

Aide-Mémoire

Information to support future communications and stakeholder engagement on the repeal of Smokefree legislation

Date due to MO:	21 December 2023	Action required by:	N/A
Security level:	IN CONFIDENCE	Health Report number:	H2023034367
To:	Hon Casey Costello, Associate Minister of Health		
Copy to:	Hon Dr Shane Reti, Minister of Health		
Consulted:	Health New Zealand: <input type="checkbox"/> Māori Health Authority: <input type="checkbox"/>		

Contact for telephone discussion

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To: Hon Casey Costello, Associate Minister of Health

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Comment:

- This aide-mémoire responds to a request made by your office on 19 December 2023 for information to support future communications and stakeholder engagement on the repeal of Smokefree legislation.
- This aide-mémoire discloses all relevant information.



Dr Andrew Old

Deputy Director-General

Public Health Agency | Te Pou Hauora Tūmatanui

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An international comparison of data and policies

- Please see Appendix 1.

Relevant data showing the trends and current status of smoking in New Zealand

Smoking

- Smoking rates have continued to decline in the latest New Zealand Health Survey (NZHS), with 6.8% of adults being daily smokers in 2022/23, down from 8.6% the previous year and 16.4% in 2011/12.
- There has been a decline in daily smoking for all ethnic groups between 2011/12 and 2022/23: Māori, 37.7% to 17.1%; Pacific peoples, 22.6% to 6.4%; European/Other, 14.7% to 6.1%; and Asian, 7.9% to 3.3%.
- The drop in daily smoking for Pacific peoples since last year (from 18.1% in 2021/22 to 6.4% in 2022/23) was bigger than the gradual decreasing trend seen over previous years. While the downward trend remains clear, the actual figure should be treated with caution, and further data is needed to confirm this.
- Daily smoking was more common in adults living in the most deprived neighbourhoods (10.7%).
- The ASH Year 10 snapshot survey found that youth daily smoking rates have shown no increase, staying stable at 1.2% which amounts to only around 700 students across the country.

Vaping

- The rate of daily vaping reported in the NZHS has increased over the past 5 years from 2.6% in 2017/18 to 9.7% in 2022/23, an estimated 408,000 people.
- Daily vaping was highest among those aged 18–24 years (25.2%), and among Māori (23.5%) and Pacific peoples (18.7%), and also more common in adults living in the most deprived neighbourhoods (15.8%).
- Daily vaping prevalence among 15-17 year olds almost doubled between 2021/22 and 2022/23 from 8.3% to 15.4% in the NZHS, representing an estimated 32,000 people in this age group vaping daily.

- The findings in the NZHS contrast with those of the ASH Year 10 Snapshot survey which found regular vaping prevalence *decreased* for Year 10 students (14–15-year-olds) in 2023 dropping by almost 2% (18.2% in 2022, 16.4% in 2023), noting the different age groups measured.
- The ASH survey also found that youth daily vaping rates are not increasing, plateauing at 10%, and the number who have ever tried vaping also showed a decrease (40.1% to 37.5%).

A stocktake of vaping policies and regulatory practices currently in place or that will be commencing soon

Date	Change	Applies to	Why is this considered effective?
Since 21 September 2023	Specialist vape retailer (SVR) premises must be at least 300 metres from a registered school or marae; applicants must understand obligations under the Act (including sales to minors)	New applications for approval as a SVR	Minimise harm, especially harm to children and young people
Since 1 October 2023	Any person who sells notifiable products, or distributes smoked tobacco products, in New Zealand must notify the Director-General of Health that they are selling or distributing these products	Any person selling the following products: vaping products, smokeless tobacco products, and herbal smoking products, or distributing smoked tobacco products	Enables retailers of notifiable products and smoked tobacco distributors to be known to the Ministry of Health, supporting compliance and enforcement work
Since 21 October 2023	New flavour description rules (vaping product packages must describe the actual flavour of the vaping product using only 1 or 2 generic flavour names)	All new vaping product notifications must meet the new flavour description requirements	Minimise harm, especially harm to children and young people
Since 21 October 2023	New vaping product safety requirements (ie, for removable batteries, child safety mechanisms and relevant maximum nicotine concentration allowed)	All new product notifications for all vaping devices (both single-use and reusable)	Minimise harm, especially harm to children and young people
Since 21 December 2023	New vaping product safety requirements (as above)	All single use vaping products must have removable batteries, child safety mechanisms, 20mg/ml nicotine concentration limit	Minimise harm, especially harm to children and young people

Date	Change	Applies to	Why is this considered effective?
From 21 March 2024	New flavour description rules (as above)	All vaping products and any vaping product that does not, will not be able to be sold in New Zealand	Minimise harm, especially harm to children and young people
From 21 March 2024	New vaping product safety requirements (as above)	All reusable vaping products must have removable batteries, child safety mechanisms, 28.5mg/ml nicotine concentration limit for a vaping substance that contains nicotine only in salt form and is intended for use in a reusable vaping device	Minimise harm, especially harm to children and young people
From 21 March 2024	No depictions of a cartoon or toy permitted	On a vaping or smokeless tobacco product, its package, and any insert in the package	Minimise harm, especially harm to children and young people

Programmes targeting Māori, Pacific peoples, and low-income communities

Stop smoking support (delivered by Health New Zealand | Te Whatu Ora and the Māori Health Authority | Te Aka Whai Ora)

- Health New Zealand and the Māori Health Authority provide free stop smoking support to adult smokers wanting to quit smoking or switch to less harmful products. Providers are located throughout New Zealand, and provide behaviour change support and free nicotine replacement therapy. Support is provided to all smokers, but is aimed primarily at young wāhine Māori, Māori, and Pacific peoples. Stop smoking services also provide support to people who have switched to vaping to quit vaping using behaviour change support only.
- Health New Zealand run a number of joint programmes with the Māori Health Authority to support young people to remain smokefree and vape-free, including Protect Your Breath and the Later Vaper Arcade, which was run in September 2023 in Auckland, and will soon be taken to other parts of the country.
- A total of \$13.875 million in Budget 2021 funding was committed to scaling up stop smoking services over three years from July 2022, with an additional \$8 million of Budget 2021 funding to be invested directly with Pacific health providers over four years so they can tailor stop smoking services for Pacific communities.
- As part of the Smokefree Action Plan, additional funding was allocated to existing Māori providers, and to scale up current stop smoking services. Since January 2023, all 16 current stop smoking providers have commenced delivery of their scaled-up proposals. These primarily focus on increasing Māori smokefree practitioners and services to hapū wāhine and Māori.

Six new community activators have also been funded to support and promote smokefree activities and smokefree activation grants are being administered to community groups. The

full-time activators, that include Māori and Pacific peoples, assist the local community with events that support the Smokefree goal.

Breakfree to Smokefree – social marketing quit campaign (delivered by Health New Zealand)

- Breakfree to Smokefree¹ is a social marketing campaign which encourages people to quit smoking. The campaign material was co-designed with Māori and Pacific audiences, and campaign assets are focused primarily on supporting Māori and Pacific peoples who smoke to quit.
- Further campaigns are planned for 2024 and will align with the Government’s approach to achieving a Smokefree Aotearoa by 2025.

Current compliance and enforcement activities

- Compliance and enforcement activity is undertaken by the Compliance Team within the Ministry of Health together with Health New Zealand’s National Public Health Service (NPHS).
- NPHS employs 39 Smokefree Enforcement Officers to undertake smoked tobacco retail-based compliance activity. The delivery of this work is managed by regional teams who have knowledge of their local communities.
- Regional compliance is centred around compliance visits and controlled purchase operations (CPOs) where a person under the age of 18 attempts to purchase a product.
- There are currently 4 people employed in the Ministry of Health compliance team. This team sets national strategy and provides advice to enforcement officers through developing guidance and training to ensure a consistent national approach.
- Additionally, the Ministry of Health compliance team focuses on compliance activities requiring a national view including assessing online compliance, product safety and notification requirements, and complaints relating to manufacturers and distributors.
- The Ministry of Health Enforcement team within Health Legal take prosecutions and issue infringement notices on behalf of enforcement officers throughout New Zealand.

Compliance activity undertaken between 1 July 2022 – 30 June 2023		
CPOs to purchase vaping products		
	<i>Number of stores visited</i>	<i>Compliance rate</i>
Specialist vape retailers	314	78%
General vape retailers	311	90.7%
CPOs to purchase tobacco products		

¹ The ads can be viewed here: <https://www.smokefree.org.nz/smokefree-in-action/breakfree-to-smokefree>

	<i>Number of stores visited</i>	<i>Compliance rate</i>
Specialist vape retailers	36	75%
Tobacco/General vape retailers	508	94.1%
Compliance visits conducted		
	<i>Number of stores visited</i>	
Specialist vape retailers	560	
Tobacco/General vape retailers	1663	

Draft talking points that could be used to support the proposed messages

- This Government is committed to achieving the Smokefree 2025 goal of fewer than 5% of people smoking daily.
- The Government is committed to further reducing smoking rates. The recent New Zealand Health Survey results showed that 6.8% of New Zealanders are smoking daily, down from 8.6% the previous year and 16.4% in 2011/12.
- We are supporting a package of initiatives to ensure we reach the Smokefree 2025 goal. This includes both regulatory and non-regulatory measures, such as:
 - changing regulations for vaping products to better protect young people and make it easier for smokers to switch
 - effective stop smoking services
 - stop smoking and vaping social marketing campaigns.
- We are also progressing stronger penalties and enforcement of vaping sales to minors.
- We know Māori and Pacific peoples are more likely to smoke, and we will continue to ensure that all tobacco control initiatives focus on those who need it the most.
- A key strategy to achieving Smokefree 2025 is ensuring that people who smoke have access to less harmful regulated products, which will help them to quit smoking.
- We will balance this by better protecting young people from accessing these products. We have seen many young people taking up vaping, which is a significant concern in our communities.
- We are not supportive of the previous Government's measures to regulate tobacco which is why we are repealing them in early 2024 as part of the Coalition Government's 100-day plan.
- We are focusing on providing people with practical tools and supports to help them to quit.
- I am also interested in taking a closer look at the enforcement of tobacco and vaping products to ensure these products do not get into the wrong hands, and have asked officials to provide advice on this.

Appendix 1: International comparisons

Country	Policy settings	Smoking		Vaping	
		Adult daily smoking	Adult current smoking	Adult vaping	Youth vaping
New Zealand		6.8% report smoking daily (2022/23) ¹	8.3% report being current smokers ² (2022/23) ³	9.7% of adults report vaping daily 11.9% of adults report vaping monthly or more frequently 24.7% of adults report ever trying an e-cigarette (2022/23) ⁴	10% of year 10 students report vaping daily 16.4% of year 10 students report vaping regularly (2023) ⁵
Australia	<ul style="list-style-type: none"> It is illegal to buy, possess or use liquid nicotine for vaping without a prescription from a registered Australian medical practitioner.⁶ From 1 January 2024, there will be a ban on the importation of disposable single use vapes. A new Special Access Scheme pathway will also be in place, allowing all medical practitioners and nurse practitioners to prescribe them where clinically appropriate.⁷ From 1 March 2024, personal importation of vapes will not be permitted, as will non-therapeutic vapes. Therapeutic vape importers will have to notify the TGA of their product's compliance with relevant product standards. Importers will need to obtain a license and permit from the Office of Drug Control before products can be imported.⁸ 	10.6% of people aged 18+ report as being current daily smokers (2022) ⁹		4.0% of adults report currently using an e-cigarette and vaping devices 14.4% of adults had used e-cigarette and vaping devices at least once in their life (2022) ¹⁰	Young people reporting currently using e-cigarette or vaping devices (daily, weekly, monthly, or less than monthly): 15-17 years: 6.8% 18-24 years: 9.3% (2022) ¹¹
United Kingdom	<ul style="list-style-type: none"> The age restriction for vaping products in store or online is 18 years (the same as other tobacco products).¹² Public consultations were launched in October 2023 for: <ul style="list-style-type: none"> creation of 'smokefree generation' by increasing the legal age to buy tobacco by one year each year.¹³ measures to tackle youth vaping by reducing the appeal, availability and affordability of vapes to children¹⁴ 		12.9% of people aged 18+ smoke (2022) ¹⁵	5.2% of adults 16+ reported that they were currently daily users of an e-cigarette 8.7% reported using an e-cigarette occasionally or more frequently (2022) ¹⁶	15.5% of young people aged 16 to 24 years reported to be daily or occasional vapers (2022) ¹⁷
USA	<ul style="list-style-type: none"> In approximately 70% of states, retailers are required to be licensed to sell e-cigarettes.¹⁸ In approximately 80% of states, the minimum age to purchase e-cigarettes is 21.¹⁹ In approximately 60% of states, there are laws regarding product packaging of e-cigarettes.²⁰ In approximately 60% of states, e-cigarettes have additional taxes beyond sales tax (ie excise or special tax).²¹ The FDA regulates the manufacture, import, packaging, labelling, advertising, promotion, sale, and distribution of electronic nicotine delivery systems (ENDS), including components and parts of ENDS but excluding accessories.²² 		11.5% report currently smoking cigarettes ²³ (2021) ²⁴		7.7% of students reported current use of e-cigarettes 10.0% of high school students and 4.6% middle school students reported current use of e-cigarettes (2023) ²⁵

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- ¹ Ministry of Health. New Zealand Healthy Survey 2022/23. https://minhealthnz.shinyapps.io/nz-health-survey-2022-23-annual-data-explorer/_w_3b93a085/#!/explore-indicators
- ² Defined as: smoke at least monthly, and have smoked more than 100 cigarettes in their whole life.
- ³ Ministry of Health. New Zealand Healthy Survey 2022/23. https://minhealthnz.shinyapps.io/nz-health-survey-2022-23-annual-data-explorer/_w_3b93a085/#!/explore-indicators
- ⁴ Ministry of Health. New Zealand Healthy Survey 2022/23. https://minhealthnz.shinyapps.io/nz-health-survey-2022-23-annual-data-explorer/_w_3b93a085/#!/explore-indicators
- ⁵ Action for Smokefree 2025 (ASH). 2023. ASH Year 10 Snapshot Survey 2023 Topline – Youth smoking and vaping. Available from: <http://ash.org.nz>
- ⁶ <https://www.athra.org.au/vaping/the-law/>
- ⁷ <https://www.health.gov.au/ministers/the-hon-mark-butler-mp/media/next-steps-on-vaping-reforms>
- ⁸ <https://www.health.gov.au/ministers/the-hon-mark-butler-mp/media/next-steps-on-vaping-reforms>
- ⁹ Australian Bureau of Statistics. Smoking and vaping. <https://www.abs.gov.au/statistics/health/health-conditions-and-risks/smoking-and-vaping/2022>
- ¹⁰ Australian Bureau of Statistics. Smoking and vaping. <https://www.abs.gov.au/statistics/health/health-conditions-and-risks/smoking-and-vaping/2022>
- ¹¹ Australian Bureau of Statistics. Smoking and vaping. <https://www.abs.gov.au/statistics/health/health-conditions-and-risks/smoking-and-vaping/2022>
- ¹² <https://www.gov.uk/government/calls-for-evidence/youth-vaping-call-for-evidence/youth-vaping-call-for-evidence>
- ¹³ <https://www.gov.uk/government/news/government-sets-out-next-steps-to-create-smokefree-generation>
- ¹⁴ Department of Health and Social Care. <https://healthmedia.blog.gov.uk/2023/10/12/creating-a-smokefree-generation-and-tackling-youth-vaping-what-you-need-to-know/>
- ¹⁵ Office for National Statistics. Adult smoking habits in the UK: 2022. <https://www.ons.gov.uk/peoplepopulationandcommunity/healthandsocialcare/healthandlifeexpectancies/bulletins/adultsmokinghabitsingreatbritain/2022>
- ¹⁶ Office for National Statistics. Adult smoking habits in the UK: 2022. <https://www.ons.gov.uk/peoplepopulationandcommunity/healthandsocialcare/healthandlifeexpectancies/bulletins/adultsmokinghabitsingreatbritain/2022>
- ¹⁷ Office for National Statistics. Adult smoking habits in the UK: 2022. <https://www.ons.gov.uk/peoplepopulationandcommunity/healthandsocialcare/healthandlifeexpectancies/bulletins/adultsmokinghabitsingreatbritain/2022>
- ¹⁸ <https://www.publichealthlawcenter.org/sites/default/files/inline-files/States-with-Laws-Requiring-Licenses-for-Retail-Sales-of-ECigarettes-Sept15-2023.pdf>
- ¹⁹ <https://www.publichealthlawcenter.org/sites/default/files/inline-files/States-with-Laws-Restricting-Youth-Access-to-ECigarettes-Sept15-2023.pdf>
- ²⁰ <https://www.publichealthlawcenter.org/sites/default/files/inline-files/States-with-Laws-on-ECig-Product-Packaging-Sept15-2023.pdf>
- ²¹ <https://www.publichealthlawcenter.org/sites/default/files/inline-files/States-with-Laws-Taxing-ECigarettes-Sept15-2023.pdf>
- ²² <https://www.fda.gov/tobacco-products/products-ingredients-components/e-cigarettes-vapes-and-other-electronic-nicotine-delivery-systems-ends#>
- ²³ People who reported smoking at least 100 cigarettes during their lifetime and who, at the time they participated in a survey about this topic, reported smoking every day or some days.
- ²⁴
- ²⁵ US FDA. Results from the Annual National Youth Tobacco Survey. <https://www.fda.gov/tobacco-products/youth-and-tobacco/results-annual-national-youth-tobacco-survey>