

Cover Briefing

Updated Cabinet paper for lodging: Smokefree Environments and Regulated Products Amendment Bill 2024

| | | | |
|------------------------|--|------------------------------|--------------|
| Date due to MO: | 12 June 2024 | Action required by: | 13 June 2024 |
| Security level: | IN CONFIDENCE | Health Report number: | H2024044391 |
| To: | Hon Casey Costello, Associate Minister of Health | | |
| Copy to: | Hon Dr Shane Reti, Minister of Health | | |
| Consulted: | Health New Zealand: <input type="checkbox"/> | | |

Contact for telephone discussion

| Name | Position | Telephone |
|----------------------|--|-----------|
| Dr Andrew Old | Deputy Director-General, Public Health Agency Te Pou Hauora Tūmatanui | s 9(2)(a) |
| Jane Chambers | 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 Withdrawn | |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:

Updated Cabinet paper for lodging: Smokefree Environments and Regulated Products Amendment Bill 2024

Security level: IN CONFIDENCE **Date:** 12 June 2024

To: Hon Casey Costello, Associate Minister of Health

Purpose of report

1. This report provides you with an updated draft Cabinet paper "Smokefree Environments and Regulated Products Amendment Bill 2024: Policy proposals to address youth vaping". This draft incorporates changes to reflect departmental feedback. This is in anticipation of lodging the paper on 13 June 2024.

Summary

2. A draft Cabinet paper was provided to your Office on 31 May 2024 for your review, prior to consultation with your Ministerial colleagues. Following changes from your Office a revised draft was sent out to departments and to your Ministerial colleagues for consultation.
3. A further revised draft Cabinet paper is attached. This draft reflects departmental feedback. We are not aware of any Ministerial feedback.
4. Key changes along with any minor editorial corrections or updates for consistency are tracked in the attached updated draft Cabinet paper as follows:

Disposable vaping products ban

- a. Clarifying of the scope of the disposable vape ban to support the issuing of drafting instructions to the Parliamentary Counsel Office at paragraph 17
- b. Inserting a new paragraph 19 that was a suggested change from your office that inadvertently was not included in the previous draft
- c. Noting the environmental benefits of the ban at paragraph 20
- d. Noting the possibility of the ban creating a commercial illicit market at paragraph 26
- e. Amending the paragraph on deferring any decision about banning the importation of disposable vapes until the effectiveness of the manufacture, sale, supply and distribution ban can be assessed at paragraph 27 (we will not be able to assess this at the end of this year)

Restrict the retail display of vaping products

- f. Providing additional detail on the current advertising exemptions at paragraph 29

Specialist vape retailer ECE proximity restrictions

- g. Adding a further sentence on the rationale for the ECE proximity restriction at paragraph 32

- h. Updating how the ECE proximity change will be provided for at paragraph 35 (our rationale for this is set out below)

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Implementation

- j. Updating the section on compliance and enforcement at paragraphs 39 to 43, to set out details regarding proposed offences and penalties, and to note that compliance tools to support the ban will be considered at a later point
- k. Updating the transitional timeframes table to reflect the suggested change of approach to having the ECE requirement provided for in the Act rather than regulations at paragraph 44

Financial Implications

- l. Noting in the financial implications section vaping products are not subject to excise tax at paragraph 47

Impact Analysis

- m. Inserting the regulatory impact statement assessment for the “Visibility of vape products and proximity of Specialist Vape Retailers – reducing youth vaping” impact statement and that a supplementary impact statement for the disposable ban and increased penalties will be provided with the LEG paper at paragraphs 51-54

Population Implications

- n. Reframing the section to make clear the proposals are intended to make it harder for young people to access vapes and that vapes will continue to be available for smoking cessation at paragraphs 55-56

Human Rights

- o. Providing additional detail regarding Human Rights implications at paragraphs 57-58

Recommendations

- p. Updating the recommendations to reflect the body of the paper and to additionally provide leeway to update the purposes of the Act as needed to reflect the new policy proposals.

s 9(2)(h)

7. A clean copy of the paper is also attached.

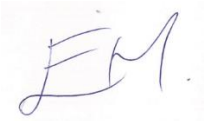
Next Steps

8. We understand your intention is for the draft Cabinet paper to be lodged on Thursday 13 June 2024 for consideration by the Cabinet Social Outcomes Committee (SOU) on Wednesday 19 June 2024.

Recommendations

We recommend you:

- a) **advise** any changes to the attached draft Cabinet paper **Yes/No**
- b) **agree** that the paper is lodged by 10am on Thursday 13 June 2024 for SOU's consideration on Wednesday 19 June 2024 **Yes/No**



Emma Hindson
Acting Manager, Policy and Regulation
Public Health Agency

Date: 12 June 2024

Hon Casey Costello
Associate Minister of Health

Date:

ENDS.

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Aide-Mémoire

Talking points: Reducing excise duty from heated tobacco products Cabinet paper

| | | | |
|------------------------|--|------------------------------|-------------|
| Date due to MO: | 7 June 2024 | Action required by: | N/A |
| Security level: | BUDGET SENSITIVE | Health Report number: | H2024043991 |
| To: | Hon Casey Costello, Associate Minister of Health | | |
| Copy to: | Hon Dr Shane Reti, Minister of Health | | |
| Consulted: | Health New Zealand: <input type="checkbox"/> | | |

Contact for telephone discussion

| Name | Position | Telephone |
|----------------------|--|--------------------|
| Jane Chambers | Group Manager, Public Health Policy and Regulation, Public Health Agency Te Pou Hauora Tūmatanui | 9(2)(a) [REDACTED] |
| Emma Hindson | Manager, Public Health Policy and Regulation, Public Health Agency Te Pou Hauora Tūmatanui | 9(2)(a) [REDACTED] |

Aide-Mémoire

Talking points: Reducing excise duty from heated tobacco products Cabinet paper

Date due: 7 June 2024

To: Hon Casey Costello, Associate Minister of Health

Security level: BUDGET SENSITIVE **Health Report number:** H2024043991

Details of meeting: 10 June 2024

Cabinet Committee: Cabinet

Purpose of meeting: You are seeking Cabinet's approval to reduce the excise duty applied to heated tobacco products (HTPs) by 50 percent on 1 July 2024.

Comment: **Reducing excise duty from heated tobacco products Cabinet paper**

- This aide-mémoire provides talking points to support your Cabinet decisions on the paper *Reducing excise duty from heated tobacco products*.
- This aide-mémoire discloses all relevant information.



Jane Chambers
Group Manager, Public Health Policy and Regulation
Public Health Agency | Te Pou Hauora Tūmatanui

Reducing excise from heated tobacco products Cabinet paper

Talking points

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9(2)(g)(i)



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Aide-Mémoire

Meeting with Action for Smokefree 2025 (ASH) on 7 August 2024

Date due to MO: 1 August 2024 **Action required by:** N/A

Security level: IN CONFIDENCE **Health Report number:** H2024045720

To: Hon Casey Costello, Associate Minister of Health

Consulted: Health New Zealand:

Contact for telephone discussion

| Name | Position | Telephone |
|---------------|---|-----------|
| Jane Chambers | Group Manager, Public Health Policy and Regulation, Public Health Agency Te Pou Hauora Tūmatanui | s 9(2)(a) |
| Emma Hindson | Manager, Ope Ōpiki, Public Health Policy and Regulation, Public Health Agency Te Pou Hauora Tūmatanui | s 9(2)(a) |

Aide-Mémoire

Meeting with Action for Smokefree 2025 (ASH) on 7 August 2024

Date due: 1 August 2024

To: Hon Casey Costello, Associate Minister of Health

Security level: IN CONFIDENCE Health Report number: H2024045720

Details of meeting: 3.15pm - 3.45 pm, Wednesday 7 August 2024
Minister Costello's office 2.54PH

Purpose of Meeting: On 25 June 2024, Ben Youdan, Director Action for Smokefree 2025 (ASH) wrote to you to:

- support the view that oral nicotine products have a role in helping people switch from smoking
- offer to discuss evidence-based, proportionate actions to reduce youth access to nicotine products while supporting access for adults who smoke
- note the opportunity to support older adults who smoke through public health campaigns and the health and social care system
- request to meet with you.

Attendees: Emeritus Professor Robert Beaglehole, ASH Chair
Ben Youdan, Director of ASH

Background: You previously met with ASH representatives Robert Beaglehole and Ben Youdan on 21 February 2024.

ASH has received recent media coverage about their connections with the vaping industry (for more detail see: [Concerns raised after anti smoking group met with vaping lobbyist | Stuff](#))

Comment:

- Cabinet (CAB-24-MIN-0084 refers) has agreed in principle to allow the sale of reduced harm smokeless tobacco and oral nicotine products, subject to products meeting safety requirements and regulatory controls to prevent youth access.
- Reforming the regulation of oral nicotine products falls under tranche two of your plan to address youth vaping.
- You will receive further advice and options to reform the regulation of oral nicotine products from the Ministry of Health later this year.

- By age group, the highest rates of daily smoking are among those aged 45-54 (8.5%) and 55-64 (9.7%). These age groups have shown the least progress in smoking reduction over the past 10 years.
- Jane Chambers, Group Manager, Public Health Policy and Regulation is available to attend this meeting.
- This aide memoire discloses all relevant information.



Jane Chambers
Group Manager, Public Health Policy and Regulation
Public Health Agency | Te Pou Hauora Tūmatanui

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Talking points

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Appendix 1: Profile of attendees



Emeritus Professor Robert Beaglehole, Chair

- Independent global public health practitioner, Robert Beaglehole trained in medicine, epidemiology and public health in New Zealand, England and the USA before becoming a public health physician.
- He was Professor of Community Health at the University of Auckland, New Zealand (1988-1999).
- He joined the staff of the World Health Organization (WHO) in 2000 and between 2004 and 2007 directed the Department of Chronic Disease and Health Promotion.
- He left WHO in February 2007 having reached the UN retirement age and returned to New Zealand.
- He is now an independent global public health practitioner with a focus on the prevention and control of noncommunicable diseases.



Ben Youdan, Director

- Ben Youdan has worked in tobacco control and campaigning for nearly 20 years in the UK and New Zealand.
- He was the Director of the UK's No Smoking Day campaign that supported over 1 million annual quit attempts and worked with the UK defence force on setting up dedicated smoking cessation services for the UK Army and Navy.
- He has worked for ASH UK, and on the European Commission youth smoking prevention initiative.
- Ben moved to New Zealand in 2007 when he was appointed Director of ASH (NZ). Since then, he has also worked as the National Campaign Director for the Green Party of Aotearoa, a campaigns and policy consultant, and is currently the Strategic Policy Lead for the New Zealand Heart Foundation.

Appendix 2: Letter requesting meeting

Tena koe

On behalf of Action for Smokefree 2025 (ASH) we would like to request a further meeting with Minister Costello to discuss next steps for Smokefree Aotearoa.

We note the recent budget statement reiterated the Government's view that tobacco harm reduction and much less harmful oral nicotine products have a role in helping people switch from smoking. A view we share and is backed by evidence.

ASH is also conscious that New Zealand's regulated model for reduced harm nicotine continues to create tensions around youth vaping prevention and fears young people will use oral nicotine products.

We would like to discuss evidence-based and proportionate actions to reduce youth access, whilst ensuring adults who smoke have access to reliable advice and products that can help them stop smoking for good.

New Zealand has been extremely successful reducing youth and young adult smoking. However, smoking rates have remained relatively stable in older adults.

It is likely that the rate at which smoking is declining will slow as much of the recent progress has been in younger populations. Around 80% of the reduction in smoking prevalence in the last decade is accounted for by people aged between 18 and 45 years old.

Older adults who smoke are being left behind, yet are the cardiovascular, lung cancer and respiratory disease victims of the next 5-15 years. Currently this population is overlooked in smokefree strategies, however there is significant opportunity to better support them through public health campaigns, and the health and social care system.

Not only will achieving Smoking prevalence of under 5% by 2025 be highly dependent on success with this older population, but the short to medium term benefit to the health system will also be greatest. The high profile debate around young people vaping, and the smokefree generation is often at the expense of the still smoking population.

We have appreciated the previous meetings with the Minister and hope we can continue the conversation about next steps including how ASH can assist with evidence-based advice and support to reduce smoking, and to keep the focus on the overwhelming harms of smoked tobacco use.

Robert Beaglehole is currently overseas until the end of July, and I hope we might be able to find a time in Ministers diary in August.

Many thanks

Ngā mihi

Ben Youdan

Director

ASH

Cover Briefing

Smokefree Amendment Bill No. 2: Draft Cabinet paper for Ministerial consultation

Date due to MO: 9 August 2024 **Action required by:** 12 August 2024

Security level: IN CONFIDENCE **Health Report number:** H2024047523

To: Hon Casey Costello, Associate Minister of Health

Copy to: Hon Dr Shane Reti, Minister of Health

Consulted: Health New Zealand:

Contact for telephone discussion

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

Minister's office to complete:

- Approved Decline Noted
- Needs change Seen Overtaken by events
- See Minister's Notes Withdrawn

Comment:

Smokefree Amendment Bill No. 2: Draft Cabinet paper for Ministerial consultation

Security level: IN CONFIDENCE **Date:** 9 August 2024

To: Hon Casey Costello, Associate Minister of Health

Purpose of report

1. This briefing provides you with a draft Cabinet paper, "Smokefree Environments and Regulated Products Amendment Bill (No 2): Approval for Introduction," and draft bill, for your consideration and Ministerial consultation.
2. We also provide the Ministry's Supplementary Regulatory Impact Statement: Banning disposable vaping products and increasing penalties for sales to minors.
3. This briefing discloses all relevant information.

Summary

4. On 24 June 2024, Cabinet agreed to the final policy decisions for the first of two amendment bills to address youth vaping (CAB-24-MIN-0218 refers).
5. The first draft bill will amend the Smokefree Environments and Regulated Products Act 1990 by introducing:
 - a. a ban of the manufacture, sale, supply and distribution of disposable vapes
 - b. increased penalties for unlawful sales of regulated products to minors
 - c. retail visibility restrictions for vaping products
 - d. the inclusion of early childhood education centres in proximity restrictions for specialist vape retailers.
6. The Ministry of Health (the Ministry) is working closely with the Parliamentary Counsel Office (PCO) on the bill. As part of this process, several minor amendments are needed to give effect to the overarching policies. Cabinet authorised you to approve any minor and technical amendments and these are summarised in Appendix A.
7. The next step is for you to seek approval from the Cabinet Legislation Committee for the bill to be introduced into the House of Representatives.
8. Drafting timeframes remain a challenge, however we are working towards a tentative lodging date of 15 August 2024.
9. We attach a draft Cabinet paper for your review. This was circulated to relevant departmental agencies and feedback is summarised in Appendix B.

10. We also attach a copy of the draft bill. The bill is still being drafted and there will likely be some further changes prior to PCO lodging the final version, however we do not anticipate substantive changes.
11. Subject to any feedback you may have, we recommend circulating the draft Cabinet paper and draft bill for Ministerial consultation on 12 August 2024 with a view to lodging on 15 August 2024.
12. Alternatively, to allow a longer period for Ministerial consultation, lodging could occur the following week on 22 August 2024, for Cabinet Legislation Committee on 29 August 2024.
13. The bill holds a category 2 priority (must be passed in 2024), however this can only occur if the select committee consideration period is less than the usual minimum of 4 months.

Recommendations

We recommend you:

- a) **Note** the attached summary of minor amendments relating to the draft bill. **Noted**
 - b) **Provide** any comments or feedback on the draft Cabinet paper and draft bill for officials to finalise the papers for Ministerial consultation **Yes/No**
- OR
- c) **Agree** to begin Ministerial consultation on the draft Cabinet paper and draft bill **Yes/No**
 - d) **Note** that a tentative date for lodging the final draft Cabinet paper is 15 August 2024 for Cabinet Legislation Committee consideration on 22 August 2024 **Noted**


John Whaanga
Acting Director-General of Health
Date:

Hon Casey Costello
Associate Minister of Health
Date:

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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.

Report of the Cabinet Legislation Committee: Period Ended 30 August 2024

On 2 September 2024, Cabinet made the following decisions on the work of the Cabinet Legislation Committee for the period ended 30 August 2024:

Out of scope



LEG-24-MIN-0171

**Smokefree Environments and Regulated Products
Amendment Bill (No 2): Approval for Introduction**
Portfolio: Health

CONFIRMED

Out of scope



Rachel Hayward
Secretary of the Cabinet



Cabinet Legislation Committee

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 Environments and Regulated Products Amendment Bill (No 2): Approval for Introduction

Portfolio Health

On 29 August 2024, the Cabinet Legislation Committee:

- 1 **noted** that the Smokefree Environments and Regulated Products Amendment Bill (No 2) (the Bill) holds a category 2 priority (must be passed by the end of 2024) on the 2024 Legislation Programme;
- 2 **noted** that the Bill will:
 - 2.1 ban disposable vaping products;
 - 2.2 introduce significant increased penalties for the sale of regulated products to minors;
 - 2.3 introduce restrictions on the retail display of vaping products, to reduce their appeal to minors;
 - 2.4 introduce licensed early childhood education centres in proximity requirements for new specialist vape retailer applications;
 - 2.5 shift existing proximity requirements regarding schools and marae into the Smokefree Environments and Regulated Products Act 1990;
 - 2.6 introduce new offences and penalties to support these requirements to ensure compliance and reduce youth vaping;
- 3 **approved** the Smokefree Environments and Regulated Products Amendment Bill (No 2) [PCO 26259/5.2] for introduction, subject to the final approval of the government caucus and sufficient support in the House of Representatives;
- 4 **agreed** that the Bill be introduced in the sitting week of 10 September 2024;
- 5 **agreed** that the Government propose that the Bill be:
 - 5.1 referred to the Health Committee for consideration;
 - 5.2 enacted before the end of 2024.

Tom Kelly
Committee Secretary

Attendance: (See over)

Present:

Rt Hon Winston Peters (Chair)
Hon Dr Shane Reti
Hon Judith Collins KC
Hon Shane Jones
Hon Brooke van Velden
Hon Casey Costello
Hon Nicole McKee
Hon Simon Watts
Hon Andrew Bayly
Hon Scott Simpson, MP
Jamie Arbuckle, MP
Todd Stephenson, MP

Officials present from:

Officials Committee for LEG
Prime Minister's Office

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In Confidence

Office of the Associate Minister of Health
Chair, Cabinet Legislation Committee

Smokefree Environments and Regulated Products Amendment Bill (No 2): Approval for Introduction

Proposal

- 1 This paper proposes that the Smokefree Environments and Regulated Products Amendment Bill (No 2) (the Bill), to prevent youth access to vaping products, be approved for introduction to the House of Representatives.
- 2 This Bill is part of a programme to introduce a coherent regulatory regime around tobacco and nicotine products to reduce smoking rates and provide appropriate access to safer products that can be used for smoking cessation.

Policy

- 3 On 18 March 2024 [CAB-24-MIN-0084 refers], Cabinet agreed to amend the Smokefree Environments and Regulated Products Act 1990 (the Smokefree Act), to:
 - 3.1 ban the manufacture and sale of disposable vaping products
 - 3.2 increase penalties for unlawful sales of regulated products to minors as follows:
 - 3.2.1 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
 - 3.2.2 set related infringement offences at \$1,000 for individuals (from \$500) and \$2,000 for a manufacturer, importer, distributor or retailer (from \$500).
- 4 Cabinet also agreed in principle to restrict the displays and storefronts of specialist vape stores to reduce appeal to under-18-year-olds.
- 5 Cabinet invited the Associate Minister of Health to report back to Cabinet regarding options to include registered early childhood education centres (ECE centres) within specialist vape retailer proximity limits that currently exist for primary and secondary schools.
- 6 On 24 June 2024 [CAB-24-MIN-0218 refers], Cabinet agreed to details required for the introduction of the above and other measures, including:

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- 6.1 the scope and nature of the ban on disposable vaping products:
- 6.1.1 the ban will apply to vapes that are not rechargeable and refillable, and to single-use containers such as prefilled tanks, pods and cartridges
 - 6.1.2 the ban will be extended to include the supply and distribution of disposable vaping products
 - 6.1.3 the ban will come into force six months after the commencement of the Amendment Act.
- 6.2 the scope and nature of retail visibility restrictions for vaping products:
- 6.2.1 vaping products (including images and related advertising) must not be visible from the street outside specialist vape retailers, inside stores that minors may enter, and on retailers' websites
 - 6.2.2 the display restrictions will come into force six months after the commencement of the Amendment Act.
- 6.3 the inclusion of licensed ECE centres in proximity restrictions for specialist vape retailers (for new applications only):
- 6.3.1 the proximity limit relating to ECEs will be 100 metres
 - 6.3.2 the existing proximity requirements will shift from the Smokefree Environments and Regulated Products Regulations 2021 to the Act.
- 6.4 the introduction of new offences and penalties to support these requirements as follows:
- 6.4.1 an offence for breach of the disposable vaping product ban, without reasonable excuse, with a maximum fine of \$400,000 for notifiers and large retailers, and \$50,000 in other cases, including smaller retailers
 - 6.4.2 an offence for breach of the restriction on the display of vaping products, without reasonable excuse, with a fine of no more than \$50,000
 - 6.4.3 the existing penalty for the display of tobacco products will increase from \$10,000 to \$50,000, and the offence will also expand to cover the restriction on the display of all regulated products
 - 6.4.4 the existing penalty for publishing an advertisement of a vaping product or smokeless tobacco product will increase from \$15,000 to \$50,000

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6.4.5 infringement fees of \$2,000 for displaying a regulated product or advertisement in a retail or online store, and for selling or supplying a disposable vaping product.

7 This Bill will give effect to these decisions.

8 While the scope and nature of the disposable ban in the Bill targets the products I have been advised are most appealing to young people, it is appropriate that a range of views are considered through the Select Committee process to ensure that the right balance is struck between protecting young people from taking up vaping and making the right products available to those who have relied on or may rely on vaping to stop smoking.

9 An additional purpose statement has been added to better reflect the purpose of the Bill: to reduce access to regulated products by children and young people.

10 The Bill also makes a small number of minor and technical amendments to give effect to the overarching policies.

11 This Bill holds a category 2 priority (must be passed by the end of 2024) on the 2024 Legislation Programme.

12 As noted in paragraph 8, this Bill aims to address immediate concerns around youth vaping. Further work on the wider tobacco and vaping regulatory regime is ongoing to ensure that the right tools and powers are in place for enforcement and that the current, piecemeal legislation is simplified.

13 I have been advised that by the end of this year a full complement of enforcement officers will be in place to support compliance with the legislation.

Impact analysis

14 A Regulatory Impact Statement was completed for the proposals to reduce visibility of vape products and proximity of Specialist Vape Retailers [CAB-24-MIN-0218 refers] and was submitted at the time that the Cabinet Social Outcomes Committee approval was sought [SOU-24-MIN-0063]. The Ministry of Health's Quality Assurance panel considered that the impact statement met the quality assurance criteria.

15 Cabinet's impact analysis requirements were not met when earlier decisions were made on banning disposable vaping products and increasing penalties for sales to minors [CAB-24-MIN-0218 refers] as no regulatory impact statement was provided. A supplementary Regulatory Impact Statement has now been completed for the proposals to ban disposables and increase penalties and is attached.

16 The Ministry of Health QA panel has reviewed the Impact Statement titled "*Banning disposable vaping products and increasing penalties for sales to minors*", produced by the Ministry of Health and dated July 2024.

- 17 The panel considers that the Impact Statement **Partially Meets** the quality assurance criteria.
- 18 The Impact Statement is clear, concise, complete and consulted. The analysis is balanced in its presentation of the information, and impacts are identified and assessed. The Panel does not consider the analysis meets the criteria to be convincing due to the limited options available, but notes that this is a consequence of previous decisions made by Cabinet.


Compliance

- 19 The Bill is consistent with:
- 19.1 the principles of the Treaty of Waitangi
 - 19.2 the rights and freedoms contained in the New Zealand Bill of Rights Act 1990 and the Human Rights Act 1993
 - 19.3 the [disclosure statement](#) requirements (a disclosure statement has been prepared and is attached)
 - 19.4 the principles and guidelines set out in the Privacy Act 2020
 - 19.5 relevant international standards and obligations
 - 19.6 the [Legislation Guidelines](#) (2021 edition), which are maintained by the Legislation Design and Advisory Committee.
- 20 Restrictions on vaping product display or advertising will impact on freedom of expression under section 14 of the Bill of Rights Act relating to commercial activity. I consider that this would be a justified limitation given the potential public health harm vaping poses to children and young people.

Consultation

- 21 The following agencies were consulted: the Crown Law Office, the Department of the Prime Minister and Cabinet, 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 Arawhiti | Office for Māori Crown Relations, Te Puni Kōkiri | Ministry of Māori Development, Ministry for the Environment, the Treasury.

22 s 9(2)(g)(i)



- 23 I have elected to not specify how retailers must comply with this policy – they should be able to choose the option that best suits their circumstances. However, I have asked officials to consider developing guidance for retailers on minimising the potential crime risk as noted in paragraph 18.

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Binding on the Crown

- 26 The principal Act binds the Crown.

Creating new agencies or amending law relating to existing agencies.

- 27 The Bill does not create a new agency or amend law relating to existing agencies.

Allocation of decision-making powers

- 28 The Bill does not allocate new decision-making powers.

Associated regulations

- 29 Regulations are not required for the legislation to take effect.

Other instruments

- 30 The Bill does not include any provision empowering the making of other instruments.

Definition of Minister/department

- 31 The Bill does not contain a definition of Minister or department.

Commencement of legislation

- 32 The Bill will come into force on the day after the date of Royal assent.

Parliamentary stages

33 The Bill will be introduced by 10 September 2024 subject to Parliament's timetable and confirmation from the Leader of the House. The Bill will then be referred to the Health Committee.

34 I intend for the Bill to be passed by the end of 2024.

Proactive Release

35 I intend to proactively release this paper, subject to redaction as appropriate under the Official Information Act 1982, following Cabinet approval.

Recommendations

I recommend that the Cabinet Legislative Committee:

- 1 note that the Smokefree Environments and Regulated Products Amendment Bill holds a category 2 priority (must be passed by the end of 2024) on the 2024 Legislation Programme
- 2 note that the Bill will:
 - 2.1 ban disposable vaping products
 - 2.2 introduce significant increased penalties for the sale of regulated products to minors
 - 2.3 introduce restrictions on the retail display of vaping products, to reduce their appeal to minors
 - 2.4 introduce licensed early childhood education centres in proximity requirements for new specialist vape retailer applications
 - 2.5 shift existing proximity requirements regarding schools and marae into the Act, and
 - 2.6 introduce new offences and penalties to support these requirements to ensure compliance and reduce youth vaping
- 3 approve the Smokefree Environments and Regulated Products Amendment Bill for introduction, subject to the final approval of the government caucus and sufficient support in the House of Representatives
- 4 agree that the Bill be introduced in the sitting week of 10 September 2024
- 5 agree that the Government propose that the Bill be:
 - 5.1 referred to the Health Committee for consideration
 - 5.2 enacted before the end of 2024.

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Authorised for lodgement

Hon Casey Costello

Associate Minister of Health

PROACTIVELY RELEASED

IN CONFIDENCE

Aide-Mémoire

Meeting with Asthma & Respiratory Foundation NZ on 29 August

| | | | |
|------------------------|--|------------------------------|-------------|
| Date due to MO: | 27 August 2024 | Action required by: | N/A |
| Security level: | IN CONFIDENCE | Health Report number: | H2024048974 |
| To: | Hon Casey Costello, Associate Minister of Health | | |
| Consulted: | Health New Zealand: <input type="checkbox"/> | | |

Contact for telephone discussion

| Name | Position | Telephone |
|----------------------|---|-----------|
| Jane Chambers | Group Manager, Public Health Policy and Regulation, Public Health Agency Te Pou Hauora Tūmatanui | s 9(2)(a) |
| Emma Hindson | Manager, Ope Ōpiki, Public Health Policy and Regulation, Public Health Agency Te Pou Hauora Tūmatanui | s 9(2)(a) |

Aide-Mémoire

Meeting with Asthma & Respiratory Foundation NZ on 29 August

Date due: 27 August 2024

To: Hon Casey Costello, Associate Minister of Health

Security level: IN CONFIDENCE **Health Report number:** H2024048974

Details of meeting: 11.15 – 11.45am, Thursday 29 August 2024
Minister Costello's office 2.054PH

Purpose of meeting:

- On 5 August Letitia Harding, Chief Executive Asthma and Respiratory Foundation NZ (ARFNZ), wrote to you to request to meet.
- In her email, Letitia noted that you had met with Action for Smokefree 2025 (ASH) to discuss youth vaping. The talking points from your meeting with ASH on 7 August are attached for your reference (H2024045720 refers).

Attendees:

- ARFNZ representative:
 - Letitia Harding, Chief Executive
- Te Whatu Ora representative:
 - Selah Hart, Head of Hauora Māori Public and Population Health, Hauora Māori Services

About the organisation:

- ARFNZ is a national foundation created with the goal to reduce respiratory-related hospitalisations, and improve respiratory health outcomes for all through research, education and advocacy.

Comment:

- Jane Chambers, Group Manager, Public Health Policy and Regulation, Ministry of Health, is available to attend at your request.
- This aide-mémoire discloses all relevant information.



Jane Chambers
Group Manager, Public Health Policy and Regulation
Public Health Agency | Te Pou Hauora Tūmatanui

Talking points on youth vaping

9(2)(g)(i)



Appendix 1: Profile of attendee



Letitia Harding, Chief Executive Asthma and Respiratory Foundation NZ

- Letitia has over 25 years of experience in the health sector.
- She holds a Bachelor of Science, a post-graduate Diploma in Business, and a Masters in Health Management from the University of Auckland.
- She is also the co-Chair of the Western-Pacific Region Global Alliance Against Chronic Respiratory Diseases.
- She was the recipient of the 2023 President's Award by the Thoracic Society of Australia and New Zealand for her advocacy and education around the dangers of vaping.

PROACTIVELY RELEASED

Appendix 2: Letter requesting meeting

From: Letitia Harding <letitia@asthmaandrespiratory.org.nz>
Sent: Monday, August 5, 2024 9:46 AM
To: Casey Costello (MIN) <C.Costello@ministers.govt.nz>
Subject: RE: Request to meet Letitia Harding

Tēnā koe,

I would like to request a meeting with Minister Costello.

We are aware that the Minister has met with ASH on the matter of youth vaping, and therefore request that the Minister also meets with the national leading respiratory NGO in New Zealand.

Please let me know when Minister Costello can schedule some time.

Ngā mihi

Letitia Harding | BSc, PGDipBus, MHithMgmt
Chief Executive/Tumu Whakarae | Asthma & Respiratory Foundation NZ
Asthma and Respiratory Foundation NZ | Te Hā Ora
85 The Terrace, Ground Floor, Wellington Central, Wellington 6011
P: s 9(2)(a)

PROACTIVELY RELEASED

Aide-Mémoire

Smokefree Environments and Regulated Products Amendment Bill (No 2): Talking points for LEG Committee

| | | | |
|------------------------|---|------------------------------|-------------|
| Date due to MO: | 26 August 2024 | Action required by: | N/A |
| Security level: | IN CONFIDENCE | Health Report number: | H2024049570 |
| To: | Hon Casey Costello, Associate Minister of Health | | |
| Consulted: | Health New Zealand: <input type="checkbox"/> Māori Health Authority: <input type="checkbox"/> | | |

Contact for telephone discussion

| Name | Position | Telephone |
|----------------------|--|-----------|
| Dr Andrew Old | Deputy Director-General, Public Health Agency Te Pou Hauora Tūmatanui | s 9(2)(a) |
| Emma Hindson | Manager, Public Health Policy and Regulation, Public Health Agency Te Pou Hauora Tūmatanui | s 9(2)(a) |

Aide-Mémoire

Smokefree Environments and Regulated Products Amendment Bill (No 2): Talking points for LEG Committee

Date due: 26 August 2024

To: Hon Casey Costello, Associate Minister of Health

Security level: IN CONFIDENCE **Health Report number:** H2024049570

Details of meeting: 9.30 am Thursday 29 August 2024

Cabinet Committee: Cabinet Legislation Committee

**Purpose of meeting/
proposal/advice:** You are seeking the Cabinet Legislation Committee's approval for introduction of the Smokefree Environments and Regulated Products Amendment Bill (No 2) (the Bill).

- Comment/
Summary:**
- On 18 March 2024 and 24 June 2024, Cabinet agreed to policy decisions to address youth vaping (CAB-24-MIN-0084 and CAB-24-MIN-0218 refer).
 - The Bill gives effect to these decisions by amending the Smokefree Environments and Regulated Products Act 1990 to:
 - a. ban the manufacture, sale, supply, and distribution of disposable vapes
 - b. increase penalties for unlawful sales of regulated products to minors
 - c. impose retail visibility restrictions for vaping products
 - d. include early childhood education centres in proximity restrictions for specialist vape retailers.
 - This aide-mémoire discloses all relevant information.



Dr Andrew Old

Deputy Director-General

Public Health Agency | Te Pou Hauora Tūmatanui

Talking points on Smokefree Environments and Regulated Products Amendment Bill (No 2)

9(2)(g)(i)



9(2)(g)(i)

PROACTIVELY RELEASED

9(2)(g)(i)

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9(2)(g)(i)

PROACTIVELY RELEASED

Aide-Mémoire

Smokefree Environments and Regulated Products Amendment Bill (No 2): Updated talking points for LEG Committee

| | | | |
|------------------------|---|------------------------------|-------------|
| Date due to MO: | 28 August 2024 | Action required by: | N/A |
| Security level: | IN CONFIDENCE | Health Report number: | H2024050050 |
| To: | Hon Casey Costello, Associate Minister of Health | | |
| Consulted: | Health New Zealand: <input type="checkbox"/> Māori Health Authority: <input type="checkbox"/> | | |

Contact for telephone discussion

| Name | Position | Telephone |
|----------------------|--|-----------|
| Dr Andrew Old | Deputy Director-General, Public Health Agency Te Pou Hauora Tūmatanui | s 9(2)(a) |
| Emma Hindson | Manager, Public Health Policy and Regulation, Public Health Agency Te Pou Hauora Tūmatanui | s 9(2)(a) |

Aide-Mémoire

Smokefree Environments and Regulated Products Amendment Bill (No 2): Updated talking points for LEG Committee

Date due: 28 August 2024

To: Hon Casey Costello, Associate Minister of Health

Security level: IN CONFIDENCE **Health Report number:** H2024050050

Details of meeting: 9.30 am Thursday 29 August 2024

Cabinet Committee: Cabinet Legislation Committee

**Purpose of meeting/
proposal/advice**

9(2)(g)(i)

**Comment/
Summary:**

The Bill

- On 18 March 2024 and 24 June 2024, Cabinet agreed to policy decisions to address youth vaping (CAB-24-MIN-0084 and CAB-24-MIN-0218 refer).
- The Bill gives effect to these decisions by amending the Smokefree Environments and Regulated Products Act 1990 to:
 - ban the manufacture, sale, supply, and distribution of disposable vapes
 - increase penalties for unlawful sales of regulated products to minors
 - impose retail visibility restrictions for vaping products
 - include early childhood education centres in proximity restrictions for specialist vape retailers.

S9(2)(g)(i)


PROACTIVELY RELEASED

S9(2)(g)(i)



- This aide-mémoire discloses all relevant information.

PROACTIVELY RELEASED


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

Talking points on Smokefree Environments and Regulated Products Amendment Bill (No 2)

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PROACTIVELY RELEASED

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PROACTIVELY RELEASED

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PROACTIVELY RELEASED