



# Health Coalition Aotearoa

## Submission from Health Coalition Aotearoa to the Smokefree Environments and Regulated Products Amendment Bill (No 2)

October 2024

### Introduction

Health Coalition Aotearoa (HCA) is a coordinating, umbrella organisation for the NGO, healthcare and academic sectors to achieve the collective vision of health and equity in Aotearoa/New Zealand. Unhealthy diets, high BMI, tobacco, and alcohol contribute about one-third of the overall preventable health loss in New Zealand<sup>1</sup>.

We represent individual members, including academic experts and community and public health leaders, as well as 74 member organisations which are committed to improving public health.

This submission was drafted by the HCA's Smokefree Expert Advisory Group (SEAG), which includes tobacco control academics, smokefree health promotion and community health leaders based in NGOs, including those delivering smoking cessation services. Members have recently completed a Vaping Position Statement<sup>2</sup> which informs our response to the Bill.

### General comments

The Smokefree Environments and Regulated Products Amendment Act, ('the Act'), which until recently provided the legal framework for our tobacco and vaping regulatory regime and was widely supported. The HCA submission on the Act provided detailed evidence supporting the three key priority measures designed to support successive governments' Smokefree 2025 goal.

Like most other health sector agencies, we objected strongly to the repeal of these measures in March this year. The repeal was undertaken without having been campaigned or consulted on, and in the absence of any supporting evidence or proper process.

As a result, the regulation of vaping is now disproportionate to risk. Smoked tobacco products are more harmful yet have weaker regulation than vaping products. The Government must address this anomaly by regulating to greatly restrict the availability, appeal, and addictiveness of smoked tobacco products<sup>3</sup>.

We strongly support putting in place policy measures to address widespread concerns about vaping prevalence, particularly in young people and non-smokers. New Zealand has much higher vaping prevalence than other similar countries among school-aged children<sup>4</sup>, and rangatahi Māori vaping prevalence is two to three times higher than non-Māori<sup>5</sup>. This is unacceptable and must be addressed as a priority.

We understand that the measures in this Bill comprise ‘Tranche One’ of a more comprehensive approach<sup>6</sup> being considered by this government. We welcome and support additional measures to further strengthen the regulatory framework to protect children and young people from vaping harms as ‘Tranche Two’ of the legislative process.

Our suggestions for a more effective, comprehensive approach are on pages 5 and 6.

## Health Coalition Aotearoa response to the Bill

### New purpose statement

*Clause 5 amends the purpose section of the principal Act to add a new purpose statement. The new purpose is to reduce access to regulated products by children and young people.*

### HCA comments

We strongly support amending the purpose section of the principal Act to reduce access to regulated products by children and young people for the following reasons.

- 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<sup>7</sup> (in 2023 daily smoking in the same age groups was 1.2% and 1.0% respectively).<sup>8 9</sup>
- 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.<sup>10</sup>
- 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 children.<sup>11</sup> 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.<sup>12</sup>
- Vaping affects young people differently from adults as they are more vulnerable to addiction and neurotoxicity.<sup>13 14</sup> Conditions such as anxiety and ADHD can become more difficult to manage with the addition of nicotine addiction.<sup>15</sup> 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.<sup>16</sup>

## Banning the manufacture, sale, supply, and distribution of disposable vapes

*Clause 4 amends the interpretation section of the principal Act to add a new definition of disposable vaping product.*

### HCA comments

We note that Ministry of Health officials recommended in their Regulatory Impact Statement (RIS) that

- *a narrow definition of ‘disposable vapes’ be used, rather than the wide definition that has been adopted in the Bill and includes pods and capsules*
- *the wide definition is out of step with UK, Australia and other definitions internationally*
- *unintended consequences of a wide definition include safety issues with refillable vapes; incentivisation of the illicit market; and the potential for acting as a disincentive for adults vaping for smoking cessation, as refillable vapes are harder to use and less convenient.*

The Ministry’s advice does not appear to have been followed.

- We suggest that this measure as worded in the draft amendments, 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.
- We agree with the Ministry’s advice that “the most effective way to remove cheap products from the market is using direct price controls (e.g. minimum prices or excise tax) rather than prohibiting product types”, and that “a ban on disposables would be most effective for reducing youth vaping if combined with other measures for instance taxation.”
- 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.
- 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.

*Clause 13 amends section 33 to clarify that specialist vape retailers cannot provide disposable vaping products free of charge or at a reduced charge.*

### HCA comments

- Clause 13 of the Bill makes amendments preventing SVRs from providing disposable vaping products free of charge or at a reduced price. However, while Section 20FA completely disallows the sale and supply of disposable products, Section 33 continues to allow SVRs to provide other vaping products free of charge or at a discount.

- We are disappointed that the Bill fails to disallow discounting of vaping products by SVRs.
- Young people are attracted to cheap products and report buying vapes despite being under 18<sup>17</sup> and a recent NZ study found many retailers used heavy price discounting to offload outdated (non-compliant) stock.<sup>18</sup> We support the repeal of 33(4), removing the exception that allows SVRs to offer discounts, giveaways, loyalty promotions, and introductory offers of vaping products.

## Including early childhood education centres in proximity restrictions for specialist vape retailers

*Clause 8 amends section 20P (which deals with applications for approval as a specialist vape retailer) to include restrictions on the sale of vaping products within certain boundaries of schools, marae, and early childhood centres.*

### HCA comments

Restricting access to vapes is essential to bring youth vaping rates down. We support proximity restrictions for schools, marae, and early childhood centres as this will limit access for young people, but the proposed approach is unlikely to be effective, as there are so many vape retailers already established inside these limits.

- Proximity restrictions need to be made retrospective, with a reasonable timeframe for implementation. We understand that ESR analysis found that about half of specialist vape retailers (SVRs) were within 300m of a school or marae in January 2024, and media reports suggested that many of these had been established just prior to the 2023 proximity restrictions coming into force<sup>19</sup>.
- We note that a rationale for the different proximity distance for ECEs (100m rather than 300m for schools and marae) has not been provided. However, the RIS analysis on extending existing restriction (of 300m) to ECEs noted that it would come close to capping the number of SVRs because there are many more ECEs than schools in NZ (4,425 compared with 2,540 schools). This suggests a possible unwillingness to restrict the number of vape retailers.
- The HCA strongly supports restricting the number of vape retailers in NZ, currently estimated at around 4,000 outlets. We note that reducing the number to 600 was a National Party policy which was campaigned on and widely supported by parents and schools during the 2023 election.
- We also support restricting vape retailer density, particularly in low-income communities.

## Increasing penalties for unlawful sales of regulated products to minors

### HCA Comments

The HCA supports increased penalties for unlawful sales of regulated products to minors, which might act as a deterrent. However, retailers are unlikely to believe they will be caught and prosecuted as enforcement and prosecution efforts have so far been sparse and ineffective, due to lack of resources. The RIS mentions that only three individuals/organisations have been charged to date, despite controlled purchase operations in 2023- 2024 revealing that 15% of vape retailers (i.e. over 1000 stores nationwide) had sold vaping products to minors.

We remain concerned that insufficient resources will be provided to public health services to monitor retailer compliance and pursue prosecutions. Without effective monitoring and enforcement, regulations are unlikely to reduce youth vaping prevalence. Despite the apparent increase in the number of Smokefree Enforcement Officers (SFEOs), it is unclear whether recently announced newly appointed SFEOs will provide sufficient capacity to prevent ongoing sales to minors.

Smokefree Enforcement Officers (SFEOs) currently have very limited ability to act when they discover noncompliance. They cannot issue fines and must send infringement information to the Ministry of Health to action. Possibly due to ‘back office’ roles being reduced, responses have been minimal. Increasing fines alone will not produce the changes in retailer behaviour that are needed. Powers available to SFEOs need to be reviewed to enable local action against non-compliant retailers, such as issuing instant fines and/or seizing non-compliant stock.

Given the level of community concern about youth vaping, information on enforcement activities and results should be made publicly available.

## Imposing retail visibility restrictions for vaping products

### HCA Comments

The HCA supports measures to reduce the visibility of vaping products, and close marketing loopholes important to youth uptake, such as online opportunities. The ‘denormalisation’ of tobacco smoking is a well-established and effective component of tobacco control efforts over the decades, and point-of-sale display bans have helped to reduce smoking prevalence internationally.<sup>20</sup> It is likely that reducing the retail visibility of vaping products will have a similar effect on youth vaping.

However, many SVR websites allow people to sign up to receive promotions using a tick a box to say they are over 18 and an ‘existing customer’; proof of purchase or age verification is rarely, if ever, required hence minors are likely to continue receiving such promotional material.

We strongly support vape retailers to be required to use age verification processes for all online sales.

## ‘Tranche Two’ regulation options

We are pleased to see that Cabinet will be considering detailed proposals for a vape licensing system as part of a ‘Tranche Two’ process.<sup>21</sup>

We strongly oppose allowing the sale of additional oral nicotine products and note that young people can easily access nicotine pouches already, despite there being no evidence of benefit to adults wanting to quit smoking, and unknown harms to users.

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 and proposed restrictions on location of new specialist vape retailers (i.e. not operating within 300 metres of schools, Early Childhood Centres and marae) to all 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.
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. Should heated tobacco products again be sold in New Zealand, the full excise tax on these products must be reinstated, as these products are more harmful to health than vaping and there is no good 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 deals.<sup>22</sup>
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.

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## References

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