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## Budget Sensitive

Office of the Associate Minister of Health

Cabinet Social Wellbeing Committee

## Smokefree Aotearoa 2025 Action Plan approval

### Proposal

- 1 This paper seeks the Committee's agreement to:
  - 1.1 publish the attached *Smokefree Aotearoa 2025 Action Plan* (action plan) (see Appendix one)
  - 1.2 amend the Smokefree Environments and Regulated Products Act 1990 to:
    - 1.2.1 further restrict access and availability of smoked tobacco products, and
    - 1.2.2 reduce their appeal and addictiveness.

### Relation to government priorities

- 2 The Labour Party's health manifesto states that Labour in Government will deliver the action plan as an immediate priority. The plan aims to directly tackle current inequities by supporting Māori and Pacific whānau to be smokefree, ensuring young people never start smoking, and introducing restrictions on the retail availability of smoked tobacco products in our communities.
- 3 Action towards a smokefree Aotearoa New Zealand supports a number of Government priorities, including empowering Māori to achieve better health outcomes, improving equity for Māori and Pacific peoples, reducing New Zealanders' risk of developing some cancers, and achieving the outcomes of the Child and Youth Wellbeing Strategy.

### Executive Summary

- 4 In April 2021, Cabinet agreed to the release of the discussion document *Proposals for a Smokefree Aotearoa 2025* [CAB-21-Min-0104], which sought public feedback on proposals for the action plan. The action plan has now been finalised following public consultation, and further analysis and modelling of proposals.
- 5 The action plan sets out six focus areas, as follows:
  - 5.1 *Focus area 1*: ensure Māori leadership and decision-making at all levels

- [REDACTED]
- 5.2 *Focus area 2:* increase health promotion and community mobilisation
  - 5.3 *Focus area 3:* increase evidence-based stop smoking services
  - 5.4 *Focus area 4:* reduce addictiveness and appeal of smoked tobacco products
  - 5.5 *Focus area 5:* reduce availability of smoked tobacco products
  - 5.6 *Focus area 6:* ensure manufacturers, importers and retailers meet their legal obligations.
- 6 I am seeking agreement to publish the action plan, and policy approval for legislative change to improve public health by reducing the use of, and exposure to, smoked tobacco products. That legislative change would consist of amendment of the Smokefree Environments and Regulated Products Act 1990 in relation to focus areas 4, 5 and 6 of the action plan.
- 7 The specific legislative changes sought are measures to:
- 7.1 provide for a regulatory regime to oversee and monitor the import, manufacture, sale and supply of smoked tobacco products
  - 7.2 reduce the appeal and addictiveness of smoked tobacco products by extending the regulatory powers over their composition (eg, reducing nicotine levels)
  - 7.3 restrict access to and availability of smoked tobacco products by amending the age limits for sale of smoked tobacco products (eg, introducing a Smokefree Generation policy), and
  - 7.4 significantly reduce retail availability by restricting sales of smoked tobacco products to retail outlets approved by the Director-General of Health.
- 8 I am seeking authorisation from Cabinet to instruct the Parliamentary Counsel Office (PCO) in relation to the measures as set out in 7 above.
- 9 Implementation of these legislative changes will progress in stages, with the Smokefree Generation leading in 2023, followed by limiting retail availability in 2024 and finally reducing levels of nicotine in smoked tobacco products in 2025. Some of the detail (eg, to set a maximum number of retailers) will sit in regulations, which will be made in 2023. Transitional periods will be provided as part of the implementation process to give regulated parties time to adjust.
- 10 I will seek authorisation from Cabinet in early 2022 to instruct PCO in relation to additional matters such as offences and penalties, fees and levies, and transitional provisions.

## Background

- 11 Smoking causes between 4,500 – 5,000 deaths in Aotearoa each year. Over 2,000 of these are due to cancer, of which over 1,200 are lung cancer deaths.
- 12 In 2018, Cabinet agreed to develop the action plan to outline a pathway to New Zealand's goal of being smokefree by 2025. For the purposes of the action plan, being smokefree means that daily smoking prevalence is less than 5 percent for all population groups in New Zealand.
- 13 In April 2021, Cabinet agreed to the release of the discussion document *Proposals for a Smokefree Aotearoa 2025* [CAB-21-Min-0104], which sought public feedback on proposals for an action plan. The action plan has now been finalised following the public consultation, as well as further analysis of proposals and modelling.
- 14 The action plan seeks to build an environment that supports population change, strengthens smokefree norms and utilises local knowledge and leadership. Recent experience from the COVID-19 response has shown that community leadership is essential for successfully mobilising communities.
- 15 The action plan sets out how we will strengthen our public health response and provide increased support to priority populations (such as mental health service users, people in prison, and those living with disabilities) through the provision of targeted and intensive stop smoking programmes.
- 16 Alongside this, the emergence of vaping products as a less harmful alternative for people who smoke, and the recent regulation of these products, provides an opportunity to shift our current regulatory settings so that they reflect a more risk-proportionate framework. This will make smoked tobacco products much less accessible and desirable than vaping products. The action plan proposes legislative changes to achieve this.
- 17 Importantly, the action plan now reflects what we have heard from our communities. Over 5,200 people and organisations engaged with the submissions process, either through a written submission, or by attending hui or Pacific-focused community meetings organised by Hāpai te Hauora.<sup>1</sup> Many of those face-to-face meetings included community members who smoked or had been affected by smoking in their whānau.
- 18 There was strong support for the proposals except from those with a commercial interest in tobacco sales. Many submitters sought swift and stringent action and there was strong advocacy for enhanced community action, stop smoking services, education, and social media campaigns.

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<sup>1</sup> Hāpai te Hauora holds the national tobacco control advocacy service contract and is responsible for delivering to all communities but with a focus on the populations experiencing the greatest burden of harm.

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19 Retailers and retail representative organisations had mixed views. Some agreed with licencing, but most were opposed to reduction in the number of outlets due to the effect on businesses. For example, Foodstuffs supported low nicotine standards but was concerned about the effect of retail reduction on small business operators. s 9(2)(ba)(i)

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20 Both Māori and non-Māori submitters raised the need for strong Māori leadership, as well as the need for strong governance more broadly, at both local and national levels.

21 The action plan reinforces this Government's view that the onus of responsibility for reducing smoking rates should not sit with those who currently smoke. The action plan focuses less on influencing consumer behaviour and more on changing the smoking environment itself. I am proposing bold measures to achieve that.

## Analysis

### The action plan

22 The framework guiding the action plan has been updated to reflect the rich and insightful feedback received, as have the areas of focus set out below:

22.1 *Focus area 1:* ensure Māori leadership and decision-making at all levels

22.2 *Focus area 2:* increase health promotion and community mobilisation

22.3 *Focus area 3:* increase evidence-based stop smoking services

22.4 *Focus area 4:* reduce addictiveness and appeal of smoked tobacco products

22.5 *Focus area 5:* reduce availability of smoked tobacco products

22.6 *Focus area 6:* ensure manufacturers, importers and retailers meet their legal obligations.

23 Specific actions are set out within each focus area. The actions include a mix of initiatives that have already commenced (eg, establishing the Smokefree Aotearoa 2025 Taskforce), new proposals (eg, delivery of targeted stop smoking services for populations with high smoking rates), and legislative change.

24 All of the actions set out in the action plan are mutually reinforcing, and together are expected to deliver the substantial changes needed to achieve the Smokefree 2025 goal.

- [REDACTED]
- 25 The University of Melbourne undertook modelling to inform the proposed actions. This provides confidence that the bold actions proposed are required to meet the goal.
- 26 Modelling estimates that the proposals in the action plan are likely to meet the Smokefree goal in 2025 for Māori males and for non-Māori males and females, and come close to meeting the goal for Māori females (5.6 percent in 2025, and 3.3 percent in 2026). This compares to a business-as-usual approach where Māori reach 5 percent smoking prevalence in 2061.
- 27 Overall, it is estimated that there will be a gain of 558,000 Health Adjusted Life Years (HALY's) leading to \$5.25 billion in savings from future health expenditure and an additional \$5.88 billion<sup>2</sup> in increased productivity (income to New Zealanders) from these proposals.
- 28 Implementing the action plan will help us achieve more equitable outcomes. This is particularly critical for Māori who have higher smoking rates than the general population. Consistent with the disparities in smoking prevalence, Māori are disproportionately burdened by smoking-related morbidity and mortality. A significant proportion of the life expectancy gap for Māori men and Māori women compared with non-Māori is a result of smoking attributable deaths.<sup>3</sup> Achieving the smokefree goal is essential to closing the life expectancy gap between Māori and non-Māori.
- 29 The Ministry of Health has established the Smokefree Aotearoa 2025 Taskforce, comprising Māori leaders, to provide assurance on progress and delivery of the actions to achieve Smokefree 2025 for Māori. The taskforce will oversee the timely implementation of the action plan and critically, will hold the Ministry of Health, the government and the tobacco control sector accountable to Māori, by ensuring equitable performance reporting and monitoring and evaluation of this action plan. The Taskforce will meet at least quarterly up until the end of 2025 and will meet with me from time to time.

### **Proposed legislative change**

- 30 To give us the best possible chance to achieve our Smokefree 2025 goal, the action plan sets out the following measures that require legislative change.

#### *Reducing the appeal and addictiveness of smoked tobacco products*

- 31 Under section 55 of the Smokefree Environments and Regulated Products Act 1990 (the Act), it is currently an offence for a manufacturer or an importer to offer for sale or export any smoked tobacco product that contains "harmful

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<sup>2</sup> HALY's, income, and expenditure are modelled by timeline into the future, and discounted 3 percent. Income gain is calculated for ages 25-64, for those New Zealanders who no longer die before the age of 64 due to smoking related causes.

<sup>3</sup> *Ethnic inequities in life expectancy attributable to smoking*, NZMJ, Vol 133 No 1507: 7 February 2020; this paper reports that for all deaths registered in 2013-15, when compared with non-Māori/non-Pacific there was a 7.4 year life-expectancy gap for Māori-men and 7.0 year life-expectancy gap for Māori women and for both Māori men and Māori women over 2 years of this gap was attributable to the higher mortality rates from smoking attributable deaths.

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constituents" exceeding any limits prescribed by regulations, as determined in accordance with any tests so prescribed.

- 32 Constituents of smoked tobacco products that are not in themselves "harmful" can contribute to the appeal and addictiveness of the tobacco product.
- 33 Nicotine in smoked tobacco products causes harm by maintaining addiction to a product that kills as many as two thirds of its consumers when used as intended. Reducing the levels of nicotine in smoked tobacco products contributes to reduction in the appeal and addictiveness of those products and ultimately, a reduction in their use, as demonstrated by the University of Melbourne modelling.
- 34 Examples of other constituents of smoked tobacco products that contribute to the appeal and addictiveness of the products include additives and ingredients such as flavours or nicotine analogues, as well as filters, filter flavour (crush) balls and filter papers. A broad approach to the regulation of the other constituents of smoked tobacco products is required to prevent adaptations to the design that seek to maintain or increase their appeal or addictiveness, given the proposed measures to reduce nicotine levels.
- 35 I propose that the legislation requires that only smoked tobacco products that meet requirements for constituents shall be able to be manufactured, imported, or offered for sale or supply, and that it becomes an offence for any smoked tobacco product to contain constituents exceeding any limits prescribed by, or any features or constituents prohibited by the Act or regulations.
- 36 The proposed offence would apply to all smoked tobacco products, including cigarettes, roll your own or loose tobacco, pipe tobacco, cigarillos, small cigars, cigars, and any other niche product. If appropriate and necessary, limited exemptions may be developed for certain smoked tobacco products.
- 37 I propose that the legislation would allow for the setting of those limits and prohibitions, including significant reductions of nicotine levels in regulations. The limits and prohibitions could be applied to any constituent of the tobacco product that improves its appeal or addictiveness, for the purpose of protecting public health.
- 38 Setting limits and prohibitions in regulations is consistent with the approach taken by the United States. Their Tobacco Control Act delegates to the Food and Drug Administration (FDA) powers to set product standards and prohibit or restrict levels of compounds or additives including for nicotine and other ingredients. The FDA has consulted on proposals to regulate nicotine levels, but these have not yet been enacted.
- 39 The reduced level of nicotine will be set at a level to prevent compensatory smoking. Clinical trials indicate that if the nicotine content of the tobacco is reduced to a sufficiently low amount, the product will not facilitate compensatory smoking or lead to nicotine dependence in people who do not already smoke and then experiment with smoking.

40 I propose that the legislation would provide for an assurance process for testing the constituents of smoked tobacco products. Section 56 of the Smokefree Environments and Regulated Products Act 1990 provides for annual testing for constituents of prescribed regulated products, and section 27 enables the Director-General of Health to require a manufacturer or importer to conduct additional tests of smoked tobacco products. Those sections do not provide sufficient assurance given the proposed changes.

41 I propose that the legislation would set out a pre-market application process requiring manufacturers or importers to seek approval for smoked tobacco products, prior to sale or import. Testing via an approved laboratory would be required, both prior to sale or import, and subsequently on a regular basis. The proposed Bill would provide for an ability to require samples for testing and withdrawal from sale in the case of compliance issues.

42 I propose that the legislation would allow for the setting of those application and testing requirements in regulations.

*Amending the age limits for sale of smoked tobacco products*

43 Under sections 40 and 41 of the Smokefree Environments and Regulated Products Act 1990, it is currently an offence to sell, deliver or supply regulated products to people younger than 18 years old.

44 I am seeking approval of a Smokefree Generation policy, which sets a cut-off date of birth, whereby it will be unlawful to sell smoked tobacco products to people born after this date. For example, if the legislation commenced on 1 January 2023, people younger than 18 years old at that time, or those born after 31 December 2004, would never be able to lawfully be sold smoked tobacco products.

45 Raising the age limit for sale of tobacco products reduces their retail availability and reflects the reality that there is no safe age to begin smoking. This would in turn reduce the use of tobacco products and may have a denormalising effect.

46 As part of a package of regulatory changes, a Smokefree Generation policy will make sure the smokefree goal is maintained long-term. New Zealand modelling suggests that, if well enforced, a Smokefree Generation policy would halve smoking rates within 10 to 15 years of implementation. The health gains per person would be five times larger for Māori than for non-Māori.

47 Section 40(3) and section 41(3) of the Smokefree Environments and Regulated Products Act 1990 currently provide defences if the person charged proves that the contravention occurred without the person's knowledge and the person took reasonable precautions and exercised due diligence to prevent the contravention. To enforce the Smokefree Generation policy effectively, more limited defences will be required.

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- 48 I propose that the legislation would make it an offence to sell or supply smoked tobacco products to people born after a certain date.
- 49 I propose that the legislation would limit the defences in relation to selling or supplying smoked tobacco products to people born after this date.

*Significantly reduce retail availability*

- 50 Currently, there are no restrictions on where tobacco can be sold in New Zealand, with the majority sold in dairies, supermarkets and service stations. Tobacco retail outlets are highly concentrated in disadvantaged areas. There are approximately 5,000-8,000 current retailers.
- 51 Higher retailer density has been associated in New Zealand and many other countries with increased youth smoking rates and greater risk of relapse for people attempting to quit. Retail density also contributes to the consumption of smoked tobacco products and the maintenance of smoking behaviour.
- 52 To reduce the retail availability of tobacco, and ultimately reduce the use of smoked tobacco products, significant reform of the retail model for smoked tobacco products is needed. I propose to introduce a regulated market model where only a set number of retailers approved by the Director-General of Health will be permitted to sell smoked tobacco products. Regulating the retail market will enable a significant reduction in retail availability and access to smoked tobacco and will support compliance and monitoring activities.
- 53 The regulated market model will prohibit all sales of smoked tobacco products, including online sales. A restricted number of retailers will be approved to be excluded from the prohibition. The approval process will allow for a specific number of retailers selling smoked tobacco products in each area of New Zealand and, if circumstances warrant, from online outlets.
- 54 Detailed criteria for approval to participate in the process for selection to be an approved retailer will be set out in regulations or notified by the Director-General of Health
- 55 The criteria for approval would be guided by requirements in the Act, such as the number and location of outlets, the suitability of an outlet, and whether the retailers are fit and proper persons. In developing the criteria, consideration will be given to the best way to engage with Māori and other communities to ensure the workability of the process at both a national and local level.
- 56 Regulatory powers are needed to:
- significantly restrict where and how tobacco can be sold, including requirements such as safe and evenly distributed supply;
  - enable the Director-General to approve selected retailers to be excluded from the prohibition on retail sales;

- enable detailed criteria to be set out in regulations or notified by the Director-General
- enable the Director-General to run a process for issuing approvals; and
- require retailers to comply with the conditions of their approval, which could include providing stop smoking advice and/or referring to stop smoking services as needed.

57 The process will be fair and transparent to ensure that all retailers that meet the criteria have an equal opportunity. It is likely that this will include a competitive element. Competition law experts have advised that this is the best approach to ensure fairness and equity. This will address circumstances where more retailers meet the criteria than is required to achieve the required reduction in outlets.

58 A reduction of approximately 95 percent of existing retailers has been used in modelling. The final number of retailers approved will need to account for New Zealand's geography, for instance taking into account the differences between urban and rural areas.

59 Reducing the number of retailers will mean that those approved will benefit from being the exclusive seller of tobacco in an area. This benefit will be offset by approved retailers needing to meet criteria and conditions, as well as any associated cost and payments. There is a risk that the successful retailers could increase the price of smoked tobacco products as a consequence of there being less competition. The Ministry will monitor market changes closely.

60 The Ministry of Health, as the regulator, would administer any new regulatory functions that the proposed legislative changes create.

61 A range of other options to reduce retail availability were considered but not progressed. These included licensing, specific store types, government-run stores and models where retailers did not profit directly from sales of smoked tobacco. These were dismissed, as compared to the preferred option they were considered unlikely to achieve a significant reduction in retail numbers, arbitrary, too costly and complex, or to be a disproportionate interference in the free market.

#### *Implications of retail reduction*

62 I acknowledge that many businesses will be disrupted by these changes to the tobacco retail market, and that most will be prohibited from selling smoked tobacco products.

63 Estimates of the impact on these retailers vary. Margins on smoked tobacco sales are thought to be small (between 5 and 9 percent), and lower than other relevant categories such as vaping products, confectionary and take away coffee. Through consultation, many convenience stores reported that large percentages of their turnover are smoked tobacco (for example 50 percent).

However, independent research suggests that around 14 percent of sales at convenience stores include smoked tobacco.

- 64 Overall volume of smoked tobacco sold in New Zealand is slowly declining, and will decline sharply following introduction of low-nicotine tobacco requirements.
- 65 If directed, officials could undertake further targeted consultation to quantify impacts on small businesses and develop options such as business support and advice to transition away from selling this harmful product.
- 66 Reducing the number of retailers will mean reducing access to smoked tobacco. This is one of the objectives of the policy. However, I acknowledge that its impact on existing smokers may not be even and could be perceived as unfair. Those in urban locations will likely be closer than those in rural areas to an approved retail store.<sup>4</sup> A number of options will be considered to address this inequity, such as suitable density measures and exceptions for rural communities.
- 67 There is also a risk that the measures to reduce the retail availability of smoked tobacco products, particularly when combined with the measures to reduce the appeal and addictiveness of smoked tobacco products, will incentivise the illicit market to grow. An effective enforcement regime combined with increased evidence-based stop smoking services and health promotion and community activity to support the smokefree goal are essential to mitigate against this risk.

#### *New requirement for general retailers selling vaping products*

- 68 Although the focus of the regulatory changes is on smoked tobacco products, many submitters to the consultation also raised concerns about vaping. Additionally, I note that those retailers transitioning away from selling smoked tobacco products may already sell, or choose to begin selling, vaping products.
- 69 In 2020, vaping products were regulated so that many of the existing restrictions for smoked tobacco products now also apply to vaping products, but with some exemptions. The Ministry of Health is monitoring the impact of those changes.
- 70 I seek agreement to introduce a requirement that general retailers must advise the Director-General of Health of their intention to sell vaping products. This is to provide information (i.e. location and volume of vaping product sales) for monitoring and compliance purposes. It will also provide a complete view of the retail environment for smoked tobacco and vaping products.

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<sup>4</sup> This is likely to reflect the existing environment for those who live in rural communities, who are required to travel further for many consumer goods.



**Next steps**

- 71 I seek agreement to publicly release the action plan and prepare and issue drafting instructions to amend the Smokefree Environments and Regulated Products Act 1990.
- 72 I will seek further approval from Cabinet in early 2022 to instruct the PCO in relation to additional matters such as compliance, enforcement, fees and levies, and transitional provisions.

Milestone/Activity	Indicative Timeframe
Release action plan	December 2021
Issue drafting instructions	Tranche one: December 2021 Tranche two: February 2022
Introduce Amendment Bill	June 2022
Legislation in place	December 2022
Implement Smokefree Generation	2023
Implement retail reduction	2024
Implement low nicotine	2025

- 73 The Ministry of Health has already started to implement aspects of the action plan, in advance of its release (eg, establishing the Smokefree Aotearoa 2025 Taskforce). I will report back to Cabinet towards the end of 2022 on the implementation of the action plan.

**Financial Implications**

- 74 Government provided \$36.625 million over four years in Budget 2021 to scale up stop smoking services and health promotion programmes. This funding will be used to implement actions under *Focus area 2: Increase health promotion and community mobilisation* and *Focus area 3: Increase stop smoking services*.

75 s 9(2)(f)(iv) [Redacted text block]

76 s 9(2)(f)(iv) [Redacted text block]



## Legislative Implications

- 77 Proposals in this paper require legislative change. This Cabinet paper proposes to amend the Smokefree Environments and Regulated Products Act 1990 and seeks agreement to the policy decisions to do so.
- 78 Regulations will set out the required technical details to bring these legislative proposals into full effect. A technical advisory group will be established to inform the regulatory requirements for product design to ensure their reduced appeal and addictiveness.

## Impact Analysis

### Regulatory Impact Statement

- 79 The Ministry Quality Assurance panel has reviewed the Impact Statement titled "Smokefree Aotearoa Action Plan" (attached), produced by the Ministry of Health and dated October 2021.
- 80 The panel considers that the Impact Statement **meets** the quality assurance criteria.
- 81 The Impact Statement is clear, complete, considered, consulted and concise. The analysis is balanced in its presentation of the information, reflects consultation on the proposals and the major impacts are identified and assessed.

### Population Implications

- 82 Māori, Pacific peoples and those living in New Zealand's most deprived areas have higher smoking rates than other groups of New Zealanders. Māori women smoke more than Māori men.
- 83 Current modelling indicates that under a 'business as usual' approach, smoking rates are projected to only reduce to 20 percent for Māori by 2025 (compared to 8.1 percent for non-Māori). Pacific peoples are projected to reach 11.7 percent daily smoking by 2025. Māori are not projected to reach five percent until 2061.
- 84 The impact of these inequities is significant. For example, lung cancer is the leading cause of death for Māori women and is a leading cause of death for Māori men. The death rate from lung cancer for Māori women is four times higher than that of non-Māori women of the same age.
- 85 People with disabilities have higher smoking rates than the general population, as do those with mental health needs and people who are in prison.
- 86 These groups, therefore, will be the most impacted by these proposals. The proposals in this paper are modelled to achieve 5.6 percent daily smoking for Māori women by 2025, and lower rates for all other populations.



## Human Rights

- 87 The Government has obligations under the United Nations Convention on the Rights of the Child to protect the rights of children, including their right to good health.
- 88 Provisions to increase the age of legal sale of smoked tobacco will have a potential impact on freedom from discrimination based on age under section 19 of the Bill of Rights Act and section 21 of the Human Rights Act. I consider that this would be a justified limitation given the potential public health harm, particularly to children and young people, being addressed.

## Consultation

- 89 The following agencies have been consulted: New Zealand Customs Service, the Ministry of Justice, New Zealand Police, the Ministry for Social Development, the Ministry of Business, Innovation and Employment (Commerce and Consumer Affairs), Te Puni Kōkiri, the Ministry for Pacific Peoples, Oranga Tamariki – Ministry for Children, the Ministry of Foreign Affairs and Trade, the Parliamentary Council Office, the Ministry for the Environment, the Ministry of Education, the Department of Corrections, The Treasury, and the Department of the Prime Minister and Cabinet. Te Arawhiti and the Crown Law Office were informed.
- 90 Hāpai te Hauora was also consulted.

91 s 9(2)(f)(iv) 

92 s 9(2)(f)(iv) 



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s 9(2)(f)(iv)

94 The Ministry of Health will continue to work with cross-government agencies to ensure implementation risks are minimised. Additional recommendations relating to compliance and enforcement will be provided in a future Cabinet paper.

### Communications

95 I will publicly announce decisions on amending the Smokefree Environments and Regulated Products Act 1990, following Cabinet's approval.

96 I intend to launch the action plan before the end of 2021.

### Proactive Release

97 I intend to proactively release this paper when the action plan is publicly released.

### Recommendations

The Associate Minister of Health recommends that the Committee:

- 1 **note** that delivering the *Smokefree Aotearoa 2025 Action Plan* is a Government priority
- 2 **note** that Cabinet agreed to release the discussion document *Proposals for a Smokefree Aotearoa 2025 Action Plan* [CAB-21-MIN-0104]
- 3 **note** that the Ministry of Health has publicly consulted on the discussion document and feedback has informed the updated focus areas and priority actions outlined in the *Smokefree Aotearoa 2025 Action Plan*
- 4 **note** that to meet the obligations of Te Tiriti o Waitangi / The Treaty of Waitangi the *Smokefree Aotearoa 2025 Action Plan* will ensure Māori leadership and decision-making at all levels
- 5 **approve** the *Smokefree Aotearoa 2025 Action Plan*
- 6 **agree** to publicly release the *Smokefree Aotearoa 2025 Action Plan*
- 7 **agree** to amend the Smokefree Environments and Regulated Products Act 1990, and the Customs and Excise Act 2018 to:

- [REDACTED]
- 7.1 **provide** for a regulatory regime to oversee and monitor the import, manufacture, sale and supply of smoked tobacco products in New Zealand

*Reduce the appeal and addictiveness of smoked tobacco products*

- 7.2 **amend** the existing regulation of constituents of smoked tobacco products to require that only smoked tobacco products that meet requirements for constituents shall be able to be manufactured, imported, supplied or offered for sale in New Zealand
- 7.3 **provide** that it becomes an offence for any smoked tobacco product to contain constituents exceeding any limits prescribed by, or any features or constituents prohibited by, the Act or regulations
- 7.4 **provide** a definition of the smoked tobacco products to which the offence applies
- 7.5 **provide** regulation-making powers to allow for the setting of limits and prohibitions in relation to the constituents of smoked tobacco products, including significant reductions of nicotine levels
- 7.6 **provide** for an application process requiring manufacturers or importers to seek approval for smoked tobacco products, prior to sale or import
- 7.7 **require** manufacturers or importers of smoked tobacco products to regularly test the constituents of their smoked tobacco products
- 7.8 **provide** for an assurance process to independently test the constituents of smoked tobacco products

*Restrict access to smoked tobacco products*

- 7.9 **amend** the age limit by setting a birthdate for sale, delivery, or supply of smoked tobacco products to effect a Smokefree Generation
- 7.10 **provide** limited defences to the offence of sale, delivery, or supply of smoked tobacco products to people under the age limit

*Restrict the availability of smoked tobacco products*

- 7.11 **provide** for a general prohibition on the sale or supply of smoked tobacco products without approval
- 7.12 **provide** for the Director-General of Health to approve a limited number of retailers (including online retailers if appropriate) to sell or supply smoked tobacco products for a specified period, for the purpose of significantly limiting the number of retailers and further reducing the number of approved retailers over time

- [REDACTED]
- 7.13 **provide** for the detailed criteria for obtaining approval to be set out in regulations or notified by the Director-General of Health, subject to guiding requirements in the Act (which may include the number and location of outlets, the suitability of an outlet, and whether the retailers are fit and proper persons)
  - 7.14 **provide** for the process for obtaining approval to be set out in regulations
  - 7.15 **provide** for the Director-General of Health to place conditions on an approval to sell or supply smoked tobacco products
  - 7.16 **provide** that the Director-General can suspend or revoke an approval in appropriate cases, such as if the retailer does not comply with a condition of their approval
  - 7.17 **provide** that it becomes an offence to sell or supply smoked tobacco products at retail without the approval of the Director-General of Health
  - 7.18 **provide** that it becomes an offence for approved retailers to sell, supply, or deliver smoked tobacco products in a way that does not comply with a condition of their approval

*Require notification of sales for general retailers of vaping products*

- 7.19 **provide** that general retailers of vaping products must advise the Director-General that they are selling vaping products
- 8 **agree** to any consequential amendments needed to give effect to the legislative proposals in recommendation 7
- 9 **agree** to update the purposes of the Act to align with the legislative change proposed and to reflect the *Smokefree Aotearoa 2025 Action Plan*
- 10 **note** that the Ministry of Health will work with Te Arawhiti and the Crown Law Office to determine how best to reflect and recognise Te Tiriti of Waitangi / The Treaty of Waitangi in the Act
- 11 **note** that the Act has been amended many times since 1990, most recently to incorporate the regulation of vaping products, and is hard to navigate and understand in places
- 12 **agree** to amendments that improve the functioning of the Act or resolve inconsistencies that may arise between different classes of regulated product
- 13 **agree** to additional regulation-making powers, as necessary, to implement the proposals in this paper
- 14 **agree** that the Associate Minister of Health issue drafting instructions to the Parliamentary Counsel Office to give effect to recommendations 7 through 13 above

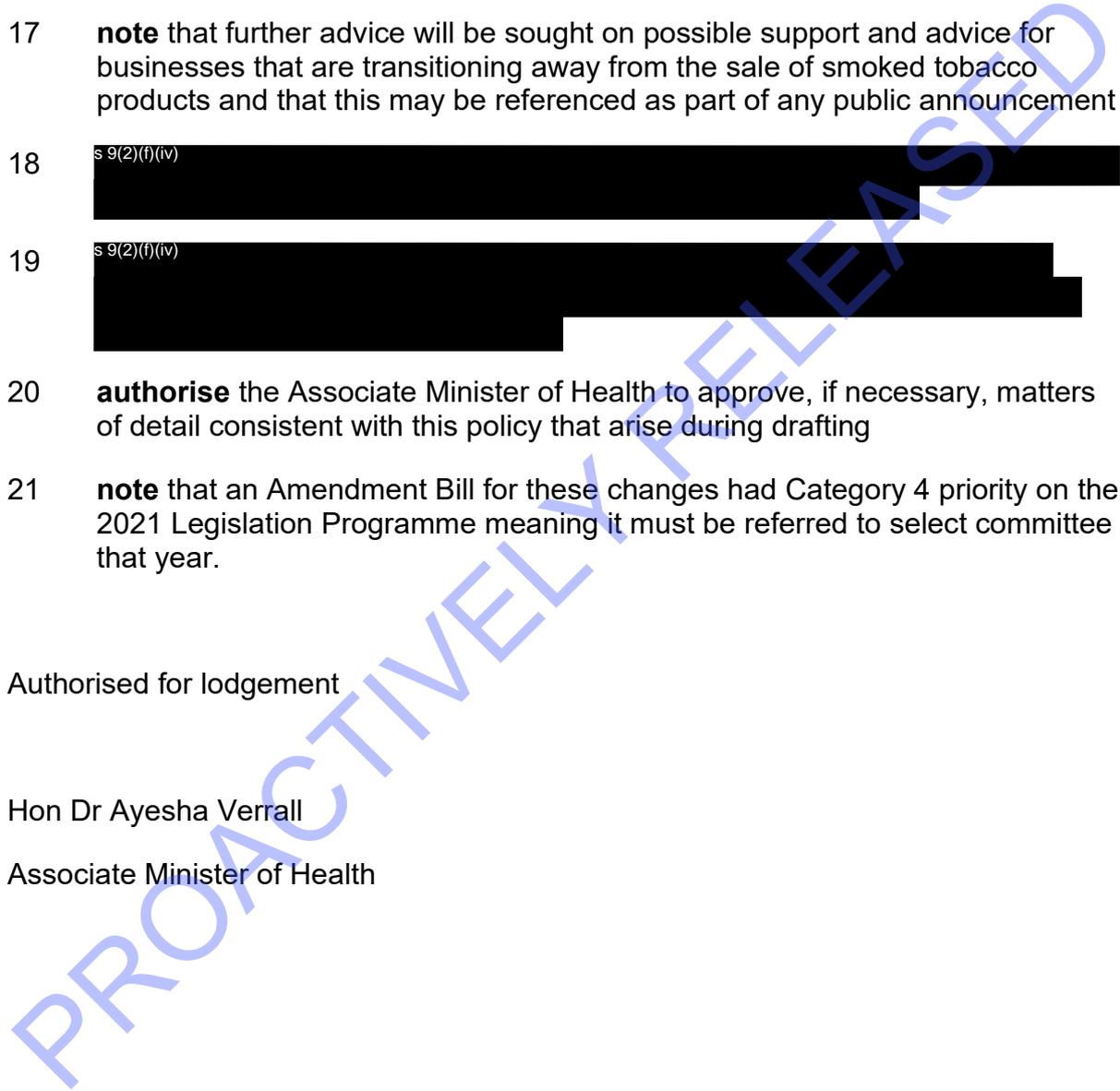


- 15 **agree** that further work be undertaken to consider the role of personal imports, manufacture and homegrown tobacco, possible exemptions to low nicotine levels for some smoked tobacco products, as well as the design of an up-to-date offences and penalties regime, fees and levies, and transitional provisions
- 16 **agree** that the regulatory regime established by this policy be cost-recovered from industry through fees and levies, consistent with Treasury's Guidelines for Setting Charges in the Public Sector
- 17 **note** that further advice will be sought on possible support and advice for businesses that are transitioning away from the sale of smoked tobacco products and that this may be referenced as part of any public announcement
- 18 s 9(2)(f)(iv) 
- 19 s 9(2)(f)(iv) 
- 20 **authorise** the Associate Minister of Health to approve, if necessary, matters of detail consistent with this policy that arise during drafting
- 21 **note** that an Amendment Bill for these changes had Category 4 priority on the 2021 Legislation Programme meaning it must be referred to select committee that year.

Authorised for lodgement

Hon Dr Ayesha Verrall

Associate Minister of Health





**Appendix one: *Smokefree Aotearoa 2025 Action Plan***

PROACTIVELY RELEASED