

Briefing

Smokefree 2025: progressing Coalition Agreement commitments

Date due to MO: 16 February 2024 **Action required by:** 20 February 2024

Security level: IN CONFIDENCE **Health Report number:** H2024035870

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
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 Withdrawn | |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:

Smokefree 2025: progressing Coalition Agreement commitments

Security level: IN CONFIDENCE **Date:** 16 February 2024

To: Hon Casey Costello, Associate Minister of Health

Purpose of report

- 1 This briefing provides a draft Cabinet paper seeking agreement to progress Coalition Agreement commitments, in the context of a broader strategic approach to achieving Smokefree 2025.

Summary

- 2 The Government is committed to the Smokefree 2025 goal of less than 5% of New Zealanders smoking daily by 2025.
- 3 Good progress is being made. In 2022/23, only 6.8% of New Zealanders aged 15 and over smoked daily. However, we have much higher rates of daily smoking for some groups including Māori (17.1% versus 6.1% for European) and lower socioeconomic groups (10.7% versus 3.1%, for the most compared to the least deprived communities). More practical support is needed to help these groups quit smoking.
- 4 This paper focuses on progressing commitments contained in the Coalition Agreements, specifically:
 - a. "amending vaping product requirements and taxing smoked products only" and "reform the regulation of vaping, smokeless tobacco and oral nicotine products while banning disposable vaping products and increasing penalties for illegal sales to those under 18." (NZ First)
 - b. "introduce serious penalties for selling vapes to under 18s, and consider requiring a liquor licence to sell vapes." (ACT).
- 5 These proposals would require legislative change and we recommend that proposed initiatives to implement the Coalition Agreement commitments are consulted on before Cabinet approves final policy proposals for a Bill. A draft Cabinet paper is attached as Appendix A for your consideration and comment. If agreed, the proposals would set the legislative direction the Government is taking towards achieving Smokefree 2025 and better protecting non-smoking youth from access to and use of smoking, vaping, and other regulated/nicotine products.
- 6 The draft Cabinet paper also notes further work will be done to strengthen the Government's approach to achieving Smokefree 2025 through non-regulatory measures. A summary of current non-regulatory measures is included below. We will provide you with a comprehensive plan for strengthening these by May 2024.

- 7 A summary of a rapid review of the evidence for the use of heated tobacco products, snus, and nicotine pouches to support smoking cessation and potential health harms is contained as Appendix B.

Recommendations

We recommend you:

- a) **advise** any changes to the attached Cabinet paper
- b) **agree** to commence Ministerial and departmental consultation, subject to any **Yes/No** changes you may have to the draft Cabinet paper



Dr Diana Sarfati
Director-General of Health
Te Tumu Whakarae mō te Hauora

Date: 16 February 2024

Hon Casey Costello
Associate Minister of Health

Date:

Smokefree 2025: progressing Coalition Agreement commitments

Background

- 1 The Coalition Agreements commit to:
 - a. “amending vaping product requirements and taxing smoked products only” and “reform the regulation of vaping, smokeless tobacco and oral nicotine products while banning disposable vaping products and increasing penalties for illegal sales to those under 18.” (NZ First)
 - b. “introduce serious penalties for selling vapes to under 18s, and consider requiring a liquor licence to sell vapes.” (ACT).
- 2 In February, Cabinet is expected to approve the introduction of the Amendment Bill to repeal the previous government’s smoked tobacco laws [H2024035267 refers].
- 3 This briefing (and the attached draft Cabinet paper) focuses on progressing the Coalition Agreement commitments in the context of a broader strategic approach to achieving Smokefree 2025 that:
 - a. strengthens practical support for people who smoke to quit, including through switching to less harmful nicotine products, and
 - b. better protects young people from accessing vaping products.

Progressing the Coalition Agreement proposals

- 4 The Coalition Agreement proposals would require legislative change and we recommend progressing these through consultation. The outcome of that consultation would then inform final policy proposals for a Bill. A draft Cabinet paper reflecting this approach is attached as Appendix A for your consideration and comment.

Amending vaping product requirements

- 5 There are opportunities to amend vaping product requirements to better support people who smoke to quit and to better protect youth from taking up vaping.

Allow retail staff to encourage those buying cigarettes to try vaping

- 6 To better support smokers to quit, one option is to investigate the feasibility of allowing retail staff to encourage customers buying cigarettes to try vaping. This is likely to require obligations to be placed on retailers, such as training of staff to ensure the consistency and quality of advice.

Require SVRs to have qualified staff and reduced vape visibility

- 7 To reduce youth vaping, requiring specialist vape retailers (SVRs) to have a suitably trained staff member present on site at all times coupled with, setting requirements that will reduce the visibility of available products, may assist in reduced access to, and appeal of vaping and vaping products.

- 8 Proliferation of vaping retailers, combined with colourful and highly visible in-store and window displays, contributes to the attraction and normalisation of vaping, instead of being presented as a harm reduction tool for people who smoke. People are exposed to window displays that function as product advertisements. 'Power walls' within general retailers expose young people to vaping products alongside regular grocery items. Two recent United Kingdom studies found the main appeal of vaping product packaging was the colours, especially for disposables, which contribute to the attractiveness of the bright displays in-store and in shop windows.
- 9 Given that SVRs are intended to be 18+ only spaces, reducing visibility of vaping products from the street would mean SVRs are not reaching out into public spaces, exposing young people to what is effectively advertising. Canada has achieved this with vaping product retailers, by requiring frosted windows.

Require General Vape Retailers (GVRs) to reduce vape visibility

- 10 A further option is that GVRs, such as dairies and petrol stations, be required to follow existing rules for the sale of tobacco (eg, to have all stock in closed cupboards). Signs in-store could still be used to alert adult customers to availability and price, so access for smoking cessation would not be reduced.
- 11 Approximately a third of SVR vaping product sales are made online from about 200 online retailers. Any consideration of a product display ban should therefore also consider these retailers. Any reduction in visibility should also include consideration of any advertising and display material via other mechanisms, that might circumvent the purpose of a display ban, such as online marketing. While youth online purchasing is consistently very low (1.5% of those who have ever tried vaping, 2.3% of daily vapers in 2023), this may change, particularly in response to any other vaping changes.
- 12 **s 9(2)(h)**
- 13 If you wish to proceed, we have included a placeholder section to this effect in the attached draft Cabinet paper. Other options would likely be identified in the process of preparing the consultation paper, as well as by submitters.

Agree to seek Cabinet's direction to consult on:

- | | |
|---|-----------------|
| a. allowing retail staff to encourage customers buying cigarettes to try vaping | Yes / No |
| b. requiring SVRs to always have a suitably trained staff member present | Yes / No |
| c. reducing visibility of vaping products from the street in SVRs | Yes / No |
| d. requiring GVRs to store vaping products out of the public's sight | Yes / No |

PROACTIVELY RELEASED



s 9(2)(f)(iv)

Yes / No

Reform the regulation of vaping, smokeless tobacco, and oral nicotine products

- 28 A summary of a rapid review of the current evidence base for heated tobacco products and oral nicotine products (snus and nicotine pouches) is contained in Appendix B.
- 29 We consider that further work, including public consultation, is needed before seeking any substantive decisions from Cabinet on reforming the regulation of these products.

Evidence for vaping, smokeless tobacco and oral nicotine products

Vaping

- 30 Vaping products are an effective quitting tool; more effective than nicotine replacement therapy (NRT). For every 100 people who make a quit attempt using a vaping product, around 8-10 are likely to succeed compared with 6 in 100 who use NRT and 4 in 100 who try to quit without support.¹
- 31 Overall, evidence shows vaping is less harmful than smoking tobacco, but not harmless. For people who smoke, switching to vaping products is highly likely to reduce the risks to their health and the health of those around them. Conversely, use of vaping products

¹ Hartmann-Boyce J, Lindson N, Butler AR, McRobbie H, Bullen C, Begh R, Theodoulou A, Notley C, Rigotti NA, Turner T, Fanshawe TR, Hajek P. Electronic cigarettes for smoking cessation. Cochrane Database of Systematic Reviews 2022, Issue 11. [Art. No.: CD010216. DOI: 10.1002/14651858.CD010216.pub7](https://doi.org/10.1002/14651858.CD010216)

among never smokers is associated with a range of harms, including nicotine addiction, which increases the risk of long-term use.

Smokeless Tobacco

- 32 There is a range of smokeless tobacco products available on the global market, including HTPs (summarised above), oral tobacco products (eg, snus), and nasal products (eg, dry snuff). The risk profiles of these products vary greatly.
- 33 Snus is less harmful than smoking tobacco, with evidence showing that it is similar to vaping. However, there is weak evidence of the effectiveness of snus as a tool for smoking cessation, and weak evidence of an association between using snus and taking up smoking. The risk of feeling addicted may be higher for snus than for smoked tobacco. Use of snus may increase the risk of certain cancers.

Oral nicotine products

- 34 Oral nicotine products are defined as nicotine products that do not contain tobacco, and include nicotine pouches.
- 35 Nicotine pouches are relatively new to the international market and, as such, evidence of their safety and effectiveness to help people stop smoking is limited. Most published data are from industry and show that nicotine pouches have substantially lower levels of toxicants compared to smoked tobacco. Like all nicotine products there is a risk of addiction. There are increasing concerns internationally of their promotion to young people.

Allowing for the sale of a wider range of reduced harm alternatives

- 36 An argument can be made for legalising products with a similar risk profile to vaping (eg, Swedish snus). However, as above, the evidence for its efficacy in helping people to quit smoking is limited. We consider there is scope to better support smokers to switch to vaping, ahead of introducing additional products.
- 37 If more products are introduced, it would be important to have product safety requirements in place (such as those that exist for vaping products). In addition, vaping-style regulatory controls should be applied as appropriate. For instance, prohibition on sales to minors, bans on promotion, advertising and sponsorship (subject to the exemptions that apply to vaping products), and notification of products.
- 38 An additional consideration is that the prohibitions on use of these products in smokefree and vapefree areas would likely not apply as these products do not emit smoke or vapour that affects third parties.
- 39 Other tobacco and nicotine products could be legalised through an amendment to the Smokefree Environments and Regulated Products Act 1990, and product safety requirements set through an amendment to the Smokefree Environments and Regulated Products Regulations 2021.

Next steps

- 40 If you wish to proceed with this proposal, we have included a placeholder section to this effect in the attached draft Cabinet paper.

Agree to seek Cabinet's agreement to consult on legalising the sale of a wider range of reduced-harm products

Yes / No

Ban disposable vaping products

- 41 Disposables have quickly become the most popular vaping product used by young people in New Zealand and internationally, and many jurisdictions have or are taking steps to restrict the sale of these products.
- 42 Previous experience shows industry will respond rapidly to circumvent a ban on disposable vaping products by introducing new products that comply with regulations but are still cheap and attractive to youth. We are already seeing the emergence of new products that fit this description in New Zealand.
- 43 The United Kingdom government has recently announced they will ban disposable vapes but will carry out consultation to identify the most effective way to do this. We recommend carrying out public consultation, including targeted consultation with industry, to identify how to effectively implement this policy.
- 44 **s 9(2)(h)**
- 45 There is little evidence to suggest that this proposal will have any significant impact on those who wish to quit smoking using vaping products. There are a range of other vaping products on the market that are significantly cheaper than smoked tobacco and are good alternatives to disposable vaping products.
- 46 Banning disposable vaping products would reduce waste and pollution, and may also support efforts to limit uptake by young people. Two recent UK studies found the appeal of disposables was perceived to be related to high visibility in stores, small size and lack of long-lasting odour (so therefore convenient and discrete), simplicity of use, and, in one of the studies, also low price.² Some youth may switch to reusables, but these are more expensive, which may reduce uptake.

Next steps

- 47 Should you wish to proceed with this proposal we have included a placeholder section to this effect in the attached draft Cabinet paper.

Agree to seek Cabinet’s agreement to consult on prohibiting disposable (single-use) vaping products **Yes / No**

Note we will undertake further analysis, followed by public and targeted industry consultation, to determine how to implement this policy effectively **Noted**

Increase penalties for unlawful sales of vaping and other regulated products to minors

- 48 The attached draft Cabinet paper seeks Cabinet’s agreement to consult on:
- increasing maximum fines for body corporates on conviction in court from \$10,000 to \$100,000 and fines for others (eg, sales assistants) from \$5,000 to \$10,000

² See: Moodie, C., Jones, D., Angus, K., MacKintosh A.M., Ford, A., O’Donnell, R., Hunt, K., Mitchell, D., Alexandrou, G., Stead, M., Neve, K., Champion, T., Froguel, A., Davies, A., Cheek, O. “Improving our understanding of e-cigarette and refill packaging in the UK: How is it used for product promotion and perceived by consumers, to what extent does it comply with product regulations, and could it be used to better protect consumers?” Cancer Research UK. 2023; and Thirlway, F., Neve K., Champion T., Froguel A., Davies A., Cheek, O. “E-cigarette appeal in context: a qualitative study in deprived areas into the role of packaging in e-cigarette purchasing and use.” Cancer Research UK. 2023.

- b. increasing infringement fees (on the spot fines) from \$500 to \$2,000 for retailers and from \$500 to \$1,000 for sales assistants.

49 The significantly higher proposed maximum fine of \$100,000 better accounts for the range in potential offenders, from sales assistants to large corporates (eg, supermarkets).

50 We propose, should you wish to proceed with increasing penalties, that they apply to the sale of all regulated products (ie, vaping products, smoked tobacco products, smokeless tobacco products, herbal products for smoking).

Next steps

51 Should you wish to allow for stronger penalties for unlawful sales of regulated products to minors and have included a section in the draft Cabinet paper to reflect this.

Agree to seek Cabinet's agreement to consult on increasing penalties for unlawful sales of regulated products to minors as follows:

- a. increase maximum fines for body corporates to \$100,000 and fines for others to \$10,000 **Yes / No**
- b. increase infringement fees (on the spot fines) to \$2,000 for retailers and \$1,000 for sales assistants **Yes / No**

Consideration of requiring a liquor licence to sell vaping products

52 Our previous advice canvassed the implications of combining alcohol and vaping licensing, please see our advice provided on 31 January 2024 [H2024034952].

53 As noted in that advice, there are aspects of liquor licensing that could be used to improve the regulation of vaping, including:

- a. significantly strengthened requirements for operator competence, including duty managers who are trained and present at all times, and suitability of the applicant requirements
- b. 1-year probationary periods for new operators
- c. licenses (for all types of retailers) that expire and must be proactively reapplied for
- d. improving the effectiveness of suspensions and cancellations of licenses as an enforcement mechanism (eg, by extending to all types of retailers and including stand down periods)
- e. strengthened decision-making processes, and opportunity for input from communities or relevant experts.

54 For completeness, we note you have raised the issues of where regulatory responsibilities regarding the sale of vaping products best sits, for example, with local authorities as is the case for alcohol, rather than with the Ministry of Health. We propose this be considered as part of a broader review of the legislation.

Next steps

- 55 Should you wish to proceed with this approach, we suggest prioritising implementation of the Coalition Agreement commitments and undertaking a broader review of the Act at a later date.

Agree to progress a broader review of the Act, including consideration of where decision making about the retail sale of vaping products best sits, to be undertaken after the Coalition Agreement commitments have been implemented.

Yes / No

Complementary non-regulatory measures

- 56 We want to ensure we maintain momentum in the decline in smoking rates, particularly for Māori. Services and programmes will continue to play a vital role in supporting people who smoke to quit, and an increasingly important role in supporting young people to choose not to vape.
- 57 We propose providing a briefing in May 2024 with a plan to strengthen our approach to achieving Smokefree 2025 through non-regulatory measures. This will be evidence-based, focused on those with greatest need, costed where possible, and include implementation timeframes. These measures are summarised below, and this outline will inform the basis of the next briefing.
- 58 Review and refresh our education and communication approach, including:
- health promotion campaigns aimed at encouraging people who smoke to quit and to use stop smoking services³
 - health promotion campaigns aimed to prevent youth vaping⁴
 - comprehensive public information including addressing misconceptions of relative harm for tobacco and vaping products⁵
 - more support for schools to reduce youth vaping.
- 59 Update our insights and research, including:
- refresh qualitative and quantitative data analysis of the current state to support policy development and strategy
 - gather new lived experience insights to guide future policy development (eg, to understand what drives youth vaping, and what the barriers are for priority groups to switch from smoking to vaping).
- 60 Provide practical support to people who smoke:

³ Vape to Quit was initiated in 2021 to encourage Māori women who smoke to switch to vaping. It was intended to also change the national narrative around vaping amongst the wider community – legitimising the use of vaping for smoking cessation purposes. The campaign ran for only one flight before being paused due to increasing concern at youth vaping rates. It was therefore not in field long enough to be evaluated. It could be restarted.

⁴ To ensure young people do not feel encouraged to take up vaping, the existing Protect Your Breath campaign could be extended into a programme of support within schools. Protect Your Breath is a social media campaign that aims to reduce vaping harm among young people and was developed with the Hā Collective of young people.

⁵ One New Zealand study of people who currently or recently smoked showed fewer than half felt vapes were less harmful than cigarettes. Pacific respondents were least likely to view vapes as less harmful than cigarettes. Māori respondents were less likely than European/Other respondents to view vapes as less harmful. E-cigarette use and perceptions among current and ex-smokers in New Zealand, HPA, January 2019 [Final Report - E-cigarette use and perceptions among current and ex-smokers in NZ Jan 2019 0.pdf \(hpa.org.nz\)](#)

- a. consider options to fund vape starter kits through quit smoking services.
- 61 Review and strengthen stop smoking services:
- a. review the effectiveness of current stop smoking services
 - b. strengthen stop smoking guidance for the smokefree workforce to include harm reduction measures including vaping
 - c. strengthen accountability of stop smoking service providers to ensure the programmes offered:
 - i. are comprehensively designed to reflect up-to-date evidence and best practice
 - ii. are focused, designed and delivered to meet the needs of priority groups
 - iii. include the available range of harm reduction products, including vaping products
 - iv. provide support for people to stop vaping.
- 62 In addition, we propose to re-designing workforce training and education packages to ensure they are fit-for-purpose, and to support and monitor community led innovations that support people to quit smoking and prevent youth uptake of vaping.
- 63 We will meet with service providers and other stakeholders in April 2024, to inform the development of this work.

Equity

- 64 Despite smoking rates having reduced for all groups of New Zealanders, daily smoking rates for Māori, low-income earners, adults with disabilities, and people experiencing mental health and addiction issues remain higher than others.
- 65 The Government remains committed to achieving the Smokefree 2025 goal, with a focus on providing people who have the greatest need, with the practical tools and supports to help them quit. The proposals outlined in the paper will help achieve this.

Next steps

- 66 A draft Cabinet paper is attached. It is due to be considered by Cabinet's Social Outcomes Committee on 28 February 2024 and Cabinet on 4 March 2024.
- 67 As drafted, the paper seeks Cabinet's agreement to authorise you to consult on each of the proposals. The nature of that consultation (eg, targeted, public, in-person, online) will need to be considered in relation to which proposals you choose to take forward.
- 68 You will need to seek final Cabinet approval to release the consultation document when it is ready. For more limited and targeted consultation, you may be able to approve the release of the consultation document and we can provide further advice to you on this.
- 69 Pending Cabinet agreement, we propose providing you with the following in May 2024:
- a. a consultation document regarding the Coalition Agreement commitments Cabinet agrees to progress (and Cabinet paper if needed)
 - b. a comprehensive plan on non-legislative measures.

70 We will also progress, pending Cabinet agreement, a broader review of the legislation to ensure it is risk-proportionate, consistent and fit for purpose, be undertaken once the Coalition Agreement commitments are completed. This would include consideration of where decision making about the retail sale of vaping products should sit.

ENDS.

PROACTIVELY RELEASED

Minister's Notes

PROACTIVELY RELEASED