

Briefing

Draft Cabinet paper and RIS for Smokefree Amendment Bill No.1

Date due to MO: 31 May 2024

Action required by: 4 June 2024

Security level: IN CONFIDENCE

Health Report number: H2024040494

To: Hon Casey Costello, Associate Minister of Health

Copy to: Hon Dr Shane Reti, Minister of Health

Consulted: Health New Zealand: Māori Health Authority:

Contact for telephone discussion

Name	Position	Telephone
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Minister's office to complete:

Approved

Decline

Noted

Needs change

Seen

Overtaken by events

See Minister's Notes

Withdrawn

Comment:

Draft Cabinet paper and RIS for Smokefree Amendment Bill No.1

Security level: IN CONFIDENCE **Date:** 31 May 2024

To: Hon Casey Costello, Associate Minister of Health

Purpose of report

1. This briefing provides you with a draft Cabinet paper for your review, prior to consultation with your Ministerial colleagues.
2. The Ministry's Regulatory Impact Statement (RIS) on visibility of vape products and proximity of Specialist Vape Retailers – reducing youth vaping is also attached.

Summary

3. On 18 March 2024, Cabinet agreed on the policy direction for Smokefree 2025 [CAB-24-MIN-0084 refers]. This included Cabinet inviting you to issue drafting instructions to the Parliamentary Counsel Office (PCO) to give effect to the following agreed policies:
 - a. ban the manufacture and sale of disposable vaping products;
 - b. increase penalties for unlawful sales of regulated products to minors [CAB-24-MIN-0084 refers].
4. On 9 April 2024 we discussed our proposed work plan for Smokefree 2025 with you [H2024038848 refers] and agreed to progress a first amendment bill to implement the disposable vape ban and the penalty increase, as well as a policy to restrict the display of vapes.
5. To progress this first amendment bill we identified the need for you to seek Cabinet's further agreement on the scope and nature of:
 - a. the ban on disposable vaping products, and
 - b. the retail visibility restrictions for vaping products.
6. We provided you with 2 briefings seeking your decisions on the matters needed to inform a Cabinet paper [H2024041342 and H2024041714 refers]. The attached draft Cabinet paper (see **Appendix 1**) reflects your decisions to progress:
 - a. a widely scoped definition of a disposable vape and an extension of the ban to include the supply and distribution of disposable vapes, and
 - b. comprehensive visibility restrictions so that vaping products must not be visible from the street for specialist vape retailers (SVRs), in-store for stores that minors may enter, and on retailers' websites, and
 - c. new offences and penalties for breaches of the ban and visibility restrictions, particularly focusing on the ability to issue sufficiently deterrent infringement fees, as well as fines. And noting, as appropriate, that the focus should be on the shop owner rather than the shop employee.

7. Due to the compressed timeframes in which we have prepared the draft Cabinet paper, the proposed offences and penalties are indicative only. We will need to engage with the Ministry of Justice's Offences and Penalty Vetting team.
8. You also asked that the Cabinet paper progress the policy to include licensed Early Childhood Education centres (ECEs) in proximity restrictions for SVRs. This proposal requires amendment to regulations rather than to the primary legislation. Subject to Cabinet's agreement we will issue drafting instructions to PCO for amendment regulations.
9. When we met with you on 27 May 2024 to discuss the above briefings you asked us to provide further information (attached at **Appendix 2**) on:
 - a. the transitional period that was provided when tobacco display restrictions were introduced and,
 - b. how the pending 1 October 2024 regulatory requirements for reusable vaping products to have removable batteries and child safety mechanisms will intersect with a widely scoped disposable vaping ban.
 - c. the offences and penalties for the new vaping flavour description requirements.
10. We have attached the Ministry's RIS for the visibility and ECE proposals (see **Appendix 3**).
11. We are also preparing a supplementary RIS for the decisions Cabinet has already made (ie, to ban disposable vapes and increase penalties for selling regulated products to minors). These proposals were not exempted from the impact analysis requirements. There is some flexibility regarding the timing of when you must provide Cabinet with this report – under the Cabinet circular, timing for a Supplementary RIS is in the hands of the responsible Minister and agreed with the Minister for Regulation (Hon Seymour).
12. This supplementary analysis RIS will be ready for you to provide to Cabinet when you seek approval to introduce the first amendment Bill. If we are able, we will provide it sooner (ie, to accompany the draft Cabinet paper).
13. As indicated in our briefing of 24 May 2024, the indicative timeline for the Cabinet Legislative Committee (LEG) and Cabinet is 25 July and 29 July respectively, with introduction of the Bill to occur shortly after [H2024041714 refers].

Next steps

14. We will incorporate any feedback you have on the Cabinet paper, following your review, and send you an updated copy for Ministerial consultation. This consultation should ideally begin on 4 June and run concurrently with departmental consultation until no later than 12 June.
15. We will update the draft Cabinet paper on 13 June to incorporate any changes you may have, as well as feedback from departmental agencies (if needed), prior to lodging the paper by 10am. As the timeframe is very tight, you may wish to seek permission from the Cabinet office for late lodging. This would shift the deadline for the Cabinet paper to be lodged from 10am Thursday 13 June to midday Friday 14 June.
16. The Cabinet paper would then be considered by the Social Outcomes Committee on 19 June and Cabinet on 24 June. Following this we will finalise the drafting instructions for PCO and issue these on 25 June.

17. Please note that the ability to introduce the Bill in July, for referral to the Health Committee in August, is dependent on PCO being able to draft a Bill in the time available. The usual time required to draft a bill of medium complexity is 3 months, which would mean introduction of the Bill in late September.

Recommendations

We recommend you:

- | | |
|--|---------------|
| a) Provide feedback on the draft Cabinet paper by 4 June 2024 | Yes/No |
| b) Agree to consult with Ministerial colleagues from 4 June 2024 | Yes/No |
| c) Agree to lodge the Cabinet paper by 10am, 13 June 2024 (or late lodge on 14 June 2024) | Yes/No |



Maree Roberts
Acting Director-General of Health
Te Tumu Whakarae mō te Hauora

Date: 31 May 2024

Hon Casey Costello
Associate Minister of Health

Date:

ENDS.

PROACTIVELY RELEASED

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Appendix 2: Further information post Officials' meeting - Monday 27 May 2024

Please find below additional information requested regarding:

1. Whether the proposed transitional period for the vaping display restrictions aligns with that given when tobacco display restrictions were introduced.
2. How the pending 1 October 2024 regulatory requirements for reusable vaping products to have removable batteries and child safety mechanisms will intersect with a widely scoped disposable vaping ban.
3. The offences and penalties for the new flavour descriptions (ie, that a vaping product must describe the actual flavour of the vaping product using only 1 or 2 flavour names).

1 Transitional period for tobacco display restrictions

- The transitional period that applied to the 2012 ban on the retail display of tobacco products was 12 months. We will align the proposed transitional time for the proposed vaping product display restrictions with this in the draft Cabinet paper.

2 Regulations and widely scoped disposable vape ban

- We do not consider any reason to defer the 1 October 2024 regulations because of the proposed widely scoped disposable vape ban and associated select committee process.
- Vaping products should meet product safety standards regardless of whether they are disposable or reusable.
- On 1 October 2024 the requirements for removable batteries and child safety mechanisms will extend to all reusable vaping products (they have already been in place since 21 October 2023 for single-use products and to any reusable vaping products that are new to the New Zealand market).
- There is no overlap between the introduction of the regulations in October 2024 for reusable products and the proposed disposable vape ban, as shown in the table below:

	Regulations (for reusables)	Amendment Bill (for disposables)
Description	- Will bring into force product safety requirements for removable batteries and child safety mechanisms	- Seeks to ban disposable vaping products (wide-scope proposed).
Timing	- Already in force for "single-use" ¹ vapes & new reusable products - Will come into force for all reusables on 1 October 2024	- Will come into force once the bill is passed and following a transitional period (currently this is proposed to be 12 months from the Bill coming into force ie, no sooner than December 2025).
Rationale	- Vaping devices and vaping substance containers should be child safe, to prevent use by young children or accidental poisoning - Batteries should be removable by the end user or by independent operators during the lifetime of the device to allow inspection, safe disposal, and (if applicable) replacement.	- Banning disposables is intended to reduce the appeal of vaping to young people as disposable vapes are typically low price, convenient, and simple to use.

3 Offences and penalties for the new flavour descriptions

- There are different offences and penalties set out in the Smokefree Environments and Regulated Products Act 1990 that relate to the new requirement for flavour descriptions to describe the actual flavour of the vaping product using only 1 or 2 flavour names. Depending on the specific circumstances, if a vape product is described as *Candy Strawberry Ice* or *Blue Unicorn Raspberry* a prosecution can be taken as follows:
 - the retailer selling the product can be prosecuted under section 65(4), and if found to have committed an offence is liable to a fine not exceeding \$50,000 (or \$400,000 for a large retailer).
 - the notifier of the product (ie, the manufacturer or importer) can be prosecuted under section 63(2) if they provided a false or misleading

¹ NB single-use has a particular definition under the current regulations: means a vaping device that is pre-filled with a vaping substance or heated tobacco product and that is not designed to be refilled once used.

declaration that their product complies with the regulations, and if found guilty is liable to a fine not exceeding \$50,000.

- Other actions the Director-General of Health (Director-General) can take are to suspend or cancel the notification under section 74 or section 75 if the Director-General has reasonable grounds to believe the notifier has provided false, misleading, or incomplete information in the product notification. If a notification for a product is cancelled the notifier must ensure the product is not sold by any person from the date of the cancellation, and a notifier who fails to do so without reasonable excuse is liable to a fine not exceeding \$400,000.

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