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3 December 2024

Cam Slater

By email: fyi-request-28805-ef091fa2@requests.fyi.org.nz

Ref: H2024054077

Tēnā koe Cam

Response to your request for official information

Thank you for your request under the Official Information Act 1982 (the Act), which was transferred from the office of the Associate Minister of Health, Hon Casey Costello to the Ministry of Health – Manatū Hauora (the Ministry) on 18 October 2024. You requested copies of the following documents:

*Document entitled "HR Batteries 190723.docx"
Documents entitled "H2023029262" about Smokefree regulations: Further advice on new vaping measures.*

The requested documents are itemised in Appendix 1 and copies of the documents are enclosed. Where information is withheld under section 9 of the Act, I have considered the countervailing public interest in release in making this decision and consider that it does not outweigh the need to withhold at this time.

I note these documents relate to a previous OIA response you received from the Ministry (H2024050899 refer). Please note:

- your request references "H2023029262", however we have interpreted it to be for H2023029282, which is the briefing with that title.
- the document HR Batteries 190723.docx is document 1 in the appendix, the title you refer to is the name the document was saved as, the actual title of the draft briefing was Smokefree regulations: Advice on vaping measures. This was the draft working version of H2023029282 and is not the advice the Ministry provided to the Minister.

I trust this information fulfils your request. If you wish to discuss any aspect of your request with us, including this decision, please feel free to contact the OIA Services Team on: oiagr@health.govt.nz.

Under section 28(3) of the Act, you have the right to ask the Ombudsman to review any decisions made under this request. The Ombudsman may be contacted by email at: info@ombudsman.parliament.nz or by calling 0800 802 602.

Please note that this response, with your personal details removed, may be published on the Manatū Hauora website at: www.health.govt.nz/about-ministry/information-releases/responses-official-information-act-requests

Nāku noa, nā

A handwritten signature in black ink, appearing to be 'A. Old', written in a cursive style.

Dr Andrew Old
Deputy Director-General
Public Health Agency | Te Pou Hauora Tūmatanui

Appendix 1: List of documents for release

#	Date	Document details	Decision on release
1	26 July 2023	HR Batteries 190723	Some information has been withheld under the following sections of the Act: <ul style="list-style-type: none">• 9(2)(a) - to protect the privacy of natural persons, including deceased natural persons; and• 9(2)(h) - to maintain legal professional privilege.
2		Briefing: Smokefree Regulations: Further advice on new vaping measures (H202302982)	

Briefing

Smokefree Regulations: Advice on vaping measures

Date due to MO: N/A **Action required by:** 26 July 2023

Security level: IN CONFIDENCE **Health Report number:** H2023029282

To: Hon Dr Ayesha Verrall, Minister of Health

Consulted: Health New Zealand: Māori Health Authority:

Contact for telephone discussion

Name	Position	Telephone
Andrew Old	Director-General, Public Health Agency / Te Pou Hauora Tūmatanui	S9(2)(a)
Jane Chambers	Group Manager, Public Health Policy and Regulation, Public Health Agency / Te Pou Hauora Tūmatanui	S9(2)(a)

Minister's office to complete:

- Approved
 Decline
 Noted
- Needs change
 Seen
 Overtaken by events
- See Minister's Notes
 Withdrawn
- Comment:

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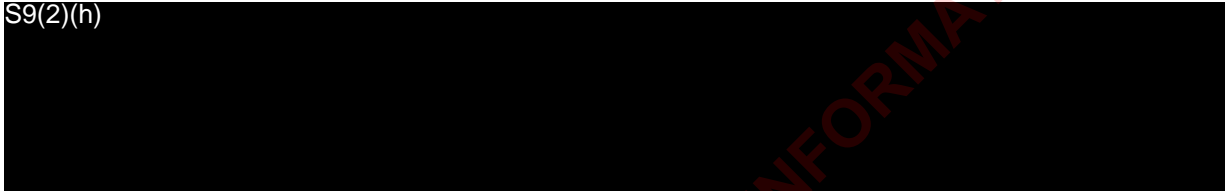
Smokefree regulations: Advice on vaping measures

Security level: IN CONFIDENCE **Date:** 26 July 2023

To: Hon Dr Ayesha Verrall, Minister of Health

Purpose of report


S9(2)(h)



Summary

2. The regulations are scheduled for LEG consideration on 3 August 2023.

S9(2)(h)



Recommendations

We recommend you:

- a) **Note** the advice in this report. **Noted**
- b) **Indicate** your preferred option for inclusion in the Smokefree Environments and Regulated Products Amendment Regulations 2023:
- a. continue to require all vape products to have removable batteries, or **Yes/No**
 - b. only require disposable vape products to have removable batteries at this time (and defer the implementation of a broader regulation for all vape products), or **Yes/No**
 - c. defer the requirement for all vape products to have removable batteries, delaying implementation . **Yes/No**

Dr Diana Sarfati
Director-General of Health
Te Tumu Whakarae mō te Hauora
Date:


Hon Dr Ayesha Verrall
Minister of Health
Date:

Vaping regulations: Further advice on removable batteries

Background

7. Amendments to the Smokefree Environments and Regulated Products Regulations 2021 are required to implement both the smoked tobacco regulatory regime and additional requirements for vaping products to reduce their appeal and addictiveness to youth and improve product safety.
8. Cabinet recently agreed to drafting of regulations that require all vaping products to have removable batteries. This was consulted on along with several other proposals such as to amend flavour name requirements, require child safety measures, reduce the maximum nicotine strength allowed in single-use (disposable) vapes, and set proximity restrictions for new Specialist Vape Stores.

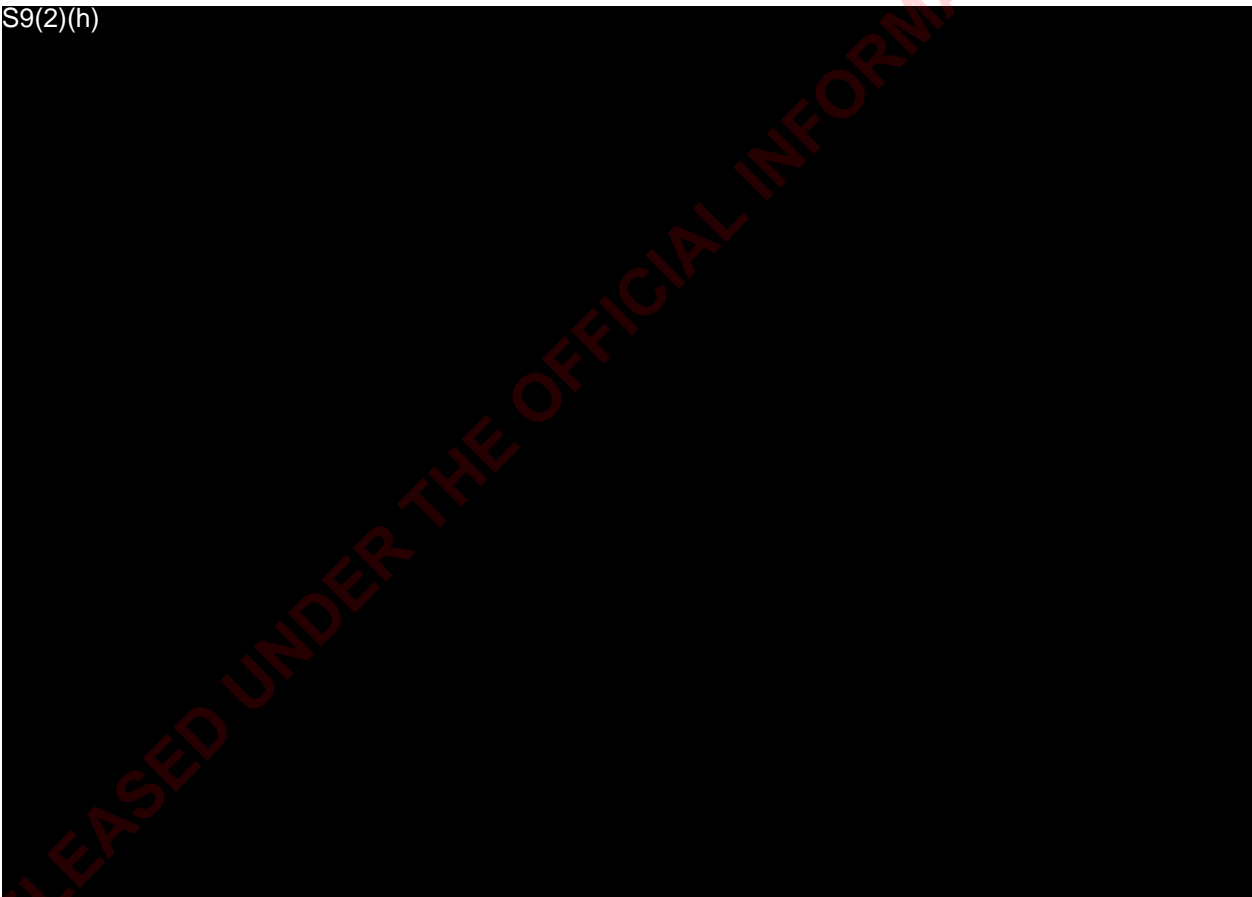
S9(2)(h)



Comment

15. The stated objective of requiring removable batteries was to make vaping products safer. There is a fire risk for batteries within a vaping product (for example, being crushed on disposal). Requiring all vape batteries to be accessible, so that they can be checked for signs of wear or deterioration, would provide a safety improvement as would ensuring the batteries could be disposed of safely.
16. MBIE raised issues around the applicability of the proposed battery requirements. They considered it may be difficult to justify the different treatment of batteries in vaping products compared to other products which similarly rely on lithium-ion batteries, such as mobile phones, which also arguably present a fire risk. MBIE could not see any immediate alternative courses of action (eg, via the development of a vaping product standard under their legislative framework) but have offered to work with us on this matter.

S9(2)(h)



Options – seeking your direction

21. Cabinet has agreed to the policy proposal to require all vape products to have removable batteries [CAB-23-MIN-0182 refers]. You announced this decision, amongst others, on 6 June 2023. The draft regulations are due to go to Cabinet on 3 August 2023 (with lodgement on 27 July).

22. S9(2)(h) we seek your direction on the following options:

- a. Option 1: continue with immediate regulation to require all vape products to have removable batteries

This option reflects Cabinet's agreement.

S9(2)(h)

- b. Option 2: amend the regulatory measure to only require disposable products to have removable batteries

This option would not impact reusable products.

S9(2)(h)

Should you decide to progress implementation of the regulation in respect of disposable vape products only, we will prepare communications accordingly.

- c. Option 3: defer the making of any regulations for batteries (recommended)

S9(2)(h)

Should you decide to defer the making of battery regulations to allow more time, we will prepare communications accordingly. This would likely mean that implementation of regulations for batteries are delayed until 2024.

Equity

- 23. Vaping products are not used evenly across society, with higher rates for Māori and Pacific peoples. Pacific adults (15+) are one and a half times more likely to vape than non-Pacific. Māori adults (15+) are more than twice as likely to vape daily as non-Māori. For 14–15-year-olds, 25.2% of Māori girls and 18.3% of Māori boys vape daily – much higher than the average for that age, which is 10.1%. Ensuring that vape products are safe will have a disproportionately positive effect on those populations.

Next steps

24. We will update the Cabinet paper to reflect your decisions if needed, prior to lodging.

ENDS.

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Minister's Notes

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Briefing

Smokefree Regulations: Further advice on new vaping measures

Date due to MO: N/A **Action required by:** 26 July 2023

Security level: IN CONFIDENCE **Health Report number:** H2023029282

To: Hon Dr Ayesha Verrall, Minister of Health

Consulted: Health New Zealand: Māori Health Authority:

Contact for telephone discussion

Name	Position	Telephone
Dr Andrew Old	Deputy Director-General, Public Health Agency Te Pou Hauora Tūmatanui	S9(2)(a)
Sally Stewart	Manager, Public Health Policy and Regulation, Public Health Agency Te Pou Hauora Tūmatanui	S9(2)(a)

Minister's office to complete:

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

Comment:

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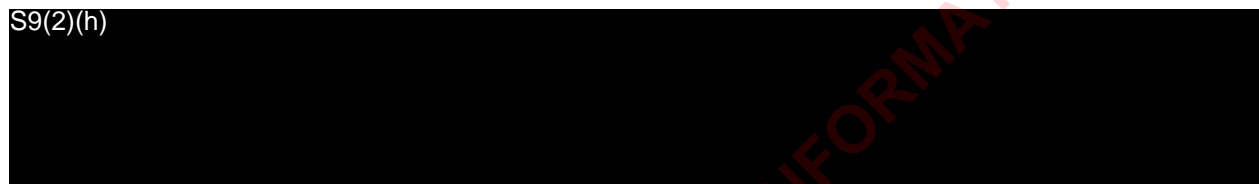
Smokefree Regulations: Further advice on new vaping measures

Security level: IN CONFIDENCE **Date:** 26 July 2023

To: Hon Dr Ayesha Verrall, Minister of Health

Purpose of report

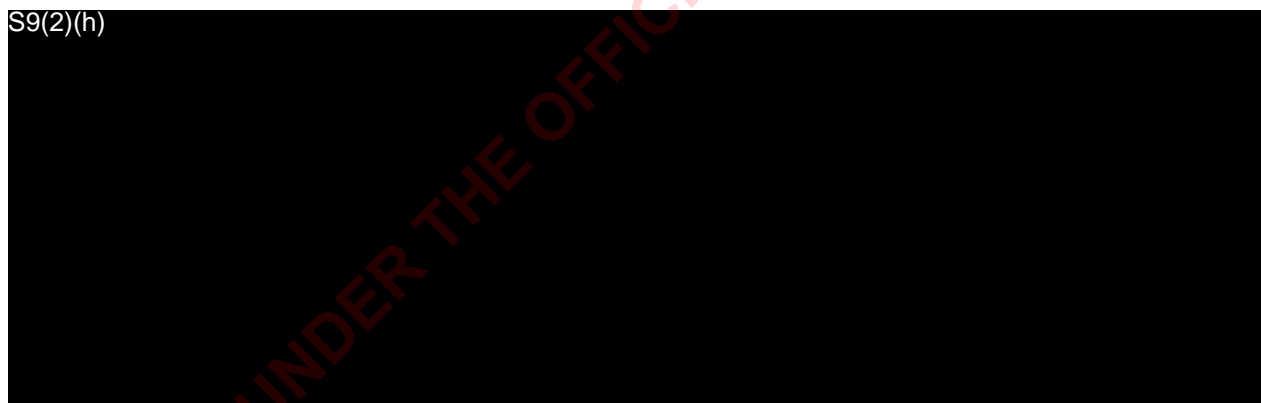
S9(2)(h)



Summary

2. The regulations are scheduled for LEG consideration on 3 August 2023.

S9(2)(h)



Recommendations

We recommend you:

- a) **Note** the advice in this report and indicate your preference below. **Noted**
- b) **Indicate** your preferred option for inclusion in the Smokefree Environments and Regulated Products Amendment Regulations 2023:

Removable batteries

- a. continue with the proposed measure to require all vape products to have removable batteries, or **Yes/No**
- b. amend the proposed measure to only require disposable vape products to have removable batteries at this time (and defer the implementation of broader regulation for all vape products), or **Yes/No**
- c. defer the proposed requirement for all vape products to have removable batteries, delaying implementation of the measure. **Yes/No**

Nicotine concentration

- d. continue with the proposed measure to amend the nicotine concentration in a reusable vaping device that uses nicotine salts to not exceed 28.5mg/mL, or **Yes/No**
- e. defer the proposed amendment to the nicotine concentration for use in a reusable vaping device, delaying implementation of the measure. **Yes/No**



Dr Andrew Old
Deputy Director-General of Health
Public Health Agency

Date: 26 July 2023

Hon Dr Ayesha Verrall
Minister of Health

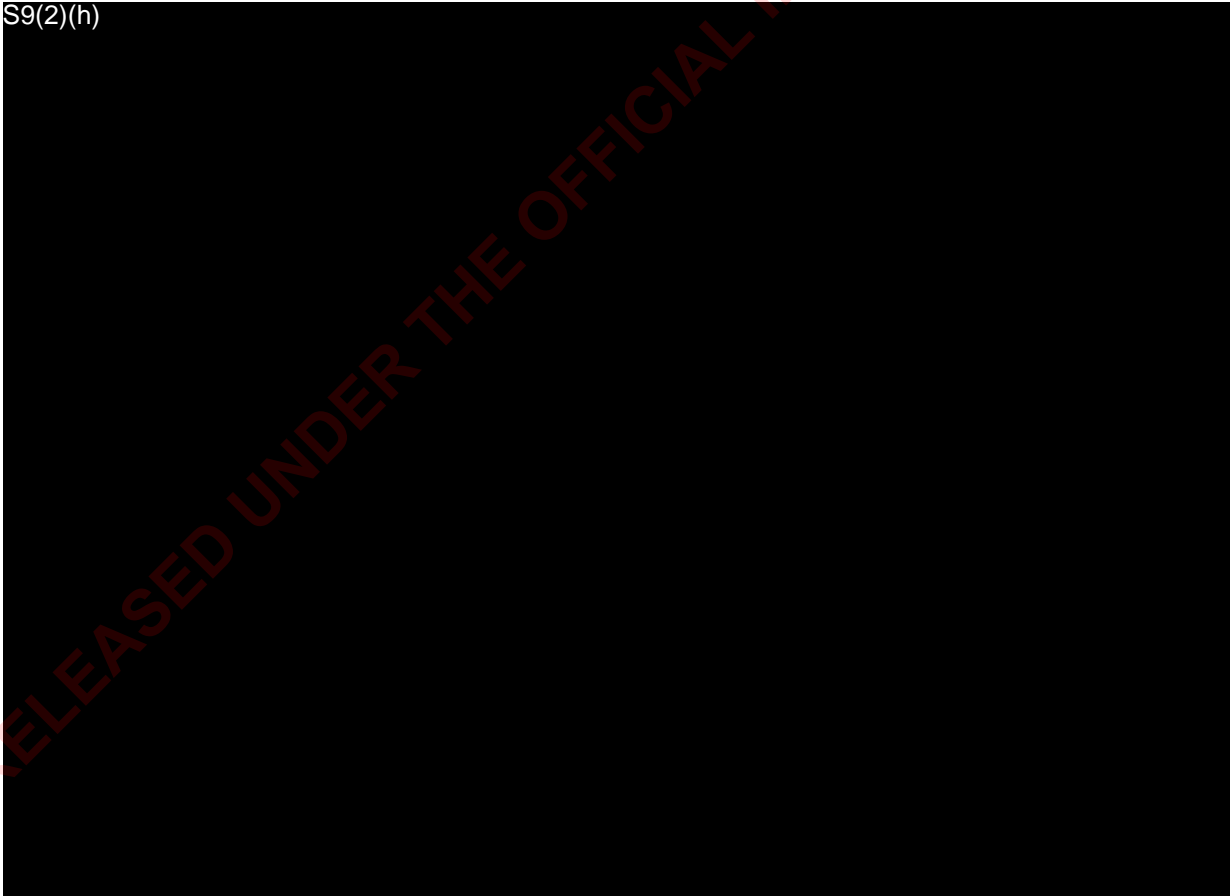
Date:

Smokefree Regulations: Advice on vaping measures

Background

6. Amendments to the Smokefree Environments and Regulated Products Regulations 2021 are required to implement both the smoked tobacco regulatory regime and to regulate vaping products in a way that seeks to minimise harm, especially harm to young people and children.
7. Cabinet recently agreed to the drafting of regulations relating to vaping that:
 - a. limit flavour descriptions on vaping products and their packages,
 - b. set out proximity requirements for approval as a specialist vape retailer,
 - c. include additional product safety requirements for vaping products including requirements for child safety mechanisms, removable batteries and restrictions relating to nicotine concentration.

S9(2)(h)

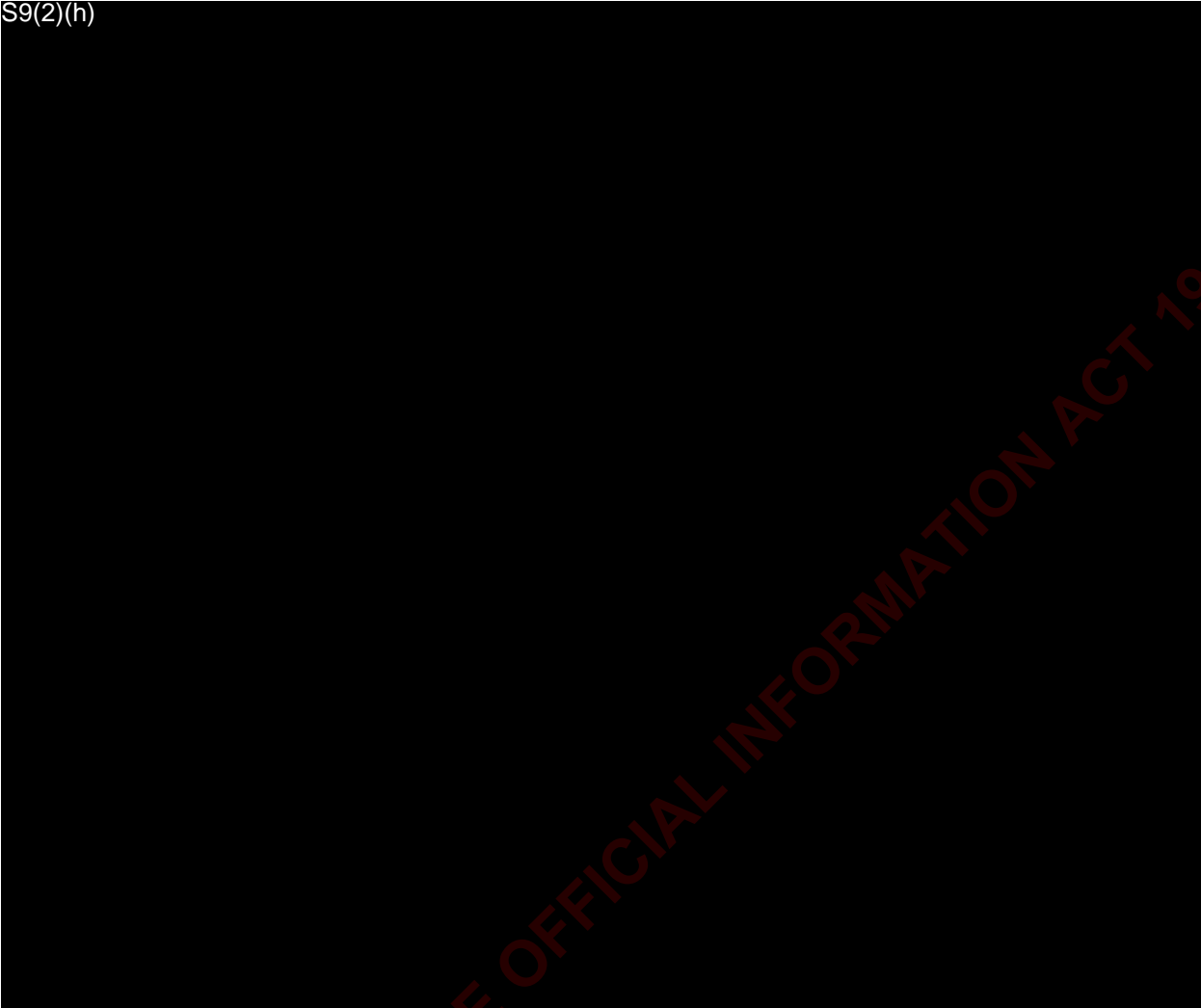


S9(2)(h)



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S9(2)(h)



Options – seeking your direction

Removable batteries

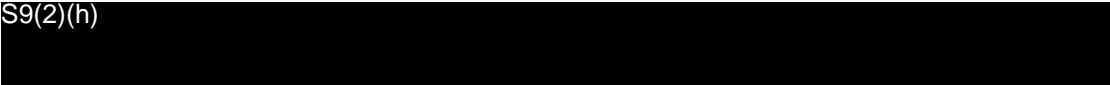
24. Cabinet has agreed to the policy proposal to require all vape products to have removable batteries, based on the earlier advice provided. [CAB-23-MIN-0182 refers]. You announced this decision, amongst others, on 6 June 2023. The draft regulations are due to go to Cabinet on 3 August 2023 (with lodgement by 10am Friday 28 July).

25. S9(2)(h) we seek your direction on the following options:

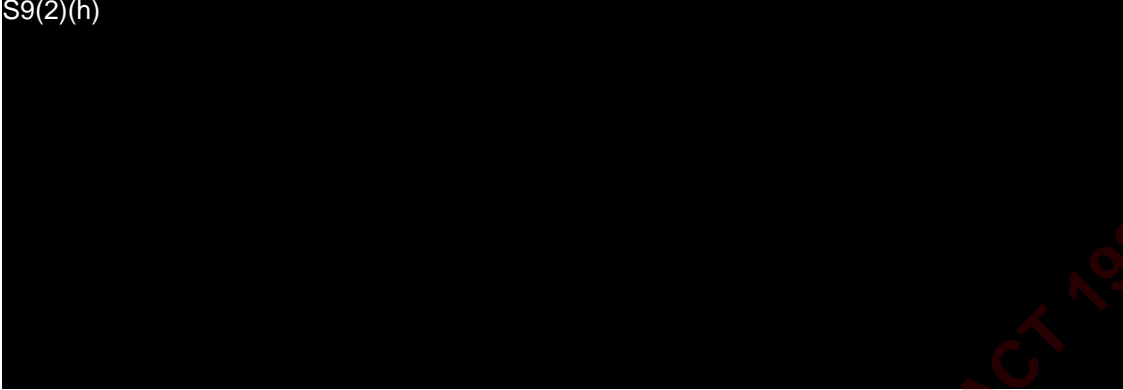
- a. Option 1: continue with immediate regulation to require all vape products to have removable batteries

This option reflects Cabinet's agreement.

S9(2)(h)



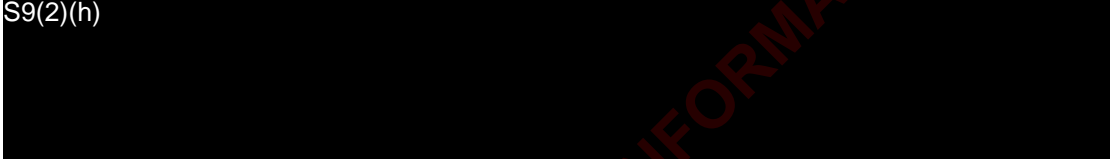
S9(2)(h)



- b. Option 2: amend the regulatory measure to only require disposable products to have removable batteries

This option would not impact reusable products.


S9(2)(h)



Should you decide to progress implementation of the regulation in respect of disposable vape products only, we will prepare communications accordingly.

- c. Option 3: defer the making of any regulations for batteries


S9(2)(h)



Should you decide to defer the making of battery regulations, we will prepare communications accordingly. This would likely mean that implementation of any new regulations for batteries are delayed until 2024.

Nicotine concentration

- 26. On 17 July 2023, Cabinet agreed to amend regulation 15 of the Smokefree Environments and Regulated Products Regulations 2021 to state the maximum allowable nicotine concentration in reusable vaping products that use nicotine salts is 28.5 mg/mL [CAB-23-MIN-0305]. As above, draft regulations are due to go to Cabinet on 3 August 2023 (with lodgement on 28 July).

- 27. S9(2)(h)  we seek your direction on the following options:

- a. Option 1: continue with the proposed measure to amend the nicotine concentration in a reusable vaping device that uses nicotine salts to not exceed 28.5 mg/mL

S9(2)(h)

- b. Option 2: defer the proposed amendment to the nicotine concentration of nicotine for use in a reusable vaping device, delaying implementation of the measure

This option would not impact the nicotine concentration of single use vaping substances which will be set at 20mg/mL.

S9(2)(h)

Should you decide to defer the making of regulations regarding nicotine we will prepare communications accordingly. This would likely mean that implementation of any new regulations for nicotine concentration of reusable vaping devices are delayed until 2024.

S9(2)(h)

Equity

28. Vaping products are not used evenly across society, with higher rates for Māori and Pacific peoples. Pacific adults (15+) are one and a half times more likely to vape than non-Pacific. Māori adults (15+) are more than twice as likely to vape daily as non-Māori. For 14–15-year-olds, 25.2% of Māori girls and 18.3% of Māori boys vape daily – much higher than the average for that age, which is 10.1%. Ensuring that vape products are safe will have a disproportionately positive effect on those populations.

Next steps

29. We will update the Cabinet paper to reflect your decisions if needed, prior to lodging.

ENDS.

Minister's Notes

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