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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.

s 9(2)(h)

#### **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.

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Authorised for lodgement

Hon Casey Costello

Associate Minister of Health

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