



Associate Minister of Health

Smokefree 2025: Cracking Down on Youth Vaping

23 May 2024

These documents have been proactively released by the Ministry of Health on behalf of the Associate Minister of Health, Hon Casey Costello.

Title of Cabinet paper: Smokefree 2025: Cracking Down on Youth Vaping

Title of minute: Smokefree 2025: Cracking Down on Youth Vaping (CAB-24-MIN-0084)

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Key to redaction codes:

- Out of scope of this proactive release
- S 9(2)(f)(iv) to maintain the constitutional conventions that protect the confidentiality of advice tendered by Ministers and officials.
- S 9(2)(h) to maintain legal professional privilege.



Cabinet

Minute of Decision

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Smokefree 2025: Cracking Down On Youth Vaping

Portfolio Associate Health (Hon Casey Costello)

On 18 March 2024, Cabinet:

Background

- 1 **noted** that the Government remains committed to reducing smoking rates and achieving the Smokefree 2025 goal of less than 5 percent of New Zealanders smoking daily;
- 2 **noted** that on 18 December 2023, Cabinet agreed to amend the Smokefree Environments and Regulated Products Act 1990 (and related regulations), and noted that the Associate Minister of Health (Hon Casey Costello), will report back before 8 March 2024 on further changes needed to strengthen the regulation of vaping and other nicotine products [CAB-23-MIN-0500];

Ban disposable vaping products

- 3 **noted** the National Party - New Zealand First coalition agreement to ban 'disposable vaping products';
- 4 s 9(2)(h) [REDACTED]
- 5 **agreed** to amend the Smokefree Environments and Regulated Products Act 1990 to ban the manufacture and sale of disposable vaping products;

Increase penalties for unlawful vape and other regulated product sales to minors

- 6 **noted** that the coalition agreements between the National Party and New Zealand First, and the National Party the ACT Party commit to 'increasing penalties for illegal sales to those under 18' and 'introduce serious penalties for selling vapes to under 18s' respectively;
- 7 **agreed** to amend the Smokefree Environments and Regulated Products Act 1990 to increase penalties for unlawful sales of regulated products to minors, as follows:
 - 7.1 set the maximum penalty for illegal sales of regulated products to minors at \$100,000 for a body corporate (from \$10,000) and \$10,000 for an individual (from \$5,000);
 - 7.2 set related infringement offences at \$1,000 for individuals (from \$500) and \$2,000 for a manufacturer, importer, distributor or retailer (from \$500);

Amend vaping product requirements

- 8 **noted** the National Party - New Zealand First coalition agreement to amend ‘vaping product requirements’ ‘before March 2024’;
- 9 **agreed** to defer commencement until 1 October 2024 of the following vaping regulations, which are due to come into effect on 21 March 2024:
 - 9.1 all reusable vaping products must have a mechanism to prevent the device being activated or accidentally operated by a child;
 - 9.2 all reusable vaping products must have removeable batteries;
- 10 **agreed** that other regulations relating to reusable vaping devices, including a ban on vaping products with images of cartoons or toys on their packaging, and restrictions on flavour descriptions, will come into effect on 21 March 2024;
- 11 **agreed** that the regulations relating to disposable (single-use) vaping devices remain in place until the Government bans the devices outright;
- 12 **authorised** the submission to the Executive Council of the Smokefree Environments and Regulated Products Amendment Regulations 2024 [PCO26298/3.0];
- 13 **noted** that a waiver of the 28-day rule is sought:
 - 13.1 so that the Amendment Regulations can come into force prior to 21 March 2024;
 - 13.2 to ensure that the Amendment Regulations come into force before the removable batteries and child safety requirements would otherwise apply to the sale of all reusable vaping products;

14 **agreed** to waive the 28-day rule;

s 9(2)(f)(iv)

15 s 9(2)(f)(iv)

16 s 9(2)(f)(iv)

17 s 9(2)(f)(iv)

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

- 18 **noted** the National Party - New Zealand First coalition agreement to ‘reform the regulation of vaping, smokeless tobacco and oral nicotine products’;
- 19 **agreed in principle** to allow the sale of reduced harm smokeless tobacco and oral nicotine products (e.g. Swedish snus and nicotine pouches), subject to the products meeting safety requirements and regulatory controls to prevent youth access;

20 **invited** the Associate Minister of Health (Hon Casey Costello), in consultation with other Health Ministers, to report back to Cabinet at the end of 2024 with detailed proposals, including the best way to certify these products for sale in New Zealand;

21 s 9(2)(f)(iv)

Consider the licensing regime for nicotine products

22 **noted** the National Party - ACT Party coalition agreement to 'consider requiring a liquor licence to sell vapes';

23 **noted** that further work is needed before any decisions can be taken on amending the vaping licensing regime;

24 **invited** the Associate Minister of Health (Hon Casey Costello), in consultation with other Health Ministers, to report back to Cabinet with detailed proposals at the end of 2024;

Vape retailing

25 **agreed in principle**, subject to paragraph 28 below, to the following changes to vape retailing:

25.1 restrict the displays and storefronts of specialist vape stores to reduce appeal to under-18 year olds;

25.2 institute a physical staffing requirement for specialist vape stores to be open and/or a minimum floorspace requirement;

25.3 allow retail staff to encourage customers buying cigarettes to try vaping;

26 **noted** that officials will undertake targeted consultation on these proposals, given their impact on business;

27 **agreed** to a review of the vape store compliance system, with a view to further amending legislation if necessary to ensure compliance;

28 **invited** the Associate Minister of Health (Hon Casey Costello), in consultation with other Health Ministers, to report back to Cabinet at the end of 2024 with substantive recommendations;

29 **invited** the Associate Minister of Health (Hon Casey Costello), in consultation with other Health Ministers and the Minister of Education, to report back to Cabinet regarding options to include registered ECE centres within specialist vape retailer proximity limits that currently exist for primary and secondary schools (this would apply to new applications only);

30 **agreed** to make any amendments to the regulation-making powers in the Smokefree Environments and Regulated Products Act 1990 to ensure that regulations of the nature proposed around vape retailing can be made post-enactment;

Legislative implications

- 31 **invited** the Associate Minister of Health (Hon Casey Costello) to issue drafting instructions to the Parliamentary Counsel Office to give effect to paragraphs 5, 7 and 30 above;
- 32 **authorised** the Associate Minister of Health (Hon Casey Costello) to approve any minor and technical amendments to give effect to paragraphs 5 and 7 above;

Next Steps

- 33 **invited** the Associate Minister of Health (Hon Casey Costello) to bring together the advice requested in paragraphs 20, 24, 28 and 29 and provide one consolidated report back to Cabinet.

Rachel Hayward
Secretary of the Cabinet

PROACTIVELY RELEASED

In Confidence

Office of the Associate Minister of Health

Cabinet

Smokefree 2025: cracking down on youth vaping

Proposal

1. This paper seeks Cabinet's agreement to crack down on youth vaping, as well as progressing Coalition Agreement commitments relating to vaping and other nicotine products.

Executive Summary

2. Good progress is being made towards the Smokefree 2025 goal of less than 5% of New Zealanders smoking daily, with 6.8% of New Zealand adults smoking daily in 2022/23.
3. To build on this progress, the Government supports a change in approach to the regulation of smoked tobacco products, the first stage of which was repealing the previous government's new smoked tobacco laws [CAB-23-MIN-0500 refers].
4. Allowing access to vaping as a cessation tool for adult smokers is an important lever to continue driving smoking rates down, but the regulatory framework for vaping needs strengthening to address youth vaping. In particular, we need to crack down on the illegal sale of vapes to minors.
5. Regular vaping among 15- to 17-year-olds has increased from 8.3% in 2021/22 to 15.4% in 2022/23 which equates to 32,000 young people in this age group vaping daily.
6. We can better protect young people by removing vaping products that are popular with young people from the market, reducing the visibility and proximity of all vaping products to young people, and improving compliance of retailers by increasing penalties for sale to minors.
7. In this paper, I seek Cabinet's agreement on proposals to crack down on youth vaping and progress commitments contained in the Coalition Agreements.
8. Proposals would be progressed as follows:
 - 8.1 banning disposable vapes, by amending the Smokefree Environments and Regulated Products Act 1990;

- 8.2 massively increasing penalties for those selling vapes to minors, by amending the Smokefree Environments and Regulated Products Act 1990;
 - 8.3 reconfirming a range of restrictions on vapes set to enter into force on 21 March 2024, including a ban on vaping products with images of cartoons or toys on their packaging, and restrictions on flavour descriptions;
 - 8.4 deferring requirements for removable batteries and child-safety mechanisms until 1 October 2024 to ensure there is not a sudden lack of available vapes for adults;
 - 8.5 s 9(2)(f)(iv)
[REDACTED]
 - 8.6 finalising remaining Coalition Agreement commitments set out in this paper before the end of the year.
9. This paper is part of the Government's broader work programme to achieve Smokefree 2025, which focuses on:
- 9.1 reducing the harm from tobacco by supporting smokers to quit smoking and preventing our young people from smoking;
 - 9.2 cracking down on vaping amongst young people;
 - 9.3 implementing a regulatory regime that manages harm in a proportionate way to achieve the broader objectives; and
 - 9.4 strengthening the range of non-regulatory interventions available for those groups most at risk.

Recent changes in smoking and vaping

10. The Government is committed to reducing smoking rates and achieving the Smokefree 2025 goal of less than 5% of New Zealanders smoking daily.
11. The Government supports a change in approach to the regulation of smoked tobacco. Progressing the Coalition Agreement commitments and a comprehensive plan for non-regulatory measures is needed to ensure we are providing people with practical tools and support to help them quit smoking and to maintain the progress being made in reducing smoking rates.
12. In recent years, New Zealand has seen some of the largest drops in smoking rates across the world. The New Zealand Health Survey shows 6.8% of New Zealanders were smoking daily in 2022/23, down from 8.6% the previous year and 16.4% in 2011/12.
13. Some groups where smoking rates remain higher than the general population need additional support. These groups include those who are heavily addicted, Māori, and low-income earners. Officials are reviewing our smokefree initiatives

to ensure they are designed and implemented in ways that are effective for these groups, so that smoking rates can continue to come down across the population.

14. Vaping has played an important role in reducing New Zealand's smoking rates. The Government continues to support vaping as a useful tool to help adult smokers to quit.
15. However, youth vaping is at undesirable levels. In 2023, 10% of Year 10 students (14 and 15-year-olds) reported vaping daily, with 27% of Māori girls and 18% of Māori boys vaping daily.
16. There are some positive signs. Rapid increases in youth vaping in recent years have plateaued and weekly, monthly, and regular vaping rates have started to decrease. However, vaping among school students in low-socioeconomic areas has continued to increase.

Crack down on youth vaping

17. Too many young people are vaping. This, and the number of vape stores, is causing concern among many in our communities. The Government is determined to crack down on youth vaping.
18. Proposals below include increasing penalties for unlawful sales of vapes to minors, banning disposable vapes, and restricting new vape stores from opening near early childhood education (ECE) centres.

Ban disposable vaping products

19. The Coalition Agreement between National and New Zealand First commits to "banning disposable vaping products".
20. Disposable vapes have quickly become the most popular vaping product used by young people in New Zealand and internationally. A ban on disposable vapes and an increase in penalties for those that supply to under-18s will make it harder for young people to take up vaping.
21. Banning disposables will support the Government's plan to reduce youth vaping. Some young people may switch to reusables if disposables are unavailable, but as these are generally more expensive, the overall effect should be to discourage youth vaping.
22. Disposables can be banned through amendments to the Smokefree Environments and Regulated Products Act 1990. Several of our major trade partners have recently announced they intend to impose or are considering bans on the devices, including the United Kingdom and France. Australia banned disposable devices from 1 January 2024.
23. I propose that Cabinet agree to ban disposable vaping products through legislative amendment.

24. s 9(2)(h) [Redacted]

25. s 9(2)(h) [Redacted]

Increase penalties for selling to minors

- 26. The Coalition Agreements between the National Party and the New Zealand First Party and the ACT Party commit to “increasing penalties for illegal sales to those under 18” and “introduce serious penalties for selling vapes to under 18s” respectively.
- 27. Minors typically access vaping products through retail stores or from friends (social supply).
- 28. Penalty levels for unlawful sales to minors are currently:
 - 28.1 Fines of \$10,000 for a body corporate (including most retailers) and \$5,000 for others (including sales assistants) on conviction before a court.
 - 28.2 Infringement fees (i.e. on the spot fines) of \$1,000 for a manufacturer, importer, or distributor, and \$500 for others (e.g. sales assistants and retailers in this instance).
 - 28.3 Controlled purchase operations (CPOs) are carried out in retailers as a key compliance activity. In 2023, around 10% of general vape retailers (e.g. dairies and supermarkets) and 17% of Specialist Vape Retailers (SVRs) sold to minors in CPOs, compared to around 5% for tobacco sales. To date, only one prosecution that included vape sales to minors has commenced, although a number of others are under consideration.

IN CONFIDENCE

It is unlikely that current penalty levels are a strong enough deterrent compared to the potential gains from non-compliance.

29. I am seeking Cabinet's agreement to increase maximum fines for body corporates from \$10,000 to \$100,000 and fines for others (e.g. sales assistants) from \$5,000 to \$10,000. Differing fines, up to a maximum of \$100,000, better account for the range in potential offenders, from sales assistants to large corporates such as supermarkets.
30. In addition, I propose increasing the existing infringement fees so that retailers are subject to a fee of \$2,000 (up from \$500) and sales assistants to a fee of \$1,000 (up from \$500) for any sales to minors that occur in their store. Many sales assistants are young people, so this policy may have a disproportionate impact on youth. However, it will have a positive impact on minors who should not be sold vaping products.
31. To ensure consistency, I propose these penalties apply to the sale of all regulated products to minors (i.e. vaping products, smoked tobacco products, smokeless tobacco products, and herbal products for smoking).
32. I do not propose, at this stage, to increase fines for the supply of regulated products in a public place due to the potentially disproportionate impact on young people who share vapes and cigarettes socially (e.g. groups of teenage friends).

Amend vaping products requirements

33. In 2023, the government introduced regulations for vape packaging, nicotine strength, product naming, and rules for disposable and reusable vaping devices. The bulk of these rules take effect for retail sale from 21 March 2024, however regulations relating to disposable vape products took effect on 21 December 2023.
34. I propose that Cabinet reconfirm a range of these restrictions on vapes set to enter force on 21 March, including the ban on vaping products with images of cartoons or toys on their packaging, and restrictions on flavour descriptions.
35. However, the incoming restrictions for batteries and multi-press locks are not replicated in the United Kingdom or European Union, unlike earlier 2021 vape regulations.
36. These specific product regulations are:
 - 36.1 that all reusable vaping devices must have a mechanism that requires at least 2 simultaneous or 5 sequential operations before the vaping device is activated and automatically deactivates the device within a period of no more than 10 minutes after vaping has stopped; and
 - 36.2 all reusable vaping products must have a battery that can be inspected, removed, and replaced, without damaging the battery or the device, by a person using no more than a screwdriver.

37. The Ministry of Health is unable to ascertain the effect of these two regulations on the availability of vapes after 21 March 2024, and their potential to significantly reduce the products available that support adult smokers with a pathway to quit. I am also concerned that New Zealand's outlier approach to regulation could lead to a market with a more limited range of higher quality vape products, allowing the cheaper segment of the market that quickly adapts to regulatory changes to further dominate.
38. In accordance with the Coalition agreement between the New Zealand First Party and the National Party, I propose that these two regulations relating to *reusable* vaping devices that were to take effect on 21 March 2024 be deferred until 1 October 2024 to ensure there is not a sudden lack of available vapes for adults.
39. In the coming months I intend to ask officials to consider whether there are potential amendments to these regulations which still require battery standards and child safety mechanisms, while being better aligned with other developed economies to ensure New Zealand is not an outlier.
40. I also intend to review the regulatory settings for pre-filled vaping products, including to evaluate capacity restrictions for devices and tighter packaging requirements, including the use of bright colours that appeal to young people.
41. Amended regulations are attached for Cabinet's agreement.

Additional proposals to be considered by Cabinet

42. As set out in paragraph 8, this paper is only one step in my broader work programme to achieve Smokefree 2025. An update on additional measures is set out below.

Vape Retailing

43. I propose to report back to Cabinet with further options to crack down on youth vaping, including considering the following changes to the way vapes are sold:
 - 43.1 restricting the displays and storefronts of specialist vape stores to reduce appeal to under-18s;
 - 43.2 instituting a physical staffing requirement for specialist vape stores to be open and/or a minimum floorspace requirement. A "specialist" vaping store needs to be just that, not an unstaffed 'store within a store';
 - 43.3 reviewing the vape store compliance system and further amend legislation if necessary to ensure compliance is occurring; and
 - 43.4 allowing retail staff to encourage customers buying cigarettes to try vaping.

44. As these proposals would impact businesses, targeted consultation will need to be undertaken before any proposals are finalised.
45. I also propose to report back to Cabinet regarding options to include registered ECE centres within specialist vape retailer proximity limits that currently exist for primary and secondary schools. This would apply to new applications only.¹

Vape store licensing regime

46. The Coalition Agreement between the National Party and the ACT Party commits to “consider requiring a liquor licence to sell vapes”.
47. I intend to review the licensing regime for specialist vape stores with a focus on providing local oversight of vape store retailers, as is the case for liquor licensing. I am looking to empower local communities to determine the number and location of vape stores in their communities rather than central government.
48. There are other aspects of liquor licensing that could be used to improve the regulation of vaping and other regulated products, including:
 - 48.1 significantly strengthened requirements for operator competence, including duty managers who are trained and present at all times, and suitability of the applicant requirements;
 - 48.2 one-year probationary periods for new operators;
 - 48.3 licences (for all types of retailers) that expire and must be proactively reapplied for;
 - 48.4 improving the effectiveness of suspensions and cancellations of licences as an enforcement mechanism (e.g. by extending to all types of retailers and including stand down periods);
 - 48.5 strengthened decision-making processes and greater opportunity for input from communities and relevant experts.
49. I propose to report back to Cabinet by the end of 2024 for further decisions on this work.
50. I want to ensure proportionality across the various products that are regulated under the Smokefree Environments and Regulated Products Act 1990. Smoked tobacco is the most harmful product and I have asked officials for advice on what further regulatory steps could also be undertaken for smoked tobacco to ensure consistency across the suite of regulated products.
51. s 9(2)(h)

¹ There are almost 4,500 ECEs on the Ministry of Education database, and just over 2,500 schools. Inclusion of ECEs in proximity limits will likely significantly decrease the number of applications for new SVRs that can be approved.

s 9(2)(h)

Practical support for smokers and young people

52. I have asked officials to provide me with a comprehensive plan by May 2024 to strengthen our approach to achieving Smokefree 2025 through non-legislative measures. The plan will be evidence-based and focused on those with the highest rates (e.g. Māori and people living in low-income areas). Areas of focus will include:

52.1 *education and communication* (e.g. health promotion campaigns to encourage smokers to quit and to use stop smoking services, more support for schools to reduce youth vaping);

52.2 *insights and research* (e.g. updated qualitative and quantitative data analysis including better understanding people's lived experience);

52.3 *practical support* (e.g. consider options to fund vape starter kits for current smokers);

52.4 *stop smoking services* (e.g. review the effectiveness of services, strengthen guidance to include harm reduction measures such as vaping, strengthen services' accountability to deliver for priority groups);

52.5 *workforce training and education* (redesign to make sure it is fit for purpose);

52.6 *community-led innovations* (support and monitor initiatives to support people to quit smoking and prevent youth uptake of vaping).

s 9(2)(f)(iv)

53. s 9(2)(f)(iv)

54.

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s 9(2)(f)(iv)

57.

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

58. The Coalition Agreement between New Zealand First and National commits to “reform the regulation of vaping, smokeless tobacco and oral nicotine products”.
59. Most smokeless tobacco and nicotine products are unlawful in New Zealand, including chewing tobacco, snus, and nicotine pouches. Chewing tobacco, which is associated with mouth cancers, should remain unlawful. However, if there are products with a similar risk profile to vaping, then I consider they should be available as options for people who smoke.
60. I am undertaking work to implement the Coalition Agreement and allow the sale of smokeless tobacco and nicotine products where the evidence shows they are significantly less harmful than smoking (i.e. they have a similar risk profile to vaping), and meet safety requirements and regulatory controls to prevent youth access.
61. Further work is needed, including to determine the best way to certify these products for sale in New Zealand. I have directed officials to examine certification processes in other developed countries where these products are sold.

Cost-of-living Implications

62. Increased infringement fines will impact sales assistants, many of whom are young and low-income, if they are caught selling to minors.

Financial Implications

63. Financial implications of these proposals, for retailers and manufacturers, consumers and government will depend on final options selected.

Legislative Implications

64. An amendment Bill would be needed to ban disposable vaping products and increase penalties.
65. Amendment regulations are needed to implement the proposals regarding deferral of the requirements to have removable batteries and child safety

mechanisms for all reusable vaping devices. Amendments to the Smokefree Environments and Regulated Products Regulations 2021 are submitted with this paper for agreement. A waiver to the 28-day rule will be required so that proposed changes to regulations can come into force by 20 March 2024.

66. Legislative amendment will also be needed to implement the in-principle proposals. I will report back at the end of the year seeking policy approvals with a view to issuing drafting instructions for a further amendment Bill in 2025.

Impact Analysis

67. Cabinet's impact analysis requirements apply to the proposals to progress a new legislative direction towards achieving Smokefree 2025, but there is no accompanying Regulatory Impact Statement and the Treasury has not exempted the proposal from the impact analysis requirements. Therefore, it does not meet Cabinet's requirements for regulatory proposals.
68. The Regulatory Impact Analysis team at the Treasury and the Ministry of Health have agreed that supplementary analysis or a post-implementation assessment will be developed and provided to Cabinet later in the year.

Population Implications

69. Some population groups have higher rates of smoking, therefore, the harm from tobacco affects these groups disproportionately (both in terms of direct health impact and the indirect impact that smoking can have on household disposable incomes). Priority groups include Māori, low-income earners, and those who are heavily addicted to smoking. More support is needed to support these groups to quit smoking.
70. Vaping products are also used unevenly across society. Pacific (15+) are 1.5 times more likely to vape than non-Pacific. Māori (15+) are more than twice as likely to vape daily as non-Māori. Regulating vaping products in a way that reduces access for those wishing to use a less harmful product than smoked tobacco would likely have a disproportionately negative effect on those populations (which also have higher smoking rates).
71. New Zealand has seen a rapid increase in youth vaping in recent years, including among young people who smoke. While this is slowing, clear inequities remain in youth vaping, with Māori students and students in low-income areas vaping more than others. Reducing access to and use of vaping products by young people is likely to reduce inequities.

Te Tiriti o Waitangi/The Treaty of Waitangi

72. Article 2 of Te Tiriti o Waitangi guarantees active protection of taonga, including wellbeing and tiaki whakapapa. The principle of active protection requires the Crown to act, to the fullest extent practicable, to achieve equitable health outcomes for Māori. This means we must go beyond a business-as-usual approach, to ensure the actions we take will increase equity.

73. Section 6 of the Pae Ora (Healthy Futures) Act 2022 requires the Government to give effect to Te Tiriti o Waitangi. This includes that the Minister, the Ministry, and all health agencies be guided by the health sector principles, which, among other things, are aimed at improving the health sector for Māori and improving hauora Māori outcomes.
74. Further and more substantive Te Tiriti analysis will be undertaken before Cabinet makes policy decisions on other matters later in the year.

Human Rights

75. Some proposals may have New Zealand Bill of Rights Act 1990 (NZBORA) implications. A NZBORA vet will be completed as part of any future legislative process.

Use of external Resources

76. No contractors have been involved in developing this paper.

Timing and 28-day rule

77. I have sought a waiver of the 28-day rule so that proposed changes to the Smokefree Environments and Regulated Products Regulations 2021 relating to vaping product requirements for reusable vaping devices can come into force by 20 March 2024.

Compliance

78. The Smokefree Environments and Regulated Products Amendment Regulations 2024 (the Smokefree Regulations) comply with:
 - 78.1 the rights and freedoms contained in the New Zealand Bill of Rights Act 1990 and the Human Rights Act 1993;
 - 78.2 the principles and guidelines set out in the Privacy Act 2020;
 - 78.3 relevant international standards and obligations; and
 - 78.4 the Legislation Guidelines (2021 edition), which are maintained by the Legislation Design and Advisory Committee.

Regulations Review Committee

79. There are no anticipated grounds for the Regulations Review Committee to draw the Smokefree Regulations to the attention of the House under Standing Order 327.

Certification by Parliamentary Counsel

80. The Parliamentary Counsel Office has certified the Smokefree Regulations as being in order for submission to Cabinet.

Consultation

81. The following agencies were consulted: the Crown Law Office, the Department of the Prime Minister and Cabinet, Health New Zealand | Te Whatu Ora, Ministry for Ethnic Communities, Ministry for Pacific Peoples, Ministry of Business, Innovation, and Employment, Ministry of Disabled People | Whaikaha, Ministry of Education, Ministry of Foreign Affairs and Trade, Ministry of Justice, Ministry of Social Development, New Zealand Customs Service, New Zealand Police, Oranga Tamariki, Parliamentary Counsel Office, Te Aka Whai Ora | Māori Health Authority, Te Arawhiti | Office for Māori Crown Relations, Te Puni Kokiri | Ministry of Māori Development, Ministry for the Environment, the Treasury.

s 9(2)(f)(iv)

82. s 9(2)(f)(iv)

83.

Communications

84. My office will work with officials to ensure timely communications as required.

Proactive Release

85. I intend to proactively release this Cabinet paper in whole within 30 business days of decisions being confirmed by Cabinet (subject to redactions on standard withholding grounds, such as maintaining legal privilege).

Recommendations

The Associate Minister of Health recommends that Cabinet:

1. **note** the Government remains committed to reducing smoking rates and achieving the Smokefree 2025 goal of less than 5% of New Zealanders smoking daily;
2. **note** at its meeting on 18 December 2023, Cabinet noted (inter alia) “the Associate Minister of Health, Hon Casey Costello, will report back to Cabinet... before 8 March 2024 on further changes needed to... strengthen the regulation of vaping and other nicotine products [CAB-23-MIN-0500 refers].”;

Ban disposable vaping products

3. **note** the National Party-New Zealand First coalition agreement to ban “disposable vaping products”;
4. **s 9(2)(h)**
5. **agree** to amend the Smokefree Environments and Regulated Products Act 1990 to ban the manufacture and sale of disposable vaping products;

Increase penalties for unlawful vape and other regulated product sales to minors

6. **note** the Coalition Agreements between the National Party and the NZ First Party and the ACT Party commit to “increasing penalties for illegal sales to those under 18” and “introduce serious penalties for selling vapes to under 18s” respectively;
7. **agree** to amend the Smokefree Environments and Regulated Products Act 1990 to increase penalties for unlawful sales of regulated products to minors, as follows:
 - 7.1 set the maximum penalty for illegal sales of regulated products to minors at \$100,000 for a body corporate (from \$10,000) and \$10,000 for an individual (from \$5,000); and
 - 7.2 set related infringement offences at \$1,000 for individuals (from \$500) and \$2,000 for a manufacturer, importer, distributor or retailer (from \$500);

Amend vaping product requirements

8. **note** the National Party-New Zealand First coalition agreement to amend “vaping product requirements” “before March 2024”;
9. **agree** to defer commencement until 1 October 2024 of the following vaping regulations which are due to come into effect on 21 March 2024:

- 9.1 all reusable vaping products must have a mechanism to prevent the device being activated or accidentally operated by a child;
- 9.2 all reusable vaping products must have removeable batteries;
- 10. **agree** that other regulations relating to *reusable* vaping devices including a ban on vaping products with images of cartoons or toys on their packaging, and restrictions on flavour descriptions, will come into effect on 21 March 2024;
- 11. **agree** that the regulations relating to *disposable* (single-use) vaping devices remain in place until the Government bans the devices outright;
- 12. **authorise** the submission to the Executive Council of the Smokefree Environments and Regulated Products Amendment Regulations 2024;
- 13. **agree** to waive the 28-day rule to ensure that the amended regulations come into force prior to 21 March 2024 when the removable batteries and child safety requirements would otherwise apply to the sale of all reusable vaping products;

s 9(2)(f)(iv)

14. s 9(2)(f)(iv)

15.

16.

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

- 17. **note** the National Party-New Zealand First coalition agreement to “reform the regulation of vaping, smokeless tobacco and oral nicotine products”;
- 18. **agree** in-principle to allow the sale of reduced harm smokeless tobacco and oral nicotine products (e.g. Swedish snus and nicotine pouches), subject to products meeting safety requirements and regulatory controls to prevent youth access;
- 19. **invite** the Associate Minister of Health to report back to Cabinet at the end of 2024 with detailed proposals, including the best way to certify these products for sale in New Zealand;

20. s 9(2)(f)(iv)

[Redacted text]

Consider the licensing regime for nicotine products

21. **note** the National Party-ACT Party coalition agreement to “consider requiring a liquor licence to sell vapes”;
22. **note** that further work is needed before any decisions can be taken on amending the vaping licensing regime;
23. **invite** the Associate Minister of Health to report back to Cabinet with detailed proposals at the end of 2024;

Vape retailing

24. **agree** in-principle to the following changes to vape retailing:
 - 24.1 restrict the displays and storefronts of specialist vape stores to reduce appeal to under-18s;
 - 24.2 institute a physical staffing requirement for specialist vape stores to be open and/or a minimum floorspace requirement;
 - 24.3 allow retail staff to encourage customers buying cigarettes to try vaping;
25. **note** that officials will undertake targeted consultation on these proposals, given their impact on business;
26. **agree** to a review of the vape store compliance system, with a view to further amending legislation if necessary to ensure compliance;
27. **invite** the Associate Minister of Health to report back to Cabinet at the end of 2024 with substantive recommendations;
28. **invite** the Associate Minister of Health to report back to Cabinet regarding options to include registered ECE centres within specialist vape retailer proximity limits that currently exist for primary and secondary schools. This would apply to new applications only;
29. **agree** to make any amendments to the regulation making powers in the Smokefree Environments and Regulated Products Act 1990 to ensure that regulations of the nature proposed around vape retailing can be made post enactment;

Drafting instructions

30. **authorise** the Associate Minister of Health to issue drafting instructions to the Parliamentary Counsel Office to give effect to recommendations 5, 7 and 29;
31. **agree** the Associate Minister of Health may approve any minor and technical amendments to give effect to recommendations 5 and 7.

Authorised for lodgement

Hon Casey Costello

Associate Minister of Health

PROACTIVELY RELEASED