

Briefing

Smokefree 2025 Work Programme

Date due to MO:	27 March 2024	Action required by:	3 April 2024
Security level:	IN CONFIDENCE	Health Report number:	H2024038096
To:	Hon Casey Costello, Associate Minister of Health		
Copy to:	Hon Dr Shane Reti, Minister of Health		
Consulted:	Health New Zealand: <input type="checkbox"/> Māori Health Authority: <input type="checkbox"/>		

Contact for telephone discussion

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 Withdrawn | |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

Security level: IN CONFIDENCE **Date:** 27 March 2023

To: Hon Casey Costello, Associate Minister of Health

Purpose of report

1. To seek your views on the attached proposed work programme to give effect to Cabinet's 18 March 2024 decisions on the policy direction for Smokefree 2025.

Summary

2. We propose the following inter-related workstreams:
 - a. Budget 2024: tax smoked tobacco products only (by 30 May 2024)
 - b. plan for practical support for smokers to quit, and to prevent and reduce youth vaping (by 30 May 2024)
 - c. review (and amend as required) Smokefree Environments and Regulated Products Regulations 2021 (vape product requirements) (by 1 October 2024)
 - d. report back to Cabinet with detailed legislative proposals for vape retailing, the sale of reduced harm smokeless tobacco and oral nicotine products, and licensing requirements (by 12 December 2024)
 - e. amend the Smokefree Environments and Regulated Products Act 1990 (the Smokefree Act) by December 2025).
3. We note your preference to progress a legislative amendment this year, to implement the ban on disposable vapes and the increase in maximum penalties for sales to minors. This approach would require two amendment bills and would likely extend the time required to progress the other suite of amendments.
4. We have scoped two options for consideration, of either one or two amendment bills, to progress the Government's policy direction for Smokefree 2025 for discussion.

Recommendations

We recommend you:

- a) **Note** the attached proposed work programme, including two distinct options to progress, for further discussion with officials
- b) **Indicate** your preference to progress with:

Option 1: two separate amendments bills, to bring into force new provisions that increase penalties and ban disposable vapes by the end of 2024 **Yes/No**

OR

Option 2: one comprehensive amendment bill to progress *all* recent Cabinet decisions **Yes/No**



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

Date: 25 March 2024

Hon Casey Costello
Associate Minister of Health
Date:

Smokefree 2025 Work Programme

Background / context

1. At its meeting on 18 March 2024, Cabinet agreed on the policy direction for Smokefree 2025 [CAB-24-MIN-0084 refers]. This included:
 - a. considering, through the Budget 2024 process, removing excise duties on heated tobacco products (May 2024)
 - b. deferring requirements for removable batteries and child-safety mechanisms for all reusable vaping products until 1 October 2024 (Smokefree Environments and Regulated Products Amendment Regulations 2024 to enable this came into force on 20 March 2024)
 - c. banning disposable vapes by amending the Smokefree Act
 - d. increasing penalties for those selling regulated products to minors by amending the Smokefree Act
 - e. further work, with a report back to Cabinet at the end of 2024 outlining recommendations for:
 - i. restricting display of vapes, including in the storefronts of specialist vape stores (SVRs)
 - ii. a physical staffing requirement for SVRs and/or a minimum floorspace requirement
 - iii. allowing retailers to encourage customers buying cigarettes to try vaping
 - iv. including registered ECE centres in proximity restrictions for SVRs
 - v. allowing the sale of reduced-harm smokeless tobacco and oral nicotine products (eg, Swedish snus and nicotine pouches), subject to products meeting safety requirements and regulatory controls to prevent youth access
 - vi. considering amending the licensing regime for vapes (and other nicotine products)
 - vii. the vape compliance system, following a review.
2. **s 9(2)(f)(iv)**
[Redacted]
3. **s 9(2)(f)(iv)**
[Redacted]
4. Finally, you have requested a plan by May 2024 to improve practical support for smokers to quit and to prevent youth vaping.
5. Attached is a proposed work programme to give effect to these decisions (refer to attached A3 - **High-level smokefree work plan**). These are ordered by final milestone

date. We have provided two options for your consideration with regards to progressing policies requiring amendments to the Smokefree Act.

Comment

May 2024 milestones: considering changes to excise duties and practical support plan

6. We are working with Treasury, as part of the Budget 2024 process, to progress Cabinet's agreement to consider, as part of Budget 2024, removing excise duties on heated tobacco products.
7. We will also support Health New Zealand to prepare the plan to improve practical support for smokers to quit and to prevent / reduce youth vaping.

October 2024 milestone: review Smokefree Regulations (vape product requirements)

8. We propose the Smokefree Regulations be reviewed, and amended if necessary, to take effect by 1 October 2024 when the deferred requirements for removeable batteries and child-proof mechanisms for reusable vapes come into effect. This work could include consultation with industry bodies, noting we have considerable feedback from businesses from the consultation undertaken before these regulations were made under the previous Government.
9. The timeframes to make amendments to the regulations are tight. Three months is usually required from policy decision to regulations coming into force (without waiver of the 28-day rule), with more time for lengthy and/or complex drafting.

December 2024 milestone: report back to Cabinet

10. Cabinet has invited you to bring together the advice on vape retailing proposals, the sale of reduced harm smokeless tobacco and oral nicotine products, and on amending licensing requirements in one consolidated report back to Cabinet at the end of 2024. s 9(2)(f)(iv)
s 9(2)(f)(iv)
11. Getting policy decisions to enable drafting instructions to be issued in December 2024 is ambitious, given the scope of matters to cover and the need to undertake targeted consultation on some, if not all, the proposals. Our ability to achieve this will depend on the overall scope of the work and, in particular, on whether you wish to additionally progress an amendment bill this year (see below).

Amending the Smokefree Act

Option 1: Progress through two amendment bills

12. We note your preference to progress a bill to increase penalties and ban disposable vapes this year. This would require an additional amendment bill to cover new policy proposals (on vape retailing proposals, the sale of reduced harm smokeless tobacco and oral nicotine products, and on amending licensing requirements). Unless there are exceptional reasons, multiple amendment bills within a twelve-month period are not

recommended¹. Given the additional demands this approach would place on drafting resources, you may need explicit approval from the Attorney-General.

13. The first amendment bill would progress the policies to increase penalties and ban disposable vapes only. Even with this relatively discrete package, the timeframes will be tight. We have indicated this amendment Bill for introduction in 2024 with a view to the bill passing by the end of 2024 (refer to attached A3 – option 1).
14. A trade-off is also likely to be necessary so that the report back to Cabinet by the end of 2024 only seeks agreement to consult publicly on a range of proposals, rather than to seek substantive agreement to enable drafting instructions to be issued. This would mean consultation in early 2025, with Cabinet decisions and agreement to issue drafting instructions sought in mid-2025 for the second amendment bill. This could be passed by mid-2026 (refer to attached A3 – option 1).

Option 2: Progress through one amendment bill

15. An alternative approach is to implement all decisions through one comprehensive amendment bill. This would include increasing penalties for sales to minors and banning disposable vapes, along with any new proposals agreed to in late November 2024, so that drafting instructions can be issued in December 2024.
16. We have indicated this amendment bill for introduction in May 2025, with a view to the bill passing by the end of 2025 (refer to attached A3 – option 1). This would be the most efficient way to progress the Government’s policies as it minimises duplication (eg, one parliamentary process) and also allows the proposals to be considered as a whole package. It would however delay the introduction of the proposals to increase penalties and ban disposable vapes.

Consultation and engagement

17. Consultation and/or engagement is proposed as follows, and is reflected in the attached high-level work programme:
 - a. *amending vaping product requirements* (ie, related to removeable batteries and child-proof mechanisms) – consultation with industry representative bodies, noting that we have a considerable amount of feedback from businesses from previous consultation
 - b. *vape retailing proposals* – the Cabinet minute notes that officials will undertake targeted consultation given the impact on business. If you agree to progress this as per option 2 (ie, as part of the December 2024 Cabinet report back and subsequent legislative amendment, then we would propose broader consultation as part of the proposal in c below)
 - c. *allowing the sale of reduced-harm smokeless tobacco and oral nicotine products, and possible licensing arrangements* – broad public consultation, including with, but not restricted to businesses, is proposed as per the attached high-level timeline

¹ <https://www.dPMC.govt.nz/publications/co-23-13-2024-legislation-programme-requirements-submitting-bids>

- d. *inclusion of ECEs in proximity requirements for SVRs* – we will engage with colleagues in the Ministry of Education in the first instance, and prior to any broader consultation.

Next steps

18. We welcome discussion of the attached high-level plan with you. Once the work plan is agreed, we will keep you informed of progress via the weekly report.

ENDS.

PROACTIVELY RELEASED

Minister's Notes

PROACTIVELY RELEASED

High-level smokefree work plan

Option 1: Progress changes through two amendment bills (potential consultation with public and/or targeted is highlighted in yellow)

2024:

Milestone	Due	Scope	Mar 25	Apr 24	May 24	Jun 24	Jul 24	Aug 24	Sep 24	Oct 24	Nov 24	Dec 24
Budget 24 (tax smoked tobacco products only)	30 May 24	- excise off HTPs	- contribute to Treasury process - Budget day 30 May									
Plan: Practical support for smokers / youth vaping	May 24	- education and communication - insights and research - practical support - stop smoking services - workforce training and education - community led innovations		preparation of plan	plan submitted to Minister							
Review Smokefree Regulations (vape product requirements)	1 Oct 24	- batteries - child-proof mechanism		policy work (including targeted engagement with industry)	briefing to Minister	SOU/CAB	Drafting (subject to Cab decisions)	LEG/CAB	28-day period	regs begin to come into force from 1 Oct		
Amend Smokefree Act (no 1)	Dec 2024	- increase in penalties to minors and - ban on disposables		policy work (work closely with MFAT); issue drafting instructions		drafting	LEG/CAB	s 9(2)(f)(iv)				s 9(2)(f)(iv)
Report back to Cabinet	12 Dec 24	Matters requiring amendment to Act: - display restrictions, including storefronts of SVRs - physical staffing requirement for SVRs - retailers encouraging customers buying cigarettes to try vaping - allowing sale of reduced-harm smokeless tobacco and oral nicotine products - vape licensing system - s 9(2)(f)(iv) Matters requiring amendment to regulations: - ECE incl. in proximity - s 9(2)(f)(iv) Other matters / matters TBC: - review vape compliance system	CAB 18 Mar	policy work (slower timing due to resource progressing first amendment bill)				briefing to Minister SOU/CAB agreement to consult		general consultation (includes Māori and industry)		

s 9(2)(f)(iv)

Option 2: Progress changes through one amendment bill (potential consultation with public and/or targeted is highlighted in yellow)

2024:

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2025/26:

	Jan 25	Feb 25	Mar 25	Apr 25	May 25	Jun 25	Jul 25	Aug 25	Sep 25	Oct 25	Nov 25	Dec 25	Jan 26
Amend Smokefree Act (scope includes increase in penalties to minors and ban on disposables unless progressed in 2024; remainder subject to Cabinet decisions in November 2024)	drafting				LEG/CAB	s 9(2)(f)(iv)						s 9(2)(f)(iv)	
Amend Smokefree regulations (if necessary to implement Amendment Act and to progress any additional matters subject to Cabinet decisions in November 2024 requiring amendment to regulations)	Timing TBC. Scope to include ECE incl. in proximity, s 9(2)(f)(iv); product safety requirements for any newly legalised products (eg, snus, nicotine pouches) and HTPs (for which there are no requirements) s 9(2)(f)(iv); possible changes following review of vape compliance system; possible licensing scheme details												