

# Health Coalition Aotearoa Smokefree Expert Advisory Group submission on the Smokefree 2025 Action Plan Discussion Document

## ***Introduction***

Health Coalition Aotearoa is an umbrella group of individual health experts and around 50 organisational members of health professional associations, public health providers, not-for-profit NGOs and academics. HCA benefits the community by promoting health for all New Zealanders, especially through the prevention of harm from tobacco, alcohol and unhealthy foods (as defined by the World Health Organisation). Our mission is to provide a collective voice and expert support for effective policies and actions to reduce harm, through a focus on the determinants of health. The Health Coalition Aotearoa Board endorses this submission.

This submission draws together views held by members of the Health Coalition Aotearoa (HCA) Smokefree Expert Advisory Group (SEAG). Although individuals are members of the HCA SEAG by dint of their personal expertise, all have made submissions as part of their various organisations. SEAG members welcome the Action Plan Discussion Document (APDD).

HCA SEAG members are:

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Ben Youdan (independent).

# 1. Strengthening the tobacco control system

## (a) Strengthen Māori governance of the tobacco control programme

What would effective Māori governance of the tobacco control programme look like?  
Please give reasons.

**The HCA SEAG strongly supports Māori governance within tobacco control that is guided by the obligations of Te Tiriti o Waitangi.** SEAG members note that Māori should be afforded the same rights in decision making, and therefore the same health outcomes, as non- Māori/ tauwiwi. While working in the spirit of partnership, SEAG members note that good governance must be guided by those most closely affected by tobacco harm. SEAG members recognise the importance of Māori themselves explaining how Māori governance of the tobacco control programme would most appropriately function.

SEAG members also acknowledge the need to ensure that Pacific leadership is prominent at all levels of the design, delivery and evaluation of all tobacco control policy, legislation and programmes, including governance, decision making and management.

## (b) Support community action for a Smokefree 2025

What action are you aware of in your community that supports Smokefree 2025?  
What is needed to strengthen community action for a Smokefree 2025? Please give reasons.

**HCA SEAG members recognise the importance of strengthening community action and building on existing support for APDD measures.** HCA members who work alongside communities reported findings from their consultations, many of which took place during community events. The voices of Māori from Te Tai Tokerau indicated very strong support for key measures within the APDD, which they believed recognised the devastating effect smoking has had on whānau Māori. Community members expressed a strong desire for their rangatahi and tamariki to be smokefree and saw smokefree communities as crucial to the well-being of future generations and the environments in which their rangatahi and tamariki will live.

Community functions provide opportunities for Māori to gather and discuss smokefree questions. Communities have supported many auahi kore movement activities, including kaupapa Māori wānanga, smokefree workplaces and employers, inter-iwi smoking cessation competitions, and smokefree dairies, sports events, and streets.

SEAG members noted the importance of providing resources for Māori and Pacific to develop community activities relevant to their peoples and suggested a community-oriented fund, such as the former Innovations Fund, could be an important way of strengthening community action and connecting activities to the wider Smokefree 2025 goal. More generally, SEAG members believe harnessing the existing leadership within whānau, hapū and iwi could make major contributions to government public health efforts.

### (c) Increase research, evaluation, monitoring and reporting

**HCA SEAG members strongly support increasing research, evaluation, monitoring and reporting. We believe monitoring and evaluation** must be a core component of all new measures implemented and endorse the proposed Action Plan's clear commitment to invest in research, evaluation and monitoring. We recommend developing and implementing a robust, prospective, and adequately resourced programme of research, evaluation and monitoring. We further recommend that the evaluation plan should assess progress towards achieving an equitable smokefree Aotearoa and eliminating the disparities in smoking and its adverse health effects, which predominantly affect Māori and Pacific populations.

### (d) Strengthen compliance and enforcement activity

What else do you think is needed to strengthen New Zealand's tobacco control system?  
Please give reasons.

**HCA SEAG members strongly support strengthening compliance and enforcement activity.** We recognise that some proposed measures could potentially be undermined by poor compliance, such as continuing sales of tobacco products by unlicensed stores or availability of illicit tobacco products. We recommend increased resourcing to enable adequate monitoring and appropriate penalties for non-compliance. As we discuss in our response to point 5, we recommend strong communications campaigns, which could denormalise social supply (among other topics).

**HCA SEAG members strongly recommend independent research to estimate the market share of illicit tobacco.**<sup>1 2</sup> NZ has limited data on illicit tobacco use, though independent research suggests industry claims are typically exaggerated, as when plain packs were introduced in Australia.<sup>3-5</sup> Furthermore there is strong evidence to suggest that the tobacco industry facilitates and promotes illicit trade.<sup>6</sup>

**HCA members recommend taking the following steps to enhance monitoring and compliance :**

- Enhanced border surveillance and enforcement actions by Customs and Excise;
- Licensing and monitoring of all importers and distributors of any tobacco products;
- Ratification of the FCTC Protocol to Eliminate Trade in Tobacco Products;
- Participation in the global tobacco track and trace system;
- Collection of robust, independent and credible data on the extent of the illicit market as part of the enhanced research, evaluation, monitoring and reporting described above.

**HCA SEAG members strongly believe** that industry claims regarding illicit tobacco markets should not deter the introduction of new policy measures. Research shows that the major influences on illicit tobacco markets are regulatory strength, government corruption, tolerance for illicit markets, and a well organised criminal infrastructure.<sup>7 8</sup> NZ's strong border control, low levels of corruption, and geographical isolation, will minimise opportunities for illicit tobacco trade. The widespread availability of alternative products, such as vaping products, will also decrease demand for illicit tobacco. Finally, we note that, as the Action Plan is implemented, smoking prevalence will fall, decrease demand for illicit products and reduce the rewards available through illicit trade.

## 2. Make smoked tobacco products less available

### (a) License all retailers of tobacco and vaping products

Do you support the establishment of a licensing system for all retailers of tobacco and vaping products (in addition to specialist vape retailers)?

- Yes
- No

Please give reasons.

**HCA SEAG members strongly support the establishment of a licensing system for all retailers of tobacco and vaping products (in addition to specialist vape retailers).**

Introducing a licensing system would bring New Zealand in line with other countries and states (e.g., Finland and South Australia), and align NZ policy with international best practice.

Retailer licensing is a pre-requisite for reducing tobacco retail availability and provides a tool to manage retailer numbers; however, licensing alone will not lead to rapid or substantial reductions in retailer numbers. Other measures are required to complement licensing and reduce the widespread availability of tobacco products.

### (b) Significantly reduce the number of smoked tobacco product retailers based on population size and density

Do you support reducing the retail availability of smoked tobacco products by significantly reducing the number of retailers based on population size and density?

- Yes
- No

Please give reasons.

**HCA SEAG members strongly support reducing the retail availability of smoked tobacco products by significantly reducing the number of retailers based on population size and density.** This measure could greatly decrease retailer numbers and thus New Zealanders' exposure to tobacco outlets. Implementation would need to account for differences in baseline numbers of tobacco retailers across different districts, where outlet density may vary, to ensure reductions are sufficient to prompt cessation, and to avoid further increases in the 'full cost' of obtaining tobacco inadvertently contributing to inequities.<sup>9</sup>

### (c) Restrict sales of smoked tobacco products to a limited number of specific store types

Do you support reducing the retail availability of tobacco products by restricting sales to a limited number of specific store types (eg, specialist R18 stores and/or pharmacies)?

- Yes
- No

Please give reasons.

**HCA SEAG members strongly support reducing the retail availability of tobacco products by restricting sales to a limited number of specific store types (e.g., specialist R18 stores and/or pharmacies).** We believe that restricting tobacco sales to a limited number of specific outlets, such as specialist R18 ('adult only') stores or pharmacies would support cessation and, importantly, deter smoking uptake among young people. This measure would also remove cigarettes from outlets where people who smoke usually purchase tobacco and thus could help quitters avoid cues known to trigger impulse buys and relapse.<sup>10 11</sup> SEAG members did not support the sale of tobacco products via alcohol outlets, except in extraordinary circumstances (e.g., where no other supply channel was available in rural areas).

International policy precedents now exist as other communities and governments have implemented measures to reduce the number of tobacco retailers.<sup>12</sup> The NZ Government's proposals to reduce tobacco availability will create environments that reduce smoking uptake and support quitting, and are thus likely to improve population health and decrease health inequities.

### (d) Introduce a smokefree generation policy

Do you support introducing a smokefree generation policy?

- Yes
- No

Please give reasons.

**HCA SEAG members strongly support introducing a smokefree generation policy (SFG).** Most people who smoke begin when adolescents or young adults and lack full knowledge of smoking's health risks,<sup>13</sup> and when their behaviours are often compromised by peer pressure or alcohol.<sup>14</sup> Measures that protect young people from smoking initiation have high public support and will be pivotal to achieving the Smokefree 2025 goal and sustaining minimal prevalence once it is achieved.<sup>15</sup>

Māori communities strongly favour this measure, which supports their vision of a future where rangatahi and tamariki are not burdened by tobacco use. Recent hui endorsed the words of Dame Tariana Turia who, at the 2021 National Tupeka Kore Tobacco control hui, stated: "The story and history of Tobacco are reflected in our Urupa." Māori attending this hui saw a smokefree generation policy as key to reversing this history.

The SFG policy will go beyond minimum age of sale/purchase laws, which do not always effectively reduce youth access to tobacco, given inconsistent retailer compliance and the 'social supply' of smoked tobacco products (e.g., from family and friends).<sup>16</sup> Fixed age laws may also have adverse consequences,

for example by inadvertently signalling that there is a ‘safe age’ for smoking or by framing smoking as a ‘forbidden fruit’.

The smokefree generation (SFG) proposal overcomes many problems associated with the current minimum age of sale law. It is likely to have a more profound impact on reducing smoking uptake because it gradually eliminates the availability of smoked tobacco products. Modelling data suggests the SFG policy will be strongly pro-equity,<sup>17</sup> with the biggest reductions in prevalence occurring among Māori and Pasifika populations due to their younger age structure and high youth and young adult smoking uptake. HCA SEAG members therefore support implementation of the SFG intervention but recognise that this measure requires complementary measures that catalyse smoking cessation. **We therefore recommend the SFG proposal is implemented as part of a comprehensive action plan to achieve the Smokefree Aotearoa goal.**

Are you a small business that sells smoked tobacco products?

- ~~Yes~~
- No

Please explain any impacts that making tobacco less available would have on your business that other questions have not captured. Please be specific.

**HCA SEAG members note the importance of reducing retailer numbers in a way that does not create marketplace anomalies advantaging some retailers over others.** We suggest restricting tobacco sales to specialist R18 stores or pharmacies. We advise against proposals such as “grandfathering”, which will decrease tobacco outlet numbers too slowly to have a meaningful impact on the Smokefree 2025 goal.

**HCA SEAG members recommend an amortization strategy,** where existing tobacco retailers are given a reasonable amount of time to phase out their existing stock and cease selling tobacco products, as this approach would bring faster change.<sup>18 19</sup>

**HCA SEAG members note that arguments opposing reductions in the number of retailers permitted to sell tobacco products often lack a logical or empirical foundation.** For example, arguments claiming that the loss of tobacco sales would see many small retailers go out of business lack empirical support as tobacco sales do not typically account for a high proportion of overall store turnover and generate very little foot traffic that leads to purchases of higher margin products.<sup>20-23</sup>

**HCA SEAG members further note the very low profit margins** associated with tobacco products.<sup>24 25</sup> Re-allocating the space occupied by tobacco products to suppliers of higher profit products, could result in **greater** profitability for retailers.<sup>26</sup>

### 3. Make smoked tobacco products less addictive and less appealing

#### (a) Reduce nicotine in smoked tobacco products to very low levels

Do you support reducing the nicotine in smoked tobacco products to very low levels?

- Yes
- No

Please give reasons.

#### **HCA SEAG members strongly support the Government in requiring all tobacco products in New Zealand to contain only very low levels of nicotine**

Very-low nicotine content (VLNC) cigarettes contain tobacco modified to eliminate most of the nicotine and bring nicotine content below the threshold at which addiction occurs (0.4 mg nicotine per gram of tobacco).<sup>27</sup> However, VLNC are just as harmful as conventional tobacco cigarettes. This point will need to be conveyed to smokers when the policy is implemented. Stopping *all* tobacco use confers the most significant health benefit to individuals.<sup>28</sup>

NZ research has shown that a short course of VLNC cigarettes can help people quit smoking, and prevent relapse back to smoking, by breaking the association between smoking and receipt of nicotine.<sup>29 30</sup> When combined with 'clean' nicotine (via NRT or vaping) and behavioural support, people more readily make the transition away from cigarettes as their source of nicotine. In smokers, VLNC cigarettes decrease nicotine exposure, decrease cigarette dependence, reduce the number of cigarettes smoked per day, and increase the likelihood of contemplating, making, and succeeding at a quit attempt. VLNCs also reduce the risk that experimental smokers become regular smokers.

Concerns about reducing nicotine have not been borne out by research evidence. Compensatory smoking has not been found to be problematic, simply because VLNC cigarettes deliver so little nicotine that it is impossible to compensate effectively.<sup>29 30</sup> Dual use of VLNC cigarettes and conventional tobacco, and stock-piling of traditional tobacco, have also been raised as concerns. A mandated simultaneous, abrupt reduction in nicotine across all combusted tobacco products would be required and research shows this approach has a more significant health benefit than a gradual reduction in nicotine levels.<sup>31</sup>

Strategies will be needed to identify how smokers and the tobacco industry may try to circumvent a nicotine reduction strategy. Reducing nicotine in cigarettes will likely motivate smokers to seek alternative sources of nicotine, particularly forms that address the hand-to-mouth action of smoking (e.g., vaping products and nicotine mouth spray). A black market in conventional tobacco would likely see an increase in the price of these products. NZ has robust border controls and surveillance which, coupled with its geographical isolation, make it unlikely that smuggled tobacco will be a significant problem.

HCA SEAG members recommend that, as part of the enhanced monitoring proposed, VLNC cigarettes are tested regularly to ensure they are as low in nicotine content as is mandated.

## (b) Prohibit filters in smoked tobacco products

Do you support prohibiting filters in smoked tobacco products?

Yes

No

Please give reasons.

**HCA SEAG members strongly support prohibiting filters in smoked tobacco products. Members note that many people who smoke believe, incorrectly, that filters reduce the harms of smoking; they further note that filters represent a major source of environmental litter.**

Analyses of tobacco industry documents show that tobacco companies understood filters made no meaningful difference to the harms people who smoke face but nonetheless continued to incorporate these in their cigarette products because smokers perceive filters as reducing harm.<sup>32</sup>

Filters also cause major environmental harm; they comprise poorly biodegradable cellulose acetate that can linger in the environment for many years before eventually breaking down into smaller plastic particles. Each year, around four trillion cigarette butts are discarded globally, making tobacco product waste the most commonly littered item in the world.<sup>33</sup> A recent NZ National Litter Audit also reported that cigarette butts were the most frequently identified litter item.<sup>34</sup>

**HCA SEAG members do not agree that the problem of discarded filters can be addressed by providing more litter receptacles or greater education, or by introducing biodegradable filters.** These suggestions suit tobacco companies' interests, relocate blame to individuals, and ignore evidence that up-stream interventions, such as changes in tobacco product design, will more effectively reduce the consumer deception and environmental burden of tobacco product waste.<sup>35 36</sup>

**HCA SEAG members note** that banning filters would align with international initiatives (e.g., members of the New York state legislature have proposed a statute banning the sale of single use filters (and e-cigarettes).<sup>37</sup>

## (c) Prohibit innovations aimed at increasing the appeal and addictiveness of smoked tobacco products

Do you support allowing the Government to prohibit tobacco product innovations through regulations?

Yes

No

Please give reasons

**HCA SEAG members strongly support allowing the Government to prohibit tobacco product innovations through regulations.** As well as creating the deceptive impression they reduce harm, filters have become a vehicle for product innovation. For at least the last decade, filters have carried flavour beads, or capsules, which people who smoke may crush to flavour the smoke they inhale and customise their smoking experiences. A recent NZ study found that flavour-capsule cigarettes appealed more to susceptible young adult non-smokers than to young adult smokers.<sup>38</sup> This finding suggests the growth in



capsule sales observed internationally is more likely to reflect recruitment of new, predominantly young “replacement smokers” than it is to demonstrate brand switching among existing smokers.<sup>39-41</sup>

## 4. Make tobacco products less affordable

### (a) Set a minimum price for tobacco

Do you support setting a minimum price for all tobacco products?

- Yes
- ~~No~~

Please give reasons.

**HCA SEAG members support setting a minimum price for all tobacco products** as this approach would provide a mechanism for managing the price-shifting that currently occurs (i.e., where tobacco companies shift a higher proportion of excise tax increases to premium brands while maintaining the relative affordability of budget and super-budget brands). This measure should be accompanied by a levy, or other disincentive to discourage tobacco sales and ensure increased revenue from a minimum price strategy does not benefit tobacco companies.

As a minimum price strategy will likely have greatest impact on people with lower incomes who typically purchase lower-cost brands, SEAG members also recommend that a minimum pricing measure must be accompanied by enhanced smoking cessation support for priority populations.

## 5. Enhance existing initiatives

### (a) Increase investment in mass and social media campaigns

**HCA SEAG members strongly support enhancing existing initiatives by increasing investment in mass and social media campaigns.** We believe these campaigns can promote behaviour change such as smokefree behaviour or switching to alternative sources of nicotine. These campaigns can also create knowledge by exposing industry practices; build supportive environments that support behaviour change,<sup>35 42</sup> and create opportunities to work more effectively with communities affected by unhealthy products, such as tobacco. **HCA SEAG members note with concern** evidence that, despite the importance of mass and social media campaigns in achieving the Smokefree 2025 goal, NZ's expenditure on these measures actually *declined* following the Smokefree 2025 goal's announcement.<sup>43</sup>

**HCA SEAG members also note that** evaluating mass and social media campaigns is crucial and should be an integral component of all campaign activity. Evidence from overseas and from within NZ shows that these mass and social media campaigns can be highly effective and highly cost-effective.<sup>44-46</sup>

We suggest mass and social media campaigns could communicate the goal's meaning and rationale, explain core policy measures, and build support for these. Campaigns could also address misperceptions that may impede use of alternative products, such as confusion between nicotine, which causes addiction, and combustion products, which cause harm. Finally, campaigns could counter potential tobacco industry activity, and reduce any resulting confusion.

We note that successful campaigns require a strategic and integrated approach; campaigns must follow best practice guidelines, particularly with respect to campaign reach, frequency and duration, if they are to have a strong impact.<sup>47-49</sup> They must also be designed to eliminate smoking disparities and reflect the needs, priorities and voices of core communities, particularly Māori, whose leaders first proposed a Smokefree Goal in 2010.

## (b) Increase investment in stop smoking services for priority populations

**HCA SEAG members strongly support increasing investment in stop smoking services for priority populations.** SEAG members note feedback from stop smoking service providers that referrals have fallen since the annual excise tax increases ceased but are likely to increase, particularly if the final Action Plan reduces nicotine to very low levels and greatly reduces tobacco supply. It is important to ensure stop smoking services are equipped to respond to increased service demand and that resourcing recognises the challenges of meeting demand during periods when staff are reallocated to meet COVID-19 requirements. SEAG members working with stop smoking service providers have suggested providing dedicated resources in GP clinics with a high population of wahine Māori (e.g., Health Improvement Practitioners and Health Coaches).

As well as enabling sufficient staffing to provide high quality advice, active support and sustained follow-up, stop smoking service providers seek improved access to prescription medications and funding to subsidise all nicotine replacement therapy products (e.g., Inhalator and Quit Mist, which are currently unfunded).

Investment is also required to ensure stop smoking services are more than programme delivery and smoking cessation providers, but can actively promote themselves within their communities. SEAG members note service providers have asked that investment in mass and social media campaigns is integrated with local stop smoking services to ensure a co-ordinated, strategic approach.

SEAG members also note that many health service providers other than stop smoking services will interact with people who smoke. Members recommend provision of smoking cessation support should be a core activity within all health service providers' roles and embedded within all services interacting with population groups where smoking prevalence peaks.

Of all the issues raised in this discussion document, what would you prioritise to include in the action plan? Please give reasons.

Do you have any other comments on this discussion document?

**HCA members strongly believe the action plan must contain a comprehensive suite of measures; members recognise that no single measure will realise the 2025 goal and note that concerted action is required to reduce the appeal, affordability, availability and addictiveness of tobacco products.**

**HCA members note** the measures that reduce supply and make cigarettes less addictive and less appealing will require assessment to ensure these do not run counter to international agreements.

Our obligation pursuant to the World Trade Organisation Technical Barriers to Trade means that regulations cannot be "...prepared, adopted or applied with a view to or with the effect of creating unnecessary obstacles to international trade." The restrictions are deemed unnecessary and therefore in breach **if they are more than is necessary to fulfil a legitimate objective.** The assessment is evidence-based.

To lessen the likelihood of any case being taken and/or being successful:

1. Articulate the goal of Smokefree 2025 as a legitimate public health objective with the outcomes the smokefree status would achieve.

2. Explicitly state the connection, based on scientific evidence, between the public health objectives and each of the proposed measures, such that no lesser alternative measures could achieve the desired result.

The Comprehensive and Progressive Trans-Pacific Partnership Agreement (CPTPP) generally means that products legally sold in Australia cannot be restricted in New Zealand and vice versa. There is the possibility of exemptions.

The Government should:

1. Notify a denial of benefits of investor state arbitration in relation to tobacco control measures under *Art 29.5* of the CPTPP with the introduction of any legislation.
2. Seek from Australia a temporary 12-month exemption for each of the proposed measures and then a permanent exemption to follow.

Investment treaties ensure foreign investors cannot be expropriated by the State without compensation. Some of the proposals, while not expropriating the cigarette industry, could be characterised as an equivalent in that they deprive the tobacco companies from at least a substantial amount of their investment. However, where non-discriminatory measures are designed to protect public health, they will not be found to be a breach.

1. Any legislation be framed as non-discriminatory in application.
2. The measures proposed do not contemplate a ban of the sale of cigarettes or other smoked tobacco products and it is prudent for them not to be characterised as such.

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