

**Submission on *Smokefree Environments and Regulated Products (Vaping)*
*Amendment Bill***

For the attention of
Committee Secretariat
Health Select Committee
Parliament Buildings
Wellington

Members of the ASPIRE 2025 Centre wish to speak to our submission.

ASPIRE 2025 is one of the University of Otago's Research Centres, a designation that recognises national leadership and international recognition for excellence; sustained and on-going contributions to research, and receipt of significant external research income. The ASPIRE Centre's overall goal is to conduct policy-relevant research that informs the Government's goal of a smoke-free Aotearoa / New Zealand by 2025 (interpreted as reducing smoking prevalence to below five percent among all population groups). ASPIRE members have undertaken several studies into vaping and vaping products, specifically electronic nicotine delivery systems (ENDS); our research findings are directly relevant to the Bill.

Our research into electronic nicotine delivery systems use and experiences has been funded by the Health Research Council of New Zealand and by the Royal Society Marsden Fund. We have also received funding from the University of Otago via an internal research grant and a grant to the ASPIRE Centre. We have no conflicts of interest to report.

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Key points

General comments:

- The primary aim of regulating vaping products should be to support the realisation of the Smokefree 2025 goal, which aims to reduce smoking prevalence to minimal levels among **all** population groups in New Zealand. We believe the new legislation should be implemented alongside comprehensive policies to reduce smoked tobacco use.
- Vaping products are generally agreed to be less harmful than smoking (though there is also broad agreement that these products are not harmless). Vaping products may help achieve Smokefree 2025 by assisting people who smoke to switch from the most harmful form of nicotine to a less harmful nicotine source.
- To benefit from vaping products, people who smoke must stop smoking altogether and make a complete transition to vaping products. As vaping¹ is not risk free, people should also be encouraged to stop using vaping products in the future, when they feel they would not relapse to smoking.
- There is a risk that vaping and smokeless tobacco products will appeal to children and adolescents, and could result in substantial use and nicotine addiction, (unknown) long term health effects, and, in the worst case, could promote smoking uptake among young people.
- We believe the Amendment Bill sets out measures that will help ensure vaping products are available for smokers while at the same time minimising use among children and adolescents. However, we believe the balance struck in the current draft Bill could be improved to provide greater protection to children and young people and maximise the impact of vaping products in supporting smokers to stop smoking.
- We believe smokeless tobacco products, particularly heated tobacco products, pose greater risks than vaping products and should be subject to more stringent regulation

Comments on detailed provisions in the proposed legislation:

We strongly support:

- Aligning where vaping may occur with legislation governing smoked tobacco use, including the grounds of early childhood centres and schools; (however, we recommend extending provisions to explicitly disallow vaping in vehicles with children under 18) (*Part 1 of the Bill; revised sections 4-13B*);
- Prohibiting sales to minors and making specialist vaping stores R18 premises that need to be registered/licensed. We recommend requiring licensing (rather than registration) of all stores (rather than specialist stores only) (*Part 1 of the Bill; revised sections 14 and 14A; Part 2 of the Bill; subpart 7*);
- Bringing vaping and smokeless tobacco product marketing (including advertising, promotion, sale and distribution of regulated products) restrictions into line with those that apply to smoked tobacco product marketing (*Part 2 of the Bill; subparts 1 and 2*);
- Measures that reduce the appeal of vaping and smokeless tobacco products to non-smokers, particularly children and young people (*Part 3 of the Bill; subpart 1*);
- Introducing regulations to ensure that the design, constituents and other attributes of vaping and smokeless tobacco products meet safety standards (*Part 3 of the Bill; subpart 2*) and require manufacturers and importers to advise the Director General of any adverse reactions;
- Requirement for vaping and smokeless tobacco product manufacturers and importers to notify regulated products prior to their sale in New Zealand and for specialist retailers to provide sales

¹ We use the word 'vaping' to refer to use of vaping products and smokeless tobacco products, as per the definition in Clause 5 of the Bill.

information to the Ministry of Health (*Part 4 of the Bill; Part 5 of the Bill; subpart 4*). However, we recommend that all retailers selling vaping or smokeless tobacco products, not just specialist retailers, should meet this requirement.

1. Recommended changes and additions to the proposed legislation:

We summarise **our recommended changes** to the Bill below:

- Amend the Bill to explicitly disallow vaping in vehicles when children aged under 18 are present.
- No sales of vaping devices, parts or accessories, or smokeless tobacco products, in generic retailers (except in specified circumstances).
- Introduce requirements for the licensing of specialist retailers, including requirements that they provide information on smoking cessation support, that staff have undergone certified training to provide advice on transitions from smoking to vaping, and that they provide online or hotline support to smokers using vaping products.
- Introduce requirements for the licensing of generic retailers.
- Introduce effective age verification processes for online sales of vaping and smokeless tobacco products.
- Require that all online vaping and smokeless tobacco product websites are R18 with strict age verification criteria that require ID certification.
- Require that all online vaping and smokeless tobacco product marketing pages feature visually salient health warnings that have been pre-tested and proven to be effective. These warnings should provide information about nicotine addiction and potential health risks.
- Require standardised packaging of all smokeless tobacco products and all products sold in generic retail outlets.
- Introduce stronger regulation of online marketing of vaping and smokeless tobacco products, to minimise exposure, appeal, and potential impact on children and young people.

We strongly recommend expanding the Bill's scope. **We propose additional measures** that could enhance progress towards the Smokefree 2025 goal, which many studies have shown will not be realised without new interventions.^{1,2}

- We strongly support requiring licensing (rather than registration) of all retailers who sell regulated products. We recommend that this requirement is applied across the retail sector and to all products, including smoked tobacco products, which are more hazardous yet remain widely available throughout communities.
- We recommend strengthening the enforcement regime so that it includes the temporary or permanent withdrawal of licences to sell regulated products as a potential penalty. This penalty could apply to cases of egregious or persistent offending; for example, in relation to sales to minors, sale of non-notified products, or sale of products containing prohibited flavours or additives.
- The Bill provides a key opportunity to consider New Zealand's overall nicotine policy environment. We recommend introducing new measures that recognise smoked tobacco products and heated tobacco products are more harmful than vaping products, and that regulate these products accordingly.
- We recommend prohibiting the sale of heated tobacco products, or if these products are permitted to be sold, strengthening their regulation relative to vaping devices and e-liquids. For example, by allowing only R18 specialist stores to sell heated tobacco products, greatly restricting the range of allowed flavours and nicotine content, and mandating standardised packaging and stronger health warnings.
- We urge the Committee to introduce new sections to the Bill to address anomalies with respect to smoked tobacco products, including:
 - Introducing licensing of all retailers who sell tobacco products (i.e., who sell any regulated product).

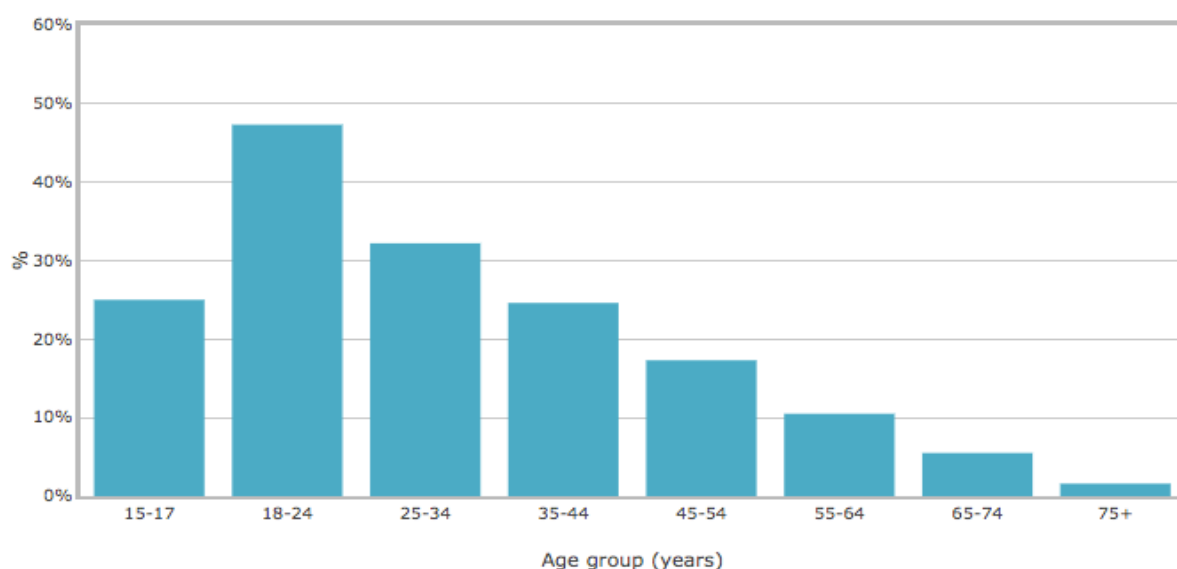
- Progressively restricting the retail availability of smoked tobacco products, and ensure such products are less accessible than vaping products. This process could begin by restricting sales of smoked tobacco products in stores situated close to schools (to align with our proposed restriction on the sale of vaping and smokeless tobacco products in these stores – see section 2).
- Introducing restrictions on flavours allowed in smoked tobacco products, starting with banning the addition of menthol.
- Requiring all retailers selling any regulated product to provide sales information to the Ministry of Health.
- We also recommend that the Committee consider differential taxation of vaping products. Unless there is evidence of youth uptake, we recommend that vape devices and e-liquids do not have an excise tax imposed. However, given smokeless tobacco products are regarded as more harmful than vaping products, we recommend excise taxes are applied to smokeless tobacco products.

2. Patterns and recent trends in vaping in New Zealand

We believe regulation must be based on an understanding of current population data, even though this is incomplete in New Zealand. We have used the available data to outline key patterns among NZ adults, among smokers and recent quitters, and among adolescents aged 14-15. The main sources of data available for adults are the NZ Health Survey (NZHS) and the Health Promotion Agency's Health and Lifestyle Survey (HLS). The New Zealand International Tobacco Control (NZ ITC) provides data on vaping product use among adult smokers and recent (up to 2 years) quitters. The ASH Year 10 snapshot survey (Yr10) provides data on adolescent use, and the Youth19 survey provides data on use among a wider youth age group.

The NZ Health Survey provides the most currently available data on vaping product use in the adult population.³ Around one in five (21.1%) of the population had ever tried e-cigarettes/vaping in 2018/19, with regular (at least monthly) use 4.7%, and daily use 3.2%. Prevalence of ever use of e-cigarettes varies greatly by age with the highest prevalence of ever use (47.3%) and regular use (8.8%) among 18-24 year olds (see figure). There was much lower prevalence among older age groups (e.g. ever use 5.5% 65-74 years; 1.6% ≥ 75 years). The highest prevalence (>4%) of daily use was among those aged between 18-34 years.

Figure 1: Age distribution of ever use of e-cigarettes 2018/19 (New Zealand Health Survey)



Use among Māori was higher e.g. regular use 8.2% and daily use 5.5% in 2018/19 with an adjusted OR of 1.65 (95%CI: 1.34-2.02) for Māori vs non-Māori regular use. Māori were almost twice as likely to have tried e-cigarettes (43.2%) than non-Māori (age and gender adjusted odds ratio [OR] = 1.95 (95%CI: 1.81-2.11).

Use of e-cigarettes has increased over recent years. The proportion that has ever tried e-cigarettes/vaping increased from 16.2% in 2015/16 to 21.2% in 2018/19. Over the same time period, regular use increased from 1.4% to 4.7% and daily use from 0.9% to 3.2%. These increases occurred among all age groups aged <75 years, men and women, and among all ethnicities.

The NZ Health Survey describes vaping prevalence at the population level (i.e., includes both smokers and non-smokers). The NZ International Tobacco Control survey provides estimates of vaping prevalence among smokers and recent quitters.

The 2018 NZ International Tobacco Control survey found that among adult smokers and recent quitters 94% were aware of vaping products and 60% had used them at least once. Almost one in six (15.5%) were currently using vaping products regularly (at least monthly) and almost one in 12 (7.8%) were using them daily. Use of vaping products was much higher among recent quitters than continuing smokers. For example, regular use among recent quitters was 22.9% (vs 12.7% in daily smokers) and daily use was 20.9% (vs 3.5% in daily smokers). The high comparative use among recent quitters suggests a substantial proportion of smokers are successfully switching to vaping products and using these as substitutes for smoking.⁴

Other important findings from the NZ International Tobacco Control survey are that around 80% of regular users use vaping products containing nicotine. Over half buy their vaping products from vape stores and about 15% buy online. Most users (>70%) reported using vaping products to help them quit or cut down on smoking. Motivators for using vaping products included that these were less harmful than smoking (60% of participants), but the commonest motivator was that they are cheaper (>80% of users).⁵

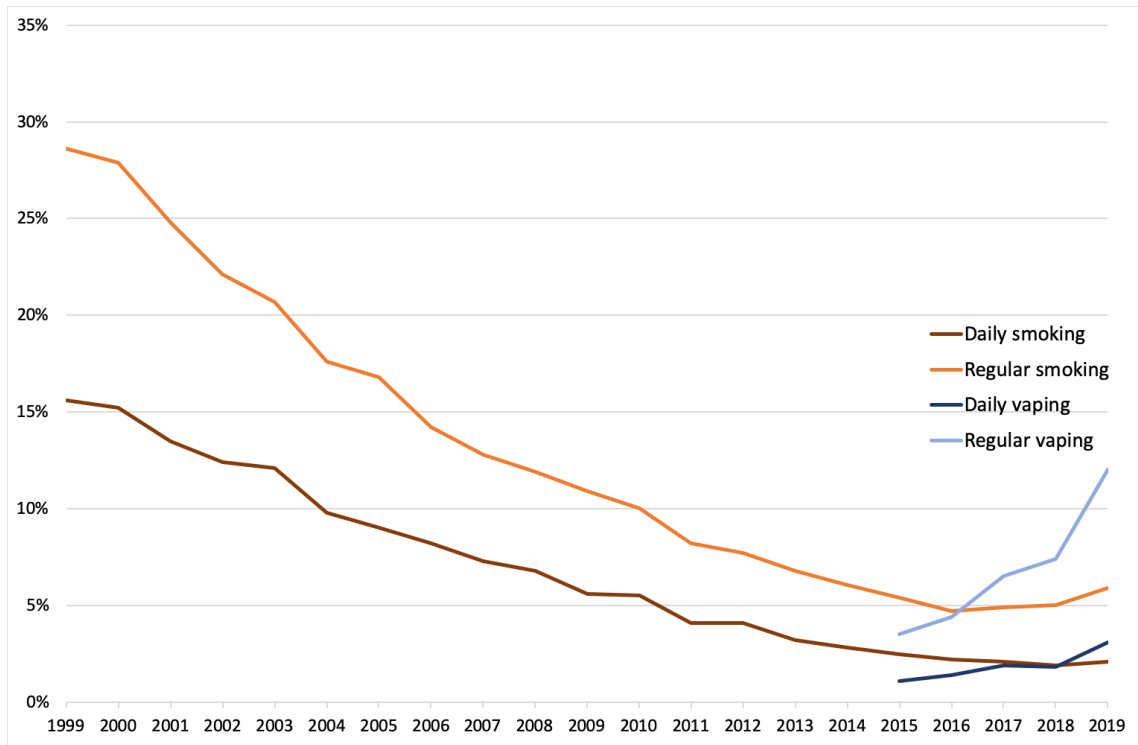
Despite concerns that there may be potential barriers to the use of vaping products, only a minority of participants who were aware of these products agreed they were too hard to get (10% agree, 77% disagree), too complicated to use (22% agree, 62% disagree), or were more expensive than smoking (6% agree, 62% disagree). However, two thirds (67%) found vaping less satisfying than smoking cigarettes.⁶

International comparative data on prevalence of vaping among smokers and recent quitters are available through International Tobacco Control study cohorts in other similar countries (Australia, Canada, England, Netherlands, United States).⁴ Prevalence of regular (at least monthly) vaping among daily smokers in New Zealand (13%) was similar to England, Canada and the US (11-14%) and higher than the Netherlands (8%) and Australia (3%). Among recent quitters regular use was much higher in England (25%) and New Zealand (23%) compared to the US (14%), Canada (7%), Netherlands (5%) and Australia (3%).

England is characterised by vaping products being widely available and having smoking cessation services that support and encourage their use to aid quitting. The high prevalence of vaping among recent quitters in New Zealand, at similar levels to England is therefore encouraging evidence that vaping could be supporting smokers to switch completely from smoked tobacco to vaping products. The 2018 NZ International Tobacco Control survey data was collected only shortly after nicotine-containing vaping products became legal to sell in NZ and largely before the recent expansion in the number of locations selling these products. During the data collection period, smoking cessation service providers were not permitted to actively encourage vaping uptake. The similar prevalence of use among smokers and recent quitters to the UK, and the finding that only one in ten of ITC participants who were aware of e-cigarettes thought they were too hard to obtain, suggests that there was easy availability for most smokers, even at a time when specialist vape stores were the main available source of vaping products.

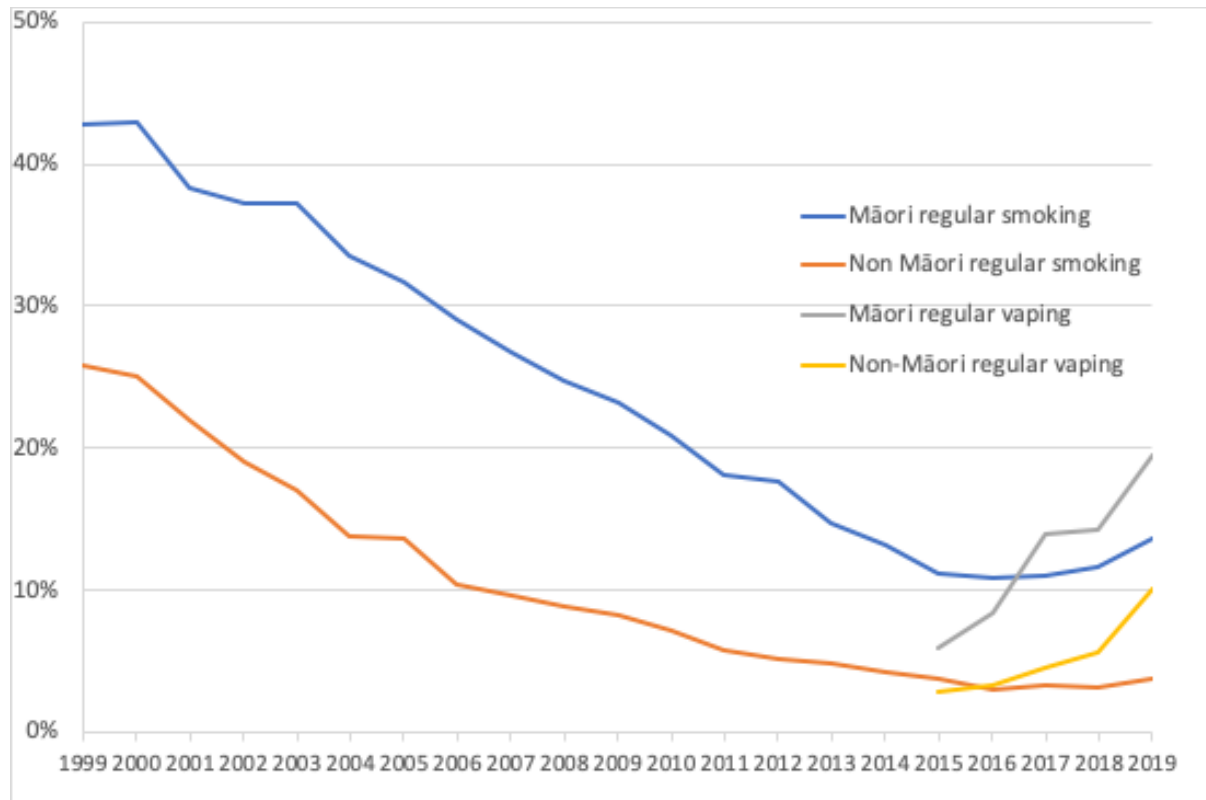
Data on adolescent vaping are available from the ASH Yr10 study. A recent paper reported a substantial increase in vaping from 2015 to 2019 with ever use increasing from 23% to 37%, regular (at least monthly) use from 3.5% to 12.0%, and daily use from 1.1% to 3.1%.⁷ The greatest increase in regular and daily use occurred between 2018 and 2019. At the same time the long-standing decline in smoking in this age group has plateaued (Figure 2).

Figure 2: Vaping and smoking trends among adolescents in New Zealand (ASH Year 10 Snapshot Survey) [Source: P Pattemore, submitted for publication, reproduced with permission]



Indicators of vaping prevalence were all higher among Māori adolescents (58.5% tried, 19.5% regular, 5.9% daily users in 2019), and the recent rapid increase in vaping coinciding with a levelling off or even increase in smoking was also seen among Māori adolescents (Figure 3).

Figure 3: Trends in regular vaping and smoking among Māori and non-Māori adolescents in New Zealand (ASH Year 10 Snapshot Survey) [Modified from C Morgan and C Bagnall, reproduced with permission]



The Youth 19 survey includes 7700 students aged 13-18 years from 52 Auckland, Northland and Waikato schools surveyed in 2019, Ever (38%) and regular (at least monthly) use (10%) prevalences were very similar to the findings of the ASH Year 10 survey. At least weekly use prevalence was 6%. Regular and weekly use was greater among male and Māori and European students and students at more affluent (decile 8-10) schools. Interestingly, almost half (48%) of regular vapers had never smoked a cigarette. ⁸

Similar patterns of rapidly increasing use of vaping products have occurred in the USA and Canada – with the use of JUUL (a pod mod vaping product similar in appearance to a USB drive) being a particular phenomenon in the USA that has generated great concern and robust regulatory responses. ⁹ However, in the UK, vaping prevalence remained approximately constant over the same period. This pattern may partly be due to the 20mg limit the UK has on nicotine concentration of vaping products, which has limited the penetration of JUUL.

The UK is also a more regulated market with greater restrictions on marketing of vaping products to youth and young people. Advertising of vaping products is prohibited on television, radio, print, online and in other electronic media, but is permitted via direct mail, cinema, outdoor media and leaflets. Manufacturers are also permitted to make factual claims, but not promotional claims, about products on their own website. These regulations apply to advertisements for e-cigarettes and e-liquids that contain nicotine and

that are not licensed as medicines.¹⁰ Recent decisions by the Advertising Standards Authority indicate that manufacturers are testing (and exceeding) the limits of these regulations;¹¹ furthermore, there have been questions about the approach taken by the Advertising Standards Authority.¹²

In summary, the available data suggest that vaping products are increasingly used by smokers in New Zealand, and are supporting smokers to switch to vaping. If these interpretations are correct, switching from smoking to using vaping products could offer potential for substantial health benefits in the New Zealand population. A recent study modelling the potential impacts of vaping in various scenarios also arrived at this conclusion.¹³

However, recent trends in the gradual decline in adult smoking prevalence and quit rates among smokers have stayed fairly constant overall, and among Māori and Pacific peoples, even as the use of vaping products has increased.¹⁴ It is thus not clear whether growing vaping uptake has increased progress towards a Smokefree Aotearoa. However, there is clear evidence of a substantial and concerning increase in adolescent vaping; this increase coincides with the greater availability and marketing of vaping products, particularly since 2018. This evidence comes from both the ASH Y10 survey (i.e., 14-15 year olds) and the Youth 19 survey (i.e., 13 to 18 year olds).

Detailed Advice to Improve the Public Health Impact of the Bill

3. Restricting the use of vaping products in specific settings

- We strongly support Part 1 of the principal Bill, which proposes amendments to prohibit use of vaping products and smokeless tobacco products in legislated smokefree areas (i.e., indoor workplaces, early childhood centres, and schools) as well as in aircraft and passenger service vehicles.

There are three main grounds for restricting where vaping products and smokeless tobacco products may be used. Firstly, because second-hand aerosol contains toxins and hence may harm the health of bystanders and is an unwelcome exposure for many non-vapers, particularly in indoor settings. Secondly, because of the probable role-modelling effect among children and young people exposed to behaviours such as smoking and vaping. Thirdly, to reduce the risk that use of vaping products and smokeless tobacco products will decrease incentives to quit by offering people who smoke an alternative to manage smokefree settings.

Constituents of Second-hand Aerosol

Several studies have examined the constituents of second-hand vaping aerosol and concluded this contains particulate matter and nicotine,¹⁵ as well as cytotoxic organic compounds that may cause mutations and future health problems.¹⁶⁻¹⁸ Systematic reviews have found that passive exposure to second hand aerosol may pose a risk to those exposed, albeit a lower risk than exposure to second hand smoke.^{19 20} The US National Academies of Science, Engineering and Medicine found conclusive evidence that most vaping devices “emit numerous toxic substances” but also noted considerable variation between devices and reported there was also conclusive evidence that “these emissions vary substantially, depending on the device and how it is used.”²¹

A recent qualitative study with vapers undertaken by the ASPIRE group found considerable confusion about the components of second hand aerosol and a widespread misperception that second hand aerosol comprised “steam” or “water vapour”.²² Beliefs vaping is simply steam, rather than an aerosol containing chemicals that may present health risks, may lead users of vaping products to believe it is safe to use these products in diverse settings, including indoor settings.

While we agree that the evidence to date suggests exposure to second hand aerosol poses fewer risks than exposure to second hand smoke poses, exposure to second hand aerosol is not risk free. Our work shows that, because second hand aerosol dissipates quickly and lacks the acrid smell of combusted tobacco smoke, vapers may interpret it as harmless when scientific studies indicate that is not the case. Given this confusion, and the nuisance effect for non-vapers who do not want to be exposed to vaping, we believe clear policy is important and strongly support extending smoke-free area provisions to include vaping. We note that the WHO Factsheet on heated tobacco products states: “Currently, there is no evidence to demonstrate that HTPs are less harmful than conventional tobacco products. HTPs contain chemicals not found in cigarette smoke and may have associated health effects”.²³

Associations between exposure to vaping behaviours and vaping uptake

Many studies have reported strong associations between young people’s risk of smoking experimentation and the smoking practices of their friends and families.^{24 25} Given the behavioural similarities between smoking and vaping, it seems reasonable to assume that young people exposed to vaping within family and peer group settings may also be at greater risk of vaping experimentation and regular vaping. These findings further support extending the Bill to ensure areas where smoking is not permitted are also areas

where vaping is not permitted.²⁶ These findings also suggest a public information campaign could be useful to dispel misperceptions of second hand aerosol and promote greater caution in vaping around young people and non-smokers.

Because of this evidence, we again support the Bill's proposal for clear regulation that maintains smoke-free areas as vape-free areas. This provision will also facilitate enforcement of the legislation and prevent any nuisance effects to non-vapers who are exposed to second hand aerosol.

However, we note that the Bill does not mention vehicles as one of the legislated smokefree areas. To avoid any confusion or lack of clarity we suggest the Bill is amended to ensure that vaping is explicitly prohibited in cars where young people aged under 18 are present. We note that the Select Committee report on the *Smoke-free Environments (Prohibiting Smoking in Motor Vehicles Carrying Children) Amendment Bill* stated:

‘We were advised that a Government bill will be introduced shortly to incorporate vaping into the Smoke-free Environments Act on the same basis as smoking. This would ensure that vaping was prohibited in all legislated smoke-free areas, including cars.’²⁷

Endorsement

- **That the Bill retain provisions to ensure all smoke-free spaces are designated vaping-free areas.**

Recommendation

- **That all current and proposed designated smoke-free areas are also designated vaping-free areas and, specifically, that the Bill be amended so it explicitly prohibits vaping in vehicles with children under 18 years.**

4. Prohibiting sales to minors

We strongly support the Bill's intention to prohibit the sale of all regulated products, including vaping products, to minors (unless young people aged under 18 wish to quit smoking, in which case we recommend access to approved vaping products occurs through smoking cessation providers). As we outline in Section 3, we also support measures that would reduce young people's exposure to vaping products, including limiting the retail outlets permitted to sell vaping products. We are concerned that the sale of vaping devices by generic retailers would increase young people's exposure to these products and reinforce the impression created by aggressive marketing that vaping products are recreational devices.

If the Bill's proposal to allow sales of some vaping products by generic retailers is enacted, we make two strong recommendations. First, we recommend that restrictions are placed on the proximity of stores to schools, kura kaupapa, and other venues where people aged under 18 years are likely to be.

Second, we recommend increasing the number of enforcement officers who can monitor and enforce the implementation of the new law. These penalties should include the provision to suspend the licence of retailers to sell these products on a temporary or permanent (for persistent offenders) basis. It would be imperative to monitor under-age sales and ensure adequate measures to protect uptake amongst young people.

As we outline in Section 6, we strongly recommend the introduction of retailer licensing. This measure will be vital if sales of vaping and smokeless tobacco products are permitted through generic retailers; licensing fees could help support the additional monitoring we believe will be necessary. Requiring all retailers selling vaping products to obtain a licence would also enable withdrawal of the licence as a penalty applied to repeat transgressors of the minimum age for sales requirement.

Endorsement

- **That the Bill prohibit the sale to minors of all regulated products, including vaping products.**

Recommendations

- **That, if generic retailers are permitted to sell vaping products, no sales of vaping products or smokeless tobacco products may occur within specified radius of a school, kura kaupapa or other youth venue.**
- **That, if generic retailers are permitted to sell vaping and/or smokeless tobacco products, increased resourcing is provided to enable more frequent monitoring by enforcement offices of under-age sales.**
- **That penalties applying to under age sales are increased and include loss of licence.**

5. Restricting the sale of vaping devices to specialist retailers

- We believe that people wishing to use a vaping product to quit smoking should have access to these products and to access expert advice to maximise the likelihood they will quit smoking successfully using these products.
- We support the sale of a full range of devices and vaping product refills and e-liquids in specialist retailers, where expert advice and support is available.
- We do not support allowing the sale of heated tobacco products as there is evidence these products present greater risk of harm than vaping products, and it is not yet established whether, or to what degree, they pose lesser risks than smoked tobacco products. If heated tobacco products were to be permitted for sale, we believe they should be less widely available than vaping products, and hence neither the devices nor the tobacco refills should be available for sale at generic retailers. We support measures prohibiting sales to minors. However, we support access for young people aged under 18 who wish to quit smoking, when access to approved vaping products occurs through smoking cessation providers.
- We support the sale of a restricted range of refills and e-liquids at most non-specialist (generic) retailers; however, we do not support the sale of vaping devices by generic retailers as proposed in the Bill (except in specified exceptional circumstances).
- We support making vaping products available via stop-smoking services or via other health professionals (e.g. pharmacies) to people who smoke and wish to switch to vaping.
- We support investigation of options to supply subsidised vaping products to people on low incomes who smoke and who wish to switch to vaping.

Evidence on transitioning from smoking to vaping

Data from over 700 smokers and recent quitters surveyed in the NZ ITC study led by ASPIRE researchers found that 98% were aware of vaping and 78% had tried e-cigarettes; however, only 8% of respondents were vaping daily.²⁸ Common reasons given by smokers for stopping using vaping products included that they found vaping products failed to offer sufficient satisfaction and did not relieve cravings.²⁹ A cross-sectional survey of 1005 New Zealand smokers and non-smokers, including 302 former vapers, found smokers who had tried to take up vaping but reverted to smoking cited lack of satisfaction as the main reason why they had resumed smoking.³⁰ Qualitative analyses of NZ smokers' transitions from smoking to vaping also highlight difficulties some people experience in making a full transition to vaping.^{31 32} These findings suggest many smokers have not found vaping products adequate substitutes for smoking. Ensuring that people using vaping products have access to expert advice and hence use the most appropriate product, may help increase the proportion of smokers able to use these products satisfactorily and successfully switch completely to vaping.

People who smoke and wish to transition to vaping require transitioning advice on several points, including the device they should select, the nicotine level of their e-liquid, how they should attempt to transition (rapidly or gradually), how they should ensure a satisfying experience, and why they should aim, eventually, to quit vaping. These (and other) decisions are personal to each individual, who are more likely to receive this advice from specialist vaping product retailers and stop-smoking services than from generic retailers. Furthermore, while some people may need to continue vaping to avoid relapse to smoking, others may wish to become free of their dependence on nicotine and will benefit from advice on how to titrate their nicotine dose so they can become nicotine-free. In addition, because vaping products are not risk-free,²¹ it is important that people wishing to switch from smoking to vaping are advised they should view vaping as a transitional behaviour, which they should also aim to quit. We believe all people purchasing vaping products should be provided with written information on local stop smoking services and the Quitline as these services are best placed provide smoking cessation support and to support vaping cessation.

Ensuring that smokers who start to use vaping products receive expert advice and support is likely to increase the proportion able to switch successfully from smoking to vaping, and will support those who wish to become vape-free.

Maximising support to smokers wishing to switch to vaping

Allowing generic retailers to sell vaping devices creates a risk that people will receive incorrect or inadequate advice, if they receive any advice at all, about the device that best suits their needs and how to use that device successfully. As a result, people wishing to switch from smoking to vaping may have a poor experience with vaping and revert to smoking in the belief that vaping did not and cannot work for them. A qualitative study exploring the knowledge New Zealand generic retailers have of devices they sell found many of those interviewed knew little about the vaping products they sold.³³

For these reasons, although we support allowing generic retailers to sell vaping refills and e-liquids, we do not support the sale of devices by these retailers except where a specialist shop is not available within a defined area (e.g. 30km). Arguments that generic retailers would be appropriate sellers of pod mod devices, which are simpler to use than more complex tank mod devices, overlook the many decisions people wishing to switch from smoking to vaping must make. These decisions include developing a satisfying inhalation experience, managing the nicotine dose required, managing cravings and persisting despite these, applying smoke-free norms to vaping (e.g., maintaining smoke-free and vape-free homes and cars), and understanding that moving from vaping to becoming vape-free offers the best health benefits. Smokers who do not receive high quality advice may be less likely to switch successfully from smoking to vaping, which would preclude them from receiving the potential health, social, and financial benefits of stopping smoking.

As the Bill currently stands, generic retailers may only identify the products they have for sale and the price of these products. While this provision limits the potential damage incorrect advice may cause, it does not recognise that some smokers may need the advice on the transition from smoking to vaping, a process they may find complex and challenging, which specialist retailers could provide.³¹ Limiting the device or flavour range generic retailers may sell does not address concerns that non-specialist store staff may provide inadequate, incomplete, or incorrect advice.

Further, unless the availability of smoked tobacco is reduced (as we recommend), generic retailers who also sell tobacco will profit irrespective of whether smokers successfully transition to vaping or not. That is, they will make regular sales regardless of whether people are purchasing smoked tobacco or vaping products. Specialist stores, which do not sell cigarettes, should be more motivated to provide good advice for transitioning from smoking to vaping. Nonetheless, as we have noted, specialist vape stores have a vested financial interest in maintaining vaping. We therefore recommend that it should be a requirement of the license for all retailers of vaping products that smokers purchasing vaping products are provided with information about their local stop-smoking service and the national Quitline service, whose staff will provide objective advice on smoking and vaping cessation.

Support for people living in remote communities

We recognise that people who smoke and who live in small and remote communities may not have access to a bricks and mortar vape store, which could potentially limit their ability to switch from smoking to vaping. In these circumstances, we suggest a generic retailer is permitted to apply for a licence to sell vaping devices and the limited range of e-liquid flavours under certain conditions (see below). Applications could be accepted under specified conditions e.g. in areas where no specialist vape stores or community pharmacies selling devices are available within a reasonable (e.g., 30km) distance and would include a

requirement that retailers completed training to provide brief smoking cessation advice. This advice could include ensuring people purchasing vapes are advised they need to transition from smoking to vaping, and stop smoking completely, as soon as possible. As we have outlined for specialist vape stores, generic retailers permitted to sell vaping devices should also be required to provide smokers with information about stop smoking services and the Quitline.

We note that many NZ-based vape stores run online stores and helplines, which could ensure people throughout the country can access vaping products and obtain transition advice from store staff. We strongly encourage consideration of the support that could be available to people wishing to switch from smoking to vaping. One option could be establish a criterion for specialist store licensing that requires these stores to provide online or hotline support; we recommend investigating the feasibility of this criterion. Another would be requiring specialist stores to provide information on the Quitline and local stop smoking services to all smokers contemplating using vaping products. Providing these facilities or advice would mean people finding transition from smoking to vaping difficult could access timely support and assistance, and may be particularly beneficial for people living in more remote communities.

Minimising access by young people if vape products are available from generic retailers

Because tobacco retailers are neither registered nor licensed, it is not possible to identify how many outlets sell tobacco, though the actual number is estimated to be between 5000 and 8000 outlets. Many vaping devices are already available through thousands of retail outlets; for example, BAT's Vype brand states on its store locator website that Vype is available from more than 2500 outlets³⁴ and many convenience stores and service stations sell competing brands.³⁵

There is strong evidence that retail density is associated with smoking among young people. A recent New Zealand study concluded: "Current smokers were significantly more likely to attempt to purchase tobacco if the density of tobacco retail outlets around their school was high. Non-smoking students were more likely to be susceptible to smoking if the density of tobacco outlets around their school was high."³⁶

There is also strong evidence that exposure to tobacco point of sale displays in convenience stores was associated with increased risk of smoking experimentation among New Zealand 14-15 year olds³⁷ and that the subsequent removal of tobacco retail displays was associated with a reduction in the risk of smoking experimentation among 14-15 year olds.³⁸ Given this evidence, it is logical to expect that the greater the number of generic retailers selling vaping products, the greater young people's exposure to these products, and the greater their risk of experimentation, will be. By definition, generic outlets are not R18 stores; they are instead stores heavily frequented by children and young people, whose exposure to vaping products will be high.

There are also other problems in allowing vaping devices to be sold by generic retailers. We believe there is a risk that sales of vaping devices to minors would increase if the number of non-specialist outlets increased. Surveillance operations examining practices among generic tobacco retailers often report non-compliance with age-of-sale restrictions.³⁹ We also believe greater resourcing of monitoring operations will be required to ensure sales of vaping products, such as e-liquids, by generic retailers are not made to people aged under 18.

Licensing of all stores and online businesses selling nicotine products

The Bill presents an important opportunity to require retailers who wish to sell any regulated product to obtain a licence. We strongly support licensing requirements for stores selling vaping and/or smokeless products, but recommend that this requirement must be applied across the retail sector and to all

products, including smoked tobacco products, which are more hazardous and remain widely available throughout communities.

As it currently stands, the Bill creates an anomaly that must be addressed urgently: dairies, supermarkets and petrol stations will be able to sell a restricted range of vaping and smokeless tobacco products but have no restrictions on the far more deadly smoked tobacco products that they sell. Furthermore, the Bill proposes requiring specialist stores to register if they wish to sell vaping or smokeless tobacco products, but stores that sell smoked tobacco products will not be required to register. Such a situation defies logic and undermines efforts to protect the health of current and future generations. We therefore urge that the Bill is accompanied by a commitment to rapidly introduce measures that require licensing (rather than registration) of all retailers selling smoked tobacco products and that the number of these retailers is progressively reduced so that smoked tobacco products are **less accessible than vaping products**.

An important weakness of the Bill is that generic stores are neither required to be registered nor to provide the sales information and data that specialist vape stores will have to submit. We have outlined why we believe generic stores should not be permitted to sell vaping products or smokeless tobacco products; however, if the Bill proceeds in its current form, we recommend that all stores selling vaping products, smokeless tobacco products, and/or smoked tobacco are required to be licensed and to provide sales information to the Ministry of Health.

We recommend that sellers of vaping devices should be regarded as providing a health service (rather than a recreational product) and that these products are treated differently from normal commercial products and carry with them requirements that do not apply to normal commercial products. Licensing would provide the government with maximum flexibility to set and amend conditions of sale, and to respond to concerns, for example, if evidence of continued increases in youth vaping uptake emerges.

Licensing would also facilitate monitoring by Smokefree Enforcement Officers and has been associated with lower tobacco use and vaping among youth in other countries.⁴⁰ Comprehensive data on the sale of regulated products would provide important insights into the overall market structure; such data would also enable more detailed monitoring and more rapid recalls, if harmful products are identified.

As we explain in Section 5, aspects of the Bill that prohibit sales of vaping products to minors require rigorous implementation and enforcement to ensure compliance. We recognise that greater resourcing will be required to support a robust monitoring and enforcement regime; licensing fees could fund improvements in compliance monitoring. As outlined in Section 5 of our submission, we believe penalties for retailers who sell to minors should be increased and should include the option of suspending their licence to sell vaping products or smokeless tobacco products, with provision to rescind the licence in cases of recidivist behaviour. Suspending a retailer's licence to sell these products could also be added to the penalties available for other unlawful actions under the Bill, such as advertising of regulated products, sale of non-notified products, or sale of vaping products containing prohibited flavours or additives.

We note that the Bill does not currently contain standards for staff training for staff who sell vaping products, particularly the knowledge they should have of transitioning from smoking to vaping. We recommend that staff who sell vaping products should have training in delivering brief interventions about the transition from smoking to vaping and that satisfactory completion of this training should be a licensing requirement. We also recommend that all retailers of vaping products should be required to provide information about smoking cessation; this information could, for example, include Quitline brochures and referrals to local stop smoking services.

We further recommend that all retailers of vaping devices should provide online and/or hotline support to consumers wishing to transition from smoking to vaping. This requirement would help ensure smokers who wish to switch to vaping receive high quality, best-practice advice, and would address concerns people wishing to switch from smoking to vaping have noted.⁴¹ Setting these standards would also establish benchmarks that would facilitate monitoring by Smokefree Enforcement Officers.

Recommendations:

- **That licensing be introduced as a requirement for selling all regulated products (i.e., including smoked tobacco products), and proposals developed to progressively restrict the availability of smoked tobacco products so these become less widely accessible than vaping products.**
- **That sales of vaping devices and smokeless tobacco products are restricted to R18 specialist retailers (with the exception noted below) who are licensed, sell products meeting rigorous safety standards, have offer transition advice, provide hotline and/or online support, and provide written information on local stop smoking services and the national Quitline service to all customers.**
- **In areas where no specialist vape stores or community pharmacies selling devices are available within a reasonable (e.g., 30km) distance, generic retailers could apply for a licence to sell a specified range of vaping devices (not smokeless tobacco products) in an area of the store that is, as far as practicable, separated from other items, particularly items, such as confectionary, that appeal to children and young people.**
- **That generic retailers are permitted to sell a limited range of e-liquids and refills (within the same restricted flavour range), but not vaping devices or smokeless tobacco products, except for specified exemptions (see above).**
- **That all retailers of any regulated product are required to provide sales information and data to the Ministry of Health (i.e., expand the provision that currently applies only to specialist vape stores).**
- **That specialist vape stores provide online or phone-line support to people experiencing difficulties in transitioning from smoking to vaping.**
- **That a rigorous and adequately resourced monitoring and enforcement process is introduced to maximise compliance with the prohibition of sales of all regulated products to minors.**
- **That infringements of requirements disallowing sales of any regulated product to minors should automatically result in a suspension of the licence to sell regulated products with permanent withdrawal of the licence for repeated transgressions.**

6. Bringing marketing of vaping products and smokeless tobacco products into line with regulations governing smoked tobacco product marketing

Advertising and Sponsorship

Since the District Court decision that found against the Ministry of Health (*Ministry of Health v Philip Morris (New Zealand) Ltd* [2018] NZDC 4478), marketing of vaping products has become increasingly aggressive and pervasive. Despite claims by manufacturers of vaping products and smokeless tobacco products that their products are designed for adult smokers who wish to quit, many marketing campaigns clearly target young people and promote vaping as a glamorous, status-enhancing activity.⁴² Marketing of vaping products and smokeless tobacco products has used themes and tactics that once promoted smoking to young people.⁴³ Rather than position vaping as an option for people who smoke and who want to reduce the harm they face, marketing campaigns position vaping as a recreational activity with socially desirable attributes.⁴⁴

We are particularly concerned about the use of:

- Social media influencers to promote vaping and vape products;
- Social media platforms to promote vaping and vape products;
- Event sponsorship to promote vaping and vape products, including themed events, particularly when combined with product sampling.

Evidence from the NZ International Tobacco Control survey, which samples smokers and people who have recently quit smoking, found that awareness of vaping was very high (94.3%); trial (ever use) of vaping products was also high (60.1%) but current use (daily, weekly or monthly) was low (15.5%).⁴⁵ Even though the data reported in this study were collected prior to the rapid increase in marketing of vaping products, awareness, trial and current use were as high in New Zealand as in countries with more liberal marketing environments (the UK and US). These data suggest that widespread marketing is not required to foster uptake of vaping products among people who smoke; instead, more attention needs to be paid to why the relatively high levels of trial do not result in higher levels of current use. As we have already noted, we believe a key reason for this discrepancy is that people purchasing vaping devices do not always receive advice on how to switch, and thus may not be well equipped to transition successfully from smoking to vaping. Furthermore, the experience of Canada and USA, where there has been a rapid increase in youth vaping in a permissive marketing environment,⁹ and the rapid increase in adolescent vaping in New Zealand since marketing has occurred since 2018,⁷ suggests aggressive advertising fosters vaping uptake in this age group, and that rigorous controls are therefore required.

Endorsement

- **We endorse all measures to bring marketing of vaping products and smokeless tobacco products (including advertising, promotion, sale and distribution of regulated products) restrictions into line with those that apply to smoked tobacco product marketing.**

Recommendation

- **Restrictions on marketing of all regulated products (including vaping products and smoked tobacco products) must cover all media platforms and activities, including social media.**

Standardised Packaging

The Bill indicates that packaging requirements will be determined following consultation. We strongly recommend that standardised packaging be mandated for all products sold by generic retailers (if generic

retailers are able to sell vaping products or smokeless tobacco products), and for smokeless tobacco products.

Standardised packaging serves an important protective function and has reduced the appeal of smoking to young people. If sales of vaping products and smoked tobacco products by generic retailers are permitted, we support differentiating between generic retailers and specialist stores, with the former required to sell all products in standardised packaging. We explain details of this distinction in more detail below.

We believe e-liquids, including pod refills, which are often packaged in visually appealing and eye-catching designs that will attract attention and risk appealing to young people, should only be available in standardised packaging. Furthermore, we believe all flavour names should be regulated and limited to descriptive names that indicate the flavour. That is, names such as “Luscious Lemon” would not be permissible but names such as “Lemon” would be.

Our work has shown that the design and appearance of vaping devices are important to people as they move from smoking to vaping.^{32 46} We therefore recommend that vaping devices sold in specialist vape stores are able to be displayed in branded packaging and permitted to use varied colours; however, we recommend that the designs used are not permitted to include cartoon characters or any imagery that may potentially appeal to young people and note evidence this imagery is widespread.⁴⁷

If, contrary to our recommendation, vaping devices are to be sold by generic retailers, we strongly recommend that these may only be sold in standardised packaging and that the devices themselves are only available in colour Pantone 448C (the muddy green colour used on smoked tobacco packaging). We further recommend that all permitted regulated products that do not involve aerosolising an e-liquid (e.g., heated tobacco products) must be presented in standardised packaging and that the only colour permitted is Pantone 448C. We believe this measure is necessary to avoid the colourful and alluring displays and devices currently being used internationally to market heat not burn products (see Figure 4 below).

Figure 4: iQOS Display and devices (international outlet)



Source: <https://ginosblog.com/iqos-heets-now-available-in-beirut-and-dubai-duty-free-681ff49de271>

We believe all packaging should feature evidence-based information about the health risks and benefits of the product contained. We are currently analysing data from a study that examined smokers' and non-smokers' responses to different information messages featured on e-liquids and would be happy to make these findings available when our analyses are complete.

Recommendations

- That all e-liquids, including pod refills, must be presented in standardised packaging.
- That e-liquid flavour names, including those used on pod refills, are limited to descriptive terms.
- That all vaping products sold by generic retailers must be presented in standardised packaging.
- That all vaping devices sold by generic retailers must be presented in colour Pantone 448C.
- That all regulated products that do not involve aerosolising an e-liquid must be presented in standardised packaging and the devices themselves must be presented in colour Pantone 448C.

Point-of-Sale (POS) and other retail displays

- We support allowing R18 (or higher age restriction) specialist vaping product stores to display vaping devices and e-liquids at the point of sale.
- We do not support allowing generic retailers to display vaping products or any POS marketing materials in their stores.

POS displays of vaping products or smokeless tobacco products risk making these products appear normal and everyday items to children and young people; given knowledge of the impact tobacco POS displays had on young people's risk of smoking experimentation,³⁷ we believe POS displays will encourage purchase of vaping products and smokeless tobacco products. As we have noted, the ban on POS displays of tobacco products was associated with a reduced risk of smoking experimentation among young people who frequently visited convenience stores.³⁸ We believe allowing in-store marketing by generic retailers will make it harder to ensure compliance with a prohibition of sales to minors. We reiterate that we do not believe that vaping devices or smokeless tobacco products should be sold by generic retailers, (except for specified exemptions outlined above).

We have observed vape products located on convenience store counters, next to cash registers, and alongside confectionary and snack foods. Point-of-sale (POS) areas such as sales counters are prime marketing real estate and have high reach – from adult smokers wishing to switch to vaping to youth who may be intrigued by the novel, sleek-looking vaping products displayed.

We believe the widespread availability of vaping and smokeless tobacco products in generic retail outlets will increase the risk that young people become interested in, and experiment with, these products. This risk will be greater if prominent displays of these products are permitted within outlets such as convenience stores, frequented by adolescents and young people. We have already note our concerns that sales of regulated products to minors will occur. Currently, the Bill allows vaping products to be visible from outside a store exterior and inside a store, including areas to which members of the public have access. We strongly recommend that vaping products are included in the provisions that apply to other regulated products and are not permitted to be visible from a store exterior or within the store.

Recommendations

- **That all regulated products, including vaping products, should not be visible from outside a specialist vape store or a generic retail outlet.**
- **That only R18 specialist stores should be permitted to display vaping products within the retail environment.**
- **That no product displays or other form of POS marketing of any regulated product should be permitted in generic stores.**

7. Online marketing and sales

Online marketing and use of social media

The Bill aims 'to regulate and control the marketing, advertising, and promotion of regulated products' (s.3A(1)c) and thus provides an opportunity to ensure greater compliance with age-of-sale restrictions for all regulated products. At present, marketing of vaping products and smokeless tobacco products is widespread on social media, and product promotions feature on platforms visited frequently by young people. Online sales sites are also often linked to social media platforms, which provide incidental, and unsought, access to sales sites and may facilitate unplanned purchases.

We have reviewed recent promotions undertaken by Vype, a vape product manufactured by British American Tobacco,⁴⁸ (see Figures 5 and 6). As noted in Section 5, these promotions draw on strategies once used to promote smoking uptake. We strongly recommend that provisions disallowing the advertising, promotion and sponsorship of vaping products and smokeless tobacco products on traditional media are comprehensive and include all social media platforms. Evidence from the US, where marketing of all tobacco products is permitted (with limited restrictions), shows strong associations between aggressive JUUL marketing and interest and uptake among young people.^{49 50} Without wide-ranging restrictions on the marketing of all regulated products, we are concerned that manufacturers of vaping products and/or smokeless tobacco products will continue to use marketing channels to target young people.

Figure 5: Examples of Vype event sponsorship

Images from Vype NZ Facebook site illustrating sponsorship of Vice Magazine Christmas party: ⁴⁸
https://www.facebook.com/pg/vypenz/photos/?tab=album&album_id=284081058801618

Images feature Vype logos on Christmas hats, photo background, signage, drink mats, wristbands



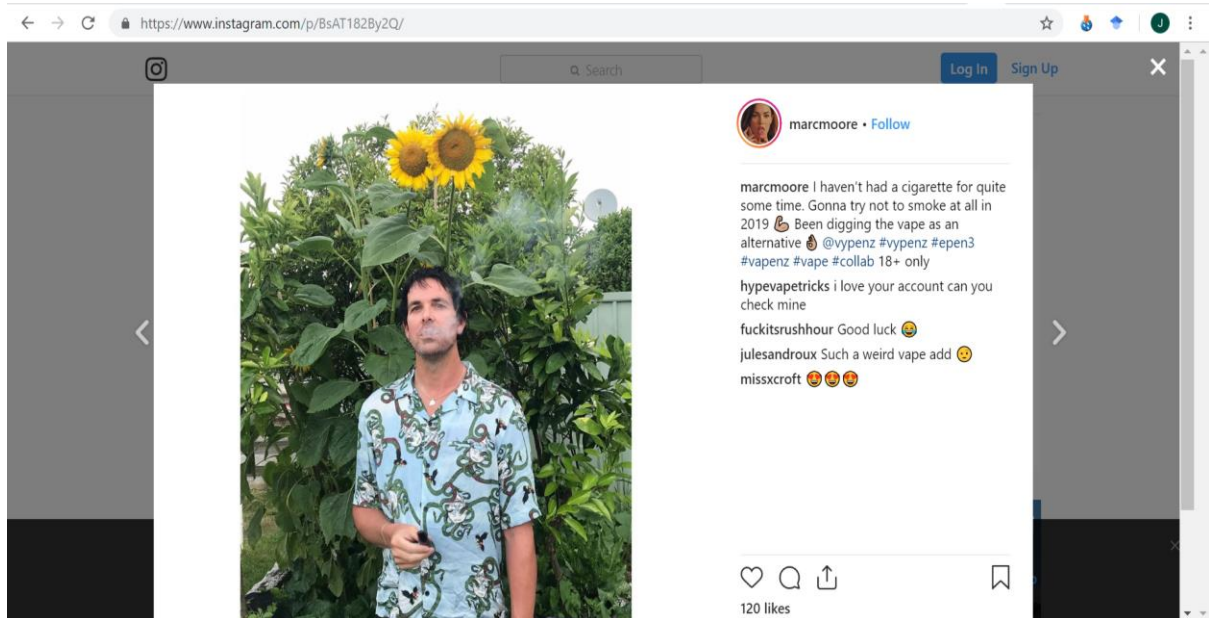




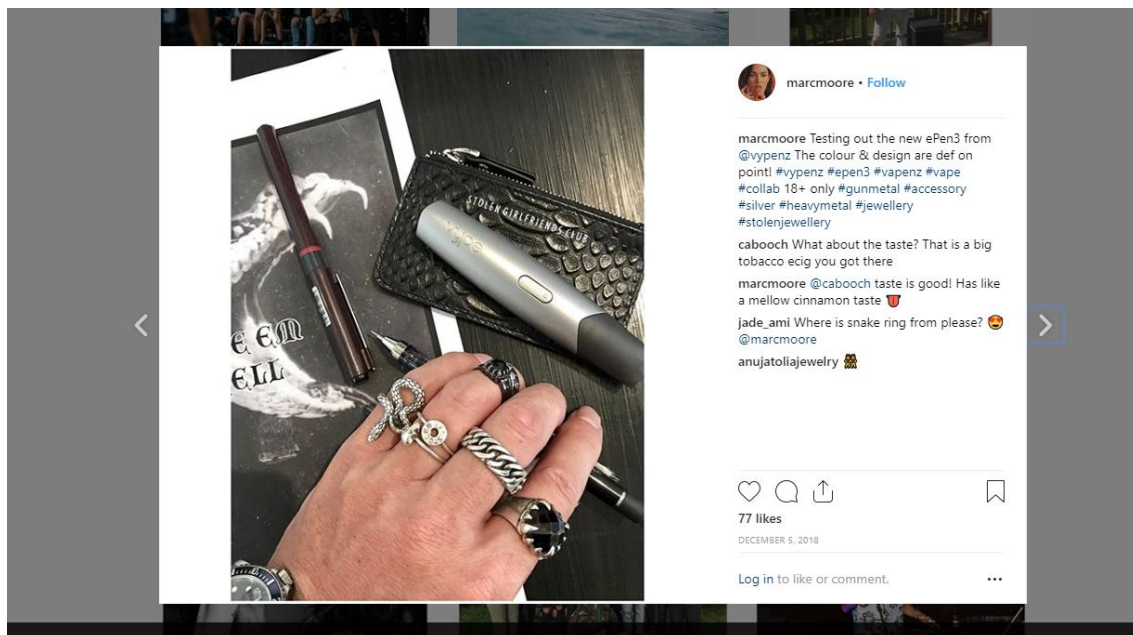
Figure 6: Vype use of “influencers”⁴⁸

Vype endorsers: Tagged postings on Instagram

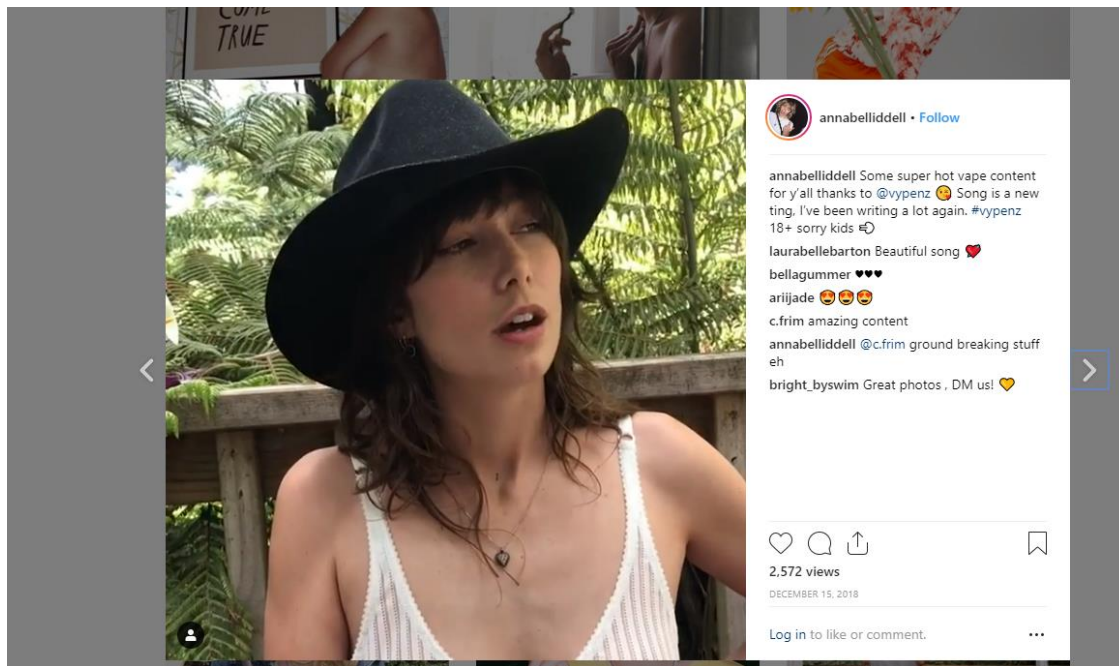
<https://www.instagram.com/p/BsAT182By2Q/>



https://www.instagram.com/p/Bq_45eoBh_6/



<https://www.instagram.com/p/BrZucudA6tL/> (video of vaping)



Online Sales

Specific measures are needed to reduce the ease with which young people may currently purchase vaping products online as many domestically-based and international vaping companies have online sales sites. Although these sites typically have an age of entry declaration, only a small proportion require age verification before entry to the site may occur.⁵¹ We believe current age-screening processes are ineffective and that online sites currently provide young people aged under 18 with easy access to vaping products.

Although the Bill proposes that internet sites include a warning that sales to people who are younger than 18 years are prohibited, without requiring age verification procedures, this requirement may have little effect. We strongly recommend introducing a requirement that online sales are only possible following an age verification process that requires a widely accepted ID featuring potential purchasers' date of birth (e.g. a driver's licence). Another alternative is government-led e-ID schemes, used by many countries to prevent youth access to online gambling.^{52 53}

We also recommend that all online vape sales sites should be required to feature visually salient health warnings that have been pre-tested, established as effective, and are appropriate to the harm presented by the product. These warnings need to be carefully nuanced so they encourage people who smoke to switch to vaping while at the same time deterring uptake among non-smokers. Currently, there is very little evidence documenting the effect of health warnings on vaping prevalence among youth.^{54 55} New Zealand research found that warnings (on the few websites where these were present) were suboptimal in content, format, and location/visibility.⁵¹ As noted, we are currently analysing the results of a study that tested various warning messages and will make the findings available in due course.

We recommend that the Bill's provisions encompass New Zealand online retailers and believe this approach is possible for websites hosted within New Zealand (e.g., websites that have an NZ Internet Protocol (IP) address or an NZ Uniform Resource Locator (URL)), or that are connected to New Zealand consumers in some other way (e.g., though a physical store or business address), and may thus be subject

to Government policies.⁵¹ Requiring online retailers to provide a physical business address in New Zealand would simplify monitoring and any follow-up actions required.

Recommendations

- **We recommend that provisions disallowing the advertising, promotion and sponsorship of vaping products and/or smokeless tobacco products on traditional media are comprehensive and include all social media platforms and apply to all NZ retailers, online or ‘bricks and mortar’.**
- **We recommend that all online sites selling vaping products and/or smokeless tobacco products are required to feature visually salient health warnings that have been pre-tested and established as effective.**
- **We recommend requiring stringent age verification processes for all online sales of vaping products and smokeless tobacco products. These sales should only be possible following verification of a widely accepted ID featuring a potential purchaser’s date of birth (e.g. a driver’s licence).**

8. Product standards, e-liquid flavours and nicotine content regulation

We strongly support the Bill's provisions to introduce regulations that ensure that the design, constituents and other attributes of vape products meet safety standards.

Conflicting views on flavours and nicotine content

There are opposing priorities and goals for the regulation of e-liquid flavours. On the one hand, some argue that access to a wide-range of flavours enhances the appeal and effectiveness of vaping products, and thus the likelihood that smokers will use these products as complete substitutes for smoked tobacco.⁵⁶ Studies have concluded that flavours are important in making vaping products appealing to smokers, but that they also appeal to adolescents and young people.^{57 58} However, while increasing the appeal of vaping products to smokers is likely to be beneficial, there are serious concerns about attributes that increase vaping products' appeal to young people.

In addition, there are concerns about possible health risks from the rapid proliferation of flavours (and hence additives to e-liquids),^{16 17} and the evidence that flavoured e-cigarettes, e-liquids, and pod mod devices, such as JUUL, appeal to adolescents (more than they appeal to adult switchers).^{59 60} Alluring flavours and high nicotine concentrations are thought to have fostered recent rapid increases in use of vaping pod mod devices seen in jurisdictions, such as the US and Canada.⁶⁰

However, flavours are also important to smokers. Unpublished data from the NZ ITC showed that in 2018 smokers and recent quitters who used vaping products found that vapers most commonly reported using fruit (40%), tobacco (23%) and sweet/lolly (17%) flavours. Similarly, a survey of almost 700 NZ vapers and ex-vapers found that fruit flavours were the most popular, with tobacco, mint or menthol, and sweets/lolly flavours also popular.⁶¹

Differences also appear in views on nicotine content. Higher concentration of nicotine in e-liquids may make vaping products more appealing and effective smoking substitutes for smokers, but these attributes increase the likelihood that adolescents and young people will become addicted if they experiment with, or engage in social use of, these products. The limitation on nicotine concentration applied through the EU Tobacco Products Directive may be one of the reasons why youth vaping has remained relatively low in the UK.

The Bill attempts to manage this regulatory tightrope by proposing that specialist retailers may sell all e-liquid e-flavours that have not been prohibited, while allowing generic retailers to sell only tobacco, mint and menthol flavoured vaping liquids. The Bill also requires that products comply with product safety standards (to be developed), including maximum nicotine content (to be determined). Furthermore, the Bill contains a provision to ban particular flavours or ingredients.

Concerns and suggested improvements

Although we support measures to regulate the flavours used in vaping products and smokeless tobacco products, and limit nicotine content, we foresee at least four problems with the proposed approach.

As we have noted in Section 7, we believe flavours are an important attribute in promoting experimentation with vaping products. Research has found that some youth consider flavour the most significant factor in trying e-cigarettes, were more likely to initiate vaping through flavoured e-cigarettes,^{57 58} and vape more frequently when using flavours. This evidence also raises serious concerns about the widespread marketing of flavours.^{62 63} We believe it is reasonable to allow an appropriate range of (approved) flavours (e.g. up to 20 flavours) to be made available through specialist retailers in order to

maximise vaping's appeal to adult smokers. We have outlined our support for standardised packaging of all e-liquids (including pod refills) in Section 7 of this submission and also strongly recommend that the packaging regulations limit flavour names to generic descriptions (e.g., numbers); this measure would prevent flavour names from presenting marketing opportunities.

Second, the current proposals allow for menthol flavoured vaping liquids and pod mods to be sold by generic retailers (along with mint and tobacco flavours). We note that menthol is used in smoked tobacco products to reduce the harshness of smoking and improve its overall palatability. Studies of tobacco industry documents reveal that tobacco companies added menthol to cigarettes as inexperienced smokers found menthol cigarettes less harsh and easier to smoke than regular tobacco-flavoured cigarettes. Industry documents also found menthol flavouring was associated with reduced harm perceptions.⁶⁴

Studies of tobacco use among new, younger, smokers has found that menthol use is high among this group, leading researchers to conclude that menthol may facilitate initiation and the establishment of regular smoking in these populations.⁶⁵ Research suggests menthol flavours have similar effects when used in e-liquid.⁶⁶ Careful analysis is required to assess whether allowing menthol flavours in vaping or smokeless tobacco products, particularly if sold by generic retailers, could facilitate youth uptake.⁶⁷ An alternative could be to replace menthol with a different flavour that has proved popular among smokers switching to vaping products, but that does not have the potential impacts on youth use as menthol flavours.

Third, the lack of knowledge of the effects of heating inhaled flavourings^{68 69} suggests that a precautionary approach would be to not allow any flavours unless their inclusion in e-liquids has been proven to be safe.

Finally, to position vaping as more attractive than smoking, we recommend that policy measures make smoking increasingly unattractive, thus ensuring people who smoke have incentives to switch to vaping. Measures we believe are especially important include reducing the nicotine content of smoked tobacco to non-addictive levels, disallowing additives that make smoking less harsh and more palatable, and regular excise tax increases.⁷⁰ In particular, flavours used in tobacco products should also be restricted to ensure consistency in flavouring restrictions for both vapes and tobacco. Tobacco products, which are much more harmful than vaping products, still contain characterising flavours, including menthol, and will continue to be available in generic retail outlets. We note that many jurisdictions have prohibited the addition of menthol to tobacco products, including several European Union countries and Canada. We recommend addressing this anomaly by committing to introduce regulations through this Bill or through other legislation that bans the use of any additive in smoked tobacco products that enhances the appeal, palatability or addictiveness of those products. We recommend the analysis of appeal, palatability and addictiveness places particular emphasis on adolescents and young people. Tobacco companies should be required to fund a Ministry of Health investigation of additives and whether these enhance the experience of smoking among young people.

Recommendations:

- **Flavours and other constituents should be allowed only if there is clear and independent evidence for their safety; they have been approved through existing product standards, such as those in place in the EU TPD/UK system, and well-regulated jurisdictions have permitted their use.**
- **The Bill should introduce provisions to control the use of characterising flavours in smoked tobacco products; these provisions should align with, or be more stringent than, those applying to vaping products.**

9. Minimising the influence of tobacco companies

As we have noted, there is an inherent conflict in allowing for-profit retailers to sell vaping and smokeless tobacco products. While we believe people who smoke and who switch completely to using vaping products will greatly reduce the health risks they would otherwise face, these people will gain greatest health benefits if they stop using all regulated products. No business can prosper by advising customers to aim to stop using the products it sells.

We believe this conflict applies particularly to manufacturers of vaping and smokeless tobacco products, such as tobacco companies. We have recently published an analysis of British American Tobacco's (BAT) plans for smokeless tobacco products, using evidence from BAT's presentations to investors and analysts,⁷¹ ⁷² and drawing on a larger report published by researchers at the University of Bath.^{73 74}

BAT's presentations show that this company, at least, sees smokeless tobacco products as a growth opportunity rather than as products that may help people switch from smoking before stopping all nicotine use. BAT's presentations illustrate two major problems arising: first, market growth depends on recruiting young people to nicotine use and, second, dual use (smoking and vaping/use of other nicotine products) is common and usually prolonged in duration.

Young people and nicotine use

BAT's investor presentations suggest the company's is focussing on recruiting non-nicotine users to its novel nicotine products. It refers to growth in the 'next generation product' market, much of which is attributed to "entrants" (which BAT defines as people "18+ or older entering the nicotine use category"). "Entrants" are thus *new* nicotine users rather than "switchers" (i.e., those people who have changed from smoked tobacco products).

As we have noted above, the major tobacco companies operating in New Zealand have had only a limited window of opportunity to market vaping and smokeless tobacco products, given these were, technically, not legal to sell until 2018. Evidence from the Youth19 survey, the ASH Y10 survey, and from secondary school principals, is that there is a rise in ever-use of e-cigarettes among young people that is occurring. The ASH Year 10 data suggest that this has coincided with a plateauing of the recent decline in smoking prevalence and the possible beginnings of increase in regular and daily smoking. These findings suggest BAT's "new entrants" in New Zealand will include a growing proportion of children aged under 18 years. As BAT's presentations to investors and analysts claimed, vaping and smokeless tobacco products are likely to be "additive", which means they will add new users into the pool of nicotine consumers.

Non-progression to quitting smoking

Although BAT has claimed that vaping and smokeless tobacco products can help smokers quit smoking,⁷⁵ their investor presentations promote claims that dual- and poly-use (use of multiple nicotine sources) rarely result in complete switching. BAT's documents suggest dual- and poly-use are generally prolonged (i.e. "more than 6 months"), and increasing in prevalence.

BAT's 2019 investor presentation states that "poly-usage is value accretive"; that is, poly-usage produces greater earnings because people who use vaping products or smokeless tobacco products alongside smoked tobacco generate more revenue than people using just one product. BAT's presentation also states that heated tobacco products generate more revenue than either vaping products or smoked tobacco.

Tobacco companies thus appear to have an incentive to promote dual use (which will have very limited if any health benefits for smokers) and the uptake of heated tobacco products, which is highly concerning,

given evidence that heated tobacco products are more harmful to health than vaping, and may have similar long-term health effects to smoked tobacco.⁷⁶⁻⁷⁹

¹⁰

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