

Briefing

Update: Smokefree 2025 Work Programme

Date due to MO:	5 April 2024	Action required by:	9 April 2024
Security level:	IN CONFIDENCE	Health Report number:	H2024038848
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 Withdrawn | |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:

Update: Smokefree 2025 Work Programme

Security level: IN CONFIDENCE **Date:** 4 April 2024

To: Hon Casey Costello, Associate Minister of Health

Purpose of report

1. To provide you with:
 - a. an updated proposed work programme, reflecting your feedback, to give effect to Cabinet’s 18 March 2024 decisions on the policy direction for Smokefree 2025
 - b. high-level key messages regarding the proposed approach.

Summary: Overview of proposed updated work programme

2. On 27 March 2024, we provided you with 2 options of either 1 or 2 amendment bills, to progress the Government’s policy direction for Smokefree 2025.
3. On 28 March 2024, you indicated your preference to proceed with 2 separate amendments bills, to ensure that new provisions that increase penalties and ban disposable vapes are in force by the end of 2024. You also asked whether any additional vaping policy proposals could be covered in the first amendment bill and/or regulations.
4. We understand your request is underpinned by the key policy objective of wanting to move quickly on any measures that will have maximum impact on lowering youth vaping rates.
5. As discussed, there is a trade-off between the amount of resource required to progress legislation, and the resources required to progress other policy proposals. The updated work programme attempts to strike a workable balance that delivers on coalition commitments, while also providing the necessary time and resource for related policy work and consultation.
6. Regulating vaping products is an area where legal challenge, both domestic and international, is likely.¹ The processes we follow are an important aspect of mitigating potential legal risks.
7. We consider bringing forward the policy to restrict the displays and storefronts of specialist vape stores to reduce appeal to under-18s could be achieved within the current indicative timeframes for the first amendment bill (ie, bill to pass this year).
8. We also propose including early childhood education centres (ECEs) in proximity restrictions for new Specialist Vape Retailers (SVRs) in the first tranche of work. Attached at **Appendix 1** is an updated proposed work programme for your consideration.

¹ s 9(2)(h)

Recommendations

We recommend you:

- a) **Note** that the updated proposed work programme addresses your request to proceed with 2 amendment bills, with a view to the commitments to ban disposable vapes and increase penalties for sales to minors being in place by December 2024 **Noted**
- b) **Note** that the updated proposed work programme brings forward 2 additional vaping policy proposals into the first amendment bill and/or into the regulations review to move as soon as possible on measures to combat the uptake of vaping by young people **Noted**
- c) **Note** that the regulations review of vape product requirements (and any amendments if required) must take effect by 1 October 2024 to align with the deferred requirements for removeable batteries and child-proof mechanisms **Noted**
- d) **Note** that adding additional matters into these timeframes has implications for our ability to undertake policy work, including consultation, and will also compress the drafting time available for the Parliamentary Counsel Office **Noted**
- e) **Note** that restricting the displays and storefronts of specialist vape stores is likely to make a positive impact on youth vaping and can be accommodated within the desired timeframes for the first amendment bill **Noted**
- f) **Note** we propose inclusion of ECEs for proximity for specialist vape retailers in the regulations review **Noted**
- g) **Agree** the attached proposed updated work programme **Yes/No**
- h) **Note** the draft key messages for to use in relation to the proposed approach **Noted**



Dr Andrew Old

Deputy Director-General

Public Health Agency | Te Pou Hauora Tūmatanui

Date: 5 April 2024

Hon Casey Costello

Associate Minister of Health

Date:

Update: Smokefree 2025 Work Programme

Background

1. At its meeting on 18 March 2024, Cabinet agreed on the policy direction for Smokefree 2025 [CAB-24-MIN-0084 refers]. On 27 March 2024, we provided 2 options for your consideration with regards to progressing the Government's policy direction for Smokefree 2025 [H2024038096 refers].
2. At a meeting with Ministry officials on 28 March 2024, you indicated your preference for the first option, that is to progress legislative amendments through 2 amendment bills. You also requested that we consider whether some of the other vaping proposals could be brought forward and if so, for us to also provide some key messages regarding the proposed approach to completing this work.

Comment: Bringing forward the vape retailing proposals

3. We understand you would like us to consider whether in addition to the first amendment bill progressing the policies to increase penalties and ban disposable vapes, it could also progress the vape retailing changes. These specific changes are:
 - a. restricting the displays and storefronts of specialist vape stores to reduce appeal to under-18-year-olds
 - b. instituting a physical staffing requirement in order for specialist vape stores to be open and/or a minimum floorspace requirement
 - c. allowing retail staff to encourage customers buying cigarettes to try vaping.

Cabinet approval is required

4. To bring any of the above vape retailing changes forward into the first amendment bill will necessitate you seeking Cabinet approval for substantive policy proposals. Cabinet's current agreement to these policies is 'in-principle' only and insufficient to issue drafting instructions.

Managing consultation expectations

5. The Cabinet paper also noted we would undertake targeted consultation on the vape retailing proposals. If we do this as part of this first round of legislative changes, it will likely push out when we could reasonably issue drafting instructions with flow on impact to the timing of the first amendment bill.
6. s 9(2)(h) [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
7. The Cabinet expectation for consultation will need to be managed. Ideally, we would undertake some targeted consultation on the vaping retail changes before advising you on any substantive policy proposals for Cabinet approval. This will be challenging given the timeframes required.

Our recommended approach to expanding the scope of the first amendment bill

8. As the timeframes are already very tight, and noting your desire to progress legislative amendments this year, we recommend only bringing forward the simplest of the vape retailing changes into the first amendment bill, that is, *restrict the displays and storefronts of specialist vape stores to reduce appeal to under-18s*. Of the 3 vape retailing proposals, this is likely to have the most beneficial impact on youth vaping through denormalising vape products as a low-risk, everyday product. We provided you with advice regarding visibility of vaping products on 31 January 2024 [H2024034952 refers]. We are also more likely to be able to undertake some industry consultation on a discrete proposal in the timeframe required.
9. The other 2 vape retailing proposals of a *physical staffing requirement and/or minimum floorspace for SVRs and allowing retailers to encourage customers buying cigarettes to try vaping* would be included in the policy work to consider amending the licensing regime for vapes. These changes are not straightforward and would benefit from consideration as part of this broader policy work.

Comment: Bringing forward review of the regulatory settings for pre-filled vaping products

10. You have also asked whether, in addition to reviewing the vape product requirements for removable batteries and child-safety mechanisms, following the deferral of these requirements until 1 October 2024, we could also review the regulatory settings for pre-filled vaping products. This would include considering capacity restrictions for devices and tighter packaging requirements, such as the use of bright colours that appeal to young people.
11. We note that Cabinet has not explicitly noted or invited you to report back on the outcome of these 2 additional reviews. We also note that the timeframe to make amendments to the regulations are tight as any amendments, if necessary, need to take effect by 1 October 2024 when the deferred requirements for removeable batteries and child-proof mechanisms for reusable vapes come into effect. 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.
12. We do not consider it is possible to bring forward consideration of tighter packaging or consideration of capacity requirements given the timeframes involved. There is considerable complexity involved in determining how best to restrict the way vapes can be packaged and presented to reduce youth vaping. As already indicated above, there is evidence that children are attracted to vapes through brightly coloured products and packaging and child friendly images such as cartoons.² A longer timeframe is needed to ensure any measures to regulate vape product packaging are robust and fit for purpose.
13. Similarly, more time is needed to determine whether introducing capacity restrictions would assist in meeting the policy objective, as we understand it, of combatting youth vaping. This is also a technical area where we recommend a considered approach. In New Zealand, a container of vaping substance sold at retail must not exceed 120 mL

² See also the youth vaping call for evidence in England, analysis found here: <https://www.gov.uk/government/calls-for-evidence/youth-vaping-call-for-evidence/outcome/youth-vaping-call-for-evidence-analysis> (accessed 4 April 2024).

capacity unless the vaping substance contains zero nicotine. The current container size limit was arrived on by the technical working group with poisoning in mind. There are a range of vaping products available on the market that use pods. These range from 1.8mL to 7mL volume. Some manufacturers only have products that are 2mL or less, but there is considerable variation in the market. As above, a longer timeframe is needed, in this instance to work through the policy objective and implications of any change.

14. When Australia introduced plain packaging requirements for smoked tobacco (for which the harms are much clearer than vaping), there was considerable challenge from industry. This resulted in ten years of court cases and significant costs to government. While it is not always possible to avoid legal challenge, taking time to carefully plan changes reduces legal risk.

Comment: Bringing forward inclusion of ECE in proximity for SVRs

15. You have also asked whether we could bring forward inclusion of ECEs into proximity limits for SVRs into the regulations review and any potential amendment regulations.
16. The addition of ECEs to the current requirement for approval as SVRs that the retail premises must be at least 300 metres from a registered school or marae is a relatively straightforward drafting amendment and, on this basis, we consider it possible to add this policy proposal for consideration in the regulations review. We note the Cabinet invitation regarding this proposal is for you to report back, in consultation with other Health Ministers and the Minister of Education.

Key messages

17. As requested, we also provide some draft high-level key messages for you that reflect the proposed approach set out above, and in the updated proposed work programme.
 - a. The Government is keen to move fast on new policies to reduce youth vaping rates, however, that needs to be balanced against the need to ensure robust policy work and parliamentary processes are followed.
 - b. Proposals requiring legislative change, such as banning disposables and increasing penalties, will need to go through the select committee process, including public consultation, to ensure good outcomes.
 - c. My aim is to have an amendment bill introduced and passed this year to give effect to these commitments. I also intend to move quickly on introducing on restrictions on the displays and storefronts of specialist vape stores to reduce appeal to under-18s. I strongly encourage the public to submit their views on these proposals when the Select Committee calls for submissions.
 - d. Other areas the Government is committed to improving, such as introducing further requirements on SVRs and reviewing the licensing and compliance system for vaping, require a longer period to ensure any changes are well thought through and informed by consultation. My intention is for public consultation on substantive policy proposals to occur early next year.

Equity

18. Vaping products are currently not used evenly across society, with higher rates for Māori and Pacific peoples. Pacific adults (15+) are one and a half times more likely to vape than non-Pacific. Māori adults (15+) are more than twice as likely to vape daily as non-Māori. Regulating them in a way that reduces access for those wishing to use a less harmful product than smoked tobacco would have a disproportionately negative effect on those populations (which also have higher smoking rates).
19. While not intended for use by non-smokers, New Zealand has seen a rapid increase in youth vaping in recent years, including among young people who smoke. There are clear inequities in youth vaping. Reducing visibility of vape products for young people will have a disproportionately positive effect on those populations who currently have higher rates of use.

Next steps

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

ENDS.

Minister's Notes

PROACTIVELY RELEASED