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Smokefree Environments and Regulated Products (Vaping) Amendment Bill

Departmental Report

Prepared by the Ministry of Health

May 2020

Contents

Introduction

The Smokefree Environments and Regulated Products (Vaping) Amendment Bill (the Bill) was introduced on 24 February 2020 and completed its first reading on 11 March 2020, at which time, it was referred to the Health Select Committee (the Committee) for consideration. Public submissions on the Bill closed on 1 April 2020.

This report summarises the submissions received by the Committee and recommends whether the Bill should be amended accordingly.

Our recommendations on amendments to the Bill are subject to the Parliamentary Counsel's discretion concerning how best to express each recommendation in legislation. In addition, the Parliamentary Counsel may recommend further amendments to the Bill that are:

- a consequence of implementing a recommendation made by the Ministry of Health (the Ministry)
- necessary for the overall coherence of the legislation
- required editorial changes (eg, punctuation, spelling and typographical errors).

About the Bill

The Bill amends the Smoke-free Environments Act 1990 (the Act) (which currently applies to tobacco smoking products and herbal smoking products) to include provision for regulating smokeless tobacco devices and vaping products. Each of these products is covered under the new term 'regulated product', which the Bill introduces to incorporate the broader scope of products regulated under the Act.

The Bill aims to take a balanced approach to the regulation of vaping and smokeless tobacco products. The Bill reflects concerns regarding children's and young people's access to and use of vaping and smokeless tobacco products and aims to protect these groups from any risks associated with such products. The Bill does this by extending many of the existing provisions of the Act to vaping products and heated tobacco devices, including the prohibitions on promoting and advertising smoking and tobacco products and smoking in indoor workplaces, early childhood centres and schools.

At the same time, the Bill acknowledges that vaping products are much less harmful than smoking and that they may help some people to quit smoking. In doing so, the Bill provides exemptions for vaping products (and to a lesser extent smokeless tobacco products) to some of the Act's promotion and advertising restrictions to support smokers' access to these products and to information and advice that may help smokers switch successfully from smoking to vaping.

Section 1: Summary of submissions

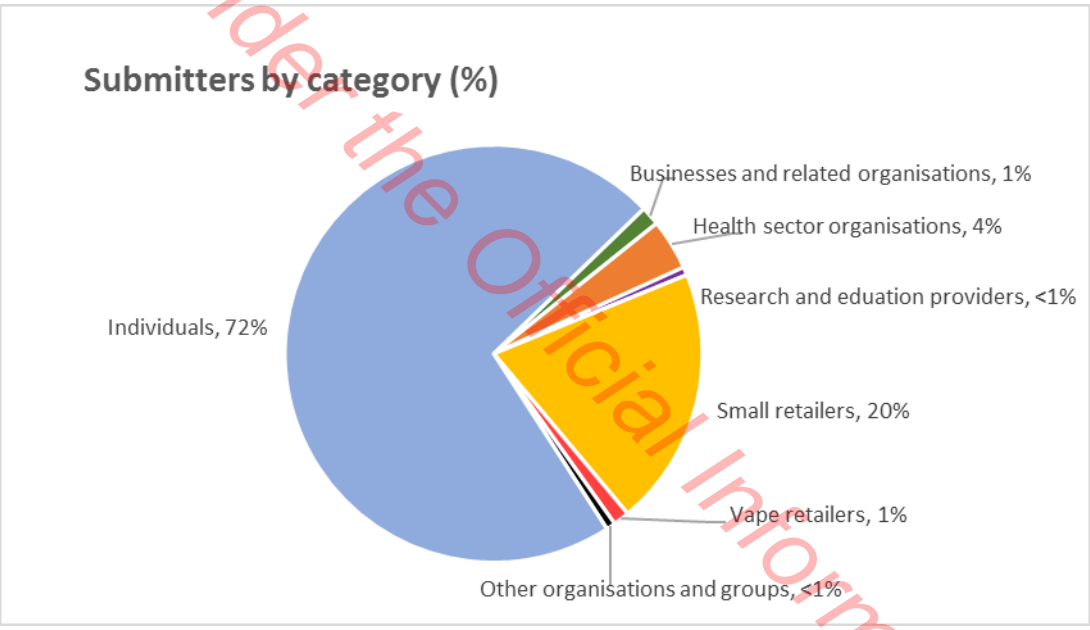
Over 1,200 submissions were made by a wide range of submitters

The Committee received a total of 1,271 written submissions on the Bill and heard 84 oral submissions. The list of submitters is attached as Appendix 1.

The largest group of submitters was individuals (914 written submissions), with over half identifying as vaping consumers. Many responded using a third-party questionnaire that sought responses to set questions.

Small general retailers were the next largest submitter group, with 255 written submissions. Most were from dairies and grocery stores, while some were from liquor stores and service stations.

Figure 1: Submitters by category



High-interest topics

Submitters made comments across most areas of the Bill, but some topics were of high interest, with at least half of all submitters commenting on these areas. These topics of high interest are discussed in more detail below.

Flavours

The availability and range of flavours was the topic of most interest to submitters, especially small retailers who mostly disagreed with the proposed restrictions on the flavours they would be able to sell.

Individual submitters, especially those identifying as vape consumers, were largely concerned about the impact that limiting flavours in generic retail stores (eg, dairies, supermarkets and service stations) would have on smokers wishing to transition or maintain their transition to vaping products.

Promotion and advertising

There was significant feedback on the promotion and advertising proposals in the Bill. Submitters had a wide range of views about the promotion and advertising proposals, with the majority supporting some sort of promotion or advertising with varying levels of restriction.

Sales to under 18-year-olds

Most submitters from all categories agreed that the sale of vaping products should not be permitted to anyone under 18 years of age.

Vape-free workplaces, early childhood centres and schools

Over half of the submitters that commented on the provisions prohibiting vaping in legislated smokefree areas generally agreed with the prohibitions, while about one-third disagreed. Other submitters supported an approach where vaping would be prohibited in some areas and allowed in others.

Standardised packaging

There was an even split between submitters who agreed that packaging should be standardised and those who disagreed.

Nicotine levels

Over half of the submitters commented on the setting of maximum nicotine levels in vaping products, although this is a matter for the regulations, rather than the Bill. Many of those who agreed with setting maximum levels made specific suggestions. The Ministry will consult on maximum nicotine levels during the development of the regulations.

Evidence on vaping

Submitters presented a wide range of evidence to support their submissions. The evidence was often conflicting, supporting arguments for both a tighter and a more relaxed regulatory approach than that set out in the Bill.

Appendix 2 outlines the Ministry's views on the risks and benefits of reduced-harm tobacco and vaping products.

Appendix 3 outlines the data on youth vaping in New Zealand (ie, in the 14- to 24-year-old age group).

The diversity of perspectives presented

The Committee received a diverse range of perspectives on the Bill from different groups of submitters, including Māori health sector organisations, the wider health sector, vaping consumers, small retailers and vape retailers.

Māori health sector organisations

Māori health sector organisations welcomed the Bill and the regulation of vaping products. All shared concerns regarding tamariki and rangatahi being exposed to and taking up vaping, and all supported legislation that would discourage this. Just over half of these submitters advocated for more stringent measures to achieve this, raising concerns that vaping is contributing to the inter-generational impacts of nicotine dependence on whānau, hapū and iwi.

Many of these submitters commented on the colonial context of tobacco; its introduction into New Zealand, and the impact on Māori, who were tobacco-free before colonisation. Submitters highlighted the disproportionately high rates of smoking and burden of tobacco-related disease and mortality among Māori.

Some submitters referenced the 2010 Māori Affairs Select Committee's *Inquiry into the Tobacco Industry in Aotearoa and the Consequences of Tobacco Use for Māori*[1] and the recommendations made in that report, along with the Government's commitment to achieving the Smokefree Aotearoa 2025 goal.

The wider health sector

Health sector organisations, more generally, expressed a similar range of perspectives to the Māori health sector, with some seeking a more liberal regulatory approach, while others wanted tighter restrictions.

An area of difference for the health sector, amongst those with more conservative views, related to being more restrictive at retail. Suggestions included not allowing retailers such as diaries to sell devices; limiting sales of all regulated products to specialist vape stores, pharmacies, and distribution via publicly-funded stop-smoking services; and implementing a licensing system for all retailers of all regulated products.

Vaping consumers

Many submitters who identified as vapers shared their personal stories on the positive impact that switching from tobacco smoking to vaping had had, and continues to have, on their health, their finances and other aspects of their lives.

[1] New Zealand Parliament. 2010. *Inquiry into the Tobacco Industry in Aotearoa and the Consequences of Tobacco Use for Māori. Report of the Māori Affairs Committee.* Wellington: House of Representatives. URL: www.parliament.nz/resource/en-NZ/49DBSCH_SCR4900_1/2fc4d36b0fbdfed73f3b4694e084a5935cf967bb (accessed 10 May 2020).

Small retailers

Many small retailers expressed concerns that the restrictions on flavours would damage their businesses. Many of these submitters said that they had helped smoking customers switch to vaping by supplying a range of flavours. They also expressed concerns that they would be prohibited from communicating with their customers.

Vape retailers

Vape retailers welcomed regulation, and many pointed out that they had been self-regulating for several years in the absence of legislation.

Many shared small retailers' concerns that the range of flavours would be limited in generic stores.

There was a general concern about the costs associated with the regulatory requirements, the lack of detail on the regulations and the short commencement timeframes.

A number of these submitters provided detailed suggestions that will be useful in developing the product safety regulations.

Section 2: Summary of recommendations

Table 1: Summary of recommended changes to the Bill

Topic	Clause	Recommendations
Commencement	Clause 2	We recommend that: • the notification regime comes into effect 12 months after Royal assent, through amending commencement and transitional provisions • the Bill be amended to give schools and early childhood education and care centres a six-month lead-in time to change their notices from prohibiting smoking to prohibiting smoking and vaping.
Interpretation	Clause 5	We recommend that the Bill be amended to exclude the use of heated tobacco products in specialist vape stores, as was the policy intent.
Purpose	Clause 6, new section 3A	We recommend that the Bill be amended to include an additional purpose along the lines of: 'to support smokers to switch to significantly less harmful alternatives'.
Application for approval as specialist vape retailer	Clause 26, new section 14A	We recommend that the Bill be amended so that existing vape stores that have more than 50 percent of their sales from vaping products can trade as such under new section 14A for a transitional period of 12 months.
Specified publications exempt from advertising prohibition	Clause 26, new section 24	We recommend that the Bill be amended to: • amend new section 24(1)(g) along the following lines: (i) the display, in accordance with regulations, of vaping products within any retail premises specified in regulations or on any Internet site specified in regulations; and (ii) the provision, in accordance with regulations, of information (in any medium) relating to vaping products within those premises or on that Internet site • add regulation-making powers for new section 24(1)(g)(i) and (ii), as was intended • delete new section 24(1)(h) (advice and recommendations that specialist vape retailers can give to customers) • provide for the following additional exemptions in new section 24: o publication, dissemination and discussion related to research into vaping and smokeless tobacco products, or ways of encouraging smokers to switch to reduced-harm products o publication of non-sponsored media articles/blogs etc encouraging the use of reduced-harm products o manufacturers and importers to provide retailers with information about the use of vaping and smokeless tobacco products, in accordance with regulations (with a corresponding regulation-making power) o specialist vape retailers to communicate with their existing customers about vaping products, in accordance with regulations (with a corresponding regulation-making power) • exempt communications in specified circumstances described in regulations in relation to vaping and smokeless tobacco products (with a corresponding regulation-making power) • amend new section 24(1)(f) to limit the application of the exemption to publicly funded healthcare services only and delete the word 'approved' and replace it with 'issued' • clarify new section 24(1)(i) to ensure that advice can also be given to groups of individuals by qualified health professionals.

Topic	Clause	Recommendations
Oral nicotine products	Clause 26, new section 53	We recommend that: • the Bill be amended to regulate oral nicotine products (other than products that have received consent for distribution under section 20, or provisional consent under section 23, of the Medicines Act 1981) under clause 53 of the Bill • a consequential amendment to the Medicines Regulations be made to clarify that all non-oral nicotine-containing products are medicines.
Powers of the Director-General of Health	Clause 26, new sections 67–72	We recommend that the Bill be amended to: • empower the Director-General of Health to set up technical advisory committees to assist in decision-making and exercise of powers under the Bill once enacted • provide the notifier a reasonable opportunity to be heard before the Director-General of Health can suspend or cancel a product notification of a notifiable product • provide a notifier with a right of appeal against a decision to suspend or cancel a product notification of a notifiable product similar to the appeal right in section 11 of the Psychoactive Substances Act 2013 (ie, a right of appeal to an appeals committee of three members appointed by the Minister of Health, and a further right of appeal on questions of law to the High Court) • require the Director-General of Health to be satisfied on reasonable grounds that the product presents an unacceptable safety risk before making a recall order.
Prohibited ingredients	Clause 26, new section 66	We recommend that new section 67 be amended to enable the Director-General of Health to set maximum limits for ingredients, in addition to outright prohibiting ingredients.
Minor or technical	Various	We recommend the following minor and technical changes be made to the Bill. • The following definitions in section 2(1) and (2) of the current Act should be amended to include all regulated products (they currently just apply to tobacco): o Automatic vending machine o Distributor o 'Of the same kind'. • The Bill should be amended to ensure that a vaping substance does not include medicinal cannabis or a cannabidiol (CBD) product (as these are regulated under the Medicines Act 1981 and the Misuse of Drugs Act 1975). • The Bill should be amended to enable the current regulations to continue to apply to tobacco products and, where applicable, herbal smoking products, until a new set of regulations applying to regulated products comes into force, as was the policy intent.

Section 3: Clause-by-clause analysis

Commencement dates

Clause 2: Commencement

This clause provides that the Bill comes into force on the day after it receives Royal assent, with a small number of exceptions.

- New section 36 (which restricts the visibility of regulated products) comes into force one month after the date the Act receives Royal assent.
- The following provisions come into force six months after the date the Act receives Royal assent.
  - New sections 59–62, which require a manufacturer or importer of a vaping product or smokeless tobacco product to notify the product before sale in New Zealand
  - New section 63(2), which links to new schedule 2 and restricts the flavours that may be contained in vaping products sold by generic retailers
  - New section 73, which requires the Director-General of Health (the Director-General) to establish a database for the purpose of the new Part 4.

Submissions

General comments

Several submissions mentioned that, in the wake of the COVID-19 response, the Committee process is being rushed and there needs to be full stakeholder inclusion and consultation. These submitters recommended that the commencement date for the provisions that come into force six months after Royal assent be changed to 12 months. One submitter suggested 12–18 months from Royal assent would be needed to allow for consultation on the regulations.

Some submitters, however, asked the Committee and officials to ensure that the Bill moves as fast as possible through the House (and by implication to commencement).

Notification requirements

Some submitters commented that, while they supported regulating vaping products, the commencement period of six months for new sections 59–60 (which require a manufacturer to notify the product before sale in New Zealand) is too short, and this period should be changed to 12 months.

In particular, these submitters were concerned that they had not yet seen any regulations specifying the notification requirements, including the product standards and fees. They made the point that the legislation will have a significant regulatory impact, particularly on small businesses, and that industry needs more time for implementation and to ensure compliance.

Standardised packaging

Submitters were concerned that the period provided for meeting packaging requirements will not be adequate as it will not allow enough time for supply chains, manufacturers and retailers to change label descriptions and packaging.

Submitters commented that there is no line of sight as to what will be in the regulations.

Comment

We agree that some aspects of the Bill should come into force later than is currently provided for in the Bill. We recommend delaying the date at which compliance is required, as set out below. This will ensure that provisions associated with some of the key purposes of the Bill, such as preventing the normalisation of vaping and minimising harm to young people, are in effect as soon as possible, while still allowing time for full consultation on the regulatory proposals and for industry implementation.

Notification

We recommend the notification regime come into effect 12 months after Royal assent, by amending commencement and transitional provisions.

Standardised packaging

We consider that new sections 49 and 50 (standardised packaging, including an offence provision) should continue to come into force on the day after Royal assent because, in practical terms, this would have no effect until regulations are in force. Transitional times would be built into the regulations to ensure time for industry implementation, as was the case when standardised packaging for tobacco products was implemented. We intend to consult on appropriate commencement timeframes for the packaging regulations when we consult on the substantive requirements.

Existing standardised packaging regulations would continue for tobacco products during the transitional period (but these do not apply to vaping products or heated tobacco devices).

Notices at schools and early childhood education and care centres

The Bill requires managers of schools and early childhood education and care centres to take all reasonably practicable steps to ensure that a notice stating that vaping is forbidden is prominently displayed at or immediately inside every entrance to the premises and every outer entrance to every building or enclosed area forming part of the premises.

At present, schools and early childhood education and care centres have notices saying that smoking is forbidden (section 7A of the current Act). Schools and early childhood care centres will need to change these notices to include vaping, but there is currently no lead-in time to allow them to do this.

The Ministry will work with the Health Promotion Agency (HPA) to support schools and early childhood education and care centres to replace their notices, at no cost to schools. However, given the COVID-19 response implications for education providers, we recommend that schools and early childhood education and care centres be given a six-month lead-in time to change their notices from prohibiting smoking to prohibiting smoking and vaping (notice requirements relating to smoking will remain in force in the interim).

Recommendations

We recommend that:

- the notification regime comes into effect 12 months after Royal assent, through amending commencement and transitional provisions

- the Bill be amended to give schools and early childhood education and care centres a six-month lead-in time to change their notices from prohibiting smoking to prohibiting smoking and vaping.

Definitions

Clause 5: Section 2 amended (Interpretation)

This clause amends the interpretation section to insert new terms, enable current terms to apply to regulated products and replace the definition of open area.

Submissions

Fewer than 10 submitters commented directly on this clause. A few of these submitters suggested that the definition of 'vaping' should not include the use of heated tobacco products, although their rationales differed, for example:

- 'nicotine vaping products intended to support quitting should be clearly differentiated from tobacco vaping products'
- 'this may allow the use of heated tobacco products in specialist vape stores (clause 9, new section 14(1) refers)'.

A small number of submitters considered that the definition of 'regulated product' was not broad enough and should be extended to include tobacco product accessories (eg, cigarette papers) or nicotine products that do not contain tobacco leaf (eg, oral nicotine pouches and drops) as it is difficult to enforce the Act for these products.

A few submitters suggested changes to allow the meaning of 'regulated product' to be expanded over time (eg, by regulations) to future-proof against unforeseen product developments.

Comment

We note that the exemption for vaping in approved premises of specialist vape retailers was intended to apply only to vaping using a vaping device. It was not intended to apply to vaping through use of heated tobacco products. We recommend correcting this oversight.

The Ministry does not agree that the Bill should enable the definition of a regulated product to be expanded by regulations. This definition is central to the regulatory framework and properly belongs in the primary statute.

We do not consider it necessary to expand the scope of the definition of 'tobacco product' to cover all accessories. We acknowledge that there has been some uncertainty about what constitutes a tobacco product advertisement, with conflicting court decisions. This has, however, been addressed in the Bill by amending the offence provision for advertising (new section 23) to prohibit publishing a 'regulated product advertisement' rather than the current section 36, which prohibits publishing 'any advertisement for a tobacco product'.

Recommendation
We recommend that the Bill be amended to exclude the use of heated tobacco products in specialist vape stores, as was the policy intent.

Purpose of this Act

Clause 6: New section 3A: Purposes of this Act

This clause amends the purposes of the Act to include:

- prevention of the normalisation of vaping
- regulation of the safety of vaping products and smokeless tobacco products.

Submissions

Five submitters commented explicitly on this clause. Of these, two expressed general support for the changes to the purposes of the Act. One submitter recommended that the Act's statement of purpose acknowledge that vaping and smokeless tobacco products are less harmful than smoking and that they may help people to quit smoking.

Two submitters did not support the inclusion of the purpose 'to prevent the normalisation of vaping', as they thought this was inappropriate given the public health interest in shifting people from smoking to vaping. One of the submitters described how de-normalisation strategies have contributed to stigmatisation of the smoker, contributing to feelings of shame and isolation from support services, and was concerned that this would happen with vaping.

Alternative suggestions for the purposes were:

- to regulate vaping, tobacco heating devices and all non-combustible oral nicotine and tobacco products not covered by the Medicines Act 1981 to provide consumers with confidence that the products have been manufactured in accordance with minimum quality standards
- to restrict the advertising and sale of all products covered by the Act to people aged 18 years and over.

Comment

The Bill seeks to strike a balance between preventing the uptake of vaping among young people and supporting smokers to switch to a significantly less harmful product. The Ministry considers that these complementary purposes both need to be expressed in the Bill.

We do agree, however, that the Bill lacks any expression in its purpose statements of its support for smokers to switch to significantly less harmful alternatives. We recommend that an additional purpose be added to the Bill to this effect.

Recommendation
We recommend that the Bill be amended to include an additional purpose along the lines of: 'to support smokers to switch to significantly less harmful alternatives'.

Vaping prohibited in legislated smokefree areas

Clauses 9–20: Various amendments prohibiting vaping in legislated smokefree areas

Clauses 9–20 extend the existing restrictions on smoking in legislated smokefree areas to include vaping and the use of heated tobacco products.

Submissions

Over 800 submitters commented on vaping in legislated smokefree areas. Over half of these submitters generally agreed with the proposed prohibitions, and about one-third disagreed. The remaining submitters supported an approach where vaping would be prohibited in some areas, such as where children congregate, and allowed in other areas, such as R18 venues.

Reasons for supporting the prohibition on vaping in smokefree areas included:

- reducing the likelihood of vaping being normalised
- signalling that second-hand vapour is not harmless
- making enforcement easier
- more general concerns about vaping odour and clouds.

Those who disagreed with the proposed prohibitions said that there is no evidence of harm to justify a blanket ban and that vaping is not as offensive as smoking.

Reasons given for a mixed approach were that vaping has lower health risks for users and bystanders compared with smoking and vaping should be allowed in some smokefree areas to encourage smokers to switch to vaping.

Many submitters supported a prohibition on vaping in areas that children frequent, such as playgrounds, sportsgrounds, beaches and parks because of the risk of normalising vaping.

Some submitters recommended looser restrictions on the prohibition of vaping in certain environments. For example, they supported employer or owner discretion in R18 venues and some workplaces, especially those employing manual labourers. Some submitters supported the United Kingdom's approach, which allows owners and managers to determine a suitable policy for their premise.

Several submitters considered that vaping should be prohibited in the outdoor smokefree areas that are designated by councils because this would help provide consistency and enable easier enforcement.

Exemptions allowing vaping in workplace vehicles and dedicated rooms in hospitals, etc.

Around 15 submitters commented on the exemptions that would allow vaping in workplace vehicles and dedicated rooms within hospitals and residential care institutions. Those who disagreed with these exemptions argued that vaping in these enclosed spaces increases the risk of exposure to toxins.

A few submitters considered that vaping should be allowed in the broader areas of a hospital or health care institution (ie, not just in dedicated rooms), where smoking cessation may be encouraged as part of treatment (eg, inpatient mental health facilities).

Vaping in vehicles carrying children

Several submitters suggested that the Bill be amended to explicitly prohibit vaping in vehicles carrying children and young people under 18 years of age.

Comment

The primary rationale for prohibiting vaping in legislated smokefree areas is to minimise the risk that vaping will become normalised. The Ministry acknowledges that there is no robust evidence of harm to bystanders from second-hand vapour.

The Act does not prohibit smoking in outdoor areas. These decisions are made by territorial authorities. We consider that it would be disproportionate to prohibit vaping in outdoor areas when this is not the case for smoking, which is significantly more harmful to users.

We do not support prohibiting vaping in work vehicles or hospitals and residential care institutions under the narrow circumstances prescribed in the Act. It would be disproportionate to allow smoking, which is much more harmful, but prohibit vaping in these circumstances.

The Smoke-free Environments (Prohibiting Smoking in Motor Vehicles Carrying Children) Amendment Bill is currently before the House awaiting its third reading. Depending on the progress of that bill, the Ministry will work with the Parliamentary Counsel Office to ensure that vaping in vehicles carrying children is also prohibited.

Recommendation
No change.

Specialist vape retailers

Clause 21: New section 14: Vaping in approved specialist vape retail premises

New section 14 exempts vaping in approved specialist vape retailer premises from the smokefree environments restrictions in Part 1 of the Bill. Specialist vape retailers must take all practicable steps to prevent people under the age of 18 years from entering the premises.

Submissions

Around 15 submitters commented on the provisions that allow customers to vape in specialist vape retailer premises, with most in support. Some submitters provided further suggestions, including restricting the number of people who can vape at a single time, banning large 'consumer promotional events' and only permitting smokers to vape.

A few submitters considered that this exemption should be extended to specialist tobacco retailers so that they could encourage their smoking customers to switch to vaping products.

Most of these submitters supported the prohibition on those under the age of 18 years entering a specialist vape store. However, some of these submitters considered it impractical, as parents wishing to enter a vape store would have to leave their children waiting outside the store. They noted that such requirements do not exist for retailers selling tobacco products.

Comment

The intent of the exemption is to support smokers to switch to vaping by permitting them to sample different products and to receive instruction and guidance inside specialist vape retailer premises. We do not support regulating the number of people who can vape within specialist vape retailer premises as we consider that this can continue to be managed by vape retailers (this provision continues the status quo for them).

We do not recommend extending this provision to include specialist tobacco retailers. Specialist vape retailers are required to take all practicable steps to prevent minors from entering the store, which is a requirement that does not apply to specialist tobacco retailers.

Recommendation
No change.

Clause 21: New section 14A: Application for approval as a specialist vape retailer

New section 14A provides that the Director-General must not give a person approval to be a specialist vape retailer unless:

- the retail premise is a fixed permanent structure
- at least 85 percent of the person's total sales from the retail premises are or will be from the sale of vaping products
- any requirements of regulations have been met.

Submissions

A specialist vape premise as a fixed permanent structure

A few submitters raised concerns about the need for a fixed permanent structure, noting that:

a. small vaping businesses such as mobile vape stores located in rural and small towns cannot afford to sell from a fixed permanent structure
b. manufacturers that do not operate from a fixed permanent structure would be unable to provide customers with information about vaping products on their website
c. the requirement is 'inappropriate' as it is more stringent than what is applied to smoked tobacco products, which are more harmful
d. the United Kingdom allows sale of all regulated products online and has not seen a significant uptake in youth vaping.

Some of these submitters made suggestions for change, including that stores with an online-only presence should be eligible to become specialist vape stores, with one submitter considering that having age verification systems in place was the key factor. A few of these submitters recommended removing the fixed permanent structure requirement.

85 percent of sales from vaping products

Around 15 submitters (mainly vape retailers) commented on the requirement that 85 percent of the total sales of a specialist vape retailer must be from vaping products. Most of these submitters argued that this requirement was too stringent and that only a very small numbers of vape retailers would be able to reach the threshold because many vape stores sell a range of other products.

Suggested alternatives to the 85 percent threshold included giving the Director-General discretion to approve specialist vape retailers that do not meet the threshold (eg, based on experience and expertise), lowering the threshold (eg, to 50 percent), having no threshold and licensing all retailers. One submitter suggested extending the 85 percent requirement to include all regulated products, not just vaping products.

Other submitters were concerned that specialist vape stores would be able to sell smoked-tobacco products alongside vaping and smokeless tobacco products.

Changing the retail model (eg, licensing all retailers of vaping products)

Some submitters (mainly health sector organisations) suggested variations on the specialist vape store model set out in the Bill. For example:

- all retailers who want to sell vaping products should be required to apply for and be granted a licence, subject to meeting certain conditions
- vaping products (or at least devices) should not be able to be sold in generic stores such as dairies, supermarkets and service stations. Instead, they should only be sold in specialist vape stores and pharmacies and distributed through publicly-funded stop-smoking services
- R18 liquor stores should be able to become specialist vape stores (or at least sell the wider range of flavours).

Comment

A specialist vape premise as a fixed permanent structure

We do not support mobile or temporary stores (eg, sales from vehicles, or pop-up stalls at festivals). These would be difficult to monitor and ensure compliance with the retailer's obligations (eg, that only notified products that meet product safety standards may be sold).

Online-only stores could be managed from a compliance perspective, although it may be more difficult to prevent minors from purchasing products from such stores. Some online vape retailers, however, said that they do have age verification systems in place (or could put it in place) for online sales.

85 percent of sales from vaping products

The Bill provides exemptions from the general restrictions in the Bill for specialist vape retailers, such as the prohibition on advertising, the ability to offer free or discounted products and the ability to vape in-store. A threshold is necessary to distinguish between specialist vape stores, which would be eligible for these exemptions, and a generic store, which would not be eligible.

It is unclear how many vape stores would be affected, but at least one large chain would be impacted. If the Committee considers a change is necessary, then lowering the threshold would be the simplest way to achieve this change.

We do, however, recommend that the Bill be amended so that existing vape stores that have more than 50 percent of sales from vaping products can trade as specialist vape shops under new section 14A for a transitional period of 12 months. This would allow more time for existing vape retailers to adjust their business model if they wanted to become specialist vape retailers.

Changing the retail model (eg, licensing all retailers of vaping products)

We do not support a significant re-design of the retail model set out in the Bill. We consider that allowing all retailers to sell vaping products (subject to a range of restrictions) and establishing specialist vape retailers that are eligible for exemptions to the more general restrictions strikes a good balance between protecting young people from accessing vaping products and providing a supportive environment for smokers who wish to switch to a less harmful alternative.

Extending eligibility to R18 liquor stores would extend the range of outlets that could sell a wide range of flavours (which appears to be what lies beneath this suggestion from a small number of submitters),

but this would also allow vaping in-store. Our preference is to keep this exemption narrowly focused on approved specialist vape retailers as set out in the Bill.

Recommendation
We recommend that the Bill be amended so that existing vape stores that have more than 50 percent of their sales from vaping products can trade as such under new section 14A for a transitional period of 12 months.

Restrictions on advertising regulated product (and exemptions)

Clause 26: New sections 23, 24 and 25

New section 23 restricts a person from publishing a regulated product advertisement. This section needs to be read in conjunction with clause 5, which amends section 2 – interpretation to extend the definition of a tobacco product advertisement to all regulated products.

A 'regulated product advertisement' is defined in clause 5 as: any words, whether written, printed or spoken and any pictorial representation, etc, that are used to:

- encourage the use of a regulated product
- notify the availability of a regulated product
- promote the sale of a regulated product
- promote smoking or vaping behaviour.

New section 24 provides for several exemptions from regulated product advertising restrictions in new section 23, including:

- a public health message approved by the Director-General
- the display of vaping products within a retail premises or Internet site in accordance with regulations
- the provision of information, in accordance with regulations, relating to vaping products within retail premises or on an Internet site
- the giving of advice and recommendations by a specialist vape retailer about vaping products to customers who are inside the retailer's approved vaping premises
- any advice or message given by a suitably qualified health worker to an individual for the purpose of supporting the individual to switch from smoking to vaping.

New section 25 provides further exemptions from the advertising restrictions for retailers, vending machines and internet sellers.

Submissions

Over 800 submitters commented on the advertising proposals in the Bill. Submitters had a wide range of views about the proposals, with the majority supporting some sort of advertising with varying levels of restriction.

Some submitters thought that all vaping product advertising should be prohibited due to the potential harm it may cause or that online advertising should be prohibited completely. Conversely, a few submitters thought that there should be no advertising restriction at all given the relative harm of vaping compared with tobacco.

Several submitters made comparisons between advertising restrictions for vaping and other 'adult' products and services with recognised harms (eg, tobacco, alcohol and gambling) and suggested that vaping should be aligned with these types of activities. Other submitters used a similar comparison to suggest that vaping should have lower restrictions, given the relatively lower level of harm when compared with smoking and alcohol use.

A number of submitters commented that they liked receiving advertising material from vape stores so that they knew what products were available and at what cost. Other submitters, including several large vaping retailers, stated that they should be able to advertise to existing customers, for example, through an email or social media campaign, about a product or support to quit smoking.

A few submitters said that it is important for independent vaping companies to be able to advertise their products to communicate their differences from big tobacco companies.

Unacceptable limits on freedom of expression

In his report on the Bill under the New Zealand Bill of Rights Act 1990 (BORA), the Attorney-General found that the Bill is inconsistent with the rights and freedoms affirmed in the BORA. In particular, the Attorney General considered that the limitations on freedom of expression contained in the Bill relating to the broad restrictions on advertising were not proportionate and that these provisions were not justifiable.

Several submitters explicitly supported the Attorney General's view, while others commented more broadly that any restriction on advertising for regulated products was an unacceptable limit on the freedom of expression and that it impinged on the right of consumers to receive that information.

General retailers' ability to give advice and recommendations about vaping products

Many submitters felt that all retailers (ie, not just specialist vaping retailers) should be able to give advice and recommendations about vaping products within their store, particularly to smokers who were considering a switch to vaping.

Other submitters felt that the proposed restriction on the ability of general retailers to provide advice and recommendations about vaping products was a missed opportunity for these retailers to support New Zealand's Smokefree Aotearoa 2025 goal. Some submitters thought this would particularly disadvantage adult smokers in rural areas, who do not have access to specialised vape retailers.

Several submitters said that it was important for all retailers to be able to provide guidance on vaping products for practical reasons. For example, several submitters commented that vaping was different to smoking in that cigarettes did not require detailed instructions (ie, you put it in your mouth, light it and inhale), whereas vaping is a relatively new technology, and there are a multitude of different devices, delivery methods and nicotine levels to choose from.

Several retailers commented that they regularly provided advice and recommendations to their customers and in doing so had assisted many smokers who were considering a move from smoking to vaping. Other submitters said that they received 'bad' advice from dairies, etc, but got good advice from 'specialist' vape stores.

Other submitters felt that vapers and generic retailers should be able to give advice and recommendations because they are more informed about the products and how to use them than health workers, who appear to have very little knowledge of vaping.

The broad scope of the terms 'advertising' and 'publish'

Some submitters were concerned that the definitions of 'advertising' and 'publish' in the Bill are too broad and that this could have the unintended consequence of prohibiting:

- the publication/discussion of research on harm reduction, with respect to smokers moving to vaping, including on Facebook and Twitter (one submitter argued that this could amount to the censoring of research)
- research into ways of encouraging uptake of reduced-harm alternatives to smoking
- expert opinions on the use of non-tobacco regulated products
- recommendations that a person should switch to vaping made by parties not specifically approved by the Director-General, for example a family member or iwi leader
- vaping product manufacturers and importers advertising their products to retailers
- public vaping expos/events for vaping consumers
- email or online direct marketing campaigns by retailers, particularly to existing customers
- discussion within consumer groups, such as online vaping communities
- smoking cessation advice by qualified health professionals.

The submitters recommended that the Committee considers exempting these activities from the advertising restrictions in the Bill.

Advertising targeted at young people and non-smokers

Some submitters felt that all advertising should be prohibited so that young people would not be enticed into vaping and to ensure inequalities are reduced.

Many submitters were concerned that vaping was being marketed aggressively at young people and that the advertising 'glamorised' vaping, for example, through the use of colourful displays and social media campaigns. Some submitters wanted 'lifestyle' advertising prohibited if it encouraged young people and non-smokers to vape (for example, the use of descriptive terms for vape juice, such as 'unicorn puke' or confectionary flavours that could appeal to young people).

A number of submitters recommended restrictions on advertising on television at times when children may be watching, for example, only advertising in the evenings as is the case with alcohol.

Some submitters wanted to ensure that restrictions on marketing of all regulated products cover all media platforms and activities, including social media, product placement and the use of influencers. Other submitters suggested that there should be restrictions on the frequency of vaping advertising to limit non-smokers' exposure to vaping advertising.

Display of vaping products

A number of submitters commented on the display of regulated products. Submitters were fairly evenly split about whether vaping products should be visible within and from outside stores.

Some submitters said that they did not support the display of vaping products in retail stores at all, while others supported allowing vaping products to be displayed within specialist vape retailers but not generic stores. A number of submitters argued that product displays (both instore and outside) are a form of point-of-sale marketing that could attract young people.

Adopting an advertising code for regulated products

Several submitters recommended that the Committee consider adopting the United Kingdom's advertising code, which minimises appeal to youth and non-smokers. One submitter recommended

that the Bill include a code for advertising regulated products similar to the one that is in place for alcohol advertising in New Zealand, or the Therapeutic and Health Advertising Code.

Advertising that promotes vaping as a healthier alternative and public health campaigns approved by the Director-General

Some submitters felt that advertising for vaping products should be restricted to advertising that is directed at smokers only, for example, that the advertisement should only be permitted if it promotes vaping as a healthier alternative to smoking.

Several submitters expressed support for public health campaigns or key messages that are approved by the Director-General to be exempted from the advertising restrictions. A few submitters stressed the importance that approved campaigns must be developed and implemented in such a way that they reduce inequalities.

A minority of those who commented considered that there also needs to be a way of conveying the risks of vaping and discouraging young people's uptake.

Monitoring, enforcement and penalties

One submitter recommended that penalties for breaching advertising restrictions should be increased, and several submitters commented that breaches of the provisions need to be appropriately monitored and enforced.

Comment

The starting point in the Bill (new section 23) is that all forms of regulated product advertising are prohibited. These restrictions have been carried over from the current Act and extended to all regulated products, including vaping products and smokeless tobacco devices.

The advertising restrictions in the Bill are intentionally broad to reduce the social approval of smoking, to ensure that vaping is not normalised and to discourage non-smokers (particularly children and young people) from vaping and using tobacco products.

While advertising is generally prohibited, the Bill recognises that smokers need support and advice to successfully move away from smoking, and new section 24 provides exemptions for certain types of advertising to occur. These exemptions are made in recognition that vaping products are a reduced-harm alternative to combustible tobacco, while balancing this with protections for young people.

Unacceptable limits on freedom of expression

The Ministry has provided advice to the Committee on the Attorney General's report and views on this matter.[2] For the reasons set out in that letter, our view is that the Bill's advertising restrictions are a justified limit on the right to freedom of expression. This is on public health grounds, given the highly addictive nature of the product and the unknown long-term health risks.

[2] Supplementary advice letter to the Committee dated 9 April 2020.

General retailers' ability to give advice and recommendations about vaping products

We consider that the interaction between two of the exemption provisions in section 24: sections 24(1)(g) and section 24(1)(h) requires clarification. These provisions are set out below for ease of reference.

> 'Section 24 (1)[The restrictions on regulated product advertising in section 23] do not apply to:
> …
> (g) the following activities:
> (i) the display, **in accordance with any regulations,** of vaping products within any retail premises or on any Internet site; and
> (ii) the provision, **in accordance with any regulations**, of information (in any medium) relating to vaping products within those premises or on that Internet site: [emphasis added]
> (h) the giving of advice and recommendations by a specialist vape retailer about vaping products to customers who are inside the retailer's approved vaping premises.'

When these two provisions are read together, the exemption in new section 24(1)(h) (which applies only to specialist vape retailers) is arguably broader than the exemption in new section 24(1)(g)(ii), which applies to all retailers, including specialist vape retailers.

It is intended that the giving of advice and recommendations by a specialist vape retailer about vaping products should not be unregulated. The Ministry therefore recommends that paragraph (h) be deleted and paragraph (g) should be relied on instead. We recommend that new section 24(1)(g) be tightened along the following lines:

> '(g) the following activities:
>
> (i) the display, in accordance with regulations, of vaping products within any retail premises specified in regulations or on any Internet site specified in regulations; and
>
> (ii) the provision, in accordance with regulations, of information (in any medium) relating to vaping products within those premises or on that Internet site.'

The intention is that regulations will prescribe requirements for specialist vaping premises and different requirements for generic retailers. Given that the corresponding regulation-making power was not included in the Bill as introduced, we recommend that the Bill be amended to enable regulations to deal with the above matters.

If the Committee agrees to this proposal, the Ministry will use the feedback from submitters to assist with developing the regulatory proposals for new section 24(1)(g)(ii). Any regulatory proposals will be subject to full public consultation, with a view to taking policy decisions to Cabinet to amend the Regulations.

Advertising targeted at young people and non-smokers

The Ministry acknowledges submitters' concerns about advertising being targeted at young people and non-smokers, for example, using colourful displays, naming e-juices after confectionery or using terms that may appeal to young people.

New section 24(1)(g)(i) provides an exemption for the display of vaping products within a retail premises 'in accordance with regulations'. As with the exemption for the provision of information by retailers outlined above, the display exemption was intended to be linked to the prescribing of

regulations, but this was inadvertently not included in the Bill. We therefore recommend that a regulatory power is added to the Bill for the exemption for display of vaping products in new section 24(1)(g)(i).

If the Committee agrees to include a regulation-making power for new section 24(1)g)(i), we will consider submitters' comments about the display of products in generic retail shops (particularly their appeal to young people) when we are developing the regulatory proposals for Cabinet's consideration.

We do not intend to make any regulations for the display of vaping products in specialist vaping retail premises as people under the age of 18 years are not permitted to enter those stores. However, we recommend that the scope of the regulation-making power includes all retailers (including specialist retailers) to ensure the Bill is future-proofed should issues arise.

Adopting an advertising code for regulated products

The Ministry does not agree with the submitters' recommendation that New Zealand introduce a vaping product advertising code such as the one in the United Kingdom or New Zealand's alcohol advertising code.

In our view, a code would add an unnecessary layer of complexity to the advertising restrictions given that there are only limited exemptions to the broad restriction on advertising. For example, the Bill does not allow television, radio or billboard advertising; online marketing; endorsements; product placement or promotion by social media influencers.

The regulation of advertising for vaping products in the United Kingdom (and alcohol advertising in New Zealand) is more permissive and allows for some advertising and marketing of those products. It is therefore appropriate for detailed guidance to be provided in those circumstances.

The Therapeutic and Health Advertising Code does not apply to vaping devices and substances because clause 5(4) of the Bill explicitly excludes these products from the scope of the Medicines Act 1981.

Exemption for research and genuine media articles

There was no intention to prohibit research or non-sponsored media articles regarding reduced-harm alternatives to smoking. We therefore recommend that the Bill is amended to provide for the following additional exemptions:

- publication, dissemination and discussion related to research into vaping and smokeless tobacco products, or ways of encouraging smokers to switch to reduced-harm products
- publication of non-sponsored media articles/blogs etc encouraging the use of reduced-harm products.

Other exemptions proposed by submitters (eg, manufacturers, direct communications with customers by specialist vape retailers)

The Ministry agrees that there may be some scope to relax the advertising provisions in respect of some of the other proposals made by submitters, for example, to allow:

- manufacturers and importers to provide retailers with information about the use of vaping and smokeless tobacco products (eg, how to use a device and its components, nicotine concentration, safe charging, etc). As submitters pointed out, there is a multitude of different products on the market and many of these will require more detailed instructions than traditional tobacco products where the use is simple and well known to all smokers[3]
- specialist vape retailers to communicate with their existing customers (eg, by email) to promote new products or discounts, which is something they can do in-store and on their websites.

The Ministry is broadly supportive of the above proposals and recommends that additional exemptions be added to new section 24 of the Bill to allow for:

- manufacturers and importers to provide retailers with information about the use of vaping and smokeless tobacco products, in accordance with regulations
- specialist vape retailers to communicate with their existing customers about vaping products, in accordance with regulations.

Any exemptions for these purposes would need to be tightly prescribed to avoid them being used to circumvent the advertising restrictions in the Bill. We therefore recommend that the Bill allows a regulation-making power to prescribe limits on these exemptions if needed.

If the Committee agrees to this proposal, the Ministry will work with stakeholders to develop proposals for the regulations to ensure they are consistent with the Bill's purpose and will be workable in practice.

Expert opinions, 'lay person' advice and recommendations, and online peer support groups

We acknowledge submitter concerns that the advertising restrictions in the Bill may prohibit the publication of expert opinions on reduced harm products or advice and recommendations made by friends, family members or iwi leaders that a person should switch to a reduced-harm alternative to smoking.

We also note submissions from vaping consumers who are concerned that online peer support groups would not be able to continue due to the advertising restrictions in the Bill.

In the Ministry's view, if the group is made up of private individuals sharing their experiences and recommendations about vaping and vaping products, it is unlikely that any enforcement action would be taken. This is because this type of activity would not meet the public interest test required for prosecution. However, it was not our intention that the Bill would prevent these types of communications, and we agree that the matter needs to be addressed.

In our view, these matters require further consideration to ensure any exemption is not used to circumvent the advertising restrictions in the Bill. We therefore recommend that the Bill be

[3] New section 24(1)(a) exempts manufacturer (and retailer) price lists from the advertising restrictions, provided the information in the list complies with price list regulations and includes any required health messages. This provision was carried over from the current Act and extended to all regulated products, including vaping products. The purpose of providing for regulations in this exemption is to prescribe the content allowed in price lists to prevent them from being used for promotional purposes (eg, by providing information to retailers on volume incentive schemes and product promotions).

There is also an exemption for manufacturers in new section 24(1)(c), which exempts magazine publications that are intended for the manufacturer's employees, but this exemption does not extend to manufacturer's communications with retailers.

amended to exempt communications in specified circumstances described in regulations in relation to vaping and smokeless tobacco products (with a corresponding regulation-making power).

If the Committee agrees to this proposal, the Ministry will work with stakeholders to review whether the above activities should be exempted from the advertising restrictions in the Bill, with a view to taking policy decisions to Cabinet to amend the Regulations. The review will take into account concerns that the potential implications of any exemption does not undermine wider government objectives in relation to the purposes of the Bill.

Public health messages

Several submitters expressed support for new section 24(1)(f), which exempts public health messages approved by the Director-General from the advertising restrictions in the Bill.

The intent of new section 24(1)(f) was to allow the Director-General to approve public health messages for use by publicly funded healthcare services, for example, in smoking cessation campaigns.

As it stands, the exemption for approved public health messages would apply to all people, including retailers. We therefore recommend that the Bill is amended to limit the applicability of new section 24(1)(f) to public health messages by publicly funded healthcare providers only, in line with the intended purpose of this provision.

The reduced-harm messaging that retailers can use in their communication material was intended to be prescribed in regulations under new section 24(1)(g)(ii) (if the Committee agrees to include the regulation-making power). Stakeholders (including retailers) will be consulted on any regulatory proposals in this regard.

The Ministry also recommends that new section 24(1)(f) is amended to change the word 'approved' to 'issued' (ie, 'public health messages *issued* by the Director-General') to clarify that the Director-General will actively issue the public health messages rather than there being an application process.

Smoking cessation advice by qualified health professionals

The Bill already provides an exemption for suitably qualified health workers to provide advice to an individual for the purposes of supporting them to switch from smoking to vaping (new section 24(1)(i)). We want to ensure this allows suitably qualified health workers to be able to provide advice to *groups* of individuals as well just individuals and recommend that new section24(1)(i) is clarified in this respect.

Public vaping expos/events

The Ministry does not support an exemption from the advertising restrictions for public vaping expos or events because such expos/events have the potential to influence young people and non-smokers to start vaping, which is inconsistent with the purposes of the Bill.

Monitoring, enforcement and penalties

Breaches of advertising restrictions will be managed through the Ministry's monitoring and enforcement processes, which includes regular compliance checks on retailers.

The Ministry of Health consulted the Ministry of Justice on the penalty levels in the Bill as is best practice, including the maximum fines for a breach of advertising restrictions. No changes to the penalty levels in the Bill are proposed.

Advertising by overseas retailers

We acknowledge the concerns raised by submitters about overseas advertisers targeting domestic consumers (known as 'cross-border' advertising). The Bill regulates this type of advertising if the person or company has a presence in New Zealand and the target audience includes New Zealanders. However, it is not possible for New Zealand law to apply in other circumstances.

Recommendations:

We recommend that the Bill is amended to:

- amend new section 24(1)(g) along the following lines:
  - (i) the display, in accordance with regulations, of vaping products within any retail premises specified in regulations or on any Internet site specified in regulations; and
  - (ii) the provision, in accordance with regulations, of information (in any medium) relating to vaping products within those premises or on that Internet site:
- add regulation-making powers for new section 24(1)(g)(i) and (ii), as was intended
- delete new section 24(1)(h) (advice and recommendations that specialist vape retailers can give to customers)
- provide for the following additional exemptions in new section 24:
  - publication, dissemination and discussion related to research into vaping and smokeless tobacco products, or ways of encouraging smokers to switch to reduced-harm products
  - publication of non-sponsored media articles/blogs etc encouraging the use of reduced-harm products
  - manufacturers and importers to provide retailers with information about the use of vaping and smokeless tobacco products, in accordance with regulations (with a corresponding regulation-making power)
  - specialist vape retailers to communicate with their existing customers about vaping products, in accordance with regulations (with a corresponding regulation-making power)
- exempt communications in specified circumstances described in regulations in relation to vaping and smokeless tobacco products (with a corresponding regulation-making power)
- amend new section 24(1)(f) to limit the application of the exemption to publicly funded healthcare services only and delete the word 'approved' and replace it with 'issued'
- clarify new section 24(1)(i) to ensure that advice can also be given to groups of individuals by qualified health professionals.

Restrictions on sponsorship

Clause 26: New sections 28, 29 and 30 – Restrictions on sponsorship and related activity

New sections 28, 29 and 30 provide that a manufacturer, importer, distributor or retailer of regulated products must not sponsor an organised activity or enter into an arrangement involving an exclusive supply arrangement involving the use of a regulated product trademark, etc.

Submissions

Most submissions that referenced sponsorship were in the format of a questionnaire template that asked the question 'Should all advertising and/or sponsoring by vape companies be stopped?' Most submitters responded either yes or no and did not explicitly state which provision they were responding to (advertising and/or sponsoring) nor provide a rationale for their answers.

The few submissions that did specifically comment on sponsorship were generally from health sector non-governmental organisations (NGOs) who were supportive of a prohibition on sponsorship.

Comment

The new sections 28, 29 and 30 carry over the equivalent provisions in the current Act and extend them to all regulated products, including vaping products. Sponsorship involving all regulated products is prohibited under the Bill, and submitters that commented specifically on this provision were supportive of the provisions. No changes are proposed.

Recommendation
No change.

Distribution, inducements and rewards, etc

Clause 26: New sections 32, 33 and 34 – free distribution, discounted products and rewards

New section 32 provides that a manufacturer, distributor, importer or retailer of regulated products must not free of charge or at a reduced price:

- distribute any regulated product (unless they are a specialist vape retailer)
- supply any regulated product to any person for subsequent distribution.

In addition, a retailer must not supply regulated products free or at a reduced charge to another person for the purpose of that retailer's business.

New section 33 provides that a manufacturer, distributor, importer or retailer of regulated products must not:

- distribute a regulated product with a non-regulated product
- supply a regulated product with a non-regulated product to another person for later distribution.

In addition, a retailer must not supply regulated products with non-regulated products to another person for the purpose of that retailer's business.

New section 34 provides that (except for specialist vape retailers) a person must not offer any gift or cash rebate or the right to participate in any contest, lottery or game to:

- the purchaser of a regulated product as consideration for the purchase of the product
- any person in consideration for the provision of evidence of the purchase of a regulated product.

New section 34 also provides that a person (including a specialist vape retailer) must not offer any gift or cash rebate etc to a retailer as an inducement or reward in relation to:

- the purchase or sale of regulated products by that retailer
- the advertising of regulated products inside that person's business
- the location of regulated products in a particular part of that retailer's business.

Submissions

More than 15 submitters commented on the exemptions for specialist vape retailers to provide rewards involving a discounted product or to provide products discounted or free of charge.

Just over half of these submitters did not support the exemptions. Of these, just over half (mainly NGOs and district health boards) did not support any exemptions to give discounts, free samples and loyalty points. Some submitters said that vaping products were already significantly cheaper than tobacco products and that the provisions encouraged people to keep vaping rather than eventually become vape free.

Just under half the submitters supported the exemptions only being offered to those vaping to quit smoking. Of these, just under half partially supported the exemption but recommended that the discounted products and rewards should only be available to those vaping to quit smoking. Some of

these submitters recommended only smoking cessation services be able to distribute discount vouchers (etc).

One submitter stated that the free distribution of a regulated product should include an exemption for smoking cessation services, stating that, under the Bill, it would be illegal for a service to provide clients with devices, creating barriers to delivering smoking cessation support. One submitter supported the exemptions being applied more broadly, including to liquor stores, while another submitter said that generic retail stores being unable to participate in loyalty schemes was 'anti-competitive'.

Comment

The intent of these provisions is to allow specialist vape stores, which must be R18, to continue business largely as usual. These exemptions may support smokers to try new products, which may be more effective for them.

These provisions do not prevent stop smoking services from providing vaping products free of cost.

Recommendation
No change.

Information and warnings at point-of-sale and on Internet

Clause 26: New sections 37 and 38 – Internet and point-of-sale health information or warnings

New sections 37 and 38 contain requirements relating to point-of-sale and Internet-sales health information or warnings.

Submissions

Around 20 submitters commented on these sections.

Submitters generally supported the provision of appropriate health information and warnings at point-of-sale at both premises and online stores.

One submitter suggested that health information and warnings available at point-of-sale (including online sales) should make clear that these products are intended to be used for quitting smoking.

Another submitter argued that only minimal marketing should be allowed for vaping products at point-of-sale and that this should include permissible product claims only made available from a set of pre-approved statements.

Comment

The Ministry considers that there is benefit in having evidenced-based health information and warnings at point-of-sale, including for Internet sales. This is permitted by the exemption in new section 24(1)(g)(ii). Details will be set out in regulations that will be publicly consulted on before they are finalised (if the Committee agrees to include a regulation-making power to correct the drafting omission).

Recommendation
No change.

Prohibition on sale and distribution to people under 18 years of age

Clause 26: New sections 39, 40 and 44: Sale, distribution and supply to people younger than 18 years of age prohibited (and repeat offenders)

Sale and distribution

New section 39(1) prohibits a person from selling a regulated product to an under-18-year-old. It also prohibits a person who has sold a regulated product to a person of any age from delivering or arranging for that product to be delivered to someone under 18 years of age.

New section 39(2) provides that a person who contravenes section 39 commits an offence and is liable to a fine of up to $10,000 for a body corporate or up to $5,000 for anyone else.

New section 39(3) provides a defence to a charge under section 39(2) if the contravention occurred without the person's knowledge and they had taken reasonable precautions and exercised due diligence to prevent the contravention.

New section 39(4) specifically provides that the requirements in new section 39(3) would be satisfied if the person can prove that they sighted an evidence of age document that indicated the purchaser was 18 years or older.

New section 44 enables the Court to make additional orders against repeat offenders who sell or distribute to those under 18 years old in certain circumstances. These orders include prohibiting the person from selling a regulated product for a particular time period or imposing conditions on the sale of that product.

Supply

New section 40(1) prohibits a person supplying a regulated product to an under 18-year-old in a public place. New section 40(2) provides that a person who contravenes section 40(1) commits an offence and is liable to a fine of up to $2,000.

New section 40(3) provides a defence to a charge under section 40(2) if the contravention occurred without the person's knowledge and they took reasonable precautions and exercised due diligence to prevent the contravention. This requirement is satisfied if the person can prove that they sighted an evidence of age document that indicated the person was 18 years or older (new section 40(4)).

Submissions

Over 800 submitters commented on the restriction on sales to those under the age of 18 years.

An appropriate age limit

Most submitters who commented on this provision thought it was appropriate to have a minimum age restriction of 18 years for vaping products. Many commented that the age limit should be aligned with age restrictions for other harmful products, such as alcohol and tobacco.

Other submitters commented that nicotine was very addictive or that the purpose of vaping was to quit cigarettes, so an age limit of 18 years was therefore appropriate.

A small number of submitters felt that the age limit should be lower, for example, to align with the minimum age for marriage (16 years with the permission of the Family Court) or the minimum age for entering the army (17 years).

A small number of other submitters thought that the minimum age should be higher, with recommendations ranging from 20–25 years. One submitter thought that the minimum purchase age should be increased annually, with a view to New Zealand becoming both vape- and smokefree in time.

The ease with which young people can access to vaping products

Many submitters were concerned that young people are currently able to access vaping products, but there were conflicting views about where they were getting these products.

Some submitters thought that young people were buying their products locally from small retailers or online or that they were being given it by friends or relatives. However, many small retailers and several online retailers said they always require identification and/or that they never sell to young people.

Strict age-verification requirements and technology use

A number of submitters thought that the Bill needed to have a stronger regulatory framework to prevent young people from purchasing vaping products online.

Many submitters thought that there should be a requirement for age verification at the point of purchase and/or delivery. Some submitters recommended that online vape retailers be required to use 18 plus courier delivery for vape products, which requires the courier to sight evidence of age when delivering a product to a customer.

A few submitters thought there should not be any online sale of vaping products.

Several submitters commented that many online sites only require a person to click a box saying that they are over 18 years of age but do not require any additional verification. Another submitter commented that very few online retailers required evidence of identification on delivery. However, several online vaping retailers commented that they have already implemented age verification processes for online purchases, and many small retailers commented that they always check age identification.

A number of submitters recommended that the Committee consider requiring technology-based online age verification, for example government identification schemes such as RealMe®, requiring purchasers to use an age-verified PayPal account or using a third-party company authorised by the Department of Internal Affairs.

Some submitters thought that online purchasers should have to provide government-issued age identification before they can view products on a website (sometimes referred to as an ‘age gate’). Another submitter commented such requirements as age gating were unrealistic and disproportionate. The submitter also commented that no other consumer product is required to

provide proof of age just to view that product's website and that equivalent legislative requirements for the alcohol industry (which do not require 'age gate' verification) have been successful.

One submitter said that there should be a limit on the number of products a customer can purchase online to mitigate the risk of an adult of legal age purchasing high quantities of product for distribution to minors.

One submitter referred to a 'track and trace' initiative in the United States whereby devices confiscated from minors can be tracked using serial numbers to flag 'bad actors' in the supply chain.

Overseas retailers

A number of submitters were concerned that overseas online retailers that do not require age verification will actively market and sell to young people in New Zealand. The submitter warned that, while the government has the power to regulate domestic retailers, it has very little ability to control the actions of sites based overseas.

Minors' access to vaping products

Many submitters thought that minors who smoke should have controlled access to vaping and reduced-harm products to help them switch to a less harmful alternative. Several submitters commented that parents and guardians should be able to encourage minors in their care to switch from smoking to vaping should the need arise.

One submitter recommended that new section 40 be replaced with a framework similar to section 241 of the Sale and Supply of Alcohol Act 2012, which permits the supply of alcohol by or with the permission of a parent or guardian.

Stronger monitoring, enforcement and penalties for sales to minors

Some submitters thought that the monitoring and enforcement regime should be strengthened to ensure that regulated products do not fall into the hands of young people, and several commented that additional resources will be needed to carry this out effectively.

Several submitters recommended significant fines or suspension for retailers that sold to minors, while others thought that a person's ability to sell regulated products should be suspended either temporarily or permanently if this were to occur.

Comment

New sections 39 (relating to sale and distribution) and 40 (relating to supply) carry over the existing restrictions in the Act on supplying tobacco and herbal smoking products and extend these provisions to all regulated products, including vaping products.

One of the purposes of the Bill as set out in clause 6 in new section 3A is to discourage non-smokers, especially children and young people, from taking up vaping or smokeless tobacco products. The Ministry therefore considers that a minimum age restriction of 18 years for the sale of all regulated products is appropriate.

Online vendors are subject to the same requirements as other retailers and must ensure they take reasonable precautions and exercise due diligence in ascertaining the purchaser's age before completing a sale. This includes sighting an appropriate evidence of age document that indicates that the person is 18 years or older.

New technology is regularly being developed, and what is reasonable in terms of the level of precaution and due diligence an online retailer should undertake will change over time as technology advances. In the Ministry's view, the provision would be less enduring if the Bill included a prescriptive requirement for a particular type of online age verification.

Risks associated with both online and in-person sale of regulated products to young people will be managed through the Ministry's monitoring and enforcement processes, which include regular compliance checks on retailers using controlled purchase operations.[4]

New section 44 enables the Court to make additional orders against repeat offenders who sell or distribute to people younger than 18 years of age. These orders include prohibiting the person from selling a regulated product, or imposing conditions on the sale of those products, for a particular time period.

We acknowledge the concerns raised by submitters about overseas advertisers targeting domestic consumers (known as 'cross-border' advertising). The Bill regulates this type of advertising if the person or company has a presence in New Zealand and the target audience includes New Zealanders. However, it is not possible for New Zealand law to apply in other circumstances.

The Ministry of Health consulted the Ministry of Justice on the penalty levels in the Bill, including the maximum fines for a breach of the restriction on sales to under-18-year-olds. No changes to the penalty levels in the Bill are proposed.

New section 40 applies to the supply of a regulated product 'in a public place' and would not prevent a person from supplying minors with regulated products in a private setting.

No changes are proposed to new sections 39 or 40.

Recommendation
No change.

[4] Controlled purchase operations (CPOs) are designed to monitor and enforce the provisions relating to the sale of regulated products to people under 18 years old. CPOs involve supervised volunteers aged between 14 and 17 years of age attempting to buy regulated products from retail premises, including online sellers.

Packaging and labelling requirements

Clause 26: new sections 49 and 51: Packaging and labelling requirements

New sections 49 and 51 enable standardised packaging requirements to be set in regulations for all regulated products, including requirements for messaging or information on packaging.

Submissions

Around 600 submitters commented on standardised packaging. Over half of these submitters agreed that the packaging of regulated products should be standardised.

Most of these submitters commented in the format of a questionnaire template that asked 'Do you think packaging should be standardised (including non-nicotine)?' Submitters provided a yes or no answer, and most did not provide a rationale. Most of the submitters who completed the questionnaire template stated that they were vape consumers. There was an even split (approximately) between submitters who agreed and those who disagreed that packaging should be standardised.

Most submitters considered there should be full information on the packaging of the product (eg, including nicotine content, ingredients and volume of liquid in a container) so consumers would be fully aware of what they were purchasing and could make informed choices.

Over 50 submitters supported the inclusion of health information and health warnings on packaging. Some of these submitters recommended that all nicotine-containing regulated products should contain warning labels stating that nicotine is highly addictive.

A few submitters disagreed with 'big' warnings on packaging of vaping products, stating that there was no evidence that nicotine was harmful.

A few health sector submitters stated that health information on the packaging of vaping products should include the potential benefits compared with tobacco products.

Comment

Standardised packaging requirements will only come into effect for vaping products if regulations are made. It is the Ministry's intention to develop tailored requirements for vaping products and smokeless tobacco products (which at present are subject to the existing tobacco standardised packaging regulations).

Labelling requirements (eg, nicotine content, ingredients) will also be set out in regulations.

The Ministry will publicly consult on the proposed labelling and packaging requirements, including messages and information, for vaping and smokeless tobacco products that will be set out in regulations before any final decisions are made.

Recommendation
No change.

Products labelled for chewing or other oral use

Clause 26: New section 53: Regulated products cannot be advertised or labelled, etc, as suitable for chewing

New section 53(1) provides that a person must not publish a regulated product advertisement that directly or indirectly states or suggests that a regulated product is suitable for chewing or for any other oral use.

New section 53(2) provides that a person must not import for sale, sell, pack or distribute any regulated product labelled or otherwise described as suitable for chewing or for any other oral use.

Oral use is defined in new section 53(4) as the absorption of the product primarily through the oral mucosa.

Submissions

Around 10 submitters commented on this section. Of these, most considered that the sale of Swedish snus[5] should be allowed, referring to evidence for its long-term safety and its contribution to low smoking rates and smoking-related illness among men in Sweden.

These submitters considered that snus could contribute to reducing harm among New Zealand smokers. One submitter noted that it may also be suitable as a reduced-harm alternative to vaping, given the uncertainties around the long-term risks associated with vaping.

A few submitters objected to the Ministry's view that snus is prohibited under section 29(2) of the current Act, arguing that this section was clearly intended to apply to chewing tobacco. One submitter also took issue with the Ministry's interpretation of the judgment in *Ministry of Health v Phillip Morris (New Zealand) Ltd [2018] NZDC 4478*[6] and the addition to the Bill of a definition of oral use.

Several submitters raised concerns that oral nicotine products that do not contain tobacco leaf and are not approved medicines are not adequately regulated and suggested that this should be addressed in the Bill.

One submitter opposed any relaxation of the prohibition on the sale of oral tobacco products. The submitter's reasons included that snus and other oral tobacco products undermine the Māori community's desire to be rid of tobacco and nicotine addiction, that there is evidence of harm (albeit to a much lesser extent than that caused by smoking) and that there is evidence from Norway that snus has attracted young non-smokers into nicotine addiction.

Comment

New section 53 is carried over from section 29(2) of the current Act, and a definition of oral use has been added:

> 'In this section, **oral use**, in relation to a product, means the absorption of the product primarily through the oral mucosa.'

[5] Snus (pronounced 'snoose') is a moist, smokeless tobacco powder variant of dry snuff that is packed under the top lip.

[6] See: www.districtcourts.govt.nz/all-judgments/2018-nzdc-4478-moh-v-morris/

Snus is captured by section 29(2) of the Act because the use of snus fits directly within the words 'other oral use' in that section, as snus is used by being placed in a person's mouth and absorbed through the lining of the mouth and not smoked or inhaled. The Ministry is satisfied that the judgment in *Ministry of Health v Phillip Morris* does not change this. The definition of oral use is new and simply clarifies the scope of this clause.

The Ministry agrees that the evidence supports submitters' comments that Swedish snus is significantly less harmful than smoking. The Government is, however, not supportive of expanding the range of nicotine-delivery products lawfully able to be sold in New Zealand.

The legal position of oral nicotine products that do not contain tobacco leaf is unclear. It is highly likely that these products contain nicotine manufactured from tobacco, in which case their sale would be prohibited under section 29(2) of the Act. However, whether the nicotine in these products is manufactured from tobacco cannot be proved to the standard of evidence required for a prosecution. Therefore, the Act cannot be adequately enforced for these products.

The Ministry agrees that the sale, supply and advertising of all oral nicotine-containing products should be regulated. Despite a few submitters' comments, there is no robust evidence to date to support claims of the safety and effectiveness of these newer nicotine products in supporting people to quit smoking.

The Ministry proposes that the Bill clarify that nicotine products for oral use (other than products that have received consent for distribution under section 20, or provisional consent under section 23, of the Medicines Act 1981) fall within section 29(2) of the current Act. This would mean that, like chewing tobacco and snus, their import for sale and their sale, package, distribution, etc. would be prohibited.

We consider that nicotine-containing products, other than those for oral use, should be regulated under the Medicines Act 1981 (eg, nicotine products applied topically, such as gels) and that this should be made clear to avoid any possible uncertainty.

Recommendations

We recommend that:

- the Bill be amended to regulate oral nicotine products (other than products that have received consent for distribution under section 20, or provisional consent under section 23, of the Medicines Act 1981) under new section 53 of the Bill
- a consequential amendment to the Medicines Regulations be made to clarify that all non-oral nicotine-containing products are medicines.

Obligations on retailers, including notifications and flavour restrictions

Clause 26: New section 63

New section 63 provides that a retailer must not sell:

- a notifiable product that has not been notified and does not comply with product safety requirements, etc
- vaping products that are not listed in Part 1 of Schedule 2 (ie, tobacco, menthol, and mint), unless they are a specialist vape retailer selling from their approved premises or Internet site.
- a prohibited flavour listed in Part 2 of Schedule 2 (there are none currently proposed).

Submissions

Over 1,000 submitters commented on new section 63. The overwhelming majority of these focused on the restrictions on flavours that generic retailers can sell.

Obligation on retailers to only sell products that meet product safety requirements

One submitter disagreed with the retailer obligation that they only sell products that meet safety requirements, expressing concern that it would unduly shift the responsibility to the retailer. Their view was that responsibility for compliance with product safety requirements should sit solely with the notifier (ie, the manufacturer or importer) and that retailers should rely on the notification scheme to uphold safety standards.

Restriction for generic retailers to sell only tobacco, menthol and mint-flavoured vaping products

A large majority of submitters commented on the flavours that can be sold in generic retail stores. Many of these submitters were either small retailers, vape consumers, vape businesses or organisations in the health sector, including health research organisations and NGOs.

Most submitters disagreed with the restrictions on flavours. Those who provided further comments said the restrictions would:

a. discourage smokers from transitioning or maintaining their transition to vaping as tobacco, menthol and mint flavours are unappealing
b. negatively affect health equity by disproportionately impacting smokers who live in rural or low socioeconomic areas who cannot purchase products online or who live in areas without specialist vape retailers (a higher proportion of these people being Māori)
c. encourage people to tamper with vaping products by adding their own flavours and/or create a black market for flavours.

Almost all small retailers disagreed with the proposed flavour restriction and raised further concerns. For example, that the flavour restriction:

a. will significantly impact on their income from vaping products as vape consumers prefer fruit and/or dessert flavours
b. will create an ‘unfair commercial advantage’ between generic retailers and specialist vape stores

c. will not affect youth vaping rates as businesses routinely ask for ID when selling vaping products
d. is disproportionate as generic retailers are allowed to sell a range of tobacco products.

Some vape consumers who disagreed with the restrictions stated that it negatively impacted on consumers' 'choice' and 'right' to purchase and use different flavours.

More flavours in generic retail stores and store exemptions

Some submitters suggested that the number of flavours in generic retail stores should be increased to four, six or ten flavours (including fruit, vanilla and/or dessert flavours).

Other submitters suggested that to ensure smokers can access a range of flavours, the Bill should permit at least R18 stores, liquor stores, internet vendors, pharmacists or tobacconists to sell more flavours and allow generic retailers, who are 'outside a certain distance from a specialist vape store', to apply for a special licence, which would allow them to stock more flavours.

Agreement with the restriction on flavours

Approximately two-thirds of health organisations who commented on flavours either supported the restriction on flavours in generic retail stores or recommended further restrictions to prevent young people from accessing vaping products. They, along with other submitters who supported additional restrictions, suggested only allowing generic retailers to sell tobacco-flavoured vapes or only permitting three flavours to be sold provided that generic retailer stores cannot sell vaping devices.

A minority of vape consumers and vape businesses agreed with the proposed flavour restrictions for generic retail stores. Those who gave reasons said:

a. the restrictions would reduce the attractiveness of vaping to young people
b. generic retailers do not provide good-quality vaping products or advice and specialist vape stores are better able to support smokers to transition than generic retailers
c. restricting flavours would have little impact on vaping consumers as vaping products can be purchased online.

Support for broader restrictions on flavours, including in specialist vape retailers

Over 40 submitters stated that all flavours that appeal to young people should be banned.

A very small number of submitters suggested limiting the range of flavours that could be sold in specialist vape stores. One submitter suggested that restrictions could later be reduced for specialist vape stores if 'supported by evidence'.

A small number of submitters specifically focused on the definition of 'flavour'. They disagreed with 'the use of the broad term flavour' and said it is important to be clear about how a flavour is being defined. Submitters noted that a flavour can be defined in at least three different ways.

a. A chemical formulation (focusing on specific ingredients)
b. A subjective sensation (ie, the person believes it tastes like apple)
c. A descriptor (ie, the name given to the flavour, eg, 'unicorn puke').

The submitters suggested that the focus should be on chemical formulation, with one submitter suggesting a focus on flavour descriptors or trademark violation.

Some submitters considered that the focus should shift from flavours or, in addition to focusing on flavours, to a focus on regulating:

a. flavour descriptors that may be attractive to young people, for example, labelling a vape flavour as 'strawberry' rather than 'berry delicious'
b. youth-centric marketing of vape flavours
c. the toxicity of particular ingredients and flavours.

We comment on descriptors and youth-centric marketing in the advertising section of this report. The toxicity of ingredients will be considered in the development of product safety regulations.

Comment

Notification requirements

The retailer has the obligation to take reasonable precautions to ensure a product meets safety requirements at the time of sale. Retailers will be able to use the notification database to check that a product is approved and all requirements have been met before they sell a product.

Flavours

The Bill aims to strike a balance between protecting young people from the risks associated with vaping products and supporting smokers to switch to much less harmful alternatives.

A brief summary of the evidence on flavours has been provided to the Committee (as part of the Ministry's additional advice, dated 9 April 2020).

There is no strong evidence that particular flavours are important for smoking cessation. However, there is evidence to suggest that flavours add to the appeal of vaping. For smokers, especially those who are unable to quit by conventional means, having a product available that is less harmful and at least as satisfying as smoking is important.

Some studies have highlighted concerns that some flavours are appealing to young people and may be a factor in youth vaping uptake. A recent review showed that young people prefer non-tobacco vaping products, especially sweet flavours. There is also some evidence that sweet flavours are perceived as less harmful. For young people who have never smoked, there are likely to be some health risks associated with regular long-term vaping. Therefore, policies and interventions that reduce access and uptake are warranted.

If the Committee wishes to consider whether the Bill has the balance right and is supportive of proposing amendments to the restriction on which flavours may be sold by generic retailers, then increasing the scope of flavours available in generic retail stores would be the simplest way to achieve this (ie, by adding further flavours or categories of flavour to Schedule 2, Part 1).

Recommendation
No change.

Powers of the Director-General of Health

Clause 26: New sections 24 and 67–72

This part of the departmental report discusses all the Director-General's powers and related submissions together because most submitters commented broadly rather than on individual provisions. Below are the relevant clauses of the Bill that involve the exercise of Director-General powers.

New sections 67-72 provide that the Director-General may:

- declare a substance to be a prohibited ingredient
- require a notifier to provide information relating to the safety of the product
- issue a public warning or statement if a product poses a risk of harm to people, or require the notifier to arrange for the product to be recalled
- suspend or cancel a product notification.

The exemptions in new section 24 that involve the exercise of Director-General powers are:

- a public health message approved by the Director-General
- approval of suitably qualified health workers to provide advice or messages for the purpose of supporting a person to switch from smoking to vaping.

Submissions

Over 600 submissions were received on the powers of the Director-General, most of which were responding to a form submission questionnaire that asked: 'Should all power for future changes be left to the Director-General?'

Most submitters simply answered 'no', or that it would be unfair or undemocratic for all power to be with one person. A few submitters were concerned that the Director-General was 'biased' or did not have the technical knowledge to make decisions under the Act.

Submitters who provided a more substantive response suggested various changes to the Bill, including that there should be greater transparency about how the powers will be used or that there should be consultation with experts, industry, suppliers and end users. One submitter was particularly concerned that new section 67 (declaration of prohibited ingredients) was tantamount to a delegated power to make regulations.

Comment

Concern about powers residing in one person

As with the current Act, in practice, the Ministry will carry out many of the regulatory powers under delegated authority (eg, product safety will be managed within Medsafe[7]). In response to submitters' concerns that the Director-General may not be qualified to make decisions and assessments about vaping products, in practice, the Ministry seeks and provides the Director-General with advice on available international best practice.

[7] The New Zealand Medicines and Medical Devices Safety Authority, a business unit of the Ministry of Health and the authority responsible for the regulation of therapeutic products in New Zealand.

From time to time, the Director-General also seeks advice from technical specialists and specialist advisory committees under several regulatory regimes that the Ministry administers. The Bill does not currently require the Director-General to establish an advisory committee to inform the exercise of their powers.

There are various approaches to advisory committees in health legislation, including no requirement to establish a committee, providing the discretion to establish one when necessary or requiring their establishment.

An example of where the regulator must establish a committee is the Psychoactive Substances Expert Advisory Committee (PSEAC) established under section 11 of the Psychoactive Substances Act 2013. PSEAC comprises up to six members with technical expertise in pharmacology, toxicology, neurosciences, medicine and any other areas the PSEAC considers relevant.

The Ministry's preference would be to empower the Director-General to, from time to time, establish and have regard to advice from technical advisory committees on the exercise of the Director-General's powers. This is in preference to requiring a specific standing committee to be established. For example, a new provision could be inserted that sets out the kinds of matters that an expert committee advises on and that signals the intent that such committees could include members of the vaping industry, where appropriate.

The kinds of advice the advisory committee could give might include: the specific effects of a product, any risks to public health, the likelihood of the product creating physical or psychological dependency, its appeal to vulnerable populations, the likelihood of its misuse and any other matters the Director-General considers relevant.

Concerns about the extent of the powers

In terms of the extent of the Director-General's powers, the Bill adopts a similar approach to pre-market entry notification features in other established regulatory schemes; either those administered by the Ministry or those in similar jurisdictions. The Ministry does not recommend removing any of the Director-General's powers, but we recommend the Committee consider introducing safeguards, as set out below.

Industry involvement in rule changes / prohibition of ingredients

In response to submitters' calls for industry involvement in 'rule' changes, this must be subject to the limitations on industry involvement under the World Health Organization's (WHO's) Framework Convention on Tobacco Control (FCTC), to which New Zealand is bound as a party.

The Director-General and the Ministry must act to protect public health policies from commercial and other vested interests in the tobacco industry (Article 5.3). The New Zealand government must observe complete transparency in any dealings with the tobacco industry. The Ministry considers some similar considerations apply to engaging with the vaping industry, some of which are also tobacco industry stakeholders. However, the Ministry acknowledges that, with respect to vaping products, this needs to be balanced by drawing on appropriate technical expertise, some of which will reside within vape businesses.

In terms of the suggestion to impose a specific requirement on the Director-General to consult before declaring an ingredient to be prohibited under new section 67, the Ministry considers that,

for public safety reasons the Director-General must be able to act immediately once there is sufficient information available. Despite this, the expectation is that the Director-General will consult, where reasonably practicable in the circumstances, with a range of technical specialists.

However, to address submitter concerns, the Ministry recommends tightening new section 67 to specify criteria that the Director-General must take into account before declaring an ingredient to be prohibited. Criteria could include the risk of harm arising from the use of the ingredient, the history of any beneficial use of the ingredient, the stance taken by other recognised regulatory authorities overseas and any other matter the Director-General considers relevant.

Consultation on application of powers

As best practice, the Director-General's delegates will in many cases consult with those affected before making a final decision. However, considering the nature of the Director-General's powers, most would be less effective if the Bill required prior consultation with those affected in all cases. For example, the Director-General may need to act very swiftly to protect the public by recalling a product or prohibiting an ingredient that has been the subject of adverse event reports.

However, in relation to powers to suspend or cancel a product notification under new sections 71 or 72, the Ministry recommends including an express Director-General obligation to give the notifier a reasonable opportunity to be heard before any suspension or cancellation occurs. This is taking account of natural justice principles and the impact on the notifier's livelihood and reputation. The obligations to act reasonably and to provide reasons already apply to the Director-General under these draft sections, but there is no explicit right to be heard.

Providing a right of appeal against suspension or cancellation

The Bill does not provide a right of appeal against the Director-General's decision to suspend or cancel a product notification of a notifiable product. Under general law, the notifier would have a right to apply to the High Court to judicially review the process leading to cancellation. However, that is not an appeal on the merits of the decision, and judicial review may be outside the reach of smaller businesses.

While the Director-General's decision to suspend is by its nature an interim measure, as with cancellation, it may result in the vape business going out of business. For this reason, we recommend that the Bill should provide the notifier with a right of appeal for decisions to suspend or cancel. The committee may wish to consider whether other aspects of the Bill conferring Director-General powers should give right of appeal (eg, recall of a product).

In terms of what the right of appeal would look like, the Psychoactive Substances Act 2013 (section 45) includes a right of appeal to an appeals committee of three members appointed by the Minister and a further right of appeal on questions of law to the High Court. An alternative (and older) model under regulation 65 of the Medicines Regulations 1984 allows a right of appeal to the District Court within 14 days of being notified of the decision in writing, and the decision of that court is final. The Ministry has a slight preference for the first model.

Requiring reasonable grounds for recall

The Ministry considers that the Director-General's power to recall a product under new section 70 should be on reasonable grounds. New section 70 requires that the Director-General be 'satisfied that the continued availability of the product poses an unacceptable risk of harm to people'. In requiring that the Director-General must be satisfied 'on reasonable grounds' before resorting to recall, this implies the Director-General's grounds for doing so must be clearly identified and transparent.

Recommendations

We recommend that the Bill be amended to:

- empower the Director-General of Health to set up technical advisory committees to assist in decision-making and exercise of powers under the Bill once enacted
- provide the notifier a reasonable opportunity to be heard before the Director-General of Health can suspend or cancel a product notification of a notifiable product
- provide a notifier with a right of appeal against a decision to suspend or cancel a product notification of a notifiable product similar to the appeal right in section 11 of the Psychoactive Substances Act 2013 (ie, a right of appeal to an appeals committee of three members appointed by the Minister of Health, and a further right of appeal on questions of law to the High Court)
- require the Director-General of Health to be satisfied on reasonable grounds that the product presents an unacceptable safety risk before making a recall order.

Prohibited ingredients and colouring substances

Clause 26: New section 66: Substances that notifiable products must not contain

New section 66 provides that a vaping substance must not contain a prohibited ingredient, a prohibited flavour or a colouring substance.

Submissions

Prohibited ingredients

Several submitters commented on proposals to prohibit ingredients. Some made specific suggestions, for example, to prohibit diacetyl, all non-water-soluble oils and vitamin E acetate.

One submitter suggested that maximum concentrations (rather than a complete ban) be set for prohibited ingredients. Another submitter suggested that prohibited ingredients should be listed alongside prohibited flavours in schedule 2 of the Act.

Colouring substances

In addition, several submitters commented on colouring substances.

A couple of submitters agreed with prohibiting colouring substances, with one submitter stating that it is not a 'major disincentive' for vaping consumers. One submitter noted that flavours are 'inadequately regulated' under the Australia New Zealand Food Standards Code.

One submitter disagreed with the placement of this section. They contend that it belongs in the regulations (rather than the Act itself) as it can be amended more easily if the evidence on colouring substances in vaping products changes.

Comment

The Bill provides that the Director-General may declare a substance a prohibited ingredient if satisfied that the substance is unsafe. The Ministry has prepared a draft list of prohibited ingredients that will be consulted on before it is finalised.

The Ministry agrees that it would be desirable to allow the Director-General to set limits for ingredients so that, in some cases, an ingredient may be allowed up to a maximum concentration. The Bill does not currently allow for this.

The prohibition on colouring substances is appropriately placed in the Bill rather than regulations. There is no evidence to support the safety of colouring substances and no good reason for their use (eg, unlike flavours, they do not play an important role in supporting smokers to switch).

Recommendation
We recommend that new section 67 be amended to enable the Director-General of Health to set maximum limits for ingredients, in addition to outright prohibiting ingredients.

Establishment of notification database

Clause 26: New section 73: Establishment of database and confidentiality of certain information

New section 73 provides that the Director-General of Health must establish and maintain a database, ensuring that confidentiality of information is protected.

Submissions

One submitter proposed that the Ministry specify the information to be collected through the notification system and that the notifiable product industry should be responsible for implementing and maintaining a low-cost, online, self-service notifications system.

Comment

The Ministry is planning to implement a low-cost, online, self-service system to support notifications (ie, the same objectives as proposed by the submitter above).

The planned system will be a bespoke configuration of a common Ministry-wide platform that supports workflow for processing and publishing applications and a number of other functions as well as notifications.

The system must meet key security, performance and availability requirements, and a common Ministry platform will be better able to support these requirements than a sector-developed system for vaping notifications.

The common platform will initially support two Ministry regulators, but current plans are to extend its use to several other areas over the next five to ten years. This will enable the Ministry to establish a standardised workflow for receiving, processing, responding to and publishing applications, etc, across multiple business units. Common core systems and a standardised workflow are expected to provide significant efficiency savings in each area.

The scope of the planned system is significantly beyond what could reasonably be delivered by the vaping industry. The overall cost to the industry is expected to be significantly lower on the common platform compared with a bespoke industry solution as sectors served by other business units will also be using the common platform.

Recommendation
No change.

Regulations

Clause 26: New sections 75–80

New sections 75–80 provide for making regulations for specified purposes, including:

- forms, registers and other documents
- health messages on automatic vending machines
- exemptions
- acceptable forms of delivery and visibility
- health information and warnings at point-of-sale and on the Internet
- information that must be contained in annual tax returns
- specifying requirements relating to the standardised packaging (including messages and information)
- notifiable products (including the prescribing of product safety requirements)
- imposing fees and levies.

Submissions

Around 70 submitters commented on these sections. These comments were mostly related to the details of the regulations, for example, maximum nicotine level. Proposals for the regulations will be developed and publicly consulted on in due course.

One submitter suggested that the scope of the regulations was too broad and that health officials may give effect to prejudices with respect to harm reduction. The submitter argued that Parliament should retain ownership over the regulations or be able to review them.

Another submitter argued that more of the provisions of the Bill should be in regulations to allow greater flexibility should issues develop in the future that might require action faster than a change to primary legislation allows.

Yet another submitter felt that the regulations needed to be responsive to new products and technologies.

Comment

The Ministry is satisfied that the current scope of the regulations is sufficient for the legislative regime to work effectively and that there is appropriate oversight, that is, by Cabinet and the Regulations Review Committee. Full public consultation will occur before any regulations are created.

We agree with the suggestions that maximum limits should be able to be set for ingredients in addition to full prohibition.

Recommendation
No change (except for the regulation-making powers recommended in the body of this report).

Infringement offences

Clause 26: New sections 81–84

New sections 81–84 set out the procedure for the infringement offences in the Bill, including notices and payment of infringement fees.

Submissions

Very few specific comments were made by submitters on the infringement offences. One submitter suggested adding a further range of offences to the infringement notice regime.

Comment

The Act currently provides for infringement notices for a range of offences related to tobacco products. The Bill proposes the establishment of an infringement regime for all regulated products. The infringement regime can only apply to strict liability offences. We have followed Ministry of Justice guidelines on the establishment of infringement offences and the setting of the infringement fees associated with these offences.

Recommendation
No change.

Enforcement officers

Clause 26: New sections 85–93

New sections 85–93 provide for the appointment of enforcement officers by the Director-General. These sections provide safeguards relating to the powers of entry and inspection and the power to require information.

An enforcement officer is provided with protection from civil and criminal liability and granted powers of entry and inspection, including being able to apply for a search warrant in certain circumstances.

The provisions also provide for an enforcement officer to require a person to provide identifying information in specified circumstances.

Enforcement officers are required to identify themselves when exercising certain powers. Offences for intentionally obstructing, hindering or resisting enforcement officers and providing false or misleading information are also included.

Submissions

Appointment of enforcement officers

One public health unit and an individual submitter suggested that police and customs officers should have reciprocal powers as both play key roles in the regulation and enforcement of tobacco laws.

Search powers

One submitter was concerned about the search powers listed in section 87, which provides for warrantless searches if 'the officer believes on reasonable grounds that it is a place to which this section applies'. They believed this violates section 21 of the BORA (unreasonable search).

The submitter was also concerned that section 87(4) allows police to accompany the health inspector on the warrantless search, which weakens police controls under the Search and Surveillance Act 2012, and that police powers should not be included in a health bill. The submitter considered the search warrant provisions in section 89 to be appropriate but noted that the Bill does not provide any reporting, oversight or complaints processes. The submitter recommended that section 87 be removed from the Bill and that the Bill be amended to acknowledge that the reporting requirements in section 171 of the Search and Surveillance Act 2012 apply to all searches.

One public health unit submitted that enforcement officers are currently only allowed to 'inspect' a retailer, which suggests officers can only look but not touch anything, such as opening a cupboard to look inside without a search warrant. The submitter considered that this is too much of a constraint on enforcement officers. This view was supported by another submission from an individual.

Resources

One submitter stated that additional resources will be required to effectively monitor and enforce the legislation to ensure minors do not access tobacco or vaping products. Another submitter was concerned that vaping products will be subject to the same lack of monitoring and regulation enforcement as the alcohol licensing regime.

Comment

The new enforcement officer provisions have been carried over from the provisions in the current Act and extended to all regulated products. The Ministry believes the provisions contain appropriate safeguards regarding the powers of entry and inspection.

Recommendation
No change.

Annual returns and reports

Clause 26: New section 94

New section 94 contains annual reporting requirements for manufacturers and importers of regulated products and specialist vape retailers.

Submissions

A small number of submitters supported the requirements for annual reporting. One submitter recommended that all retailers selling vaping or smokeless tobacco products, not just specialist retailers, should be covered by these requirements.

Comment

This is a carry-over provision and is a current requirement for manufacturers and importers of tobacco products. New section extends the scope of the current provision to all regulated products.

The requirement on specialist vape retailers to report is new and does not exist for generic retailers or for retail of tobacco products. The reporting requirement for specialist vape retailers aims to ensure that those retailers continue to satisfy the sales requirement in new section 14A(2)(b).

Recommendation
No change.

Section 4: Minor and technical changes

Recommendation

We recommend that the following minor and technical changes be made to the Bill.

- The following definitions in section 2(1) and (2) of the current Act should be amended to include all regulated products (they currently just apply to tobacco):
  - Automatic vending machine
  - Distributor
  - 'Of the same kind'
- The Bill should be amended to ensure that a vaping substance does not include medicinal cannabis or a cannabidiol (CBD) product (as these are regulated under the Medicines Act 1981 and the Misuse of Drugs Act 1975).
- The Bill should be amended to enable the current regulations to continue to apply to tobacco products and, where applicable, herbal smoking products, until a new set of regulations applying to regulated products comes into force, as was the policy intent.

Section 5: Out-of-scope comments noted in submissions

Comments on tobacco and tobacco products

Over 60 submitters provided comments on tobacco and tobacco products. Over half of these submitters (including many DHBs and NGOs) commented on the need to reduce the retail supply of tobacco products. Most of these submitters recommended that the Bill be extended to prohibit the sale of tobacco products by general retailers, including dairies, service stations and supermarkets.

A couple of submitters commented that substantial restrictions on smoked tobacco products would be consistent with the more restrictive availability of vaping products as proposed in the Bill.

These comments/recommendations are out of scope for the Bill. In 2019, Associate Minister of Health, Hon Jenny Salesa indicated her intention to introduce an action plan to accelerate progress towards the Smokefree Aotearoa 2025 goal. A draft plan will be publicly consulted on before it is finalised. This consultation will provide the public with the opportunity to submit on issues relating to tobacco products.

Vaping products should be regulated under the Medicines Act

New subsection 2(4) in clause 5(4) stipulates that vaping devices are not medical devices and vaping substances are not medicines.

Seven submitters, including two from a single organisation, proposed that vaping products should be assessed through the same safety standards applied to other 'quit smoking' products, such as nicotine replacement therapies (NRTs).

NRTs are currently regulated as medicines or medical devices under the Medicines Act 1981.

The approach proposed by submitters is contrary to government policy on the regulation of vaping products, which is to strike a balance between protecting young people from the risks associated with vaping products and supporting smokers to switch to much less harmful alternatives.

Regulating vaping products as medicines or medical devices would place both up-front and ongoing compliance obligations on manufacturers and importers, which would have a significant impact on the availability of products for existing smokers.

Appendices

Appendix 1: Submitters' details

Category / Name of submitter	Organisation	Oral submission
Businesses: Tobacco and vaping industries		
British American Tobacco New Zealand	British American Tobacco New Zealand	Yes
Chris Woods	Japan Tobacco International	
Imperial Brands New Zealand	Imperial Brands New Zealand	Yes
Dr James Murphy (BAT)	Nicoventures Trading Ltd	Yes
Kaine Thompson, Claas H Schberg	JUUL Labs	Yes
Lion Labs	Lion Labs	Yes
Mission Limited	Mission Limited	Yes
Vaping Trade Association of NZ	Vaping Trade Association of NZ	Yes
Businesses: Other		
Paul Rayner	A tourism company	
Anne Harris	Pfizer NZ	
Myriad Pharmaceuticals	Myriad Pharmaceuticals	Yes
Sue and Teresa Taylor	T and T Consulting Ltd	Yes
Business associations		
Business NZ	Business NZ	
Dr Eric Crampton	The New Zealand Initiative	Yes
Greg Harford	Retail NZ	
NZ Food and Grocery Council	NZ Food and Grocery Council	
Dave Hooker	NZ Association of Convenience Stores	Yes
New Zealand Law Society	New Zealand Law Society	
Large general retailer organisations		
Matthew Lane	Night n Day Foodstores	Yes
Melissa Hodd	Foodstuffs (N.Z) Limited	Yes
Vape stores		
Antifun Ltd TA Premium Vape	Antifun Ltd TA Premium Vape	
Coastline vapes	Coastline vapes	
Cosmic	Cosmic	Yes
Easy as E-Cigs Ltd	Easy as E-Cigs Ltd	
Michael Brader on behalf of team	Hawkes Bay Vapour	Yes
Tracy Pile	Infused Oamaru	Yes
Paul Elton	Jock's Vapes, Upper Hutt	
Jubby's Juice Ltd	Jubby's Juice Ltd	
NZ Vapour	NZ Vapour	
Morris Lazootin and Savvas Dimitriou	Te Wairua Limited	Yes
Clint Baxter	Vape Merchant Ltd	Yes
VAPO staff survey	VAPO	
Vaporium	Vaporium	
Kevin Carroll	Vive Vape Co	Yes
Robert Reid	Global Innovations Ltd	Yes

Category / Name of submitter	Organisation	Oral submission
District health boards (DHBs) / public health services		
Richard Portch	Auckland Regional Public Health & Auckland Metro DHBs	Yes
Evon Currie	Canterbury DHB	Yes
Nicholas Jones	Hawke's Bay DHB	
Waikato DHB	Waikato DHB	
Whanganui DHB	Whanganui DHB	
Dr Jose M Ortega Benito	Nga Tai Ora Public Health Northland	
Toi Te Ora Public Health	Toi Te Ora Public Health Tauranga	
Primary health organisations (PHOs) / entities		
Anoop Gopalakrishnan	WellSouth Primary Care Network	
Irihāpeti Mahuika	Pegasus Health (Charitable) Ltd	Yes
Mahitahi Hauora Primary Health Entity	Mahitahi Hauora Primary Health Entity	
Health profession associations		
Dr Felicity Dumble	NZ College of Public Health Medicine	
Dr Jeff Brown	Royal Australasian College of Physicians	Yes
Dr Kate Baddock	NZ Medical Association	Yes
Nicola Hill	Royal Australisian College of Surgeons	Yes
NZ Nurses Organisation	NZ Nurses Organisation	
Pharmaceutical Society of NZ	The Pharmaceutical Society of NZ	
Phlip Pattmore	The Paediatric Society of NZ	Yes
Prudence Stone	Public Health Association of NZ	Yes
Royal NZ College of General Practitioners	Royal NZ College of General Practitioners	
Health sector NGOs, coalitions and councils		
ASH (Action for Smokefree NZ)	ASH (Action for Smokefree NZ)	Yes
Associate Professor Colin Menelsohn	Australian Tobacco Harm Reduction Association	Yes
Bridget Forsyth	Smokefree Murihiku	
Barbara Holland and Barbara Robson	Federation of Women's Health Councils	
Cancer Society	Cancer Society of NZ	Yes
Carly McDowell	Smokefree Mid Canterbury	
Catherine Manning	Takiri Mai te Ata Regional Stop Smoking Service	Yes
Dr Alex Wodak	Australia Drug Law Reform Foundation	Yes
Dr Nicki Jackson	Alcohol Healthwatch	
George Laking	End Smoking New Zealand	Yes
Hawkes Bay Smokefree Coalition	Cancer Society	
Heart Foundation	Heart Foundation NZ	
Jo Miller (for Healthy Families Hutt Valley Strategic Leadership Group)	Healthy Families Hutt Valley	
Letitia Harding	Te Ha Ora Asthma and Respiratory Foundation	Yes
Lisa Hesp	Executive Group, Smokefree Canterbury	Yes
Mark Vivian	Stroke Foundation of NZ	
New Nicotine Alliance	New Nicotine Alliance	
Philip Hope	Lung Foundation NZ	Yes
Ross Bell	NZ Drug Foundation	Yes
Sophie Carty	Smokefree Otago	

Category / Name of submitter	Organisation	Oral submission
Trish Fraser	Auckland Women's Health Council	Yes
West Coast Tobacco Free Coalition	West Coast Tobacco Free Coalition	
Robyn Harris	The Pharmacy @ Your Community Charitable Trust	Yes
Iwi and Māori health providers		
Te Runanga o Ngati Whatua (iwi)	Te Runanga o Ngati Whatua	
Fred Sadler	Te Hau Ora O Ngapuhi	
Collective of Māori health and iwi health providers	Cancer Society Northland (on behalf of the collective)	Yes
Hapai te Hauroa Tapui Ltd	Hāpai te Hauora Tapui Ltd	Yes
Rebecca Ruwhiu-Collins	Vape2Save	
Taki Tahi Toa Mano	Taki Tahi Toa Mano	Yes
Pacific health providers		
Edward Cowley	Tala Pasifika	
Maria Meredith	PACIFICA Tamaki (Women's) Branch	Yes
Tofilau Bernadette Pereira	PACIFICA Inc	Yes
Other: NGOs, advocacy groups, student association		
Coalition of Asia Pacific Tobacco Harm Advocates	Coalition of Asia Pacific Tobacco Harm Advocates	
Nancy Loucas	Aotearoa Vapers Community Advocacy (AVCA)	Yes
Jordan Williams	NZ Taxpayers Union	Yes
NZ Council for Civil Liberties	NZ Council for Civil Liberties	Yes
Matt Holden	Free Speech Coalition	
Francesca Dykes	Otago University Students Association	Yes
Sisi Tuala Leafa	Hash Tags (Youth Empower)	Yes
Universities		
Chris Bullen and Natalie Walker	National Institute for Health Innovation, School of Population Health, University of Auckland	
David Sweanor	Advisory Board, Centre for Health Law, Policy & Ethics, University of Ottawa	
Various people	Tobacco and Alcohol Research Group, University College of London	Yes
Martin McKee	London School of Hygiene and Tropical Medicine, University of London	Yes
Various authors	Adolescent Health Research Group, University of Auckland with University of Otago	Yes
Janet Hoek	ASPIRE 2025, University of Otago	Yes
Schools		
Harbour Montessori College	Harbour Montessori College	
John Rogers	Sancta Maria College	
Territorial authorities		
Brendan Anstiss	Christchurch City Council	
Small general retailers		
Abdal Soltan	Auckland city central dairies	
Alan Dinning		
Alankar Patel	The Corner dairy	

Category / Name of submitter	Organisation	Oral submission
Albert Street Dairy	Albert Street Dairy	
Ali Mahmood		
Alpesh Patel	Grove Store, Papakura	
Yogesh Patel	Te Puke Street Food Store	
Amarijit Singh	store	
Amit Patel	Mirrabooka Superette	
Anjana Rama	Eastbourne Dairy	
Anju Patel	McDivitt Superette,	
Anthony Tea	Mobil Mart Mt Albert	
Ara Smith		
Aro Valley Mini Mart	Aro Valley Mini Mart	
Arvindbhai Patel		
Ashish Patel	Mini Mart Herne Bay	
Asvin Patel		
Avinesh Mudalair	Piopio Superette	
Baljinder Singh		Yes
Balvir Singh		
Belt Road Supermarket	Belt Road Supermarket	
Bharat Patel	Shree Superette	
Bhavesh Patel	Masala's Convenience Lower Hutt	
Bhavna Patel	Jyotis Dairy	
Bid Basket Foodstuffs Bell Block	Bid Basket Foodstuffs Bell Block	
Bimal Singh	Albany Highway Superette and Lotto	
Bina Sheth	Puhinui Mini Mart	
Brad Sissons	Liquor store- Bay of Islands	
C R Dairy	C R Dairy	
Cambridge Corner	Cambridge Corner	
Capital Market	Capital Market	
Capital Mart Featherston	Capital Mart Featherston	
Chao Weng	Polson St Foodmarket	
ChengWei Ge	Discounter Stores	
Chet Ankumar Amrutbhai Patel	Larnoch Superette	
Chintu Gandhi	One Stop Super Shop	
Choices Dairy and Takeaways	Choices Dairy and Takeaways	
Chris Ayto		
City Cards and Mags	City Cards and Mags	
City Mart Hamilton	City Mart Hamilton	
City Mart Wellington	City Mart Wellington	
City Mini Market group	City Mini Market group	
City Stop Manners Street	City Stop Manners Street	
Coinsave	Coinsave	
Coronation Dairy	Coronation Dairy	
Craig Pitman		
Crescent Dairy	Crescent Dairy	

Category / Name of submitter	Organisation	Oral submission
David Davies	Edmund Road Auto Mart (Gull)	
David Zhang	Ponsonby Superette	
Delowar Hossian	Parkland Superette, Ramarama	
Dhansookh Dajee	Plaza Superette Mt Albert	Yes
Dharmesh Jarem	Coronation Superette	
Dharmesh Modi	Rongotea Food Square	
Dharmesh Patel		
Dimpal Kumar		
Dipak Patel		
Dipika Patel	Woodward Dairy	
DJ's Dairy	DJ's Dairy	
Fang Niu	Midtown Superette	
Four Square Eketahuna	Four Square Eketahuna	
Frankleigh park dairy	Frankleigh park dairy	
GandT Happy Variety NZ Ltd	GandT Happy Variety NZ Ltd	
GAS Eketahuna	GAS Eketahuna	
Gas Linton	Gas Linton	
Gas Waikari	Gas Waikari	
Gaurang B Patel	Westpark Superette	
Gaurang Pandya		
Gaurang Patel	Handy Store, Papatoetoe	
George Ding	Discount Mall	
Good Value	Good Value	
Greens Dairy	Greens Dairy	
Hao Xu		
Hardik Rokadia	Fenton Park Dairy, Rotorua	
Harry Dahya	Herbert Ave Dairy	
Harshad Patel	Chivalry Foodmart	
Hataitai Dairy	Hataitai Dairy	
Haven Road Store	Haven Road Store	
Hawera Discount Specialist	Hawera Discount Specialist	
Hemal Gandhi	Carnation Superette	
Heretanga Hospital Store	Heretanga Hospital Store	
Hermant Patel		
Hiren Ahir	Alexander Food Market, Palmerston North	
HiWay Dairy	HiWay Dairy	
Ikramulhaq Patel	Elm Street Dairy, Waiuku	
Imran Keten	Kirons Convenience Store	
Inglewood Dairy	Inglewood Dairy	
Jagroop Singh	Village Foodmart Tuakau	
James Godinet	Metromart group	
Jane Ling		
Jatinder Singh		
Jay Modi	Southbridge Superette, Canterbury	

Category / Name of submitter	Organisation	Oral submission
Jayesh Patel	Beach Haven Discount Superette	
Jennifer Gin	dairy owner	
Jeremy Dunedin	Mobil Group	
Jian Li	Discount Dairy & Vapour	
Jimil	Prachi Enterprises Ltd	
Jitesh Patel	Creswik Food Market	
Jo-anne Thomson	Food for Though Café & Takeaways	
John Zao		
Kaimanawa Food Market	Kaimanawa Food Market	
Karamjit Kaur	JVR Pricecutter	
Karen Mills		
Kbeez Putaruru Ltd	Kbeez Putaruru Ltd	
Kelvin Grove Mini Market	Kelvin Grove Mini Market	
Ken Chan	Tofu Shop Henderson	
Kiran Patel	Gloriana Dairy. Palmerston North	
Kirit Patel	Patels Foodmarket, Whangarei.	
Kirst Soma		
Kishor Rupan		Yes
Kiwimart	Kiwimart	
Kolotex Fielding Ltd (WN Chamberlain)	Hooked on A Habit, Feilding	Yes
Kolotex Gisborne Ltd (WN Chamberlain)	The Discount T, Gisborne	
Kolotex Holdings NZ Ltd (WN Chamberlain)	The Discount T, Lower Hutt	Yes
Kolotex Kilbirnie NZ Ltd (WN Chamberlain)	Kilbirnie The Discount T store.	
Kolotex Naenae NZ Ltd (WN Chamberlain)	The Discount T Upper Hutt	
Kolotex Newtown NZ Ltd (WN Chamberlain)	The Discount T Newtown	
Kolotex Porirua NZ Ltd (WN Chamberlain)	The Discount T Porirua	
Kolotex Riccarton NZ Ltd (WN Chamberlain)	The Discount T Riccarton	
Krhitig Gupta		
Kulraj Singh	Dairy264	
Kunal Saluja	Allenton Foodmarket	
Lalit Patel	Juliet Superette Pakuranga	
Lance Kennett	The Bullring	
Langley Mini Market	Langley Mini Market	
Limbrick St Maxi Mart	Limbrick St Maxi Mart	
Lingsu Deng	Duncan St Dairy. Whanganui	
Liz Annette	GAS Maratei	
Liz Watson	GAS Maratei	
Mahendra Patel	Cheltenham General Store	
Mahesh Lathiya		
Mahesh Patel	Kaiapoi Super 7	
Mamonur Rahman	Bairds Road Pricecutter	
Manav Sharma	McLean Park Store, Napier	
Manav Sharma	McLean Park Store, Napier	
Manhar Patel	Summerhays Corner Superette	

Category / Name of submitter	Organisation	Oral submission
Marfell Superette	Marfell Superette	
Max Wholesale Foodmarket	Max Wholesale Foodmarket	
Midhurst Dairy	Midhurst Dairy	
Mirrabooka Superette	Mirrabooka Superette	
Mihir Patel		
Minesh Patel	The Corner Dairy, Papakura	
Mitchell Horner		
Mitesh Shankarbhai Chaudhari		
Mobil Dannevirke	Mobil Group	
Mobil Taihape	Mobil Group	
Mt Victoria Food Market	Mt Victoria Food Market	
Narendra Somabhai Patel	Whenuapai Mini Mart	
Naresh Patel		
Natu Patel	Jayna Superette	
Nelson Chamberlain	New Zealand Tobacconist	
Nilesh Shah	convenience store in Auckland CBD.	
Ninad Joshi	The Bulls Superstore. Bulls	
Nirmal Kaur	Cee Jaes 278 Shakespear St	
Niteen Patel	Westshore Corner Store Napier	
Nolantown Dairy	Nolantown Dairy	
Opunake Discounter	Opunake Discounter	
Palak Nayak		Yes
Palak Zaveri		
Park Store Hawera	Park Store Hawera	
Parth Patel	NZ Convenience Store	
Parul Patel	Sherwood Superette, Browns Bay	
Patea Dairy and Food	Patea Dairy and Food	
Pengkun Luke Liu	Thirsty Liquor Northcote	
Penny Chen		
Pooja Sharma		
Pradip Patel	Rewa Dairy. Palmerston North,	
Prakash Patel		
Pranav Patel	South End Mini Market. Marton,	
Prasant Patel	Mananui Dairy, Whakatane	
Pratiksa Patel	Redberry Supermarket, Cambridge	
Pravin Dahya	Winsford Superette	
Pushpa Moore		
Queen Drive Dairy	Queen Drive Dairy	
Queen Mart City	Queen Mart City	
Raj Kingra	Store	
Raj Kumar		
Raj Modi		
Raj Patel	Hillpark Superette	
Rajeshbhai Gopalbhai Patel	Tui Superette, Kaikohe	

Category / Name of submitter	Organisation	Oral submission
Rakesh Sunni		
Rakesh Umar Kirithumar Raval	Merivale Superette	
Raman Kaur		
Ramesh Patel	Porchester Road Superette	
Rangiora Mini Market	Rangiora Mini Market	
Ravi Patel	Onekawa Store, Napier	
Raviesh Dhillon		
Ravji Patel	Connifer Grove Dairy	
Rendezvous Dairy	Rendezvous Dairy	
Rima Naidu	Kennedy Road Dairy, Napier	
Rinkesh Pater		
Ripal Patel	Alfiston Road Diary	
Rishab Bharewaj	Gilbert Road Superette	
Ritesh Kapadia	Tawa Foodmarket, tawa	
Robin Young		
Rocky Cao	Discounter store, New Plymouth	
Rocky Cao	Discount Specialist Strandon	
Rocky's Superette		
Roshan Patel	Crofton Downs Dairy	
Ruby (Hong) Wu		
Rucha Patel	Northland Dairy	
Sai Dairy	Sai Dairy	
Sai Simram	Sai Simram Ltd	
Sai Simran ltd	Sai Simran ltd	
Saurav Madan	store	Yes
Saurin Gandhi		
Shailesh Vallabh		Yes
Shirish Patel	Tuakau Food Market,	
Shital and Jignesh Patel	Windsor Park Store Hastings	
Shital Patel	Windsor Park Store Hastings	
Shiv Patel	Shiv Patel Enterprises Ltd	
Shonit Chandra	Fenton Park Dairy, Rotorua	
Shyam Foodmarket	Shyam Foodmarket	
Spirit Stratford	Spirit Stratford	
Stratford Dairy	Stratford Dairy	
Sukhvinder Singh	VIP Superette, Kawakawa	
Sukwinder Parmar	Line Road Pricecutter, Glen Innes.	
Sunil Kumar	East End Dairy, Kaikohe	
Super Liquour New Plymouth	Super Liquour New Plymouth	
Suresh Jarem	D Jairam and Sons	Yes
Tao Mo		
Tavistock Dairy	Tavistock Dairy	
Telstar dairy	Telstar dairy	
The Hempstore Aotearoa	The Hempstore Aotearoa	Yes

Category / Name of submitter	Organisation	Oral submission
Thien Quang Huynh		
Thomas Pullupparambil		
Tim Jeffs		
Tinkal Morar	Weymouth Superette	
Top Cook Dairy and Takeaway	Top Cook Dairy and Takeaway	
Tracy Jiang	Elles Rd Mini Market	
Trilochan Singh	Xpress Mark, Flat Bush	
Trupti Patel	Gemini Dairy	
Tucker Box	Tucker Box	
Tushar Patel	Sunnybrae Dairy	Yes
Tusharkumar Limbachiya		
Umesh Patel	Southgate Superette, Takanini	
Viral Patel	Marten Ave Superette	
Vivek Ganta		
Waipukuarau Store	Waipukuarau Store	
Wei Lin		
West End Store	West End Store	
William Kweon		
Willis Street Superette	Willis Street Superette	
Windmill Dairy	Windmill Dairy	
XiaoJuan Wang	Discounter Stores, Auckland	
Xin Tan		
Yang Ellen Zhang		
Yining (Ivan) Wan		
Yogesh Patel	Te Puke Street Food Store	
Yogihari Retail Ltd	Yogihari Retail Ltd	
Yuan Wang	Thirsty Liquor Glenfield	
Yun kim	The Point Store	
Zan Li	Z Star Ltd and Vigor Brown Store	Yes

Individual submitters		
Aaron Sowry	Greg Sutherland	Mike Kuzman
Abby Poole	Gregory Jackson Ertel	Minette Hanekom
Abilash Thomas	Gregory Price	Miriam Gabriel
Adam Porter	Gretchen Wade	Mitchell Bocking
Adam Smith-Holley	Halle Mitchell	Monica Higgins
Adam Timmins	Hamish Lawson	Morag du Bois
Adrian Borrowdale	Hamish McCrae	Morgan Pritchard
Adrianne Swinburn	Hamish Quigg	Mukesh Chhika [+Oral]
Aengus C	Hannah M Parker	Nancy E Loucas
Agnes Walker	Harlen Wilkinson	Nancy Peters
Ahmad Alzahrani	Harrison Ross	Narelle Constable
Aiden Curtis	Harry Hughes	Narendra Somabhai Patel
Aimee Bradley	Harshad Patel	Natali Manic

Individual submitters		
Alan Bromley	Hayden Hughes	Natasha Broadley
Albert Soek	Hayden Ross Bacon	Natasha Judd
Alexander Bukh	Healther Mccarthy	Nathan Andrews
Alexandra Hickman	Heidi Greig	Nathan Brown
Alexandra Smith	Helen Beswick-Cousins	Nathan Cowie
Ali Sarabi	Helen Kourounis	Nathan Grey
Alicia Goss	Helen McCaul	Nathan Krutz
Alison White	Hendrik van der Merwe	Nathan Ward
Allan Rapley	Henry Bacon	Natu Patel
Amanda Bennett	Hinemoa Macpherson	Neale Cooper
Amanda Casey	Hiren Vather	Neil Briscoe
Amanda Chisholm	Hitesh Kumar	Neil Riley
Amanda Dodd	Holly Johnson	Neil Rossin
Amanda Donald	Hori Meilak	Nelson Chamberlain
Amanda High	Ian Hutcheson	Nerissa Hawkins
Amanda Lipsham	Imogen Adolph	Nicholas Fletcher
Amanda Martin	Irene Tufuga	Nicholas Hannan
Amanda Roberts	Ireni Ireni	Nicholas Reid
Amber Bishop	Isabelle Finau Sepi jnr Tufuga Braddick	Nicholle Nicholle
Amber Cordy	Isabelle Stacey	Nick Greene
Amber Rutledge	Ivan Cullpitt	Nick Wiles
Amera Morrigan	Izak Townsend	Nicola Hainton
Amii Pritchard	J Chanesman	Nicola Mangos
Amy Jackson	Jacinta Trounson	Nicola McDermott
Anahera Horomona Tuhou	Jack Jesson	Nicole Ritchie
Andrea Mcewan	Jack Smith	Niki Ash
Andrea Santos	Jack Toepfer	Nikke Fernie
Andrea Thompson	Jackie Liggins	Norman Alexander
Andrew Keehan	Jackson Taylor	Norman Scott
Andrew Keesing	Jacob Clarke	Nur Gencel
Andrew Ralph	Jacqui Kilburn	Olly Fatherly
Andrew Rooke	Jacquie Forsyth	Pamela Kapila
Andrew Thompson	Jaimee Lisa Brough	Patricia Hall
Andrew Young	Jaimie Horan	Patricia Heem
Angela Burney	Jake Patterson	Patricia Philcox
Angela Hauk-Willis	James Isaac Galbraith	Patricia Soon
Angela Helen Stones	James Pearson	Patrick Copeland
Angela Park	James unknown	Patrick Fruean
Angelique Naoum	Jamie Robinson	Paul Browne
Ann Duncan	Jamie Shearer	Paul Button
Ann Peterson	Jan van Dyke	Paul Fraser
Anna Leslie	Jan Walsh	Paul Haliday
Anne Andrew	Jane Cartwright	Paul Harlow
Annie Mcmullen	Jane Ellis	Paul Leahy

Individual submitters		
Ansar Pasha	Jane Mitchell	Paul Martin
Anthony McDonald	Jane Murdoch	Paul Meani
Anthony Ryan	Janice Hill	Paul O'Connell
Anton Mather	Jarod Thompson	Paul Watson
Antonia Wihongi	Jase Smithyman	Paula Hodges
Aramoana de Feu [+Oral]	Jason Clark	Pearce Stephens
Arana Tamepo	Jason Francis	Penelope Scott
Aria Aani Moore	Jason Green	Pengkun Luke Liu
Arnia Tamihana-Simich	Jason Mateni	Peter Cartwright
Aron Bailey	Jason Wright	Peter Foster
Arron Conn	Jay Dempster	Peter Greenwell
Arron Peacock	Jayesh Patel	Peter Kenehan
Ashlee Ratcliff	Jazz Leat	Peter Liggins
Ashley Koning	Jen Wiig	Peter Meagher
Atilla Erbasan	Jennifer Bennett	Peter Melrose
Axel Salsmark	Jennifer Byrn	Peter Reddaway
Ayden Collins	Jennifer Chatfield	Phil Lattaney
Azriel Ritchie	Jennifer L McGinnis	Philip David Hunter
Barbara Edwards	Jennifer Sage	Philip de Weck
Bedette Van Wyk	Jenny Buckley	Philip Gowers
Ben Pritchard	Jess Sternbeck	Philip Greshoff
Bernie Disney	Jesse Arnold	Philip Hamilton
Beth Jenkinson	Jessica Brunn	Philip Hardman
Bethany Hughes	Jessica Lim	Philip Simpson
Beverly Hunter	Jessica Mayfield	Phillipa Bourke
Bhrent Bingley	Jessica Short	Pippa Edwards
Bhupen Patel	Jessica Tasker	PT
Bodie Hutchinson	Jewel Peters	Quinton Satchell
Bodie Newman	Joan Evans	Rach Mac
Bohdan Palatchie	Joanna Wild	Rachael Courtney
Bonnie van der Bult	Joanne Blue	Rachel Morse
Boudewijin Boogaard	Joanne Thornton	Rachel Smithers
Boyd Hicks	Jodi Henry	Rade Naumoski
Bradley Keith	Jodie Wiseman	Rakesh Umar Kirithumar Raval
Bradley unknown	Jody Barber	Ralph Kohi
Brady Sharrett	Joel Haydon	Ray Burns
Brenda McGregor	Joella Allcott	Rebecca Gilbert
Brenda Tuffery	Joey McIsaac	Reefe Hinga
Brendon Cameron [+Oral]	John Alexander Campbell	Reilly Gardner
Brendon Edward Hoare	John Coppin	Relay for Life
Brendon White	John Eddy	Rian Swart
Brent Bary	John Elliott	Richard Butterfield
Brent Carter	John Finnie	Richard Dykes [+Oral]
Brent Wallace	John Hornyak	Richard Hain
Brett Redwood	John Lear	Richard Holmes

Individual submitters		
Breviss Wolfgramm	John Russell	Richard John Emery Fry
Brian Johnson	John Stella	Rick Webster
Brian Peters	Johnny Meeuws	Riki Trevor Huntley
Brian Thomas	John-Paul Dimmers	Riley Powell
Brian Walters	Jonathan Deane	Rob Cross
Bridget Forsyth [+Oral]	Jonathan Geoffrey Hall	Rob McCardle
Bridget Lummis	Jonathan Lole	Robert Beaglehole & Ruth Bonita [+Oral]
Brock Ferrar	Jordan Whibley	Robert Bell
Brodie Whitnell	Jordan Whycroft	Robert Cleary
Bronson Wairau	Joseph Clifford	Robert Todorovski
Bronson Wharehinga	Joshua Dutton	Robyn Berry-Luke
Brooke Anderson	Joshua Leask	Robyn Ede
Bruce Cross	Joshua Marseden	Robyn Leatrice Gallagher
Bruce Macdonald	Joshua Moa	Robyn Sayer
Bud Wagstaff	Joshua Morris	Rodney Comer
Caela Adams	Judy Stevens-Morehu	Rodrigo Souza
Caitlin Harvey	Julian De Fresne	Roger McPherson
Call Morrison	Julian Emsley	Roimata Mangu
Callum Mason	Julian Morrell	Romayne Helen Mcdowell
Calum Reardon	Julie Hicks	Ron Ron Swenson
Cam Lockie	Justin Honey	Ronald Hey
Cameron Rutten	Justin Liao	Ronald Liew
Campbell Lange	Justin Timms	Ronni Cullen
Candace Bagnall [+Oral]	K Lee	Rosemary Seddon
Candice Robb	Kahu Pekepo	Ross McKay
Carl Arundel	Kane Hughes	Ross Soroka
Carl Dale	Kara Cowin	Roy Ratahi
Carl Mann	Karandeep Singj	Rudie Pansegrauw
Carl Van de berg	Karen Carter	Russell M
Carly Gaskell	Karen Horrell	Ryan Andrews
Carmen Gregan-Ford	Karen Lupe	Ryan Cameron
Carol Board	Karina Huang	Ryan Gibson
Carolyn McKay	Karina Liman	Ryan Harris
Carson Smith	Karolyn Baumann	Ryan Johnson
Casey Annabell	Kasey Calogaras	Ryan Lee
Casey Wallace	Kate Burton	Sacha Kawe
Cass Metcalfe	Kate Fullerton	Saffron Melanie Mason
Catherine Thompson	Kate Marjetich	Sahne Martin
Cedric Tan	Kath Fowler	Sally Liggins
Celina Matila [+Oral]	Katherine Lynch	Sam Turner
Chantel Smolenski	Katherine Russell	Samantha Barry
Chanttal Lewis	Katherine Zibell	Samantha Copeland
Charles Boston	Kathleen Fay Pile	Samantha Kirikiri
Charles Nicholson	Kathrynne Stokes	Samantha Politi

Individual submitters		
charmaine pompey	Katie Burrows	Samathan Symlie
Chedyn Beach	Kayla unknown	Sandra Wood
Cherie Murphy	Kayle Stevens	Sara Christiansen
Cherry Morgan	Kayley Pania Mitchell	Sarah B
Cheryl ford	Kayne Metcalfe	Sarah Barwise
Chester De Castro	Kegan Develin	Sarah Cunningham
Chet Ankumar Amrutbhai Patel	Keith Oliver	Sarah Harkness
Chirag Makwana [+Oral]	Keith Wallace	Sarah Melissa
Chirag Shah	Kelly Tattersall	Sarah Scott
Chris Andrews	Ken Chan	Sarah Webster
Chris Barwise	Ken LotuI'inga	Saskia Zwanikken
Chris Bold	Kera Gifkins	Scott Clarke
Chris Clarkson	Kerri Kilner	Scott Fraser
Chris Dearsley	Kerrine O'Connor	Scott Jones
Chris Verstappen	Kerry Hocquard	Scott Murdoch
Chrissy unknown	Kerry Johnston	Scott Radford
Christian weaver	Kevin Dsouza	Sean Bardwell
Christie Cooper	Kevin Parsons	Sean Hillgrove
Christina Corbett	Kevin Wilton	Sean Hsin-Shyuan Lee
Christine Anderson	Kieran Richard Smith	Sebastian Lloyd
Christine Francks	Kim Ashford	Shae Ryder
Christine Hemming	Kim Han	Shalonne Scobbie
Christine McLean	Kim Lingham	Shane Bradbrook [+Oral]
Christine Pike	Kim Oakley	Shane Comber Froggatt
Christopher McMeekan	Kim Papesch	Shane Pratt
Christopher Koenig	Kim Powell	Shane Purcell
Christopher lee archer	Kiona Graham	Shannon Anderson
Christopher smith	Kirsty Alty	Shannon unknown
Chrystal Smith	Kirsty Jones	Sharon Coomber
Claire Doole	Koko Tuffery	Shaun Sweet
Claire Hynd	Kris Anton	Shaun Vukic
Clare Parry	Kristcyn Knipe	Shawn Laurence
Clive Bates [+Oral]	Kristian Pilgrim	Shawn Whitworth
Colin Villiers	Kristie McGoldrick	Shayna Coleman
Coral Graham	Kristy Dench	Shayne Walker
Courtnery Carter-Smith	Kurt Harrison	Shelly Elvin
Craig Alan Dawson	Kye Frank	Sheree Patmore
Craig John Dance	Kylie Garrad	Sherrill Lewis
Craig Kilpatrick	Lamees Ramahi	Sheryl Olsen
Craig Milne	Lana Hunter	Shinay Maraea
Csandra Ogle Plunkett	Lane Berghan	Shiva unknown
Cynthis sideris	Lannden Bower	Shreya Rao
Daisha Zilionis	Laura Ewing	Sian Burgess
Daisy Dee	Lea Tolofua	Sidney Sampson
Daisy Walker	Leann Cartwright	Simon Henwood

Individual submitters		
Dale Foote	Lee Taylor	Simon Stack
Damelza Elizabeth Burnard	Lee Teoh	Simon Watkins
Damien R	Leigh Williams	Sina T
Damon Cooper	Leila Kleyn	Sonali Dutt
Dan Collett	Leitu Tufuga [+Oral]	Sonja Maitland
Dan Walsh	Leon Monastirski	Sophie Carty
Daniel Akast	Lesley smith	Sophie Hancock
Daniel Anderson	Levi Hines	Sophie Stickland
Daniel Farr	Levi Ryan	Stacey Girardin
Daniel Frances O'Toole	Lewis Lewis Read	Steohine Joffrin
Daniel Milne	Lexi-Jayy-jack Critchley	Stephan Butler
Daniel Reid [+Oral]	Linda Buxton	Stephanie Winkler
Daniel Spearpoint	Linda Lavin	Stephen Christie
Daniel Veen	Linda Simonsen	Stephen Galvin
Daniel Vos	Lindsay Zelf	Stephen Phillips-Dargaville
Daniel Vuksic	Linley Barrett	Stephen Piner
Danielle Grice	Lisa Brady	Stephen Smith
Danny Carley	Lisa Cowe	Steve Brad
Darren Alan Johnston	Lisa Graham	Steve Daniel
Darren Johnston	Lisa H Ponga	Steve Dohmen
Darren Smith	Lisa Rutherglen	Steve Hamilton
Dave Hack	Litsa Skepathianos	Steve Munford
Dave Morgan	Lloyd Casey	Steven Brown
David Bowen	Logan Fletcher	Steven Gribble
David Clarke	Lorna Johnston	Steven Mclachlan
David Farrell	Lorraine Hamilton	Steven Smith
David Hunt	Louise Mainvil	Stuart Dally
David Lines	Louise Tawhai	Sudha Bhana
David Miller	Louise Tischendorf	Sue Purgmire
David Moyle	Lucy Kennedy	Sue Sue
David Peter Vitali	Luise Gortz	Susan Gibbling
David Sopper	Luke Baker	Susan Letchford
David Turner	Luke Hardiman	Suscan Ritchards
Dawn Newton	Luna Rivers	Suzanne Bielby
Dean McCondach	Lydia Liew	Suzette Laws
Dean Robb McCondach	Lynne Montgomery	Tabitha Day
Debbie Wallace	M E Miller	Tai Faalogo
Debra Pugh	Maddison Booth	Tamara Schliebs
Declan Tessier	Maggie Prentice	Tanan Zorigt
Dee Carter	Mahmoud Adbuo	Tania Eliason
Del Logan	Mansukhbhai Patel	Tania Lumb
Denise Drendel	Manu Dodd	Tayla Harris
Destri Head	Mara Schneider	Te Rukutia Tongaawhikau
Dharmesh Jarem	Marc HenryWright	Teaio Maki
Diana Orvan	Marcella Angela Dodanis	Terijoy Wilton

Individual submitters		
Diane Prescott	Marcus Ohlson	Terri Ellmer
Dianne Morison	Marcy McCormick	Terri-Mae Fitzgerald
Dierdre Legg	Maree Candish	Thomas Bell
Dion Bly	Marewa Glover [+Oral]	Thomas Power
Dominic O'Grady	Margaret Dinnan	Thomas Russ
Dominic Ritchie	Marian Bartram	Tiarna Lee Hopkinson
Donna Hancock	Marie Hart	Tiata Malosi
Donna Morpeth	Marie Wilkins	Tiffany Cresswell
Donna Torrie	Marion Freimuth	Tim Childs
Dr Allan Wyllie	Mark Broadway	Tim Hinton
Dylan Mama	Mark Francis McElhinney	Timothy Moffitt
Ed Red	Mark Green	Timothy Stewart
Edward Rhind	Mark Hodgson	Timothy Wilson
Edward Williams	Mark Linton	Tineke Tu
Eiizabeth Burdett	Mark O'Neill	Tirika Adam
Eileen Brown	Mark Paterson	TJ Bishop
Elaine Epiha	Mark Schofield	Tom Johnson [+Oral]
Eli Buck	Mark Swaney	Tom Kim
Eli Sherwood	Marko Peselj	Tom Morawetz [+Oral]
Elizabeth Nairn	Marshall Ashworth	Tony Hulme
Elizabeth Prosser	Martin Witt	Tony Johnson
Elizbeth Belshaw	Mary Evans	Tony Lawson
Emily Fleet	Mary Karas	Tony Le Ross
Emily McKenzie	Mary Martik	Traa Riarn
Emily Thomsett	Mary-Anne Macaskill	Tracey Collins
Emma Griffin	Mathew Josland	Tracey Waho-Blayney
Emma Louis	Matilda Fry	Tracy Carroll
Eric Lim	Matt Honeycombe	Tracy Michel
Erica Harland	Matthew Bird	Trent Keith
Ernest Munro	Matthew Boswell	Tricia Warren
Eve Bon	Matthew Cathro	Trish Bostad
Faran Gillbanks	Matthew Driscoll	Trudi Hill
Fiona McNair	Matthew Emson	Tui Ziarno
Florence Pirotais	Matthew Perpere	Tyler McKinley
Frances Bish	Matthew Rogers	Tyler Sands
Francesca Sullivan	Matthew Rutherglen	Venessa Minkley
Frankie Lee Matthews	Maureen Farr-Cross	Vickie Geraghty
Freison Mitchell	Maureen Hall	Vicky Noble
Freya Noel Barnes	Maxine Gunning	Victoria Findlay
Gail Cannan	Maxine Lynch	Victoria Walters
Gareth Miles	Meghan Kirk	Vincent Xie
Gareth Ollerenshaw	Melanie McFarlane	Vincent Zeng
Gareth Pritchard	Melanie Yardley	Virginia Smith
Gareth Robinson	Melinda Sigley	Vivian Murphy
Garry Farmer	Melissa Fergusson	Wade Maxwell

Individual submitters		
Garry Grant	Melissa Jull	Warren Hartley
Gary Grive	Melissa Reynolds	Warrick Carter
Gaurang B Patel	Melissa Stead	Warwick Carter
Gavin Christensen	Melody Tulaiu	Wayne MacKinlay
Gavin Rae	Michael Boylen	Wayne Ritchardson
Genevieve Ussher	Michael Crook	Wendy Carew
Geoffrey Dawson	Michael Francis Caton	Wendy Stratton
Geoffrey Mairs	Michael Gabbitas	William Alexander
George Barlis	Michael Gartner	William George Frewin
Geraldine Atkins	Michael Hoy	William Gianoncelli
Gerri Brown	Michael Sibbes	William Shankar
Ghia M	Michael unknown	William V
Glenn Henson	Michaela Billings	Wymond Gripp
Glenn William Anderson	Michaela Henderson	Yang Ellen Zhang
Gordon Stuart	Michele Mullins	Yolande Jaffares [+Oral]
Grace Murdoch	Michele Nimmo	Yuan Wang
Graham Peters	Michelle Dayman	Yvonne Menary
Graham Slattery	Michelle Gibson	Zachary Adams
Grant Hewison	Michelle Mollard	Zane S
Grant Mason Daubney	Michelle Taylor	Zara Jasmine Cole
Greg Davies	Mikayla Prosser	Zorawar Singh Ahluwalia
Greg Simpson	Mike Burke	Eliana Golberstein Rubashkyn [+Oral]

Appendix 2: The Ministry's views on the risks and benefits of vaping products

Submitters presented a wide range of often conflicting evidence to the Committee on the evidence for the risks and benefits associated with vaping.

The Ministry's position is that vaping products can benefit smokers, especially those who are unable to quit smoking using conventional means. However, they are not risk free. In particular, the risks associated with long-term vaping are not yet fully known. For young people who have never smoked, there are likely to be some health risks associated with regular long-term vaping.

Harm reduction and support for smoking cessation

The many toxins in tobacco smoke, rather than the nicotine, are responsible for most of the harm associated with tobacco use. Vaping (and smokeless tobacco products) do not combust.

The Ministry is satisfied that vaping is significantly less harmful than smoking and is an appropriate alternative for smokers who wish to reduce the smoking-related harm to their health and those around them. There also is evidence to show that vaping can help people to quit smoking.

Vaping flavours

Many submitters raised concerns about the restrictions on the sale of vaping product flavours by generic retailers.

There is no strong evidence that particular flavours are important for smoking cessation, but there is evidence to suggest that flavours add to the appeal of vaping. For smokers, especially those who are unable to quit by conventional means, having a product available that is less harmful and at least as satisfying as smoking is important.

Some studies have highlighted concerns that some flavours are appealing to young people and may be a factor in youth uptake of vaping.

A summary of the evidence on the use of vaping flavours was provided to the Committee on 9 April 2020 as part of the Ministry's supplementary briefing.

Vaping product safety

While it is much less harmful to vape than it is to smoke, there are inherent risks associated with the use of vaping products. These risks relate primarily to the toxicants present in products, however, there is also some risk associated with malfunctioning devices.

These risks can be mitigated through the product safety requirements, which will be set by regulations (eg, for manufacturing standards, prohibitions on harmful ingredients, maximum nicotine concentration and child-resistant closures).

Potential impact of vaping on children and young people

There is some concern that experimentation may lead to regular vaping and then to smoking (ie, vaping acts as a gateway to smoking). However, there is no robust evidence to support this concern.

Two major reviews were published in 2018 that addressed this issue. The National Academy of Sciences in the United States (which was cited by a few submitters as the best source of evidence) and Public Health England (which has subsequently updated its review) considered the same evidence and concluded that there is an association between ever vaping and ever smoking at a later point in time. Both reports acknowledged that the studies included in the reviews had limitations and that it is not possible to conclude that vaping causes smoking.

A summary of the data on youth vaping is provided as Appendix 3.

Vaping during pregnancy

The Committee has expressed interest in the impacts of vaping in pregnancy, and several submitters have provided supplementary evidence.

The Ministry's advice is that it is best to have a smokefree and nicotine-free pregnancy (we know that nicotine can have some adverse effects in pregnancy). However, for women who are struggling to stop smoking, the use of nicotine replacement therapy (NRT) during pregnancy is appropriate, as use of these products is associated with significantly less harm than continuing to smoke. The addition of support, such as that provided by stop-smoking services, is currently the most effective way to quit smoking.

However, for women who cannot quit using conventional methods, switching to vaping and stopping smoking, is an appropriate action.

Estimates of lives saved

The Committee has expressed interest in whether there are any estimates for the number of lives saved by vaping. A 2019 study by researchers at the University of Otago found that New Zealand's approach of allowing wide access to e-cigarettes would be likely to result in overall health gains and cost savings for the health system.

The research modelled the impact of liberalising the sale of vaporised nicotine products, such as e-cigarettes, compared with a situation where the uptake of these products was very low, as in New Zealand in 2011.

The study, published in the international journal *Epidemiology*,[8] found that liberalising vaping products would lead to a gain of 236,000 quality-adjusted life-years for the general population and savings of NZ$3.4 billion over the remaining lifetime of these people – a sizeable gain in health for the New Zealand population and an important benefit in terms of lower health costs.

[8] Petrovic-van der Deen FS, Wilson N, Crothers A, et al. 2019. Potential country-level health and cost impacts of legalizing domestic sale of vaporized nicotine products. *Epidemiology* May, Vol 30(3), 396–404. URL: https://journals.lww.com/epidem/Citation/2019/05000/Potential_Country_level_Health_and_Cost_Impacts_of.14.aspx (accessed 11 May 2020).

Appendix 3: Youth vaping (14- to 24-year-olds)

Data on youth vaping is reported from the ASH Year 10 Snapshot survey, the Youth Insights Survey (YIS), the Health and Lifestyle Survey (HLS) and the New Zealand Health Survey (NZHS). The most recent vaping data from these surveys is summarised in the table below.

The Youth19 Rangatahi Smart Survey (Youth19) is new and has only been completed once so does not provide any trend data unlike the other surveys.

Table 2: Summary of the findings from the youth vaping surveys

	YIS	ASH Year 10 Snapshot	Youth19	15- to 17-year-olds in the 2018/19 NZHS*	15- to 24-year-olds in the HLS
Survey year	2018	2019	2019	2018/19	2018
Sample	Nationally representative survey; 2,689 year 10 students aged 14 and 15 years.	Census style survey; 27,354 year 10 students aged 14 and 15 years.	This is not a nationally representative survey. It surveyed 7,700 adolescents (13- to 18-year-olds) from Greater Waikato, Auckland and Northland regions.	Subgroup of a nationally representative survey.	Subgroup of a nationally representative survey.
% of those who have tried vaping	38%	37%	38%	25%	46%
% of those who vape at least once a month (current or regular vapers)	8%	12%	10%	3%	7%
% of those who vape at least once a week	Not reported	Not reported	6%	–	–

	YIS	ASH Year 10 Snapshot	Youth19	15- to 17-year-olds in the 2018/19 NZHS*	15- to 24-year-olds in the HLS
% of those who vape daily	2%	3%	Not reported	2%	5%
Those more likely to be current vapers	Māori	Not reported	Males Māori Students attending medium- to high-decile schools	–	–
Those more likely to be daily vapers	Sample size not enough	Males Gender Diverse Māori Pacific peoples Students attending low- and medium-decile schools	Not reported	–	–
Vaping by smoking status	Among never smokers, 2.1% are current vapers and 0.5% are daily vapers.	Fewer than 1% of never smokers were daily vapers. Current smokers were more likely to try vaping and vape regularly.	About two-thirds of ever vapers (65%) and 48% of regular vapers had never smoked cigarettes. The survey did not report about daily vaping.	-	-

*Information for 15- to 24-year-olds is also available from the NZHS.

Points to note:

- All surveys had similar questions on frequency of vaping and smoking.
- ASH Year 10 Snapshot data suggests that daily vaping is more common among students attending low-decile schools in New Zealand, but Youth19 data says that current vaping is more common among medium to high decile school students in Greater Waikato, Auckland

and Northland regions. The 2018 YIS data did not show any significant differences by school decile group (but the numbers were high in low-decile schools).

- Reporting of vaping prevalence by smoking status is different. ASH Year10 Snapshot and the YIS data say 'Out of never smokers, _% are daily vapers', whereas Youth19 data says 'Out of ever vapers and regular vapers, _% had never smoked cigarettes'.
- The YIS was the only survey that asked participants if their last vape contained nicotine.

ASH Year 10 Snapshot survey

The ASH Year 10 Snapshot survey of between 20,000 and 30,000 14- to 15-year-olds (year 10 students) has been carried out annually since 1999. It has been collecting data relating to the use of e-cigarettes (vaping) since 2015.

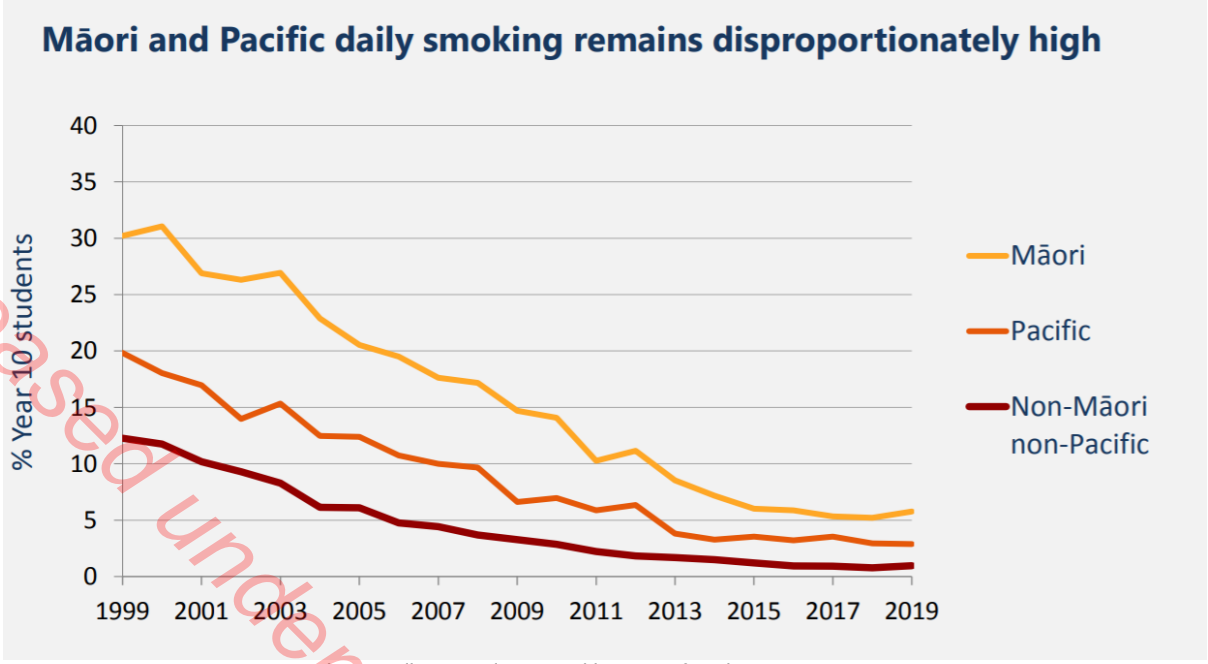
Key findings

Key finding of the 2019 ASH Year 10 Snapshot survey were as follows.

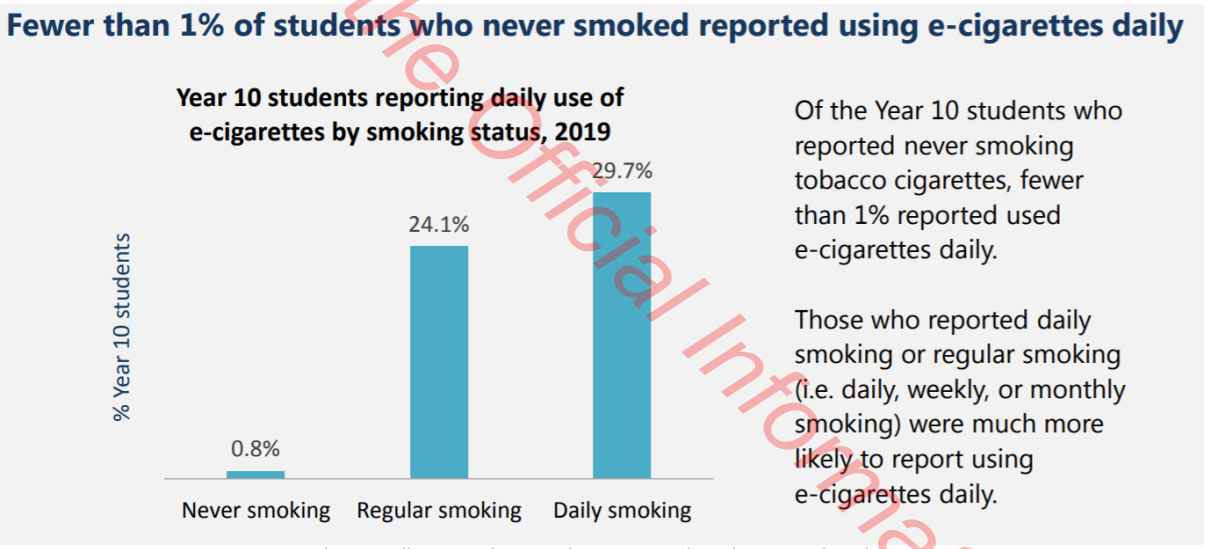
- A total of 3 percent of year 10 students reported using e-cigarettes daily.
- Fewer than 1 percent of year 10 students who never smoked reported using e-cigarettes daily.
- Over one-third of year 10 students reported trying an e-cigarette (even a single puff or vape).
- Students who smoked were almost four times more likely to have tried an e-cigarette (even a single puff or vape) than students who never smoked.

Comment

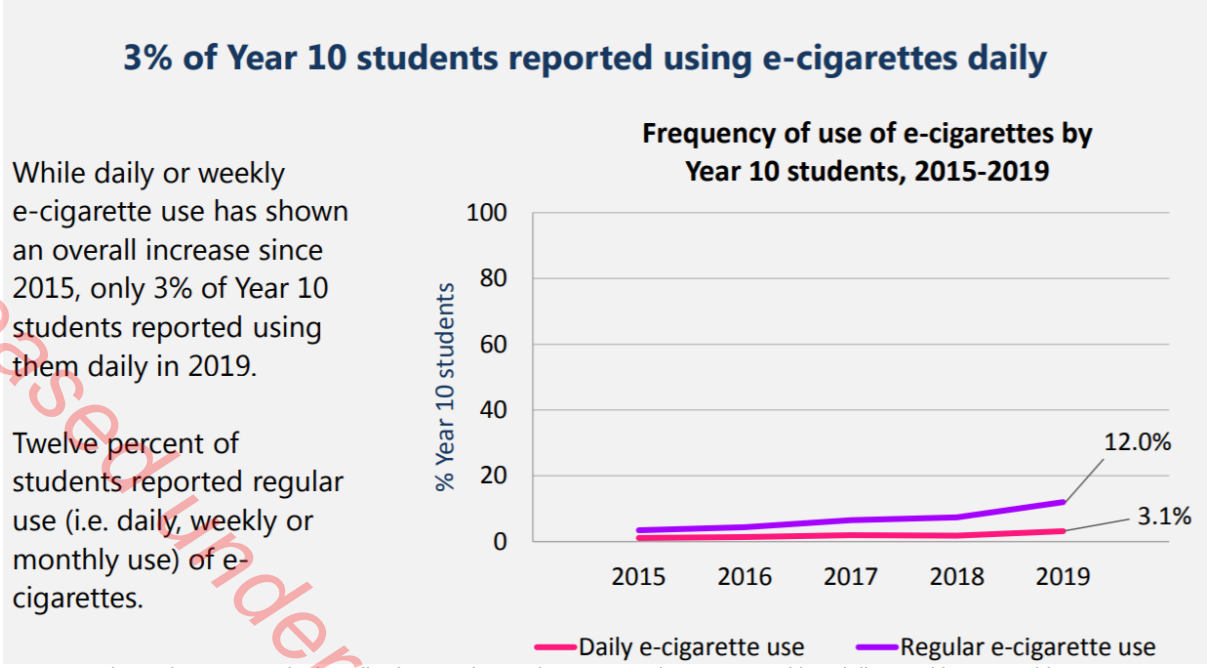
These results coupled with the decline in daily smoking over the same period (2015–2019), indicate that vaping may be displacing smoking. Daily use is important to monitor as a sign that young people are dependent on vaping. Although students are experimenting, daily use remains low. Daily smoking in this group has been declining since 1999 as shown in the graph below.



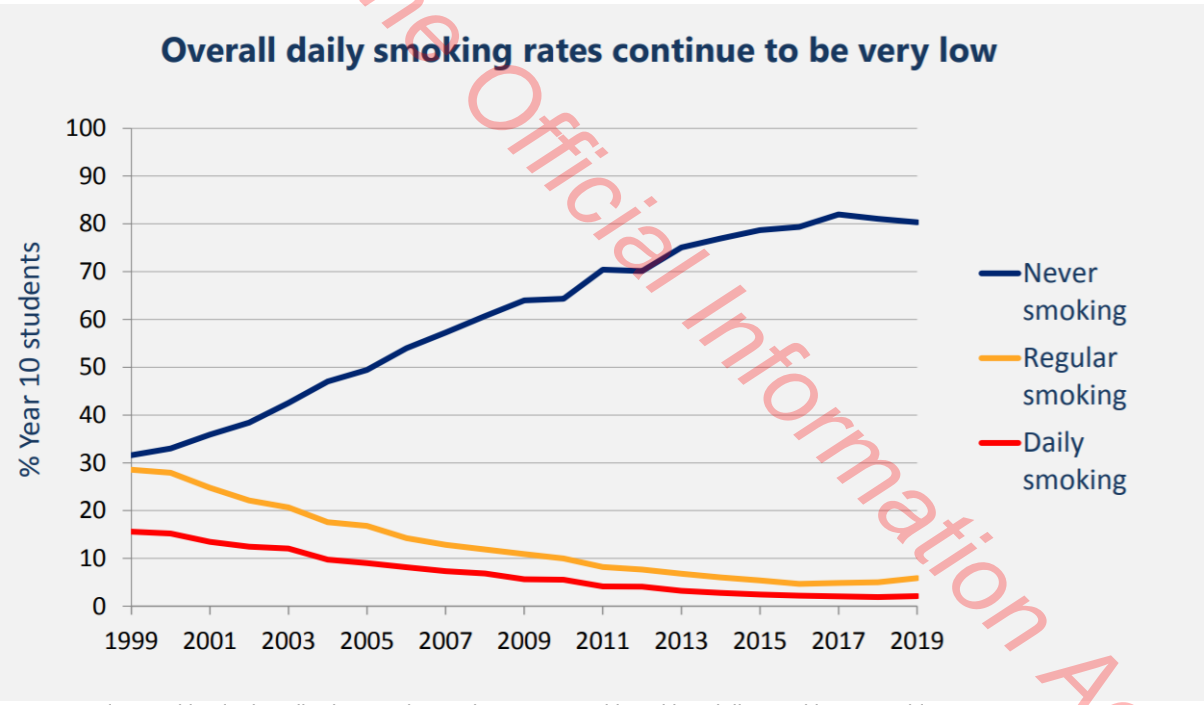
Source: 2019 ASH Year 10 Snapshot, Topline Results – Smoking 2019 factsheet



Source: 2019 ASH Year 10 Snapshot, Topline Results – E-cigarettes and vaping 2019 factsheet



Note: Regular e-cigarette use is described as students who report e-cigarette use either daily, weekly or monthly.
Source: 2019 ASH Year 10 Snapshot, Topline Results – E-cigarettes and vaping 2019 factsheet



Note: Regular smoking is described as students who report smoking either daily, weekly or monthly.
Source: 2019 ASH Year 10 Snapshot, Topline Results – Smoking 2019 factsheet

Youth Insights Survey

The YIS has asked year 10 students about 'ever use' of e-cigarettes since 2012. The YIS is conducted every two years and also asks about smoking.

Key findings

Vaping

The YIS found that while the proportion of students who had tried e-cigarettes (vapes) increased between 2016 and 2018, the proportion of students vaping daily (daily vapers) remained low. The results show that 'ever use' has been steadily increasing over the years. In 2012, 7.1 percent of participants said they had tried an e-cigarette. By 2018, this figure has increased to 36.9 percent.

In 2018:

- 38 percent of students had tried vaping (ever vapers), up from 29 percent in 2016 and 20 percent in 2014
- 1.9 percent of students were daily vapers, compared with 0.7 percent in 2014
- 8 percent of students vaped at least monthly (current vapers), up from 3 percent in 2014 (The increase in current vapers was seen across most demographics.)
- Māori were two times more likely to be current vapers than non-Māori.

The top reasons current vapers gave for vaping were that they liked the flavours/taste and they enjoyed vaping with their friends (both 59 percent).

Among current vapers:

- over half (54 percent) did not vape nicotine (only flavour)
- 23 percent vaped nicotine (with or without flavour)
- 5 percent did not know what their device contained
- 12 percent did not give any response.

Smoking

The YIS found that the proportion of students who were smoking cigarettes at least once a month (current smokers) in 2018 had not changed since 2016. In 2018, around 1 in 20 (5 percent) 14- and 15-year-olds smoked at least monthly (current smokers), unchanged from 2016 and down from 2012 (7 percent).

Those more likely to be current smokers were:

- Māori (2.5 times more likely than non-Māori)
- Pacific peoples (2 times more likely than non-Pacific peoples)
- attending low-decile schools (2 times more likely than those attending high-decile schools).

Health and Lifestyle Survey

The HLS is a biennial face-to-face in-house survey of New Zealanders aged 15 years and over that has collected information on e-cigarette use since 2014. In this appendix, we focus on young people aged 15- to 24-years-old.

Key findings

In 2018:

- about 7 percent of 15- to 24-year-olds reported vaping at least once a month (a significant increase from 2014, when it was 0.1 percent)
- around 5 percent of 15- to 24-year-olds reported vaping daily.

Differences by demographics and smoking status were not observed because of the smaller sample size for 15- to 24-year-olds.

New Zealand Health Survey

The New Zealand Health Survey (NZHS) is published annually and reports on e-cigarette use in the population aged 15 years and over. The NZHS has reported on e-cigarette use since 2015/16. This appendix focuses on the 15- to 17-year old age group results.

Key findings

- Daily e-cigarette use amongst 15- to 17-year olds increased from 0.1 percent in 2015/16 to 1.7 percent in 2018/19.
- Those 15- to 17-year olds who use an e-cigarette at least monthly increased from 0.6 percent to 3.4 percent.
- Those 15- to 17-year olds who had ever tried an e-cigarette increased from 19 percent to 25 percent.

Comment

The results of this survey show that while many young people are experimenting with vaping (25 percent), only a small percent are vaping on a daily basis (around 2 percent). The results do not show the percentage of the daily vapers that were smokers or ex-smokers.

Youth 19 Rangatahi Smart Survey

Key findings

Overall, 38 percent of students in the Northland, Auckland and Waikato regions reported they had tried vaping, while 10 percent reported vaping regularly (monthly or more often) and 6 percent reported vaping weekly or more often.

Comment

The survey found that nearly two-thirds (65 percent) of students who ever vaped and nearly half (48 percent) of regular vapers had never smoked cigarettes. This was the only survey included in this appendix that did not report on daily vaping.