



Position statement on vaping

September 2024

Summary of HCA position

Nicotine vaping products are highly addictive and harmful to children and young people.

Vaping has a valid role as a smoking cessation aid, but HCA does not support the widespread availability and marketing of vapes as lifestyle products.

Policy and regulation to date has not adequately protected young people from vaping harm, and stronger measures are needed (see detailed recommendations, pp 6-9).

Measures to reduce our unacceptably high rates of youth vaping need to include:

- **Reducing access to nicotine products**
- **Regulating pricing, vaping products, promotion and packaging**
- **Effective monitoring and enforcement**
- **Provision of quit vaping support**

We suggest it is time to consider whether vaping products should continue to be regulated as consumer goods, or as the WHO recommends, as medicines, by Medsafe.

Introduction

New Zealand's long-term, comprehensive tobacco control programme has contributed to a reduction in daily smoking prevalence in adults from approximately 35% at its peak in 1970¹ to 6.8% in 2022/23.² Māori leadership in tackling the damage caused by tobacco throughout Aotearoa has been pivotal in this success, especially the work of the Māori Affairs Select Committee Inquiry (2010) that resulted in our aspirational goal for New Zealand to be Smokefree by 2025. The Committee recognised the importance of tobacco excise tax in reaching this goal and prioritised annual increases in price.

However, serious inequities in smoking-related harm remain, with Māori smoking prevalence still at 17.1%, and smoking among adults living in lower income neighbourhoods (10.7%) much higher than adults who live in the highest income neighbourhoods (3.1%).³

The use and impact of tobacco harm reduction narratives

Harm reduction strategies have long been in use in New Zealand to reduce drug-related harm, and in the 1980s, needle exchange programmes were established⁴ along with other successful interventions designed to prevent HIV/AIDS. Tobacco harm reduction has been defined as "minimizing harms and decreasing total mortality and morbidity, without completely eliminating tobacco and nicotine use"⁵. This concept was adopted and used by the Ministry of Health in 2019⁶ when consulting on proposed amendments to the Smokefree Environments Act 1990 to regulate vaping,

In 2021, the Ministry of Health produced a national position statement on vaping⁷, confirming earlier communications that they believed vapes (also known as Electronic Nicotine Delivery

Systems or ENDS) were contributing to the Smokefree 2025 goal and disrupting significant smoking inequities. This approach has been questioned within New Zealand’s tobacco control sector, reflecting international concerns about lack of data on longer-term health outcomes of nicotine vaping, potential and actual harms to young people, rapidly changing product design, and the uneasy alignment with tobacco industry harm reduction marketing narrativesⁱ.

Effective harm reduction initiatives are highly targeted to individuals at risk of harm (in this case, people who smoke), but tobacco and vaping industries have used harm reduction rhetoric to argue for minimal regulation of vaping products. This has facilitated the creation of a new generation of customers for nicotine-containing products, many of whom are young people who have never smoked regularly.

New Zealand government policy has consistently acknowledged the need to protect young people, while allowing less harmful nicotine products to be widely available for adults wanting to stop smoking. But it is now clear that efforts to protect young people from harm have not been effective. New Zealand has been far too slow to regulate against aggressive tobacco industry and retailer marketing and sales to minors.

Vaping as a tool for quitting smoking or switching to potentially less harmful products

Vaping data collected in the NZ Health Survey since 2017/18 shows a reduction in smoking prevalence alongside an increase in vaping (see Figure 1 below⁸). This correlation appears to support the view that making vaping products widely available and less expensive than combustible tobacco products has lowered smoking prevalence. It also appears to have underpinned recent decisions by government to halve tax on Heated Tobacco productsⁱⁱ and proposals to make other oral nicotine and tobacco products availableⁱⁱⁱ as consumer products.

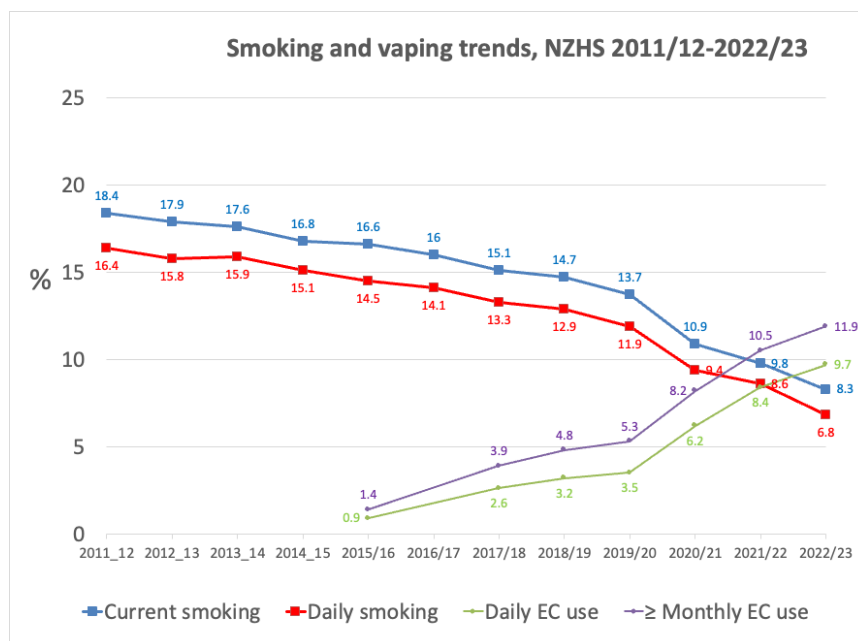


Figure 1: Smoking and vaping in people aged 15 and older, 2011/12 to 2022/23

Yet it is still unclear to what extent vaping has contributed to reducing smoking prevalence in NZ, over and above the cumulative effect of interventions in place prior to its introduction. Some

ⁱ Imperial Brands Science. Bringing the story of tobacco harm reduction to life. 2021 [updated September 21; cited 2021]. Available from <https://imperialbrandsscience.com/timeline/thr-story/>

ⁱⁱ <https://www.rnz.co.nz/news/in-depth/523526/govt-set-aside-216m-to-pay-for-heated-tobacco-product-tax-cuts#:~:text=RNZ%20reported%20earlier%20this%20month,a%20vapour%20rather%20than%20burned.>

ⁱⁱⁱ <https://www.phcc.org.nz/briefing/mind-gap-associate-health-ministers-actions-conflict-ministry-advice-align-tobacco>

supporting evidence for the contribution of vaping comes from the high prevalence of vaping among people who have recently stopped smoking (54% in the 2022 EASE/NZ ITC survey⁹). However, recent tobacco control interventions such as the annual above inflation excise tax increases introduced in 2011 and continued to 2020 will also likely have contributed (price has a well-established relationship with tobacco consumption¹⁰), particularly during the period of the ‘cost-of-living’ crisis due to higher inflation and increased interest rates which began from around mid-2021. For example, in the 2022 EASE/NZ ITC survey 93% of participants who had recently stopped smoking said the price of cigarettes was either ‘very much’ or ‘somewhat’ a reason they had stopped.¹¹

There is good evidence from clinical trials¹² that vaping can increase the success of attempts to stop smoking and may be more effective at an individual level than nicotine replacement therapy (NRT) especially when used in the context of comprehensive smoking cessation services. Yet only 8-10% of people vaping to quit smoking have been shown to successfully quit through vaping¹³ and dual use in New Zealand is high: 63.9% of people over the age of 15 years who currently used vapes, also smoked.¹⁴ Dual use and transitions to and from dual use have been associated with higher tobacco dependence compared with those who use only smoked tobacco cigarettes or e-cigarettes.¹⁵

We note that the World Health Organization (WHO) concluded in 2024 that:

“e-cigarettes as consumer products have not been proven to be effective for cessation at the population level. Instead, alarming evidence on adverse population health effects is mounting.”^{iv}

Vaping prevalence in children and young people

High rates of nicotine addiction in school-aged children (10% of 14-15-year-olds and 15% of 15–17-year-olds reported vaping daily in 2023) are a serious problem for students, parents and schools. Most young people who vape have never smoked regularly and many have never smoked at all^v (in 2023 daily smoking in the same age groups was 1.2% and 1.0% respectively).^{16 17} There is no evidence (other than anecdotal reports) of vaping being a gateway to smoking in New Zealand, but some similar countries (England, Australia) have recently seen increases in youth smoking, and review studies suggest that vaping remains a risk for later smoking.¹⁸

While vaping is likely to result in fewer harms than smoking in terms of longer-term health outcomes like heart disease and cancer, nicotine addiction itself is very harmful to children¹⁹. Problems may include disruptions to learning from withdrawal symptoms, reduced physical activity and fitness, sleep disruption, lowered self-esteem, increased anxiety and mood disorders, and financial problems.²⁰ Vaping affects young people differently from adults as they are more vulnerable to addiction and neurotoxicity.^{21 22} Conditions such as anxiety and ADHD can become more difficult to manage with the addition of nicotine addiction.²³ The need for regular nicotine ‘hits’ reduces students’ ability to concentrate and learn, creates behavioural problems in classrooms and at home, and increases the risk of absences and exclusion from school, including primary schools.^{vi}

Vaping and health inequities

The introduction of new generation nicotine products and their promotion to young people has created widespread nicotine addiction that undermines the *Tupeka Kore* vision. It is very concerning that daily vaping is much higher among Māori (22%) and Pacific (14%) Year 10 students than among their European/Pākehā peers (see Figure 2 below²⁴).

^{iv} Retrieved 5/07/2024 from <https://www.who.int/news-room/questions-and-answers/item/tobacco-e-cigarettes>

^v Retrieved 9/09/2024 from <https://www.phcc.org.nz/briefing/smoking-and-vaping-among-14-15-year-olds-government-action-urgently-needed>

^{vi} Retrieved 26/07/2024 from <https://www.rnz.co.nz/news/national/506882/more-primary-school-students-stood-down-for-vaping-ministry-of-education>

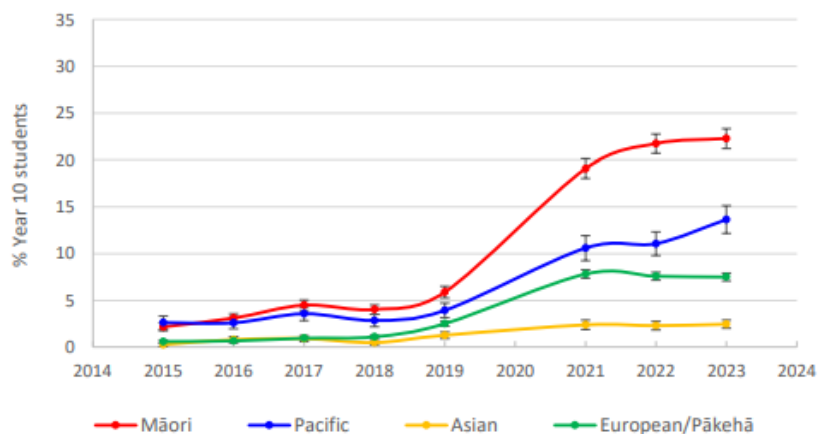


Figure 2: Daily vaping prevalence in Y10 students by ethnicity

Tobacco was originally introduced to Māori as an article of trade, resulting in very high rates of nicotine addiction among Māori – an ongoing reminder of colonisation²⁵ and intergenerational trauma.²⁶ The tobacco industry has continued to exploit Māori by promoting heated tobacco and vaping products at marae and rugby clubs in South Auckland in 2019^{vii}, aggressive marketing online, through giveaway promotions on youth radio popular with Māori and Pasifika and offering cheap deals on products.^{viii}

Daily vaping has also increased in older youth. The 2022-23 NZ Health Survey²⁷ found daily vaping among 18- to 24-year-olds had risen to 25.2% (from 23% in 2021/22).

Some restrictions on vape marketing and sales to minors were introduced in November 2020, but these have not afforded comprehensive protection to young people. By 2023, New Zealand had relatively high rates of youth vaping (16.4% of 14-15-year-olds were regular vapers²⁸ compared with 10% of Australian 14-17-year-olds who were current vapers^{ix}). International comparisons of youth vaping (16–19-year-olds, 20+ days per month, 2023 data) shows that our youth vaping rate (17.3%) is nearly twice as high as England (9.7%), and almost three times as high as Canada (6.2%) and the United States (6.4%).²⁹

Smokefree legislation and vaping regulation

Vaping products have been available in New Zealand for over a decade, within a rapidly evolving market that has included transitions from ‘cig-a-likes’ (mimicking cigarettes), podvapes, disposables, and many variations to these. Prior to a 2018 District Court decision³⁰ (Philip Morris (NZ) Ltd v Ministry of Health [2018] NZDC4478) in favour of Philip Morris, it was believed that existing legislation applied to nicotine-containing vapes and heated tobacco products and that these could not be sold in New Zealand. The Court decision clarified the legal status of these products, and tobacco and vaping industries quickly began more aggressive marketing of vaping to young people, as protections under the Smokefree Environments Act 1990 had been found not to apply to vaping products.³¹ Vaping products changed around this time – nicotine salt formulations enabled higher concentrations of nicotine to be delivered, and the devices became smaller and more discrete.

The Smokefree Environments and Regulated Products (Vaping) Amendment Act 2020 required that all workplaces, including restaurants and bars, were to be smokefree and vape free. The Act also

^{vii} Retrieved 20.07.2024 from <https://www.rnz.co.nz/news/in-depth/394073/big-tobacco-targeting-maori-with-e-cigarettes#:~:text=Philip%20Morris%20is%20targeting%20M%C4%81ori,%20or%20community%20outreaches>.

^{viii} Retrieved 20.07.2024 from <https://www.rnz.co.nz/news/in-depth/394252/tobacco-company-targeting-maori-for-money-minister>

^{ix} ‘Current use’ includes people using e-cigarettes daily, at least weekly, at least monthly, or less often than monthly. Retrieved 5/07/2024 from <https://www.aihw.gov.au/reports/smoking/young-peoples-vapes-e-cigarettes#more-use>.

banned the sale of vaping products to anyone under the age of 18 together with most forms of marketing and promotion, and required that product safety standards should be met. The flavours sold by dairies and other general retailers were limited but specialist vaping retailers (SVRs) could stock unlimited flavours.

Further amendments to the Smokefree Environments Act were made in December 2023. Health Coalition Aotearoa submitted a detailed response to the proposed amendments^x, arguing for a much stronger regulatory approach on vaping. Some of our recommendations were adopted in the Act, including restrictions on new vape shop proximity to schools and marae, a reduction in levels of nicotine in disposables to 20mg/ml, and restrictions on flavour names and packaging imagery. However, we had also argued unsuccessfully for many other measures, and opposed changes to the Act that would remove existing protections for youth under both Section 3A and Section 49 (pp 16-17^{xi}).

Smokefree amendments were also introduced at this time. The three key measures (mandated denicotinisation, greatly reduced retailer numbers and the smokefree generation policy for smoked tobacco products) designed to reduce smoking prevalence had a strong evidence base and very strong health sector and public support but have since been repealed. The repeal rationale appeared to be based on tobacco industry arguments³² rather than credible evidence.³³ If vaping has supported reduced smoking prevalence, the repealed measures were likely to have strengthened this impact. Because smoked tobacco products would have become much less appealing, addictive and available, the impetus to have switched to vaping products would have increased.

Cabinet members of the current government have approved in principle introducing oral nicotine and tobacco products, including nicotine pouches (e.g. Zyn) and Swedish snus.^{xii} However, evidence that introducing these new products will support smoking cessation and further reduce smoking prevalence^{xiii} is very weak.³⁴ In May 2024, without public consultation³⁴ or communication and against Ministry of Health advice, Cabinet approval in principle has been given for legalising the sale of these nicotine products.³⁵ At the time of writing it remains unlawful to sell oral nicotine and tobacco products in New Zealand, however they are being promoted and sold on NZ websites (illegally).^{xiv}

Furthermore, against the advice of officials in the Ministry of Health, the government halved the excise tax on the tobacco used in Heated Tobacco Products (HTPs) in July 2024, despite lack of evidence about the effectiveness of these products as smoking cessation aids.³⁶

World Health Organisation advice on regulating new generation nicotine products

In 2019, the WHO defined heated tobacco products as tobacco products but left it to individual countries to decide how vaping (ENDS) should be defined and regulated, which resulted in very different regulatory regimes between countries.

^x Retrieved 6/07/2024 from <https://www.healthcoalition.org.nz/wp-content/uploads/2024/04/HCA-SFA-submission-FINAL.pdf>

^{xi} Retrieved 6/07/2024 from <https://www.healthcoalition.org.nz/wp-content/uploads/2024/04/HCA-SFA-submission-FINAL.pdf>

^{xii} Retrieved on 9/09/2024 from <https://www.phcc.org.nz/briefing/can-oral-tobacco-and-nicotine-products-help-people-stop-smoking>

^{xiii} Retrieved 5/07/2024 from https://www.nzherald.co.nz/nz/snuff-and-chewing-tobacco-could-be-legalised-to-help-smokers-quit-but-researchers-sceptical-about-benefits/H6VGGGDR6ND4VOCQRWLZPLGM7M/#google_vignette and <https://www.beehive.govt.nz/release/smokefree-amendment-bill-introduced> which quotes Associate Minister of Health Casey Costello claiming “In the last three years, 229,000 people have stopped smoking, with vaping playing a key role”.

^{xiv} Retrieved on 9/07/2024 from [Oral nicotine products: Expanding the nicotine marketplace | PHCC](#).

“At COP6, decision FCTC/COP6(9), invited Parties “to consider prohibiting or regulating ENDS/ENNDS, including as tobacco products, medicinal products, consumer products, or other categories, as appropriate, taking into account a high level of protection for human health.”³⁷

The WHO updated this advice in 2024³⁸ and now recommends that countries like New Zealand which have permitted the commercialization of ENDS as consumer (rather than therapeutic-only) products

“ensure strong regulations to reduce their appeal and their harm to the population, including banning all flavours, limiting the concentration and quality of nicotine, and taxing them” and that “where countries pursue a smoking cessation strategy utilizing e-cigarettes, to carefully weigh national circumstances and the risk of uptake, and exhaust other evidence-based cessation strategies. The conditions under which the products are accessed should be controlled to ensure appropriate clinical conditions and the products should be regulated as medicines, rather than their sale permitted as consumer products.”

Legislating to protect young people from nicotine addiction

Recent Coalition Government decisions on vaping policy

Health Coalition Aotearoa supports most of the recent Cabinet agreements^{xv} (6 August 2024) for strengthening vaping regulations to better protect young people (see comments below in response to material not supported, in italics) and note that work to “crack down on youth vaping” will be undertaken in two tranches and include the following measures.

- banning not only the manufacture and sale, but also the supply and distribution of disposable vaping products, *and extending the scope of the ban to cover vapes that are not rechargeable and refillable, and single-use containers such as prefilled tanks, pods and cartridges*
- extending restrictions on displays and storefronts of specialist vape retailers to general retailers – not allowing vaping products and related imagery to be visible from the street, inside retailers that minors may enter (e.g. convenience stores), and on retailer websites
- including Early Childhood Centres in proximity restrictions of *100 metres* for SVRs
- increasing penalties for vaping-related offences.

We note that Cabinet agreed on page 3 of the Cabinet Minute of June 2024 that the Amendment Bill was to be designated a “category 2 priority (must be passed in 2024)”.

HCA Responses to Cabinet decisions above

1. Extending the ban to include *vapes that are not rechargeable and refillable single-use containers such as prefilled tanks, pods and cartridges* as agreed by Cabinet, needs further consideration. Regardless of the definition used, this measure is unlikely to completely remove cheap vapes from the market, as the industry is adept at circumventing regulations and producing products at a low price point. Our preference is a ban on all non-refillable vapes but excluding vapes which use refillable or replaceable tanks, pods and cartridges.

Furthermore, a broad definition that disallows pod and cartridge systems may have unintended consequences, including people increasingly using low quality refillable vapes that carry greater risks than the vapes currently favoured by most people who vape, including young people. Risks include explosion, adulteration or contamination of e-liquids, and poisoning resulting from children drinking e-liquids.

^{xv} Dated 6 August 2024, retrieved on 20/08/2024 from [smokefree_env_reg_products_amendment_bill_2024_youth_vaping_black_box_watermarked.pdf](https://www.health.govt.nz/SmokefreeEnvRegProductsAmendmentBill2024YouthVapingBlackBoxWatermarked.pdf) ([health.govt.nz](https://www.health.govt.nz))

We recommend further consideration of the risks and benefits of this broad definition of “disposable vapes” including implications for youth uptake, for people switching to vaping as an alternative to smoking, for prevalence of poisoning from drinking e-liquid, for contamination risks with open systems (i.e. refillable vapes), for the development of a black market, and for the environment.

2. *Including proximity limits for Early Childhood Centres (ECEs)* is supported by HCA, but the rationale for making this limit 100 metres rather than 300 metres as is currently applied to schools and marae, is not clear. ECEs ought to be subject to the same proximity limits as schools and marae.
3. We support *increased penalties for vaping-related offences* but note that sufficient resources to ensure robust enforcement is essential.

Strengthening current activities and legislation

Alongside a recent increase in monitoring and enforcement activities, Cabinet has agreed some positive steps to strengthening legislation, but as noted above, they need further work, and more needs to be done to be effective in the government’s stated aim to ‘crack down on youth vaping’.

New Zealand’s regulation of vaping products as consumer goods has proven to be hugely damaging and costly for our children and young people, parents, schools, and youth mental health and addiction services. If vaping products are regarded as smoking cessation aids, they should meet the same regulatory standards as other smoking cessation products (i.e. nicotine replacement therapy).

Serious inequities between Māori and non-Māori that are apparent in youth vaping rates must be addressed as a priority consistent with *Te Tiriti o Waitangi* responsibilities. Māori youth are unfairly exposed to the many behavioural, financial and other risks associated with nicotine addiction as they have much higher usage rates than non-Māori.

A strong, comprehensive and planned approach is needed to address the harm impacting our young people. The plan should be based on high-quality research and involve consultation with affected communities. There is no place for tobacco or vaping industry input in either research or planning.

We are pleased to note that Cabinet will be considering detailed proposals for a vape licensing system as part of ‘Tranche Two’ options^{xvi}. Tranche two options identified include “minor amendments to vape retailing, and the outcome of the vape store compliance system review” and allowing the sale of reduced harm smokeless tobacco and oral nicotine products, the latter which we strongly oppose.

We recommend additional Tranche Two components be considered alongside those already identified, as follows.

Access to nicotine products

1. Reduce the number of retail outlets selling vaping products. Options to be considered include restricting sales of vapes to a much smaller number of licensed specialist vaping retailers or to pharmacies, and disallowing general retailers such as petrol stations and supermarkets to sell vapes.
2. Apply current or proposed restrictions on location of new vape retailers (i.e. not operating within 300 metres of schools, Early Childhood Centres and marae) to existing vape retailers and give notice to shops currently too close to these premises, to move or stop selling vapes within one year.
3. Restrict vape retailer density, particularly in low-income communities.

^{xvi} As identified in the Cabinet paper of 6 August 2024, p.2.

4. Additional nicotine products such as oral nicotine pouches, oral tobacco (e.g. snus) and other novel commercial nicotine and tobacco products should not be approved for sale in New Zealand until there is robust independent evidence of their effectiveness as smoking cessation aids.
5. The full excise tax on heated tobacco products must be reinstated, as these products are highly likely to be more harmful to health than vaping and there is thus far no robust independent evidence that they support smoking cessation.
6. The ban on disposable vapes must be accompanied by measures preventing retailers from selling these products more cheaply than previously in the lead-up to the ban. Particular attention should be given to ensuring product dumping does not occur in disadvantaged communities.
7. Online marketing and sales to minors must be addressed with mandatory age verification processes that require more than a tick box, and consideration given to other mechanisms that can prevent young people accessing nicotine products online.

Price

8. Prohibit discounts, giveaways and price promotions for vaping products by deleting section 33(4) of the Smokefree Environments and Regulated Products Act. SVRs regularly discount products, and offer giveaways and promotions such as two-for-one deals³⁹.
9. Consider introducing measures to reduce the affordability of vaping products for young people and non-smokers (e.g. excise taxation, minimum pricing), while retaining the price at a lower level than smoked tobacco, to encourage people who smoke to 'switch' to alternative products.

Products, promotion and packaging

10. Require all vaping products to have black and white standardised packaging with health warnings focusing on the dangers of addiction.
11. Consider options for restricting flavours, not just flavour descriptors, and especially flavours popular with children.

Monitoring and enforcement

12. We support recent attempts to increase activities to monitor and enforce adherence to vaping regulations and would like to see further investment in this area. However, increased monitoring is not a substitute for more effective policy and should be introduced **alongside** the measures outlined in this section.
13. The monitoring regime should include regular testing of nicotine levels and constituents of e-liquids.
14. In addition to higher penalties for the sale of nicotine products to minors, introduce penalties for poor labelling of nicotine levels in products and breaches of the current nicotine level limits.
15. Lower the current threshold for prosecution of retailers in breach of regulations.

Quit vaping support services

16. Fund services to provide vaping cessation support to any people wanting to quit vaping, regardless of their previous smoking status and age.
17. Develop and evaluate child and youth specific vaping cessation services, clinical guidelines for these services, and guidance for parents and schools about how to help students who are addicted to nicotine.

Support people wanting to stop smoking

1. Focus on implementing comprehensive evidence-based strategies for driving population smoking prevalence down equitably, such as those set out in the Smokefree Aotearoa 2025 Action Plan.^{xvii}
2. Focus on providing evidence-based smoking cessation products and programmes, delivered with professional support from general practice and smoking cessation services.
3. Ensure that all vape retailers have the competence and commitment to advise and support customers who smoke, to switch completely to vaping or refer them to smoking cessation support services.
4. Consider subjecting nicotine vaping products and other nicotine products for Medsafe approval, alongside proven nicotine replacement therapies.
5. Retain a maximum nicotine strength for vaping products of 20mg/ml while reinstating the mandated minimisation of nicotine levels in smoked tobacco products to ensure strength of regulation is proportionate to risk.
6. Alongside restrictions on the number, location and density of vaping retailers, reintroduce restrictions on the smoked tobacco retailer numbers so that these products are less easily available than vaping products.

^{xvii} Retrieved on 17/08/2024 from <https://www.health.govt.nz/our-work/preventative-health-wellness/smokefree-2025/smokefree-aotearoa-2025-action-plan> .

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