

From: S9(2)(g)(ii) [redacted]
Sent on: Friday, October 20, 2023 3:37:50 AM
To: S9(2)(g)(ii) [redacted]
Subject: FW: Draft Flavour Wheel - some feedback

Coolants was excluded as it's not a flavour, so I haven't included a bunch of other emails on coolants.

From: S9(2)(g)(ii) [redacted]
Sent: Tuesday, 27 June 2023 11:00 am
To: Matt Burgess S9(2)(g)(ii) [redacted]; S9(2)(g)(ii) [redacted]
[redacted] Sally Stewart S9(2)(g)(ii) [redacted] Emma Hindson S9(2)(g)(ii) [redacted]
Cc: Stephanie Parlane S9(2)(g)(ii) [redacted]
[redacted]
Subject: RE: Draft Flavour Wheel - some feedback

That means I'm not sure how we deal with it. I think it's a difficult thing we need to make a decision about. It may not fit well in the wheel, but I don't think we can ignore it. Manufacturers will want or likely find some way to refer to it. It might be better to have it as one of the two flavour descriptors.

From: Matt Burgess S9(2)(g)(ii) [redacted]
Sent: Tuesday, 27 June 2023 10:58 am
To: S9(2)(g)(ii) [redacted]
[redacted] Sally Stewart S9(2)(g)(ii) [redacted] Emma Hindson s 9(2)(a) [redacted]
Cc: Stephanie Parlane S9(2)(g)(ii) [redacted]
[redacted]
Subject: RE: Draft Flavour Wheel - some feedback

Hi S9(2)(g) [redacted]

Does that mean you support it not being included?

Thanks,

Matt

From: S9(2)(g)(ii) [redacted]
Sent: Tuesday, 27 June 2023 9:06 am
To: Matt Burgess S9(2)(g)(ii) [redacted]
[redacted] Sally Stewart S9(2)(g)(ii) [redacted] Emma Hindson S9(2)(g)(ii) [redacted]
Cc: Stephanie Parlane S9(2)(g)(ii) [redacted]
[redacted]
Subject: RE: Draft Flavour Wheel - some feedback

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Just adding to the discussion on ice – this is not usually a mint/menthol flavour – just a cooling effect. It is extremely popular with youth. It acts in a similar way to menthol tobacco to mask somewhat the harshness of the nicotine. It might not be considered a flavour, but more of an effect.

From: Matt Burgess S9(2)(g)(ii)
Sent: Tuesday, 27 June 2023 8:14 am
To: S9(2)(g)(ii) Sally Stewart
S9(2)(g)(ii) Emma Hindson S9(2)(g)(ii)
Cc: Stephanie Parlane S9(2)(g)(ii)
Subject: RE: Draft Flavour Wheel - some feedback

Thanks S9(2).

1. We specifically took out drinks other than coffee and tea, but if you think cola is needed then we could add it back in by changing the category to Drinks – my concern with that is that we could get a lot of requests to add in other drinks as well. We wouldn't necessarily add them in but we'd need to respond to a lot more requests. I've added passionfruit, oat (renaming Nuts to Nuts & Grains) and sweet.
2. We excluded ice as it isn't a flavour. If they have to ensure the name accurately describes the flavour then we shouldn't allow things that don't have a flavour. They can presumably use a mint flavour instead of ice.
3. Yes – definitely. I think we've decided that they can choose one flavour name or a combination of two flavour names for each variant.
4. I think we should allow people to request additional flavours but not additional categories – so if the flavour they want doesn't fit within the listed categories then we won't consider it.

I've attached a link to the updated version of the flavour wheel in case anyone has any further feedback.

Cheers,

Matt

From: S9(2)(g)(ii)
Sent: Monday, 26 June 2023 9:00 pm
To: Matt Burgess S9(2)(g)(ii) Sally Stewart
s 9(2)(a) Emma Hindson S9(2)(g)(ii)
Cc: Stephanie Parlane S9(2)(g)(ii)
Subject: RE: Draft Flavour Wheel - some feedback

Hi Matt,

I have taken a look at the flavour wheel document. I think it looks pretty good really, but I have a couple of questions/comments:

1. I have done a quite unscientific survey of websites.... I think that the wheel has most things that we would want. A couple of things to consider adding – Cola, passionfruit, some sort of cereal/granola/oat flavour name, generic ‘sweet.’
2. Also ‘Ice’ –We haven’t got it as a descriptor, and it is a very popular descriptor. However, I understand that ‘ice’ can be added in a way that is essentially flavourless. I wasn’t sure if this was purposeful?
3. I think that the flavour wheel document would need to specify how people use it. For example, the fact that there can only be a maximum of two chosen (if this is what we are saying)
4. Are we having a process / some way that people can request a flavour be added to the wheel? We haven’t really talked about this... it just says that the Ministry will publish.

Regards,

S9(2)

From: Matt Burgess S9(2)(g)(ii)

Sent: Tuesday, 20 June 2023 11:12 am

To: Sally Stewart S9(2)(g)(ii) Emma Hindson S9(2)(g)(ii)

S9(2)(g)(ii)

Cc: Stephanie Parlane S9(2)(g)(ii)

Subject: RE: Draft Flavour Wheel

Hi,

We did some more work on the flavour wheel and would appreciate any thoughts/feedback on this version: [SERPR Flavour Wheel.xlsm](#)

Thanks,

Matt

From: Matt Burgess

Sent: Thursday, 18 May 2023 6:31 pm

To: Stephanie Parlane S9(2)(g)(ii)

Subject: RE: Draft Flavour Wheel

Here’s the updated flavour wheel now the macros are working again.

From: Matt Burgess

Sent: Wednesday, 17 May 2023 11:08 am

To: Stephanie Parlane S9(2)(g)(ii)

Subject: Draft Flavour Wheel

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Briefing

Proposals for the Smoked Tobacco Regulatory Regime

Date due to MO: 28 October 2022 **Action required by:** 3 November 2022

Security level: IN CONFIDENCE **Health Report number:** HR20221296

To: Hon Dr Ayesha Verrall, Associate Minister of Health

Contact for telephone discussion

Name	Position	Telephone
Jane Chambers	Group Manager, Policy and Regulation, Public Health Agency / Te Pou Hauora Tūmatanui	s 9(2)(a)
Sally Stewart	Manager, Policy and Regulation, Public Health Agency / Te Pou Hauora Tūmatanui	

Minister's office to complete:

- | | | |
|---|------------------------------------|--|
| <input type="checkbox"/> Approved | <input type="checkbox"/> Decline | <input type="checkbox"/> Noted |
| <input type="checkbox"/> Needs change | <input type="checkbox"/> Seen | <input type="checkbox"/> Overtaken by events |
| <input type="checkbox"/> See Minister's Notes | <input type="checkbox"/> Withdrawn | |

Comment:

Arrived: 31/10/22
in
office

Proposals for the Smoked Tobacco Regulatory Regime

Security level: IN CONFIDENCE **Date:** 28 October 2022

To: Hon Dr Ayesha Verrall, Associate Minister of Health

Purpose of report

1. This report provides you with a draft Cabinet paper and attached discussion document that sets out a suite of regulatory proposals required to establish the Smoked Tobacco Regulatory Regime. In addition, the report provides proposals to strengthen current vaping regulations for your consideration.
2. This report discloses all relevant information and implications.

Summary

3. The Smokefree Environments and Regulated Products (Smoked Tobacco) Amendment Bill (the Smokefree Bill) is expected to pass in December 2022, and the Smoked Tobacco Regulatory Regime stood up from 1 July 2023. To develop the regime, consultation on all regulatory proposals will be undertaken in February and March 2023, following the Smokefree Bill receiving Royal Assent.
4. Manatū Hauora has drafted a discussion document setting out the regulatory proposals needed to set up the scheme and Cabinet approval is required to release the document for consultation. A draft Cabinet paper seeking this approval is attached.
5. The regulatory proposals cover:
 - the smoked tobacco products retail application scheme
 - low nicotine standards and product approval processes
 - new notification requirements
 - fees.
6. Alongside the regulatory proposals needed for the Smoked Tobacco Regulatory Regime, Manatū Hauora has also set out a small number of proposals to strengthen existing vaping requirements through regulations. These proposals respond to concerns raised in the recent media, ministerials and through submissions on the Smokefree Bill regarding youth vaping uptake.

Recommendations

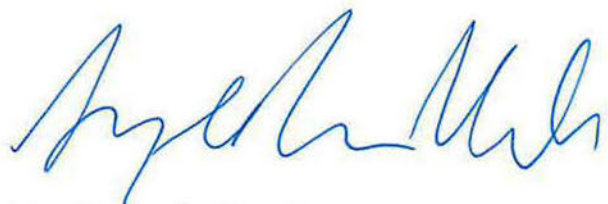
We recommend you:

- a) **Agree** to the following draft Smoked Tobacco Regulatory Regime proposals set out in the draft discussion document:
- i. The smoked tobacco products retail application scheme Yes/No
 - ii. Low nicotine standards and product approval process Yes/No
 - iii. New notification requirements for smoked tobacco distributors, general vape retailers, and retailers of other notifiable products Yes/No
 - iv. Fees for the smoked tobacco regulatory regime. Yes/No
- b) **Agree** to the additional proposals that tighten to existing vape packaging and product restrictions to reduce youth vaping uptake. Yes/No
- c) **Agree** to circulate the draft Cabinet paper and discussion document with your Ministerial colleagues (subject to any changes). Yes/No
- d) **Note** the Cabinet paper will need to be lodged with the Cabinet Office by 10am on Thursday 17 November 2022, for Cabinet Social Wellbeing Committee on 23 November 2023.
- e) **Note** that planning to undertake Māori and Pacific engagement is underway and an engagement plan will be provided to you in November.



Gerardine Clifford-Lidstone
Acting Deputy Director-General
**Public Health Agency / Te Pou Hauora
Tūmatanui**

Date:



Hon Dr Ayesha Verrall
Associate Minister of Health

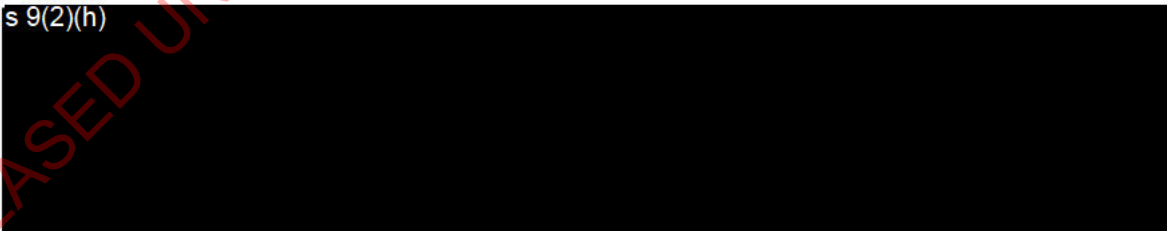
Date: 25/11/22

Proposals for the Smoked Tobacco Regulatory Regime

Context

1. The Smokefree Environments and Regulated Products (Smoked Tobacco) Amendment Bill (the Smokefree Bill) is currently being considered by the Health Committee. Public submissions have been analysed and Manatū Hauora, in its role as advisor to the committee, has recommended changes to the Smokefree Bill in its departmental report. You have received a copy of this report.
2. As drafted, the retail application scheme must commence six months after the Smokefree Bill receives Royal Assent. This briefing provides you with a draft Cabinet paper and attached discussion document (attached as appendices 1 and 2) that sets out a number of regulatory proposals to achieve this so that the Smoked Tobacco Regulatory Regime can be in place in mid-2023 (subject to the Bill passing before the end of this year).
3. In addition, you have commissioned advice on what more can be done through regulations to provide a better regulatory balance so that those who wish to stop smoking can continue to easily access vape products, while further preventing youth vaping uptake. This briefing provides you with options for your consideration and approval.
4. Both the Smokefree 2025 Taskforce and the Pacific Assurance Group have had the opportunity to consider and provide input on the regulatory proposals at varying stages of their development. Both groups are supportive of the approach being taken.

Proposals

5. The attached draft discussion document is intended to be released for public consultation in February/March 2023, following the enactment of the Smokefree Bill and will form the basis of targeted engagement with Māori and Pacific peoples.
6. The regulatory proposals outlined in the discussion document are summarised below.
7.  s 9(2)(h)

Retail application scheme

8. The Smokefree Bill restricts where smoked tobacco products can be sold and who can sell them. Smoked tobacco products will only be able to be sold in a limited number of retail premises approved by the Director-General of Health. To enable this, an application scheme must be established that sets out how the number of stores will be distributed across the country, criteria needed to grant approval and the application process for doing so.

9. Many submissions on the Smokefree Bill, that were in favour of this policy, were in favour of setting a number limit in the Act itself, rather than in regulations. As a result, the departmental report recommends amending the Smokefree Bill to specify a maximum number (600)¹ that the Director-General cannot exceed (refer to page 28 of the departmental report).
10. The retail scheme will comprise the following components, and proposals set out the details required for each of these:
 - the *method of allocation* of the smoked tobacco products retailers. For example, the split between urban and rural locations, and for each region of New Zealand
 - the *criteria for decision making*, including minimum requirements for acceptance as a smoked tobacco retailer (eg, fit and proper person check, security and business processes)
 - the *approval processes*, including a method for ranking applicants, and the criteria which will be used to do so. These include, for example, the location of stores in relation to sensitive locations like schools, history of compliance with the Smokefree Environments and Regulated Products Act 1990 (the Smokefree Act), and the overall suitability of the retail premise.
11. As part of the consultation, we will be seeking feedback on the retail scheme. Specific consultation will take place with Māori as proposed in the Smokefree Bill. There will also be targeted consultation with Pacific communities, retail associations and with other stakeholders that have knowledge of local areas such as local government.
12. Further detail on the retail application scheme is provided in the discussion document.

Low nicotine standards and product approval processes

13. The Smokefree Bill includes a specific provision that nicotine levels in smoked tobacco products, and a method of determining whether the levels have been exceeded, are set in regulations.
14. Many submissions on the Smokefree Bill, that were in favour of this policy, were also strongly in favour of setting a limit for nicotine directly in the Act. As a result, the departmental report recommends amending the Bill to specify a maximum level of no more than 0.8mg/g nicotine in all smoked tobacco products (refer to page 42 of the departmental report).
15. We propose that a low nicotine product safety standard is set in regulations and could include requirements relating to nicotine testing methods, product safety system requirements, minor packaging changes and application forms and approval processes.
16. Further detail on the product standard, as well as required testing methods, is provided in the discussion document.

¹ This number is 10 percent of the estimated existing number of retailers (around 5000 - 6000).

New notification requirements

17. The Smokefree Bill requires distributors of smoked tobacco products and general vape retailers to notify the Director-General of Health that they are distributing or selling their products. Regulations will set out database notification requirements.
18. Some submissions made suggestions about the categorisation of other regulated products, other than smoked tobacco and vaping products. To ensure entry to market requirements are consistent for all regulated products, the departmental report recommends extending the notification requirement to retailers of *all* notifiable products.
19. We propose a simple annual registration scheme, with a small administration fee, that requires distributors and general vape retailers to enter their contact details on Manatū Hauora's database. Further detail is provided in the discussion document.

Fees

20. The Bill provides for recovering the costs of establishing and operating the Smoked Tobacco Regulatory Regime from the industry through fees and/or levies. These fees and/or levies will be specified in regulations.
21. We propose fees for smoked tobacco retail applications, applications for smoked tobacco products approvals, and sector participant registrations. The fees have been set based on estimates of the average cost to receive, process and respond to each type of application or registration. Further detail is provided in the discussion document.

Strengthening vaping requirements

22. You have commissioned work to look at what could be done to further strengthen existing restrictions and requirements on vaping products through regulations, to reduce youth vaping uptake.
23. Concerns around youth vaping uptake were also raised in a number of submissions on the Smokefree Bill (refer to page 10 and 11 of the departmental report). Many submitters wished to see the three key smokefree policies also applied to vaping.
24. While Manatū Hauora acknowledges the concerns raised by these submitters, we did not recommend any changes to existing vaping provisions to the Health Committee. These provisions are relatively new and the public health sector's ability to enforce the new vaping provisions has been compromised by its role in the COVID-19 pandemic response. A concerted compliance and enforcement effort must be undertaken before determining whether such changes are needed, and this will be a focus of the Smokefree work programme over the next four years.
25. There is, however, an opportunity to tighten vaping requirements through existing regulation making powers in the Smokefree Act. We are mindful that any such changes are made with some caution. The Smokefree Bill makes substantial and bold changes that will affect both the availability of smoked tobacco products, and their nicotine content, over time. It is important that people who decide to stop smoking as a result of these changes continue to have ready access to less harmful nicotine products, such as vapes. That said, we acknowledge and share concerns about the number of young people taking up vaping. There is an opportunity to better balance the vaping regulatory regime to protect our rangatahi from ever becoming addicted to these products.

26. The following section outlines a small number of proposals that could be achieved through the existing regulation making powers in the Smokefree Act, and we have signalled whether or not these should be progressed. There is an opportunity to consult on vaping proposals in February/March 2023 as part of the consultation on the Smoked Tobacco Regulatory Regime.

Draft vaping proposals for your consideration

Tightening vape retail requirements

27. While vaping is now regulated in a way that enables people wanting to quit smoking to safely access vaping products, it is important that these products are not sold or marketed in a way that makes them more readily available or accessible to young people. We must also be confident that vape retailers understand, and are complying with, their legal obligations. The Smokefree Bill's proposed change to require general vape retailers to notify that they are selling vape products will help compliance and enforcement efforts.
28. Some submitters indicated a wish to see tighter approval criteria for vape retailers set out in regulations, including density and proximity restrictions, 'fit and proper person' requirements, requiring cessation and safe usage training and provision of a referral pathway to services, and for a manager to always be required on premises.
29. While further approval requirements can be set in regulations, there is very limited evidence at this stage to suggest doing so will impact youth vaping rates. The 2022 ASH survey of Year 10 students found that the most common source of vapes for this age group is from friends (for daily users, 46% bought from or were given by friends, for all vape users, 43% were given by friends). The least common source is buying online or in a shop. As a source of vapes, dairies, petrol stations and supermarkets were the main source for only 2.1% of all vapers and 3.5% of daily vapers. Specialist vape stores were higher, but still only 3.8% of all vapers and 8.7% of daily vapers reported them as the main source.
30. As compliance and enforcement efforts ramp up, we will be in a better position to understand whether vape retailers are operating their businesses to the highest standards and in accordance with their requirements under the law. If strengthened consequences are needed for breaching these requirements (eg, removing the right to sell vape products), this would require an amendment to the Smokefree Act. We can provide further information to you on how this could be achieved, if needed.
31. In addition, the Ministry of Foreign Affairs and Trade is about to fund the University of Auckland to carry out research that will establish an accurate estimate of the number and distribution of tobacco and vaping retail outlets in New Zealand. This will be presented by smoking prevalence and proximity to high schools. This is due mid next year and will give us further information to assess the value of tightening vape retailer approval requirements (eg, restricting vape sales near schools).
32. **We therefore do not recommend progressing this proposal at this stage.**

Extending packaging and product restrictions

33. The way products are packaged and designed impact on their appeal, particularly for youth. The Smokefree Act requires the appearance of a vaping product and package

(including messages and information on a product package) to comply with any requirements set out in regulations. Existing requirements reflect those in place in the UK and EU. The intent was to recognise and communicate that vaping is a less harmful alternative to smoking, while limiting their appeal to non-smokers and young people.

34. However, we consider that there are opportunities to strengthen the requirements already in place to further reduce appeal to youth, as described below.

Restrict flavour names and packaging designed to appeal to youth

35. Vape flavours are relatively generic, however, the naming of flavours in some products appear designed specifically to appeal to young people. For example, Honey Bear, Stoned Smurf and Unicorn Milk.

36. **We propose addressing this issue by restricting flavour names to generic descriptions.** This can be achieved by updating current packaging and labelling requirements that are already set in regulations. Naming would need to be accurate and reflect the flavour only. While there is not necessarily evidence that this would reduce youth uptake of vaping, it is unlikely to have unintended consequences, and will signal to industry that we will not tolerate marketing to young people.

37. These changes can be made under section 83(1)(a) of the Smokefree Act.

Tighten product safety requirements for disposable vapes

38. Disposable vapes are a single use plastic product, and early research indicates littering and limited opportunities for recycling or safe disposal of batteries. In addition, these products have high levels of nicotine, making them very addictive, and have a number of safety concerns including a lack of child safety mechanisms, inability to inspect for battery damage, nicotine concentration, substance labelling and trackable serial or batch numbers.

39. Disposable vapes are also cheap and designed to appeal to young people. Use of these products in New Zealand is currently low, but they have quickly become the most popular vape product used by young people in the US and UK, and we expect this trend to follow here if left unaddressed.

40. **We propose to restrict the use of disposable vapes by tightening current product safety requirements** that are set in regulations (refer Appendix 3 for detail). **s 9(2)(g)(i)**

[REDACTED]

41. These changes can be made under section 84(1)(a) of the Smokefree Act.

42. Banning these products outright would require an amendment to the Smokefree Act that would prohibit their import, manufacture, sale and distribution. We can provide further information to you on how this could be achieved, if needed.

Cabinet decisions needed

43. Prior to consulting on the proposals needed to establish the Smoked Tobacco Regulatory Regime and to tighten vaping restrictions, you will need to seek Cabinet approval to release the draft discussion document.

44. We have prepared a draft Cabinet paper for you to take to the Cabinet Social Wellbeing Committee (SWC) and this is attached as Appendix 2. The draft paper notes that the proposals may need to be updated to reflect any further changes made to the Smokefree Bill in the final Parliamentary stages. At this stage we are not expecting any changes that will significantly impact on the detail of the regulatory proposals.
45. We suggest you seek Cabinet approval before the Smokefree Bill commences on 1 January 2023. This will enable consultation to commence in early February 2023 so that regulations can be made and in place by July 2023 for the Smoked Tobacco Regulatory Regime to commence.
46. Timeframes and deliverables to achieve this are as follows:

What	When	Action needed
Agree to draft proposals	3 November 2022	Manatū Hauora will update draft Cabinet paper and discussion document, as needed
Cabinet paper to SWC	23 November 2022	Ministerial consultation 3-16 November Lodge paper 17 November
Cabinet approves public release of discussion document (subject to Smokefree Bill passing)	28 November 2022	Approval will be subject to Bill passing (and any changes made through the final stages)
Smokefree Bill commences	1 Jan 2023 (tbc)	
Consultation commences	Early Feb 2023	

Consultation plan and engagement with Māori and Pacific

47. The Public Health Agency's Hauora Māori team will lead the Māori consultation process which will occur in February 2023. A copy of the engagement plan will be provided to you in November 2022 before you take the Cabinet paper to SWC. Engagement with Pacific peoples will be undertaken at the same time. This will be led by Tala Pasifika and is supported by Pacific Health in the Public Health Agency.
48. Consultation on the proposals more broadly will be primarily undertaken via Citizen Space, with additional targeted workshops with interested groups (ie, local councils and retail associations).

Equity

49. It is crucial that the Smokefree Bill is operationalised in a way that reduces the prevalence of smoking across all population groups and support more equitable outcomes. Establishing a robust regulatory regime that has been well consulted on and reflects the needs and considerations of Māori, as well as other disproportionately affected populations, will achieve this.

Next steps

50. Subject to your approval, Manatū Hauora will update the draft Cabinet paper and discussion document for you to take to SWC on 23 November 2022.

ENDS.

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Appendix 1: Draft Cabinet paper

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Appendix 2: Draft discussion document

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From: S9(2)(g)(ii)
Sent on: Friday, October 20, 2023 3:36:40 AM
To: S9(2)(g)(ii)
Subject: FW: Flavour wheel
Attachments: Thesis_Krusemann_complete.pdf (3.48 MB)



Thesis_Krusemann_c
omplete.pdf

From: S9(2)(g)(ii) <[redacted]@hc-sc.gc.ca>
Sent: Saturday, 22 October 2022 1:11 am
To: Sally Stewart <[redacted]@hc-sc.gc.ca>
Cc: S9(2)(g)(ii) <[redacted]@hc-sc.gc.ca>
Subject: Flavour wheel

See chapter 2, attached, thesis for the flavour wheel I was referring to.

Warm regards,

S9(2)

De : Sally Stewart <[redacted]@hc-sc.gc.ca>
Envoyé : 2022-10-17 16:34
À : Choiniere, Denis (HC/SC) <[redacted]@hc-sc.gc.ca>
Cc : S9(2)(g)(ii) <[redacted]@hc-sc.gc.ca>
Objet : vaping product packaging

Dear S9(2), I hope all is well with you.

With our legislation progressing through Parliament, we are turning our minds to regulations. In addition to the regulations needed to implement the smoked tobacco Bill, we are considering options to tighten up the regulation of vaping products as youth uptake continues to rise, causing a fair amount of concern in some quarters. Subject to the Bill passing in December, we will be publicly consulting on regulatory proposals in February.

We would be keen on meeting to hear about your experience with your regulatory requirements – primary in relation to packaging, including product or flavour names. I'm not sure that we are entirely up to date with the work you have done in this area, but we would be interested in hearing what you have in place or are considering, as well as whether compliance and enforcement has been a challenge.

And we'd be happy for a general catchup – it's been a while.

Regards
Sally

Sally Stewart (she/her)

Team Manager
Policy and Regulation

S9(2)(a)

S9(2)(g)(ii)

Public Health Agency | Te Pou Hauora Tūmatanui

Ministry of Health | Manatū Hauora

133 Molesworth Street Thorndon, Wellington 6011



*

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From: S9(2)(g)(ii)

Sent: Thursday, 24 August 2023 3:31 pm

To: S9(2)(g)(ii)

Cc: Stephanie Parlane S9(2)(g)(ii) Gill Hall S9(2)(g)(ii)

Subject: Ice memo/unintended consequence and managing queries

Kia ora S9(2)(g)(ii)

Sorry to dump you with this but I haven't had time the last few days to get around to doing anything about this. We just need to update the memo to include a little bit about how the industry might react, what they are now required to do, and what the impact of this might be. S9(2)(g)(ii) has seen the memo and asked for more to be added about this.

I note we have already received a query about this to the vaping inbox – S9(2)(g)(ii) just mentioned.

I'm not familiar with the toxicological assessment, or what that means logistically, so can't really write up anything about it.

The risk I see is that we are in effect applying a new trade barrier to industry which is an unintended outcome of the regulations to restrict flavour names. We need to be able to explain what the industry needs to do and why. And probably justify why this is now a requirement when it wasn't something outlined in the consultation etc.

We need to be able to manage and respond to queries and challenges that will come from industry on this issue. S9(2)(g)(ii) might be able to give you a steer if you don't know where to start.

Can I leave that with you to work on? Run it by S9(2)(g)(ii) and then S9(2)(g)(ii) when you're done, and then update the memo a little to say what we've done.

Just noting it has gone on the webpage today so we will probably want to prepare something soon. I'm around for the arvo so let me know if you have any questions.

Link – [Memo to GM on Policy decision taken to exclude synthetic cooling agents from approved flavours for vaping products from SERPR 2023.docx](#)

Audit trail – [Audit Trail - Memo to GM on Flavour Wheel.docx](#)

S9(2)(g)(ii) will then want to see the memo again before she signs it. You could also share the wording that is prepared for media queries.

Ngā mihi

S9(2)(g)(ii)

Senior Advisor | Kaitohutohu Matua
Public Health Policy & Regulation

S9(2)(g)(ii)

Te Pou Hauora Tūmatanui | Public Health Agency
Manatū Hauora, 133 Molesworth Street



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Briefing

Smoked Tobacco Regulatory Regime - report back to Cabinet

Date due to MO: 20 April 2023

Action required by: 21 April 2023

Security level: IN CONFIDENCE

Health Report number: H2023020631

To: Hon Dr Ayesha Verrall, Minister of Health

Consulted: Health New Zealand: Māori Health Authority:

Contact for telephone discussion

Name	Position	Telephone
Jane Chambers	Group Manager Policy and Regulation, Public Health Agency	s 9(2)(a)
Emma Hindson	Principal Advisor, Policy and Regulation, Public Health Agency	

Minister's office to complete:

Approved

Decline

Noted

Needs change

Seen

Overtaken by events

See Minister's Notes

Withdrawn

Comment:

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Smoked Tobacco Regulatory Regime - report back to Cabinet

Security level: IN CONFIDENCE **Date:** 20 April 2023

To: Hon Dr Ayesha Verrall, Minister of Health

Purpose of report

1. This report provides you with a draft Cabinet paper seeking policy approval for the regulatory proposals needed to establish the Smoked Tobacco Regulatory Regime (attached as Appendix 1).
2. This report discloses all relevant information and implications.

Summary

3. Following the passing of the Smokefree Environments and Regulated Products (Smoked Tobacco) Amendment Act in December 2022, Cabinet agreed to consult on the regulatory proposals needed to establish the Smoked Tobacco Regulatory Regime [CAB-22-MIN-0589 refers]. Consultation is now completed and the proposals subsequently updated to reflect public feedback.
4. Most of the proposals were largely supported, and some changes are recommended as follows:
 - a. slightly refine the retail allocation distribution to reduce the number of retail premises in rural areas, and increase numbers in highly populated urban areas (see Appendix 1 of attached Cabinet paper)
 - b. refine the requirements for the testing method for low nicotine smoked tobacco products in line with advice from the technical expert advisory group
 - c. change the retail premise application fee from a range of up to \$2,200, to a specific fee of \$1,475.
5. The consultation document also sought feedback on proposals to tighten current vaping restrictions, within the scope of the regulation-making powers in the Smokefree Environments and Regulated Products Act 1990 (the Smokefree Act), to reduce their appeal to youth. These proposals garnered a significant response. This briefing summarises the themes raised and seeks your decisions on extending approval requirements for Specialist Vape Retailers, including introducing proximity restrictions.
6. This report has been shared with a number of departmental agencies, including Te Aka Whai Ora and Te Whatu Ora and feedback has been incorporated.
7. You will need to take updated regulatory proposals to the Cabinet Social Wellbeing Committee (SWC) on 10 May 2023, to enable regulations to be in place for the retail scheme to commence in August 2023.

Recommendations

We recommend you:

- a) **Note** the updated retail allocation numbers as outlined in Appendix 1 of the attached draft Cabinet paper **Noted**
- b) **Note** that feedback from departmental consultation has been incorporated into the attached draft Cabinet paper **Noted**
- c) **Agree** to the draft smoked tobacco proposals outlined in the attached draft Cabinet paper (paragraphs 25, 29, 35, 44 and 51 refer) **Yes/No**

EITHER:

- d) (i) **Agree** that there be no proximity restrictions to become an approved Specialist Vape Retailer. **Yes/No**

OR:

- (ii) **Agree** that any new Specialist Vape Retailer cannot operate within 300m from the location point for a school on the Ministry of Education database **Yes/No**
- (iii) **Agree** that any new Specialist Vape Retailer cannot operate within 300 metres of any Marae **Yes/No**
- e) **Agree** to amend the Smokefree Regulations to require that a person must demonstrate an understanding of their obligations under the Smokefree Act, before being approved as a Specialist Vape Retailer **Yes/No**
- f) **Agree** to the draft vaping proposals outlined in Appendix 3 of the attached Cabinet paper (paragraph 48 of the Cabinet paper refers) **Yes/No**
- g) **Invite** officials to provide advice later in 2023 on options to shift the regulatory balance towards better protecting young people from the risks associated with vaping **Yes/No**
- h) **Agree** to consult on the draft Cabinet paper with your Ministerial colleagues (subject to any changes you have) **Yes/No**
- i) **Note** the Cabinet paper will need to be lodged with the Cabinet Office by 10am on Thursday 4 May 2023, for Cabinet Social Wellbeing Committee on 10 May 2023 **Noted**

s 9(2)(f)(iv)

s 9(2)(f)(iv)

Dr Diana Sarfati
Director-General of Health
 Te Tumu Whakarāe mō te Hauora
 Date: 20 April 2023

Hon Dr Ayesha Verrall
Minister of Health

Date: 27/4/23

Smoked Tobacco Regulatory Regime - report back to Cabinet

Background

2. Public consultation on the regulatory proposals needed to establish the Smoked Tobacco Regulatory Regime is now completed with 2700 submissions received and analysed. The majority of proposals were largely supportive. Some proposals have been refined as a result of the feedback received and these are outlined in more detail below.
3. Consistent with previous consultation on the Smokefree Aotearoa 2025 Action Plan and the Smokefree Amendment Bill, those with a commercial interest did not support the proposals. While some tobacco companies provided useful feedback on technical matters such as low-nicotine testing methods, feedback from both the tobacco and vaping industry was mainly focussed on general concerns regarding the Smokefree Act itself (eg, their view that the policies are unworkable, or that the changes will drive an increase in the black market and crime).
4. The attached draft Regulatory Impact Statement includes more detail on consultation feedback (Appendix 2). In addition, a summary of the analysis of submissions is currently being drafted. We intend to publish the submission analysis following Cabinet decisions, and we will provide you with a draft copy at the end of April 2023.
5. There was significant interest and feedback on the vaping proposals. The proposals covered: restricting the way flavour names are described on product packaging (current products on the market include flavours such as 'gummy bear', 'OMG' and 'unicorn tears'); extending product safety requirements (to include child-safety mechanisms and reduce nicotine salt levels in disposable vapes); and extending approval requirements for Specialist Vape Retailers (SVRs) (eg, by introducing proximity restrictions to specific locations such as schools).
6. The proposal for restricting flavour names remains largely unchanged and the proposal to tighten product safety requirements has been refined to reflect consultation feedback. Unsurprisingly, many stakeholders strongly supported the proposal to introduce proximity restrictions on new SVRs. However, there is still limited data and evidence on the impact of the proposal on youth vaping and this is discussed in more detail later in this report.

Consultation with Māori

7. Manatū Hauora held 10 community hui across the country. Six were held in person and 4 online due to difficulties because of Cyclone Gabrielle.
8. In addition, almost 200 online submissions from individuals and organisations listed their ethnicity as Māori and another 230 responses were gathered by Hāpai Te Hauora using a simplified survey at Te Matatini.
9. A strong and consistent theme across all hui was the need to ensure that community voice is front and centre of decision-making, both in relation to the implementation of the retail scheme itself, and more broadly, to achieve the objectives of the Smokefree Aotearoa 2025

Action Plan. We are working with Te Aka Whai Ora on how this can best be achieved, as well as how we can engage with Iwi-Māori Partnership Boards.

Updated proposals

Smoked tobacco

10. Manatū Hauora consulted on requirements for the following:
 - a. the smoked tobacco retail scheme (including approval and decision-making criteria to become an approved retailer)
 - b. testing requirements and approval processes for low nicotine products
 - c. new notification requirements for distributors and retailers
 - d. fees to enable the regime to be cost-recovered.
11. Feedback on these proposals was largely supportive. Those who did not support the proposals were generally small businesses (and tobacco companies) concerned about the impact of the proposed changes on their business. The proposals have been refined to reflect feedback heard and further analysis. In summary:
 - a. The allocation distribution has been changed to reflect feedback that the rural allocation was too high, and the allocation in highly populated urban areas such as Auckland was too low (and therefore would penalise certain populations in terms of travel and petrol costs). In addition, following discussions with the Ministry of Foreign Affairs and Trade, a specific allocation is proposed to be included for a small number of duty-free stores and we are continuing to work with them to refine this proposal.
 - b. The preferred low nicotine testing method is confirmed as a chemical analytical method, that uses gas chromatography. A specific method has not been stipulated, but regulations will provide guidance on the features of an appropriate method and require any potential applicant to submit their testing methodology for consideration by the Director-General of Health.
 - c. Fees charged for retail applications have been refined from a range of \$500 to \$2,200, to a set fee of \$1475.
12. The updated proposals are outlined in the body of the attached draft Cabinet paper.

Vaping

13. Manatū Hauora consulted on requirements to:

Restrict the way vaping flavours are described

14. There was strong public support for restricting flavour descriptions and this proposal remains largely unchanged. Manatū Hauora intends to publish prescribed flavour descriptions as a flavour wheel (or similar) on its webpage.

Extend existing product safety requirements

15. While many supported the reduction in nicotine levels in disposable vapes, there was consistent support for these levels to be even lower. Conversely, industry submitters did not support reducing nicotine levels and argued that different levels for reusable and disposable vapes would be confusing and may impact on people's ability to successfully stop smoking.

16. There was significant concern around the requirements for removeable/replaceable batteries, due to manufacturers' ability to safely implement such changes across all vape products. For example, submissions noted that most vaping devices notified in New Zealand (both reusable and single use) contain inbuilt batteries, which are securely sealed within.
17. The policy intent of this proposal is to reduce the appeal of vaping products to youth. It is not to restrict the market for adults wishing to quit smoking. We consider that further work is required to understand the impact of introducing removeable/replaceable batteries on the whole vape market before introducing such measures. We have taken a similar approach with child safety measures and have recommended that these only be required for disposable vape products at this stage.
18. The proposal outlined in the Cabinet paper therefore focuses on: requiring child-safety mechanisms on disposable vapes; reducing nicotine salt levels in disposable vapes to minimise the addictiveness, and therefore appeal, to youth; and ensuring that all vape products have clear and legible product information on them.

Extend approval requirements for SVRs

19. There was strong support for restricting where SVRs can operate. Concern about the presence of vape shops and their impact on young people was heard across the country from Māori and Pacific peoples, and was a consistent theme across the submissions.
20. It is not clear, however, whether this would reduce the appeal of vaping products to youth. The 2022 ASH survey of Year 10 students found that the most common source of vapes for this age group was from friends (for daily users, 46 percent bought from or were given by friends, for all vape users, 43 percent were given by friends). The least common source was buying online or in a shop. Further, the survey also showed no significant relationship between the density of SVRs to a school (within 1.5km proximity) and school vaping prevalence.
21. There is also some concern that introducing restrictions on where SVRs can operate will impact on adult accessibility. It is important that people wishing to switch to less harmful products, such as vapes, can do so, especially as the retail reduction and low nicotine changes come into force.
22. We therefore propose that any proximity restrictions introduced for SVRs are made with caution. If you wish to proceed with introducing proximity restrictions, we recommend that a SVR must be further than:
 - a. 300m from the location point for a school on the Ministry of Education database. This measurement is intended to give effect to not having SVRs near the main entrance of a school.
 - b. 300 metres of any Marae. Including proximity restrictions for Marae reflects clear and consistent feedback from consultation hui and Te Aka Whai Ora.
23. We do not recommend extending proximity restrictions to other locations, such as sports grounds, at this stage as this would be difficult to implement in a fair and risk-proportionate way. There is also no available evidence to suggest it will impact on achieving the policy intent of reducing the appeal of vaping to youth.
24. We also recommend an additional requirement in regulations that the applicant must demonstrate an understanding of their obligations under the Smokefree Act (eg, no sales

to minors). This responds to compliance and enforcement concerns raised through consultation and will give greater confidence to the Regulator that SVRs are consistently operating within the requirements of the law.

Many submitters did not think the vaping proposals went far enough

25. The consultation document set out proposals that could be achieved within the scope of the regulation-making powers of the Smokefree Act.
26. While there was general support for the proposed changes, many submitters did not think that the proposals went far enough. A number indicated that the same restrictions that are being put in place for smoked tobacco should also be applied to vaping products. For example, the number of SVRs should be capped, more requirements should be in place to be approved as a retailer, and that young people should never be allowed to be sold vapes (like the 'Smokefree Generation' policy). Many wanted an outright ban on disposable vapes and did not want vapes to be sold in dairies or other small businesses young people frequent. These changes could only be achieved through an amendment Bill.
27. Our previous advice on these matters has noted that vape products are newly regulated¹, the new provisions of the law are risk-proportionate and more time is needed to see how the legislative changes have bedded in. We also noted the important role of compliance and enforcement in ensuring that the new requirements of the law (eg, no sales to minors) are being met.
28. However, the recent consultation process has demonstrated that public concern regarding vaping, and in particular its impact on young people, is very strong. This is reinforced by the clear and consistent message from hui and fono undertaken across the country of the importance of the community/whānau voice in decision-making. Māori and Pacific are clear that they consider that the balance of our regulatory settings doesn't meet the policy intent of the law: *that adults wishing to quit smoking can access less harmful regulated products while young people are protected from risks associated with vaping.*
29. Officials can provide advice on options to shift the regulatory balance to better protect young people if you wish.

Second tranche of regulations

30. The consultation document set out a proposal for packaging and labelling requirements for low-nicotine tobacco products to ensure that people understand that these products are still harmful to their health. We have not included this proposal in the attached draft Cabinet paper as further information is needed before it can be finalised. Manatū Hauora has commissioned work in association with Te Whatu Ora Health Promotion, to provide further insights on New Zealanders' understanding of low nicotine tobacco product, to inform messaging.
31. Regulations may also be needed for the notification of smoked tobacco product importers and manufacturers, which requires further work with Customs.
32. Once this work is completed in September 2023, we will provide you with advice on any proposed packaging changes, and you can seek Cabinet approval later in the year or early next year.

¹ The Smokefree Environments and Regulated Products (Vaping) Amendment Bill came into force in December 2020.

Agency feedback

33. We have circulated the draft Cabinet paper to departmental agencies, including Te Aka Whai Ora and Te Whatu Ora. The feedback received was not substantial and the main updates to the Cabinet paper are summarised below:
 - a. Approval requirements now include the following additional security requirements that businesses must have (or plan to have) in place: an appropriate fog cannon system; and secure product storage. This responds to Police concerns regarding the prevention of retail crime.
 - b. Proximity restrictions for Specialist Vape Retailers now include Marae, in addition to primary and secondary schools. This responds to clear and consistent feedback from consultation hui and Te Aka Whai Ora.
34. The Ministry of Business, Innovation and Employment raised some concerns regarding the impact of some of the ranking criteria on competition for business and our response is set out below:
 - a. The ranking criteria in the draft Cabinet paper penalising selling alcohol has not changed. We believe that the proposal is already worded in the most competitively neutral way.
 - b. We have removed the proposal to favour existing businesses over new entrants to address concerns that this would unfairly penalise new market entrants who may better meet criteria such as security and location. We are continuing to consider policy options that can address community concerns that retailers may be approved where none currently are located.
35. We are expecting Ministry of Foreign Affairs and Trade feedback shortly and will inform your office of any additional changes needed to the paper as a result. We are not anticipating any major issues.

Equity

- a. The new provisions of the Smokefree Act must be implemented in a way that reduces the prevalence of smoking across all population groups and vaping amongst young people and supports more equitable outcomes.
- b. Establishing a robust regulatory regime for smoked tobacco (and strengthening the existing vaping regulatory regime) that has been well consulted on and reflects the needs and considerations of Māori, as well as other disproportionately affected populations, will achieve this.

Next steps

- c. We will update the attached draft Cabinet paper following your consideration of this briefing so that you can circulate a copy to your Ministerial colleagues for feedback.
- d. You will need to take the Cabinet paper to the 10 May 2023 SWC meeting so that the regulations can be drafted and in force by August 2023, when the retail scheme must commence.

ENDS.

Minister's Notes

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From: S9(2)(g)(ii) [REDACTED]
Sent: Monday, 27 February 2023 9:59 am
To: Emma Hindson S9(2)(g)(ii) [REDACTED]; Matt Burgess
S9(2)(g)(ii) [REDACTED]
Subject: RE: Vaping submission

Môrena, here's the other vape flavour article from the March 2023 issue. Just shows how complex the evidence is around flavours, which we may need to reference in the RIS.

[Associations Between E-cigarette Use and E-cigarette Flavors With Cigarette Smoking Quit Attempts and Quit Success: Evidence From a U.S. Large, Nationally Representative 2018–2019 Survey | Nicotine & Tobacco Research | Oxford Academic \(oup.com\)](#)

This one suggests:

- smokers that vape are more likely to make quit attempts/successfully quit
- users of flavoured vapes are more successful than unflavoured or tobacco flavoured vapes
- those who use mint or menthol are as successful as those who use other flavours (fruit/sweet) – though they reference the other studies that have suggested these fruit/sweet flavours are more associated with success
- based on their findings they suggest removing flavours aside from mint and menthol would not harm smoking cessation but would remove youth appeal (possibly in conflict with the article I sent Friday about youth liking the cooling properties that menthol presents)
- they reference multiple surveys that suggest if flavours were restricted, a sizeable group of vapers would return to smoking
- limitations of the study include that they didn't really look at how type of vape device interacted with flavours and smoking cessation, and this is US based with a strong history of African American use of menthol flavour, which might make the findings less applicable to us.

And here's a highly relevant but small study looking at how youth perceive vape packaging.

[Vaping Flavors and Flavor Representation: A Test of Youth Risk Perceptions, Novelty Perceptions, and Susceptibility | Nicotine & Tobacco Research | Oxford Academic \(oup.com\)](#)

This found:

- middle schoolers (11-14) who view the fruit-flavoured vaping product with flavour colour and flavour image were more likely to consider it fun and interesting and were seen as more susceptible to trying vaping (compared to tobacco flavour colour and image or no colour and image)
- restricting flavour representation on packaging might reduce how fun and interesting youth perceive these products to be and how susceptible they are to using them
- limitations are that it was only 176 children
- they suggested additional research with adult smokers is needed to check how these changes would impact their behaviour. "Future research should also continue to investigate other approaches not tested in this study, such as restricting the descriptors of flavours and selling these and other products in adult-only brick-and-mortar shops."

Ngâ mihi,

S9(2)(g) [REDACTED]

From: S9(2)(g)(ii) [REDACTED]
Sent: Friday, 24 February 2023 2:25 pm

To: Emma Hindson S9(2)(g)(ii); Matt Burgess

S9(2)(g)(ii)

Subject: RE: Vaping submission

Hi again

More for us to discuss.

This is a really difficult article to get my head around, but feels like it could be very relevant to our vaping flavours work. [Perceived Sensory Characteristics of Blended and Ambiguous “Concept” Flavors Among Adolescent and Young Adult E-cigarette Users | Nicotine & Tobacco Research | Oxford Academic \(oup.com\)](#)

If I’m interpreting it correctly, it’s saying:

- A cooling sensation is at least as important as whether a flavour profile is sweet or fruity (I’m not sure if we have or can factor this into the flavour wheel)
- Industry suggests removing ‘descriptive’ flavour names like ice mango, and moving to ‘concept’ flavour names like marigold will remove youth appeal (basically the opposite of what we’re proposing)
- The authors are not convinced this is true, as they say youth are able to find concept flavours that match their preferred descriptive flavours (but raises the question of whether changing it either way would have any effect on youth usage)
- Youth already seem to mostly use descriptive flavours – though they acknowledge this could be an association with the type of devices they use (ie young people mostly use disposables, disposables may mostly have descriptive names etc).
- They suggest the US menthol cigarette ban should be extended to ban cooling agents in vapes, as that effectively masks the harshness of high levels of nicotine (worth discussing).

There are other vape flavour articles in this March 2023 journal that I haven’t got to yet, including impact on quit smoking success, so I may share more relevant stuff next week.

Ngâ mihi,

S9(2)(g)

From: S9(2)(g)(ii)

Sent: Friday, 24 February 2023 12:20 pm

To: Emma Hindson S9(2)(g)(ii); Matt Burgess

S9(2)(g)(ii)

Subject: Vaping submission



[Whitehall-smokefree-environments-regulations-submission-form feb 2023.pdf](#)

Kia ora kôrua

This is an interesting submission on behalf of what I assume is a vape retailer/organisation. Their answers to questions across the document demonstrate a thorough understanding of our proposals. If you skip to page 14, you can see the responses on youth vaping. I think there’s some useful challenges and suggestions to consider when preparing the RIS.

Might be best if we work through the answers together and test the validity. I suspect we can dismiss some of the recs as unworkable, but other challenges may be suitable to list as cons in the RIS. Matt I think we'll really need your expertise re batteries etc.

I'll set up a meeting for Wednesday. Best if you spend 10-15 mins beforehand reading through those 6 pages.

Ngâ mihi,

S9(2)(g)

S9(2)(g)(ii)

Please note, my standard days of work are Mon(9-2.30),
Wed (8.30-5.30), Thurs (7.30-3.30) and Fri (9-2.30)

Senior Advisor

S9(2)(g)(ii)

Public Health Agency | Te Pou Hauora Tūmatanui
Manatū Hauora, 133 Molesworth Street
Thorndon, Wellington 6011



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Cabinet

Minute of Decision

This document contains information for the New Zealand Cabinet. It must be treated in confidence and handled in accordance with any security classification, or other endorsement. The information can only be released, including under the Official Information Act 1982, by persons with the appropriate authority.

Report of the Cabinet Social Wellbeing Committee: Period Ended 16 December 2022

On 19 December 2022, Cabinet made the following decisions on the work of the Cabinet Social Wellbeing Committee for the period ended 16 December 2022:

[REDACTED]	Out of scope	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]

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[Redacted]

Out of scope
[Redacted]

Out of scope
[Redacted]

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SWC-22-MIN-0257

**Smokefree Environments and Regulated
Products Act 1990: Release of Consultation
Document on Proposals for Smoked Tobacco
Regulatory Regime**
Portfolio: Associate Health (Hon Dr Ayesha
Verrall)

CONFIRMED

Rachel Hayward
Secretary of the Cabinet

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Cabinet Social Wellbeing Committee

Minute of Decision

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Smokefree Environments and Regulated Products Act 1990: Release of Consultation Document on Proposals for Smoked Tobacco Regulatory Regime

Portfolio Associate Health (Hon Dr Ayehsa Verrall)

On 14 December 2022, the Cabinet Social Wellbeing Committee (SWC):

- 1 **noted** that the Smokefree Environments and Regulated Products (Smoked Tobacco) Amendment Bill (the Amendment Bill) provides for a regulatory regime to oversee and monitor the import, manufacture, sale, and supply of smoked tobacco products in New Zealand;
- 2 **noted** that the Smoked Tobacco Regulatory Regime must be established six months after the Amendment Bill comes into force on 1 January 2023;
- 3 **noted** that Manatū Hauora intends to publicly consult on regulatory proposals needed to establish the Smoked Tobacco Regulatory Regime;
- 4 **noted** that the consultation document *Proposals for the Smoked Tobacco Products Regulatory Regime* (the consultation document), attached to the submission under SWC-22-SUB-0257, seeks feedback on the proposed requirements for the Smoked Tobacco Regulatory Regime, including:
 - 4.1 the smoked tobacco products retail application scheme;
 - 4.2 low nicotine standards and product approval processes;
 - 4.3 new notification requirements;
 - 4.4 fees;
- 5 **agreed** to include the following vaping proposals in the consultation document:
 - 5.1 restricting flavour names that are likely to particularly appeal to young people (e.g. Honey Bear and Unicorn Milk), with the objective of minimising their appeal to young people and reducing the associated uptake rates;
 - 5.2 tightening product safety requirements for disposable vapes to ensure that they are safe to use;

6 **agreed** to consult on proposed proximity restrictions as part of approval requirements to become a Specialist Vape Retailer;

7 s 9(2)(h) [Redacted]

8 **agreed** to the public release of the consultation document following the Amendment Bill coming into force;

9 **authorised** the Associate Minister of Health (Hon Dr Ayesha Verrall) (the Associate Minister) to approve amendments to the consultation document to reflect any changes made to the Amendment Bill in its final stages, prior to its public release;

10 **authorised** the Associate Minister to approve minor technical and editorial amendments to the consultation document, prior to its public release;

11 **noted** that the Associate Minister intends to report back to SWC in April 2023, following assessment of the consultation feedback, with final recommendations for the Smoked Tobacco Regulatory Regime, including the drafting of regulations.

Rachel Clarke
Committee Secretary

Present:

- Rt Hon Jacinda Ardern
- Hon Kelvin Davis
- Hon Dr Megan Woods
- Hon Chris Hipkins
- Hon Carmel Sepuloni (Chair)
- Hon Andrew Little
- Hon Peeni Henare
- Hon Jan Tinetti
- Hon Dr Ayesha Verrall
- Hon Meka Whaitiri

Officials present from:

- Office of the Prime Minister
- Office of the Chair
- Officials Committee for SWC

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Office of the Associate Minister of Health

Chair, Social Wellbeing Committee

Smokefree Environments and Regulated Products Act 1990: Public consultation on regulatory proposals for the Smoked Tobacco Regulatory Regime

Proposal

- 1 This paper seeks Cabinet approval to publicly consult on regulatory proposals required to establish the Smoked Tobacco Regulatory Regime, following the enactment of the Smokefree Environments and Regulated Products (Smoked Tobacco) Amendment Bill (the Smokefree Bill).

Relation to Government priorities

- 2 These proposals strengthen the regulation of both smoked tobacco and vaping products. This contributes to the Smokefree Aotearoa 2025 goal and other Government priorities: namely empowering Māori to achieve better health outcomes, improving equity for Māori and Pacific peoples, reducing New Zealanders' risk of developing some cancers, and improving child and youth wellbeing.

Executive Summary

- 3 The Smokefree Environments and Regulated Products (Smoked Tobacco) Amendment Bill, (the Smokefree Bill) has passed its third reading and will come into force on 1 January 2023.
- 4 The new provisions of the Smokefree Bill regulate entry into the smoked tobacco and vaping product markets, provide for the approval of smoked tobacco products, regulate the constituents of smoked tobacco products, and create a 'smokefree generation'. There are a range of other new provisions in the Smokefree Bill to strengthen the existing framework and to strengthen system monitoring.
- 5 A regulatory regime must be established to oversee and monitor the import, manufacture, sale, and supply of smoked tobacco products six months after the Smokefree Bill comes into force. The attached consultation document sets out the requirements for the regime and includes an additional proposal to tighten vaping requirements to reduce the appeal of vaping products to young people and associated uptake rates. The proposals will be publicly consulted on, following the Smokefree Bill coming into force.
- 6 I will report back to Cabinet in April 2023, following consultation, with the final proposals and seek Cabinet approval to issue instructions to the Parliamentary Counsel Office to draft regulations.

Background

- 7 The Smokefree Bill amends the Smokefree Environments and Regulated Products Act 1990 (the Smokefree Act) and the Customs and Excise Act 2018, with the objectives of:
- 7.1 significantly reducing retail availability of smoked tobacco products
 - 7.2 preventing young people, and successive generations, from ever taking up smoking (the Smokefree Generation Policy), and
 - 7.3 reducing the appeal and addictiveness of smoked tobacco products.
- 8 The Smokefree Bill also contains new requirements that notifiable product retailers must register with (and pay an associated fee to) Manatū Hauora (the Ministry of Health). The details on how to register will be set in regulations. This will provide a better picture of who and where products are being sold to assist monitoring and compliance efforts.
- 9 A regulatory regime must be established to oversee and monitor the import, manufacture, sale, and supply of smoked tobacco products six months following the Smokefree Bill coming into force.

Getting the balance right: addressing youth vaping

- 10 Vaping has an important role to play in the successful implementation of the Smokefree Bill. We need to ensure that people who decide to stop smoking, as a result of the substantial changes the Smokefree Bill makes, have ready access to less harmful nicotine products.
- 11 However, vaping is not harmless, and we do not wish to see tamariki and rangatahi become addicted to these products. While the Smokefree Act already prohibits the sale and supply of vaping products to those under 18 years of age, the legacy of our previously unregulated market means that vaping rates for our young people continue to rise¹.
- 12 I also acknowledge that the public health sector's ability to enforce these new provisions was compromised by its role in the COVID-19 pandemic response. I have asked Manatū Hauora and the National Public Health Service to prioritise compliance and enforcement activities. This will give greater confidence that vape retailers understand, and are complying with, their legal obligations. I expect that officials will continue to monitor, commission, and gather evidence to get a clearer sense of what the market is doing.
- 13 That said, I believe there is also an opportunity now to ensure that our vaping regulatory regime has the right balance. I therefore propose consulting on a proposal to extend vaping packaging and product restrictions to further reduce the appeal of vaping products to young people and associated uptake rates, as part of the public consultation process.

¹ New Zealand Health Survey data showed that daily use of vapes by 15 to 17 year olds increased from 1.7 percent in 2018-19 to 5.8 percent in 2020-21.

Public consultation

- 14 I want to be sure that the Smoked Tobacco Regulatory Regime is established in a timely and effective way to meet the intended objectives of the Smokefree Bill.
- 15 The consultation document sets out draft regulatory proposals to achieve this. It seeks feedback from the public, industry, and other interested stakeholders on requirements for:
- 15.1 the smoked tobacco products retail application scheme
 - 15.2 low nicotine standards and product approval processes
 - 15.3 new notification requirements
 - 15.4 fees
 - 15.5 extending vaping packaging and product restrictions.
- 16 Consultation will be conducted online and face-to-face. Manatū Hauora will email a link to the consultation document to those on its database of stakeholders, including industry (representative bodies, manufacturers, importers, and retailers), non-government organisations, stop smoking service providers, and Māori and Pacific providers.
- 17 In addition, the Smokefree Bill includes specific Te Tiriti o Waitangi provisions requiring the Director-General of Health (Director-General) to consult with Māori when making retail decisions, and on the Minister of Health to ensure the risks and benefits to Māori are considered when making regulations regarding the content of smoked tobacco products.
- 18 The obligation to consult sits with the Director-General, rather than for example Te Aka Whai Ora (Māori Health Authority), because the Director-General has statutory responsibility for making the retail decisions set out in the Smokefree Bill. However, the Director-General is required to consult with Te Aka Whai Ora before making these key retail decisions.
- 19 The Public Health Agency's (PHA's) Hauora Māori team will lead specific consultation with Māori in February and March 2023 and this will be conducted in-person and online across the country. The PHA is working closely with Te Aka Whai Ora to ensure that Māori are engaged in a way that specifically considers Māori perspectives, and special consideration is given to the potential impact retail decisions may have on different groups of Māori.
- 20 There will also be targeted consultation with Pacific peoples, led by Tala Pasifika², with support from Manatū Hauora, as well as retail associations and with other stakeholders that have knowledge of local areas such as local government.

² Tala Pasifika is a Pacific community non-governmental organisation that Manatū Hauora and Te Whatu Ora have partnered with for the smokefree work programme.

- 21 The feedback received through consultation will inform the development of the final regulatory proposals to support the regulatory scheme under the Smokefree Bill. I intend to bring these proposals back to Cabinet in April 2023.

Regulatory proposals to establish the Smoked Tobacco Regulatory Regime

The smoked tobacco products retail application scheme

- 22 The Smokefree Bill restricts where smoked tobacco products can be sold and who can sell them. Smoked tobacco products will only be able to be sold in a limited number of retail premises approved by the Director-General.
- 23 To enable this to happen, an application scheme must be established that sets out how the number of stores will be distributed across the country, criteria needed to grant approval and the application process for doing so.
- 24 The consultation document sets out the detail of the scheme and seeks feedback on the following components:
- 24.1 the *method of allocation* of the smoked tobacco products retailers. For example, the split between urban and rural locations, and for each region of New Zealand
 - 24.2 the *criteria for decision making*, including minimum requirements for acceptance as a smoked tobacco retailer (eg, fit and proper person check, security, and business processes)
 - 24.3 the *approval processes*, including a method of ranking applicants, and the criteria which will be used to do so. These include, for example, the location of stores in relation to sensitive locations like schools, history of compliance with the Smokefree Act, and the overall suitability of the retail premise.
- 25 These new provisions, and the proposals needed to implement them, will impact on a significant number of small businesses who sell these products across the country. While there are approximately 6000 current retail premises selling smoked tobacco products, the amended Smokefree Bill sets a 'cap' of no more than 600 approved retail premises.
- 26 Tobacco and vape products are among the most commonly targeted items in thefts and robberies in New Zealand. New Zealand Police advise that the proposed reduction in tobacco retailers will significantly increase the risk of criminal activity targeted at stores that continue to sell these products. To mitigate the risk of theft, robberies and ram raids, approved tobacco retailers will need to meet stringent security requirements, such as fog canons, bollards and monitored security alarm systems.

Low nicotine standards and products approval processes

- 27 The amended Smokefree Bill includes a specific provision that limits nicotine levels in smoked tobacco products. A method of determining whether those limits have been exceeded, are set in regulations.

28 The consultation document sets out a proposed low nicotine standard, and seeks feedback on requirements such as:

- 28.1 low nicotine testing methods
- 28.2 requirements for product safety
- 28.3 minor changes to packaging requirements
- 28.4 application forms and processes for approvals and temporary approvals.

New notification requirements

- 29 The amended Smokefree Bill requires distributors of smoked tobacco products and notifiable product retailers to notify the Director-General that they are distributing or selling their products.
- 30 The consultation document sets out, and seeks feedback on, a simple annual registration scheme with a small administration fee. The scheme requires distributors and notifiable product retailers to enter their contact details on the Manatū Hauora database.

Fees

- 31 The Smokefree Bill provides for recovering the costs of establishing and operating the Smoked Tobacco Regulatory Regime from the industry through fees and/or levies.
- 32 The consultation document sets out, and seeks feedback on, proposed fees for smoked tobacco retail applications, applications for smoked tobacco products, and sector participant registrations. The fees have been set based on estimates of the average cost to receive, process, and respond to each type of application or registration.

Extending vaping packaging and product restrictions

- 33 The Smokefree Environments and Regulated Products Regulations 2021 set out requirements for how vaping products look and the messages and information they contain. These requirements are intended in part to limit their appeal, particularly for youth. The regulations also set out safety requirements that products must meet before they are able to be sold on the New Zealand market.
- 34 The consultation document sets out, and seeks feedback on additional packaging and product requirements for vape products including:
- 34.1 restricting flavour names that are likely to particularly appeal to young people (eg, Honey Bear and Unicorn Milk), with the objective of minimising their appeal to young people and reducing the associated uptake rates
 - 34.2 tightening product safety requirements for disposable vapes to ensure that they are safe to use.

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- 35 I am also seeking Cabinet discussion and direction on a further option to include proximity restrictions as part of approval requirements to become a Specialist Vape Retailer (SVR).
- 36 Recently, concerns have been raised in the media, ministerial correspondence and through submissions on the Smokefree Bill regarding the proximity of SVRs to schools, and the corresponding impact this is having on our youth vaping uptake.
- 37 Current evidence on whether proximity restrictions would reduce youth uptake is somewhat limited. The 2021 ASH survey of Year 10 students found that the most common source of vapes for this age group is from friends (for daily users, four percent bought from or were given by friends, for all vape users, 43 percent were given by friends). The least common source was buying online or in a shop. The survey also suggests that high youth vaping rates are not linked to SVR density within one kilometre of a school. I note, however, that the ASH survey pre-dates the establishment of SVRs. The next survey will be able to better analyse youth vaping rates against current SVR locations and this analysis will be available in early 2023.
- 38 Although evidence for long term of vaping is not yet available, I propose we take action to prevent rangatahi from being addicted to nicotine.
- 39 Proximity restrictions relating to SVR locations (eg, distance from schools, sports grounds or other community specific considerations) can be made through existing regulation-making powers, and there is an opportunity to include these proposed changes as part of the consultation on the Smoked Tobacco Regulatory Regime. Any changes would apply to all future SVR approvals but could not apply retrospectively.
- 40 These proximity restrictions would not apply to general vape retailers (eg, dairies, supermarkets, service stations). These stores can only sell three vape flavours and therefore carry a limited product range. In addition, restrictions for general vape retailers would require a legislative amendment as there is currently no existing regulation-making power to do so. I believe more compelling evidence is needed before this option is considered.

Next steps

- 41 The consultation document will be released in February 2023 for six weeks. Following consultation and analysis of feedback, I will report back to Cabinet in April 2023 with final proposals on details of the Smoked Tobacco Regulatory Regime. I will also be seeking agreement to instruct the Parliamentary Counsel Office to draft regulations.

Financial Implications

- 42 In line with previous Cabinet decisions [CAB-18-MIN-0569 refers], the Smoked Tobacco Regulatory Regime will be fully cost-recovered, including establishment and operational costs.

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Legislative Implications

43 Regulations will be needed to establish the Smoked Tobacco Regulatory Regime.

Impact Analysis

44 The Treasury's Regulatory Impact Analysis team has determined that the proposal to release the discussion document on the Smoked Tobacco Regulatory Regime is exempt from the requirement to provide a Regulatory Impact Statement (RIS). The exemption is based on advice that the discussion document includes the key features of an interim RIS.

45 Manatū Hauora's Quality Assurance panel has reviewed the discussion document and confirmed that it meets these requirements. A full RIS will be completed following consultation to inform Cabinet's final decisions in April 2023 on recommendations for requirements for the Smoked Tobacco Regulatory Regime.

Population Implications

46 The Smokefree Bill focuses on fulfilling our Te Tiriti o Waitangi obligations and improving equity.

47 Māori, Pacific peoples and those living in the most deprived areas of Aotearoa have higher smoking rates than other groups of New Zealanders. They are, therefore, among those most likely to be impacted by these proposals. The consultation document seeks meaningful engagement from priority population groups, including Māori and Pacific populations.

48 In addition, Māori and Pacific youth have higher rates of vaping and would also be more likely than their counterparts to be impacted by these proposals.

Human Rights

49 The proposals in this paper are consistent with the New Zealand Bill of Rights Act 1990 and the Human Rights Act 1993.

[Legally privileged] s 9(2)(h)

[Redacted content]

51

s 9(2)(h)
[Redacted]

[Redacted]

[Redacted]

[Redacted]

Consultation

55 The following agencies have been consulted: the New Zealand Customs Service, the Ministry of Justice, New Zealand Police, the Ministry of Business, Innovation and Employment (Commerce and Consumer Affairs), Te Puni Kōkiri, the Ministry for Pacific Peoples, the Ministry for Ethnic Communities, Te Arawhiti, the Crown Law Office, the Parliamentary Counsel Office, the Ministry of Foreign Affairs and Trade, Te Whatu Ora, Te Aka Whai Ora, the

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Ministry for Pacific Peoples, the Ministry for Youth Development, the Ministry of Education, Oranga Tamariki- Ministry for Children and Ministry for the Environment. The Treasury and the Department of the Prime Minister and Cabinet were informed.

Communications

- 56 I will work with Manatū Hauora on public communications for the release of the consultation document.

Proactive Release

- 57 I intend to proactively release this paper when the consultation document is released.

Recommendations

- 58 I recommend that the Committee:

- 1 **note** that the Smokefree Environments and Regulated Products (Smoked Tobacco) Amendment Bill provides for a regulatory regime to oversee and monitor the import, manufacture, sale, and supply of smoked tobacco products in New Zealand.
- 2 **note** that the Smoked Tobacco Regulatory Regime must be established six months after the Smokefree Environments and Regulated Products (Smoked Tobacco) Amendment Bill comes into force on 1 January 2023.
- 3 **note** that Manatū Hauora intends to publicly consult on regulatory proposals needed to establish the Smoked Tobacco Regulatory Regime.
- 4 **note** that the consultation document seeks feedback on the proposed requirements for the Smoked Tobacco Regulatory Regime, including:
 - 4.1. the smoked tobacco products retail application scheme
 - 4.2. low nicotine standards and product approval processes
 - 4.3. new notification requirements
 - 4.4. fees.
- 5 **agree** to include the following vaping proposals in the consultation document:
 - 5.1 restricting flavour names that are likely to particularly appeal to young people (eg, Honey Bear and Unicorn Milk), with the objective of minimising their appeal to young people and reducing the associated uptake rates
 - 5.2 tightening product safety requirements for disposable vapes to ensure that they are safe to use.
- 6 **agree** to consult on proposed proximity restrictions as part of approval requirements to become a Specialist Vape Retailer.

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- 7 **[legally privileged]** s 9(2)(h) [REDACTED]
- 8 **agree** to the public release of the consultation document, following the Smokefree Environments and Regulated Products (Smoked Tobacco) coming into force.
- 9 **agree** that the Associate Minister of Health can approve amendments to the consultation document to reflect any changes made to the Smokefree Environments and Regulated Products (Smoked Tobacco) Amendment Bill at the Committee of the Whole House stage, prior to its public release.
- 10 **agree** that the Associate Minister of Health can approve minor technical and editorial amendments to the consultation document, prior to its public release.
- 11 **note** that following assessment of the consultation feedback, I will report back to Cabinet in April 2023 with final recommendations for requirements for the Smoked Tobacco Regulatory Regime, including the drafting of regulations.

Authorised for lodgement

Hon Dr Ayesha Verrall

Associate Minister of Health