



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 Social Wellbeing Committee: Period Ended 16 December 2022

On 19 December 2022, Cabinet made the following decisions on the work of the Cabinet Social Wellbeing Committee for the period ended 16 December 2022:

Out of scope



PROACTIVELY RELEASED

Out of scope



SWC-22-MIN-0257

**Smokefree Environments and Regulated
Products Act 1990: Release of Consultation
Document on Proposals for Smoked Tobacco
Regulatory Regime**
Portfolio: Associate Health (Hon Dr Ayesha
Verrall)

CONFIRMED

Rachel Hayward
Secretary of the Cabinet



Cabinet Social Wellbeing Committee

Minute of Decision

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Smokefree Environments and Regulated Products Act 1990: Release of Consultation Document on Proposals for Smoked Tobacco Regulatory Regime

Portfolio Associate Health (Hon Dr Ayehsa Verrall)

On 14 December 2022, the Cabinet Social Wellbeing Committee (SWC):

- 1 **noted** that the Smokefree Environments and Regulated Products (Smoked Tobacco) Amendment Bill (the Amendment Bill) provides for a regulatory regime to oversee and monitor the import, manufacture, sale, and supply of smoked tobacco products in New Zealand;
- 2 **noted** that the Smoked Tobacco Regulatory Regime must be established six months after the Amendment Bill comes into force on 1 January 2023;
- 3 **noted** that Manatū Hauora intends to publicly consult on regulatory proposals needed to establish the Smoked Tobacco Regulatory Regime;
- 4 **noted** that the consultation document *Proposals for the Smoked Tobacco Products Regulatory Regime* (the consultation document), attached to the submission under SWC-22-SUB-0257, seeks feedback on the proposed requirements for the Smoked Tobacco Regulatory Regime, including:
 - 4.1 the smoked tobacco products retail application scheme;
 - 4.2 low nicotine standards and product approval processes;
 - 4.3 new notification requirements;
 - 4.4 fees;
- 5 **agreed** to include the following vaping proposals in the consultation document:
 - 5.1 restricting flavour names that are likely to particularly appeal to young people (e.g. Honey Bear and Unicorn Milk), with the objective of minimising their appeal to young people and reducing the associated uptake rates;
 - 5.2 tightening product safety requirements for disposable vapes to ensure that they are safe to use;

6 **agreed** to consult on proposed proximity restrictions as part of approval requirements to become a Specialist Vape Retailer;

7 s 9(2)(h)



8 **agreed** to the public release of the consultation document following the Amendment Bill coming into force;

9 **authorised** the Associate Minister of Health (Hon Dr Ayesha Verrall) (the Associate Minister) to approve amendments to the consultation document to reflect any changes made to the Amendment Bill in its final stages, prior to its public release;

10 **authorised** the Associate Minister to approve minor technical and editorial amendments to the consultation document, prior to its public release;

11 **noted** that the Associate Minister intends to report back to SWC in April 2023, following assessment of the consultation feedback, with final recommendations for the Smoked Tobacco Regulatory Regime, including the drafting of regulations.

Rachel Clarke
Committee Secretary

Present:

Rt Hon Jacinda Ardern
Hon Kelvin Davis
Hon Dr Megan Woods
Hon Chris Hipkins
Hon Carmel Sepuloni (Chair)
Hon Andrew Little
Hon Peeni Henare
Hon Jan Tinetti
Hon Dr Ayesha Verrall
Hon Meka Whaitiri

Officials present from:

Office of the Prime Minister
Office of the Chair
Officials Committee for SWC

Office of the Associate Minister of Health

Chair, Social Wellbeing Committee

Smokefree Environments and Regulated Products Act 1990: Public consultation on regulatory proposals for the Smoked Tobacco Regulatory Regime

Proposal

- 1 This paper seeks Cabinet approval to publicly consult on regulatory proposals required to establish the Smoked Tobacco Regulatory Regime, following the enactment of the Smokefree Environments and Regulated Products (Smoked Tobacco) Amendment Bill (the Smokefree Bill).

Relation to Government priorities

- 2 These proposals strengthen the regulation of both smoked tobacco and vaping products. This contributes to the Smokefree Aotearoa 2025 goal and other Government priorities: namely empowering Māori to achieve better health outcomes, improving equity for Māori and Pacific peoples, reducing New Zealanders' risk of developing some cancers, and improving child and youth wellbeing.

Executive Summary

- 3 The Smokefree Environments and Regulated Products (Smoked Tobacco) Amendment Bill, (the Smokefree Bill) has passed its third reading and will come into force on 1 January 2023.
- 4 The new provisions of the Smokefree Bill regulate entry into the smoked tobacco and vaping product markets, provide for the approval of smoked tobacco products, regulate the constituents of smoked tobacco products, and create a 'smokefree generation'. There are a range of other new provisions in the Smokefree Bill to strengthen the existing framework and to strengthen system monitoring.
- 5 A regulatory regime must be established to oversee and monitor the import, manufacture, sale, and supply of smoked tobacco products six months after the Smokefree Bill comes into force. The attached consultation document sets out the requirements for the regime and includes an additional proposal to tighten vaping requirements to reduce the appeal of vaping products to young people and associated uptake rates. The proposals will be publicly consulted on, following the Smokefree Bill coming into force.
- 6 I will report back to Cabinet in April 2023, following consultation, with the final proposals and seek Cabinet approval to issue instructions to the Parliamentary Counsel Office to draft regulations.

Background

- 7 The Smokefree Bill amends the Smokefree Environments and Regulated Products Act 1990 (the Smokefree Act) and the Customs and Excise Act 2018, with the objectives of:
- 7.1 significantly reducing retail availability of smoked tobacco products
 - 7.2 preventing young people, and successive generations, from ever taking up smoking (the Smokefree Generation Policy), and
 - 7.3 reducing the appeal and addictiveness of smoked tobacco products.
- 8 The Smokefree Bill also contains new requirements that notifiable product retailers must register with (and pay an associated fee to) Manatū Hauora (the Ministry of Health). The details on how to register will be set in regulations. This will provide a better picture of who and where products are being sold to assist monitoring and compliance efforts.
- 9 A regulatory regime must be established to oversee and monitor the import, manufacture, sale, and supply of smoked tobacco products six months following the Smokefree Bill coming into force.

Getting the balance right: addressing youth vaping

- 10 Vaping has an important role to play in the successful implementation of the Smokefree Bill. We need to ensure that people who decide to stop smoking, as a result of the substantial changes the Smokefree Bill makes, have ready access to less harmful nicotine products.
- 11 However, vaping is not harmless, and we do not wish to see tamariki and rangatahi become addicted to these products. While the Smokefree Act already prohibits the sale and supply of vaping products to those under 18 years of age, the legacy of our previously unregulated market means that vaping rates for our young people continue to rise¹.
- 12 I also acknowledge that the public health sector's ability to enforce these new provisions was compromised by its role in the COVID-19 pandemic response. I have asked Manatū Hauora and the National Public Health Service to prioritise compliance and enforcement activities. This will give greater confidence that vape retailers understand, and are complying with, their legal obligations. I expect that officials will continue to monitor, commission, and gather evidence to get a clearer sense of what the market is doing.
- 13 That said, I believe there is also an opportunity now to ensure that our vaping regulatory regime has the right balance. I therefore propose consulting on a proposal to extend vaping packaging and product restrictions to further reduce the appeal of vaping products to young people and associated uptake rates, as part of the public consultation process.

¹ New Zealand Health Survey data showed that daily use of vapes by 15 to 17 year olds increased from 1.7 percent in 2018-19 to 5.8 percent in 2020-21.

Public consultation

- 14 I want to be sure that the Smoked Tobacco Regulatory Regime is established in a timely and effective way to meet the intended objectives of the Smokefree Bill.
- 15 The consultation document sets out draft regulatory proposals to achieve this. It seeks feedback from the public, industry, and other interested stakeholders on requirements for:
- 15.1 the smoked tobacco products retail application scheme
 - 15.2 low nicotine standards and product approval processes
 - 15.3 new notification requirements
 - 15.4 fees
 - 15.5 extending vaping packaging and product restrictions.
- 16 Consultation will be conducted online and face-to-face. Manatū Hauora will email a link to the consultation document to those on its database of stakeholders, including industry (representative bodies, manufacturers, importers, and retailers), non-government organisations, stop smoking service providers, and Māori and Pacific providers.
- 17 In addition, the Smokefree Bill includes specific Te Tiriti o Waitangi provisions requiring the Director-General of Health (Director-General) to consult with Māori when making retail decisions, and on the Minister of Health to ensure the risks and benefits to Māori are considered when making regulations regarding the content of smoked tobacco products.
- 18 The obligation to consult sits with the Director-General, rather than for example Te Aka Whai Ora (Māori Health Authority), because the Director-General has statutory responsibility for making the retail decisions set out in the Smokefree Bill. However, the Director-General is required to consult with Te Aka Whai Ora before making these key retail decisions.
- 19 The Public Health Agency's (PHA's) Hauora Māori team will lead specific consultation with Māori in February and March 2023 and this will be conducted in-person and online across the country. The PHA is working closely with Te Aka Whai Ora to ensure that Māori are engaged in a way that specifically considers Māori perspectives, and special consideration is given to the potential impact retail decisions may have on different groups of Māori.
- 20 There will also be targeted consultation with Pacific peoples, led by Tala Pasifika², with support from Manatū Hauora, as well as retail associations and with other stakeholders that have knowledge of local areas such as local government.

² Tala Pasifika is a Pacific community non-governmental organisation that Manatū Hauora and Te Whatu Ora have partnered with for the smokefree work programme.

- 21 The feedback received through consultation will inform the development of the final regulatory proposals to support the regulatory scheme under the Smokefree Bill. I intend to bring these proposals back to Cabinet in April 2023.

Regulatory proposals to establish the Smoked Tobacco Regulatory Regime

The smoked tobacco products retail application scheme

- 22 The Smokefree Bill restricts where smoked tobacco products can be sold and who can sell them. Smoked tobacco products will only be able to be sold in a limited number of retail premises approved by the Director-General.
- 23 To enable this to happen, an application scheme must be established that sets out how the number of stores will be distributed across the country, criteria needed to grant approval and the application process for doing so.
- 24 The consultation document sets out the detail of the scheme and seeks feedback on the following components:
- 24.1 the *method of allocation* of the smoked tobacco products retailers. For example, the split between urban and rural locations, and for each region of New Zealand
 - 24.2 the *criteria for decision making*, including minimum requirements for acceptance as a smoked tobacco retailer (eg, fit and proper person check, security, and business processes)
 - 24.3 the *approval processes*, including a method of ranking applicants, and the criteria which will be used to do so. These include, for example, the location of stores in relation to sensitive locations like schools, history of compliance with the Smokefree Act, and the overall suitability of the retail premise.
- 25 These new provisions, and the proposals needed to implement them, will impact on a significant number of small businesses who sell these products across the country. While there are approximately 6000 current retail premises selling smoked tobacco products, the amended Smokefree Bill sets a 'cap' of no more than 600 approved retail premises.
- 26 Tobacco and vape products are among the most commonly targeted items in thefts and robberies in New Zealand. New Zealand Police advise that the proposed reduction in tobacco retailers will significantly increase the risk of criminal activity targeted at stores that continue to sell these products. To mitigate the risk of theft, robberies and ram raids, approved tobacco retailers will need to meet stringent security requirements, such as fog canons, bollards and monitored security alarm systems.

Low nicotine standards and products approval processes

- 27 The amended Smokefree Bill includes a specific provision that limits nicotine levels in smoked tobacco products. A method of determining whether those limits have been exceeded, are set in regulations.

- 28 The consultation document sets out a proposed low nicotine standard, and seeks feedback on requirements such as:
- 28.1 low nicotine testing methods
 - 28.2 requirements for product safety
 - 28.3 minor changes to packaging requirements
 - 28.4 application forms and processes for approvals and temporary approvals.

New notification requirements

- 29 The amended Smokefree Bill requires distributors of smoked tobacco products and notifiable product retailers to notify the Director-General that they are distributing or selling their products.
- 30 The consultation document sets out, and seeks feedback on, a simple annual registration scheme with a small administration fee. The scheme requires distributors and notifiable product retailers to enter their contact details on the Manatū Hauora database.

Fees

- 31 The Smokefree Bill provides for recovering the costs of establishing and operating the Smoked Tobacco Regulatory Regime from the industry through fees and/or levies.
- 32 The consultation document sets out, and seeks feedback on, proposed fees for smoked tobacco retail applications, applications for smoked tobacco products, and sector participant registrations. The fees have been set based on estimates of the average cost to receive, process, and respond to each type of application or registration.

Extending vaping packaging and product restrictions

- 33 The Smokefree Environments and Regulated Products Regulations 2021 set out requirements for how vaping products look and the messages and information they contain. These requirements are intended in part to limit their appeal, particularly for youth. The regulations also set out safety requirements that products must meet before they are able to be sold on the New Zealand market.
- 34 The consultation document sets out, and seeks feedback on additional packaging and product requirements for vape products including:
- 34.1 restricting flavour names that are likely to particularly appeal to young people (eg, Honey Bear and Unicorn Milk), with the objective of minimising their appeal to young people and reducing the associated uptake rates
 - 34.2 tightening product safety requirements for disposable vapes to ensure that they are safe to use.

IN CONFIDENCE

- 35 I am also seeking Cabinet discussion and direction on a further option to include proximity restrictions as part of approval requirements to become a Specialist Vape Retailer (SVR).
- 36 Recently, concerns have been raised in the media, ministerial correspondence and through submissions on the Smokefree Bill regarding the proximity of SVRs to schools, and the corresponding impact this is having on our youth vaping uptake.
- 37 Current evidence on whether proximity restrictions would reduce youth uptake is somewhat limited. The 2021 ASH survey of Year 10 students found that the most common source of vapes for this age group is from friends (for daily users, four percent bought from or were given by friends, for all vape users, 43 percent were given by friends). The least common source was buying online or in a shop. The survey also suggests that high youth vaping rates are not linked to SVR density within one kilometre of a school. I note, however, that the ASH survey pre-dates the establishment of SVRs. The next survey will be able to better analyse youth vaping rates against current SVR locations and this analysis will be available in early 2023.
- 38 Although evidence for long term of vaping is not yet available, I propose we take action to prevent rangatahi from being addicted to nicotine.
- 39 Proximity restrictions relating to SVR locations (eg, distance from schools, sports grounds or other community specific considerations) can be made through existing regulation-making powers, and there is an opportunity to include these proposed changes as part of the consultation on the Smoked Tobacco Regulatory Regime. Any changes would apply to all future SVR approvals but could not apply retrospectively.
- 40 These proximity restrictions would not apply to general vape retailers (eg, dairies, supermarkets, service stations). These stores can only sell three vape flavours and therefore carry a limited product range. In addition, restrictions for general vape retailers would require a legislative amendment as there is currently no existing regulation-making power to do so. I believe more compelling evidence is needed before this option is considered.

Next steps

- 41 The consultation document will be released in February 2023 for six weeks. Following consultation and analysis of feedback, I will report back to Cabinet in April 2023 with final proposals on details of the Smoked Tobacco Regulatory Regime. I will also be seeking agreement to instruct the Parliamentary Counsel Office to draft regulations.

Financial Implications

- 42 In line with previous Cabinet decisions [CAB-18-MIN-0569 refers], the Smoked Tobacco Regulatory Regime will be fully cost-recovered, including establishment and operational costs.

IN CONFIDENCE

Legislative Implications

- 43 Regulations will be needed to establish the Smoked Tobacco Regulatory Regime.

Impact Analysis

- 44 The Treasury's Regulatory Impact Analysis team has determined that the proposal to release the discussion document on the Smoked Tobacco Regulatory Regime is exempt from the requirement to provide a Regulatory Impact Statement (RIS). The exemption is based on advice that the discussion document includes the key features of an interim RIS.
- 45 Manatū Hauora's Quality Assurance panel has reviewed the discussion document and confirmed that it meets these requirements. A full RIS will be completed following consultation to inform Cabinet's final decisions in April 2023 on recommendations for requirements for the Smoked Tobacco Regulatory Regime.

Population Implications

- 46 The Smokefree Bill focuses on fulfilling our Te Tiriti o Waitangi obligations and improving equity.
- 47 Māori, Pacific peoples and those living in the most deprived areas of Aotearoa have higher smoking rates than other groups of New Zealanders. They are, therefore, among those most likely to be impacted by these proposals. The consultation document seeks meaningful engagement from priority population groups, including Māori and Pacific populations.
- 48 In addition, Māori and Pacific youth have higher rates of vaping and would also be more likely than their counterparts to be impacted by these proposals.

Human Rights

- 49 The proposals in this paper are consistent with the New Zealand Bill of Rights Act 1990 and the Human Rights Act 1993.

[Legally privileged]: s 9(2)(h)

50 s 9(2)(h)



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s 9(2)(h)

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Consultation

55 The following agencies have been consulted: the New Zealand Customs Service, the Ministry of Justice, New Zealand Police, the Ministry of Business, Innovation and Employment (Commerce and Consumer Affairs), Te Puni Kōkiri, the Ministry for Pacific Peoples, the Ministry for Ethnic Communities, Te Arawhiti, the Crown Law Office, the Parliamentary Counsel Office, the Ministry of Foreign Affairs and Trade, Te Whatu Ora, Te Aka Whai Ora, the

Ministry for Pacific Peoples, the Ministry for Youth Development, the Ministry of Education, Oranga Tamariki- Ministry for Children and Ministry for the Environment. The Treasury and the Department of the Prime Minister and Cabinet were informed.

Communications

- 56 I will work with Manatū Hauora on public communications for the release of the consultation document.

Proactive Release

- 57 I intend to proactively release this paper when the consultation document is released.

Recommendations

- 58 I recommend that the Committee:

- 1 **note** that the Smokefree Environments and Regulated Products (Smoked Tobacco) Amendment Bill provides for a regulatory regime to oversee and monitor the import, manufacture, sale, and supply of smoked tobacco products in New Zealand.
- 2 **note** that the Smoked Tobacco Regulatory Regime must be established six months after the Smokefree Environments and Regulated Products (Smoked Tobacco) Amendment Bill comes into force on 1 January 2023.
- 3 **note** that Manatū Hauora intends to publicly consult on regulatory proposals needed to establish the Smoked Tobacco Regulatory Regime.
- 4 **note** that the consultation document seeks feedback on the proposed requirements for the Smoked Tobacco Regulatory Regime, including:
 - 4.1. the smoked tobacco products retail application scheme
 - 4.2. low nicotine standards and product approval processes
 - 4.3. new notification requirements
 - 4.4. fees.
- 5 **agree** to include the following vaping proposals in the consultation document:
 - 5.1 restricting flavour names that are likely to particularly appeal to young people (eg, Honey Bear and Unicorn Milk), with the objective of minimising their appeal to young people and reducing the associated uptake rates
 - 5.2 tightening product safety requirements for disposable vapes to ensure that they are safe to use.
- 6 **agree** to consult on proposed proximity restrictions as part of approval requirements to become a Specialist Vape Retailer.

- 7 **[legally privileged]** s 9(2)(h) [REDACTED]
- 8 **agree** to the public release of the consultation document, following the Smokefree Environments and Regulated Products (Smoked Tobacco) coming into force.
- 9 **agree** that the Associate Minister of Health can approve amendments to the consultation document to reflect any changes made to the Smokefree Environments and Regulated Products (Smoked Tobacco) Amendment Bill at the Committee of the Whole House stage, prior to its public release.
- 10 **agree** that the Associate Minister of Health can approve minor technical and editorial amendments to the consultation document, prior to its public release.
- 11 **note** that following assessment of the consultation feedback, I will report back to Cabinet in April 2023 with final recommendations for requirements for the Smoked Tobacco Regulatory Regime, including the drafting of regulations.

Authorised for lodgement
Hon Dr Ayesha Verrall
Associate Minister of Health