by schools to the VRA on the number and brands of confiscated vapes	<b>Yes/No</b>
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<b>Advise</b>	whether you would like officials to undertake a broader piece of work that would aim to provide better support for schools to deal appropriately with vaping by students	<b>Yes/No</b>
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### Potential for broader policy review

71. The additional information you have provided to officials outlines your strategic approach to achieving Smokefree 2025. We understand that you are supportive of an approach that aims to strike a balance between ensuring that people who smoke have access to less harmful alternatives, and that children and young people are protected from access to and use of nicotine products.
72. We consider that there is value in a broader policy review to comprehensively consider how to achieve a risk proportionate approach across the Smokefree Act and its regulations.
73. This would incorporate the insights gathering mentioned below to ensure that we fully understand and incorporate into our policy advice the perspectives of those groups who have New Zealand’s highest smoking and vaping rates.

### Better understanding the perspectives of those who vape

74. We have been reviewing the information we hold to support good decision making. In doing so, we have had the following objectives in mind:
  - a. reducing youth vaping rates
  - b. reducing the gaps in youth vaping rates between Māori and Pacific compared with non-Māori, non-Pacific
  - c. ensuring people who smoke can access less harmful forms of nicotine.
75. An identified evidence gap is insight from the lived experience of people who vape – both rangatahi who vape (and who may or may not smoke), and adults who use vapes to support smoking cessation.
76. We propose to engage with a range of communities including rangatahi Māori, Pasifika youth, whānau who have used vaping to quit smoking, and Māori and Pasifika smoking cessation providers. Empathy mapping (a process that aids in understanding another person's perspective) would be carried out with these groups to ensure their lived experience informs policy recommendations. This work could feed into a broader policy review.

### Social marketing campaigns / stop smoking support

77. As advised earlier [H2023033250 refers], complementary initiatives could be progressed, including public campaigns, reviewing and enhancing existing stop smoking services, community-led initiatives, and extending the range of subsidised products available to help people quit smoking.

### Equity

78. Vaping products are currently not used evenly across society, with higher rates for those living in more deprived areas, those with disabilities, Māori, and Pacific peoples.

79. Pacific adults (15+) are one and a half times more likely to vape than non-Pacific. Māori adults (15+) are more than twice as likely to vape daily as non-Māori. Those (15+) living in the most deprived neighbourhood are over 2.8 times more likely to vape than those living in the least deprived neighbourhoods.
80. Regulating them in a way that reduces access for those wishing to use a less harmful product than smoked tobacco would have a disproportionately negative effect on those populations (which also have higher smoking rates), and vice versa.
81. While not intended for use by non-smokers, New Zealand has seen a rapid increase in youth vaping in recent years, including among young people who smoke. There are clear inequities in youth vaping. Reducing access to, visibility of, and addictiveness and appeal of vape products for young people will have a disproportionately positive effect on those populations who currently have higher rates of use.

## Next steps

82. We will report to you by the end of January 2024 seeking your formal agreement to recommendations for a Cabinet paper. We will also provide you with a draft Cabinet paper, with placeholder recommendations in some instances, for your consideration.
83. We propose that you take a paper to Cabinet in early March – this should provide time for you to consider the paper, advise any changes, and to consult Ministers and government departments on the draft paper you propose taking to Cabinet.
84. Given the litigious nature of the industry, and the contentious nature of some of the proposals set out above, we would recommend a public consultation process prior to Cabinet making final decisions for legislative drafting. An indicative timeline for a policy and legislative process is as follows:

What	Indicative timeframes
Substantive advice to Minister	31 January 2024
Cabinet – seeking agreement to publicly consult	By 8 March 2024 (the end of the 100 day period)
Public consultation	mid-March to late April
Report back to Minister	Late May 2024
Cabinet – seeking final policy decisions and agreement to draft an amendment bill	June 2024
Issue drafting instructions	Late June 2024
Drafting	July – October 2024
Introduction of Bill to Parliament and referral to select committee	Late October 2024



ENDS.

PROACTIVELY RELEASED

## Appendix

# PRODUCTS REGULATED UNDER SMOKEFREE ENVIRONMENTS AND REGULATED PRODUCTS ACT 1990

## TWO KEY CATEGORIES AS DEFINED IN CURRENT LEGISLATION

### 1. SMOKED TOBACCO PRODUCTS

(SMOKED TOBACCO PRODUCTS MUST BE APPROVED).

CIGARETTES

CIGARS

CIGARILLOS

LOOSE TOBACCO / ROLL YOUR-OWN

PIPE TOBACCO

### 2. NOTIFIABLE PRODUCTS

(NOTIFIABLE PRODUCTS MUST BE NOTIFIED).

VAPING DEVICES, EG

- INCLUDES DEVICES USED FOR HEATED TOBACCO PRODUCTS (HTP, HEAT NOT BURN)

VAPING SUBSTANCES, EG

- LIQUIDS/JUICE

HERBAL SMOKING PRODUCTS, EG

- TARO LEAF
- OTHER HERBAL CIGARETTES

SMOKELESS TOBACCO, EG

- HEATED TOBACCO PRODUCTS

ORAL PRODUCTS\*

- SNUS
- CHEWING TOBACCO

EXTRA INFO:

\*\*ORAL TOBACCO PRODUCTS ARE BANNED FROM SALE AND SUPPLY IN NEW ZEALAND. THEY ARE NOT BANNED FOR INDIVIDUAL USE – CAN BE IMPORTED FOR THIS PURPOSE. IF ALLOWED FOR COMMERCIAL IMPORT THEY WOULD CURRENTLY BE NOTIFIABLE, BECAUSE THEY ARE SMOKELESS TOBACCO PRODUCTS.

SHISHA

(GENERALLY CLASSIFIED AS AN HTP, COULD ALSO BE CONSIDERED SMOKED TOBACCO, HERBAL SMOKING PRODUCT OR VAPING SUBSTANCE. DEPENDING ON CONSTITUENTS AND USE. CAN BE REGULATED FURTHER IF REQUIRED).

## Minister's Notes

PROACTIVELY RELEASED