

# Submission form: Proposals for the Smoked Tobacco Regulatory Regime

## 1 Your details

This submission was completed by: *(name)* Richard Edwards  
Email: Richard.Edwards@otago.ac.nz  
Organisation *(if applicable)*: ASPIRE Aotearoa Research Centre

## 2 Additional information

These questions are optional. We are only asking for your age and ethnicity to help us analyse submissions.

My age is:

- Under 18
- 18 – 34
- 35 – 44
- 45 – 54
- 55 – 64
- 65 +
- Not applicable (eg, I am submitting on behalf of an organisation or group)

The ethnicity/ethnicities I identify with are:

- New Zealand European / Pākehā
- Māori
- Pacific Peoples
- Asian
- Other European
- Other ethnicity
- Prefer not to say/ not applicable (eg, I am submitting on behalf of an organisation or group)

If other ethnicity, please specify:

Please provide details of any Iwi you might affiliate to below.

Members of ASPIRE identify as NZ European, Māori and Pacific Peoples

I am, or I represent, the following category or categories: *(tick all that apply)*

- |  |  |
|--|--|
| <input type="checkbox"/> Personal submission   | <input type="checkbox"/> Healthcare provider (eg, primary care provider, stop smoking provider)    |
| <input type="checkbox"/> Community or advocacy organisation                                  | <input type="checkbox"/> Professional organisation   |
| <input type="checkbox"/> Iwi/Hapū affiliated, and/or Māori organisation                      | <input type="checkbox"/> Tobacco manufacturer, importer or distributor                             |
| <input type="checkbox"/> Pacific community organisation                                      | <input type="checkbox"/> Vaping or smokeless tobacco product retailer, distributor or manufacturer |
| <input checked="" type="checkbox"/> Government organisation (eg, local council)              | <input type="checkbox"/> Small retailer (eg, dairy or convenience store)                           |
| Research or academic organisation  | <input type="checkbox"/> Medium or large retailer (eg, supermarket chain or large petrol station)  |
| <input type="checkbox"/> Other <i>(please specify)</i> :<br>Click or tap here to enter text. |  |

## 3 Privacy

We intend to publish the submissions from this consultation, but **we will only publish your submission if you give permission**. We will remove personal details such as contact details and the names of individuals.

If you do not want your submission published, please tick this box:

- Do not publish this submission.

Your submission will be subject to requests made under the Official Information Act (even if it hasn't been published).

## 4 Commercial interests

Do you have any commercial interests?

- I have a commercial interest in smoked tobacco products
- I have a commercial interest in other regulated products (vaping products, other notifiable products)
- I have commercial interests in both smoked tobacco and other regulated products (vaping products, other notifiable products)
- I do not have any commercial interests in smoked tobacco or other regulated products (vaping products, other notifiable products)

## 5 Commercially sensitive information

We will redact commercially sensitive information before publishing submissions or releasing them under the Official Information Act.

If your submission contains commercially sensitive information, please tick this box:

- This submission contains commercially sensitive information.

If so, please let us know where.

Click or tap here to enter text.

## 6 Protection from commercial and other vested interests of the tobacco industry

New Zealand has an obligation under Article 5.3 of the World Health Organisation Framework Convention on Tobacco Control (FCTC) when 'setting and implementing public health policies with respect to tobacco control ... to protect these policies from the commercial and other vested interests of the tobacco industry'.

The internationally agreed Guidelines for Implementation of Article 5.3 recommend that parties to the treaty 'should interact with the tobacco industry only when and to the extent strictly necessary to enable them to effectively regulate the tobacco industry and tobacco products'.

The proposals in this discussion document are relevant to the tobacco industry and we expect to receive feedback from companies in this industry. We will consider all feedback when analysing submissions.

To help us meet our obligations under the FCTC and ensure transparency, all respondents are asked to disclose whether they have any direct or indirect links to, or receive funding from, the tobacco industry.

Please provide details of any tobacco company links or vested interests below.

None

## **7 Please return this form:**

By email to: [smokefree2025@health.govt.nz](mailto:smokefree2025@health.govt.nz)

By post to: Smokefree Consultation, PO Box 5013, Wellington 6140.

# 2 Consultation questions

The Ministry of Health is seeking comments on the following.

## 1 Regulatory proposal 1a: Number of smoked tobacco retail premises and their distribution across Aotearoa

This section focusses on how stores that sell tobacco products will be spread across the country. In this section you can tell us if there's anything you think we should know about how areas should be defined, how many stores should be in each area, and anything important about your area.

This proposal relates to the written notice under section 20M of the Act to set a maximum number of retail premises in areas of New Zealand. Currently there are around 6,000 retailers of smoked tobacco products in Aotearoa. The recent changes to the Act mean that no more than 600 approved retail premises will be permitted to sell smoked tobacco products across the country. We propose that New Zealand be divided into areas based on whether they are urban or rural.

We have suggested an example scenario for smoked tobacco retail premises summarised by region. It is likely that the final distribution will need to be adjusted to take into account feedback from consultation, so this is a starting point for discussion only.

- Do you agree with dividing Aotearoa into areas and having a separate maximum number of smoked tobacco retail premises for each one?

Yes

No

Yes, in principle we agree with this proposal. However, within the current regulatory framework we strongly recommend that the policy is implemented to ensure that the aim of greatly reducing retail availability of STPs is achieved. We therefore recommend:

1. The maximum number of retailers should progressively reduce. This outcome could be achieved by reassessing the maximum number of STRs numbers in each area annually and decreasing that number by a fixed amount or by the estimated percentage reduction in the number of people who smoke within an area (whichever is the greater).
2. The allocation process should never result in new retailers being established in areas (e.g., rural areas) which previously had no retailers, nor should it result in

additional retailers being added over and above the current number in any area (i.e. areas which currently have very few STRs should not have additional retailers allocated).

- Do you agree with the concept that urban and rural areas should be treated differently?

Yes

No

We both agree with this statement in some ways but disagree in others. We acknowledge tobacco retail environments are quite different in rural and urban settings and hence different allocation formulae may be required for urban and rural areas.

We know that there is generally higher retailer density in urban areas, particularly in neighbourhoods of higher deprivation, and it is here that the need to restrict STP retail availability is greatest, to ensure the policy promotes equitable reductions in smoking prevalence. There is strong research evidence that greater access to tobacco facilitates youth smoking uptake, impedes cessation and could entrench smoking-related health inequities. We provided citations to research evidence that supports these assertions in our previous submissions on the draft Smokefree Action Plan and Smokefree Act.

However, while the priority is to reduce retailer density in urban areas, we also believe that the allocation processes should align with the purpose of the regulations, namely to greatly reduce ease of access to tobacco products across Aotearoa. There are likely to be some priority areas in rural locations with high retail density, for example, where there are popular holiday destinations in rural areas. It is important that the allocation process addresses such instances and supports aspirations of iwi and hapu in all locations to minimise the availability of STPs in their communities, regardless of whether they are situated in urban or rural locations.

Furthermore, we are concerned about that there may be too much focus on ensuring 'reasonable access' to tobacco products in the proposed allocation approach to STRs in rural areas. We suggest it is more important to ensure reasonable access to cessation support, which may be highly problematic in rural locations. For example, we understand that most of the retailers in Northland who have delisted tobacco are located in rural and isolated areas. We strongly suggest consulting with the National Public Health Service Te Tai Tokerau, whose staff have worked with these communities, to assess how these changes have affected people who smoke and the extent to which "reasonable access" to tobacco products is required.

If you have any comments on how we have defined rural and urban, or how the geographic nature of the area required by the Act should be taken into account, write them here.

Click or tap here to enter text.

- Do you agree with our suggested allocation scenario, as described in Table 1 of the consultation document and the supplementary maps we have produced?
- Yes
- No

We generally support the suggested allocation scenario but note some anomalies. According to staff from National Public Health Service Te Tai Tokerau, the Indicative Maps for Northland show 16 proposed tobacco retailers in areas that currently have no retailers e.g., Cape Reinga. As noted above, we do not support introducing new retailers to areas that currently have no tobacco retailers. Introducing retailers to these areas is contrary to the Action Plan goal and Smokefree Act measures, both of which aim to reduce the retail availability of tobacco products. We strongly recommend the Ministry of Health work with local Smokefree Teams to help prevent anomalies such as these from occurring.

We note that the rural allocation process is based solely on State Highway mileage within the area. This approach may have contributed to anomalies, such as those noted above; for example, similar areas (area, population size etc.) may have substantial differences in kilometres of State Highway. We recommend assessing overall roading mileage using tools such as Google Maps.

More specifically, we note that the number of retailers allocated to Auckland seems low for a large population.

How else could you determine the maximum number of retail premises for each area, bearing in mind the Act allows for a maximum of 600 retail premises?

Following from our recommendations to the first question in this section we make the following suggestions:

**1. Maximum outlet number should decline over time**

We strongly support establishing a “maximum” number of retailers but believe this number should not be fixed but instead decline over time, as smoking prevalence falls. We believe this objective is possible within the existing legislation. We suggest developing algorithms for each area so that the number of outlets declines annually either by a fixed number or proportionately as the estimated number of people who smoke declines. As a safeguard, we recommend the ratio of retail outlets to the estimated number of people who smoke is monitored and never exceeds the ratio that exists when the permit scheme comes into operation. The aim should be to reduce retail tobacco supply to minimal levels (defined as fewer than 100 STRs) within five years.

**2. Time-limited STP retail permits**

We strongly recommend that permits to sell smoked tobacco products are issued for a specified period; we suggest a maximum of one year only. All applicants should be told there is no automatic renewal of the permit, that permit numbers will reduce over time, and that the ultimate goal of the retail reduction policy is to minimise tobacco product supply.

**3. Two stage retail reduction**

Once the number of retailers has been reduced to 100 outlets or less we suggest that an

alternative allocation model should be introduced to minimise supply and restrict the type of retail store types that can sell STPs, and ideally to ensure people who smoke have greater cessation support available (directly or by referral) at the point of purchase.

We outline three options for this second stage and their advantages and disadvantages in an appendix (pharmacies, R18 non-profit specialist stores and supermarkets) to this submission.

Click or tap here to enter text.

- We are interested in understanding the needs of different areas of Aotearoa. What is your area?

- |  |   |
|--|---|
| <input type="checkbox"/> Northland (Te Tai Tokerau)                                | <input type="checkbox"/> Manawatū/Whanganui                                     |
| <input type="checkbox"/> Auckland (Tāmaki Makaurau)                                | <input type="checkbox"/> Wairarapa/Wellington (Te Whanganui-a-Tara)             |
| <input type="checkbox"/> Waikato   | <input type="checkbox"/> Nelson/Marlborough (Whakatū/Te Taihu-o-te-waka)        |
| <input type="checkbox"/> Bay of Plenty (Te Moana a Toi-te-Huatahi)                 | <input type="checkbox"/> Tasman/West Coast (Te Tai o Aorere/Te Tai Poutini)     |
| <input type="checkbox"/> Tairāwhiti/Hawkes Bay (Te Matau-a-Māui)                   | <input type="checkbox"/> Canterbury/Chatham Islands (Waitaha/Wharekauri/Rēkohu) |
| <input type="checkbox"/> Taranaki  | <input type="checkbox"/> Otago/Southland (Ōtākou/Murihiku)                      |
| <input type="checkbox"/> Other/I am not in New Zealand<br><i>(please specify):</i> |   |

We have a national focus so have not indicated a specific area here.

## Regulatory proposal 1b: Minimum requirements for approval as a smoked tobacco retailer

This section focusses on minimum requirements for selling smoked tobacco products. In this section you can tell us about who should be allowed to sell and what type of systems you think they should have.

This proposal relates to key criteria under 20I and regulation making powers under 82A of the Act to require the retailer to meet certain criteria before they can be approved.

The Director-General of Health must be satisfied that retail premises are run by people who are 'fit and proper'. Further requirements that need to be met can be set in regulations for security, training, delivery, other business systems, and other relevant criteria. We have proposed some requirements which are intended to ensure that the retail scheme works as intended.

- Do you agree with the proposed requirements for a 'fit and proper' person in Appendix 2 of the consultation document?

- Yes
- No

If you have any comments on the proposed requirements for a 'fit and proper person, please write them here.

We endorse the potential requirements set out in appendix 2 and strongly recommend that they are set as firm criteria rather than soft considerations that may be at the discretion of the Director General. This change will ensure decisions are made consistently and that those making applications are aware of what is expected of them. In addition, we recommend the following criteria for a fit and proper person are established with regards to retailer track record of compliance and ongoing training.

- Applicants to be a STR must be the primary operator of a store (e.g., store owner or manager). This criterion aims to prevent people from presenting themselves as applicants and effectively "fronting" for people who operate the store but who are unable to apply because they do not meet specific "fit and proper" criteria.
- Any record of past breaches of the tobacco product minimum age of sale requirements by the store owners/managers should automatically disqualify them from applying for a STR permit. Applicants should be required to make a declaration that they have not been found guilty of such breaches and there should be a process to check this is the case.
- Any subsequent proven breach of minimum age of sale requirement at a store should result in the permit being withdrawn and applications for renewal disallowed. Renewal applications should be reviewed to check the store/applicant has not been found to have breached the regulations.
- Any past breaches by the applicant relating to underage alcohol sales should automatically result in an applicant failing to meet the 'fit and proper person' test.

We strongly recommend involving local Smokefree Enforcement Officers (SFEOs) in the STR review and approval/renewal process as these staff can provide crucial background information about complaints, non-compliance, infringements and prosecutions. We believe this information should play a key role in assessing whether an applicant meets the 'fit and proper person' test.

We strongly urge frequent monitoring of all STRs (i.e., site visits at least quarterly with frequent controlled purchase operations) by SFEOs.

We recommend establishing a mechanism that enables community members to register complaints about smoked tobacco retailers. SFOs will assess and investigate these

complaints and, depending on their assessment, upheld complaints may lead to the loss of a permit to sell smoked tobacco products.

- Do you agree with the minimum requirements we have proposed for security systems, training, sales systems, delivery systems and other business systems?

Yes

No

We broadly agree with the nature of the criteria, although we have some suggestions for strengthening some of the specific minimum requirements for each criterion.

### **Security**

We note there is on-going work to define minimum requirements and preferred systems. We suggest that approved security system minimum criteria are established so that only systems designated as suitable by retail security specialists meet the criteria for approval.

We do not have specific expertise in store security and would defer to people who do. However, we anticipate that the minimum requirements could include specifying operational cloud-based cameras of a particular recording quality, requiring all recordings to be retained for a specified period, specifying a minimum number of cameras and identifying required places for installations of cameras (e.g., a camera on every entrance and exit to the retail premise, above every tobacco cabinet, and a camera facing customers). We also recommend that the store interior should be required to be visible from outside. Stores could be required to meet criteria that exclude use of any materials that obscure the line of sight into stores (e.g., window coverings, posters, window branding).

Tobacco companies should not be permitted to fund meeting retailers' minimum security requirements. Any evidence of tobacco industry funding should automatically lead to the revocation of a permit.

### **Training**

We recommend that the minimum training requirements are specified in more detail and these should include training in preventing sales to underage people, as well as security and cessation referral training. All retail staff at STRs should be required to undergo the basic training. Training in smoking cessation referral should aim to ensure that all staff selling STPs are able to provide advice about possible sources of cessation support such as the Quitline and local cessation services.

Regular (e.g., annual) training updates should also be required. Training could be organised by SFEs or through online materials produced by the MoH, as is most appropriate. We consider regular training essential to ensure information can be updated e.g., on local cessation service providers. Online training places less of a burden on retailers and their staff (i.e., no requirement to attend in-person training). A verified identification system must be used to ensure all staff undertake specified training and no substitutions are possible.

In addition to training we recommend that all STRs are required to have information (e.g., leaflets/posters) available or on display about local cessation providers and how to access Quitline services. They must provide be able to provide this information on request from people who smoke who are purchasing cigarettes/tobacco.

## **Sales systems**

**Records of sales.** We believe the proposed requirements for recording and providing sales data needs much greater specificity. Each product (brand/brand variant) should have a unique product code (UPC) and details of each product (including photos) must be provided to the Ministry of Health. It is imperative that all tobacco retailers provide monthly sales data that documents sales for each UPC in volume (units) and value (NZ\$), and the sales price, using an electronic template developed by the MOH to assist with sales monitoring by outlet and region. This information should be delivered no later than the 10<sup>th</sup> business day of the following month to the MoH. Scanner data should also be purchased and collated monthly by the Ministry of Health; the costs for this work should be included in the STR permit fees. Sales data should be verified by an independent data company and subject to regular audit at the retailer's expense.

The ability to provide robust and comprehensive sales data should be a criterion used to assess the suitability of applicants who seek to sell smoked tobacco products. The level of sales at STRs should be a factor used to assess permit renewal (i.e., once sales fall below a threshold level, the permit is rescinded).

Summary sales data should be collated and reported annually by the MoH or by an independent organisation. Systems for the collection, verification, analysis and reporting of sales data should be funded from STR and STP application fees.

**Systems to prevent sales to minors.** This provision should specify a minimum standard for these systems so the criterion can be assessed.

## **Delivery systems**

We do not believe that delivery systems are required (with the possible exception for online sales, see comments below). Sales from STRs should be required to be in person as delivery systems would risk undermining the intention of the Action Plan and Smokefree Act to restrict retail availability of STPs, and could allow a loophole for sales to minors as enforcement of minimum age at the time of delivery will be difficult.

We recommend that a restriction is introduced on the total amount of cigarettes/tobacco that can be purchased in a single transaction to minimise the risk of bulk purchasing being used to undermine the aim of restricting availability of STPs.

Do you have any other suggestions?

We have several suggestions that we believe could strengthen the regulations. We also offer suggestions about supply models that utilise non-commercial or health professional routes (further detail in appendix).

## **Compliance and monitoring**

We recommend increased funding (supported via revenue raised from permit fees and set out as part of the cost-recovery process) for the employment of additional SFEOs and strengthening of the monitoring and enforcement processes for STRs.

We strongly urge establishing a system for frequent monitoring of all STRs (i.e., site visits at least quarterly with frequent controlled purchase operations) to check compliance with policing underage sales and ongoing adherence to minimum requirements for security, training, and other business systems. As part of the monitoring system, we recommend establishing a mechanism that enables community members to register complaints about smoked tobacco retailers.

An appropriate process will be required for breaches of regulations identified by SFEOs or community members to be investigated and where proven penalties applied including fines and suspension or withdrawal temporarily or permanently of permission to sell STPs.

### **Store location**

We believe store location should be included as an additional minimum requirement for approval as well as a factor in determining which stores will be approved (see section 1c).

We believe no store permitted to sell smoked tobacco products should be located within a 1km radius of a school, early childhood centre, kōhanga reo, kura kaupapa or any other child-centred location, such as playgrounds and parks. Any exceptions to this requirement (e.g., in remote locations where application of the criteria would result in an absence of supply) should require the approval of the DGH. A modelling study found adoption of this approach would reduce tobacco retail outlets to an estimated 641 outlets nationally (with a 2 km limit it was estimated to be 260 outlets remaining). (Pearson et al. 2015)

This approach offers several advantages:

- It affords greater protection of young people. We note that young people report obtaining smoked tobacco from retail outlets. (Gendall et al. 2014)
- This measure recognises and responds to widespread public concerns that young people should be protected from addiction to tobacco (and other nicotine products). For example, in the 2020/21 ITC NZ survey of 1230 people who smoked or had recently quit 89% supported greater expenditure on media campaigns to reduce youth smoking and in the 2021 interim ITC NZ survey of 615 people who smoked or had recently quit 83% supported the policy to introduce a smokefree generation. (Edwards et al. 2021)
- Establishing proximity limits would follow international best practice from other jurisdictions.
- This measure would be straightforward to implement as the perimeter of school boundaries is set out on local government maps as is the perimeter of retail premises.

We recommend considering adding an additional proximity requirement that no store should be located within a specified distance of another STR (say 1km) to avoid clustering of STRs within localities and communities.

Click or tap here to enter text.

# Regulatory proposal 1c: Approval processes and decision-making criteria

This section focusses on the retail application process for smoked tobacco retailers. The Act requires that the Director-General determine and publish a process for applications. We are seeking feedback on 2 main parts: firstly, how the application process will be run, and secondly how we will compare applications against each other if there are too many applicants for an area.

Here you can tell us what you think is important to consider.

You can find more details on this proposal in the consultation document.

- Do you agree with the proposed application process?

- Yes
- No

We agree in principle with the proposed approach but believe the assessment process should include the following:

- All applications should be reviewed by a panel including Smokefree Enforcement Officers and others such as Police, Council and Iwi reps as appropriate. SFEOs should provide information about the applicant, including their complaints history, compliance breaches, infringements, and prosecutions so that this can be considered in ranking applications.
- No application should be approved before a formal site inspection has taken place to assess that the applicant and the premises meet the fit and proper person test and minimum requirements criteria outlined in sections 1a and 1b.
- As noted in response to Section 1a, we suggest adding:
  - no retailer should be approved located within 1km of sensitive sites, including schools, early childhood centres, kōhanga reo, kura kaupapa, playgrounds and other areas designated as sensitive by communities (e.g., community centres or marae); and
  - no smoked tobacco retailers should be approved in areas that currently do not have any tobacco retailers or additional to existing numbers of retailers.
- The assessment process should include provisions enabling community submissions and engagement with Iwi, which should be considered when determining which STRs are approved.
- In line with our recommendation to reduce the number of tobacco retailers progressively, the number of STR approvals should be reduced annually. A factor

that could be applied to decisions about which STRs to continue to approve as numbers of STRs are reduced could be STR sales volume (with lowest volume STRs not approved) or a lottery system could be introduced.

We generally agree with the proposed ranking criteria:

However, we believe that compliance history with underage sales and minimum distance from schools, playgrounds and other places of community significance (as noted above, we propose no stores within 1km of these sites) should be minimum requirements for approval as STRs rather than ranking criteria.

We also recommend adding additional ranking criteria to inform the STR applicant rankings to those proposed, e.g.,

- Proximity to schools/playgrounds and other place of community significance (above the minimum of at least 1km),
- Distance from other STRs (above the minimum of at least 1km),
- Community/lwi preference,
- SFEO advice,
- Additional business-related criteria (e.g., level of security, quality of sales data, degree of staff training over and above the minimum requirements),
- Store type (e.g., rank pharmacists above other retail types).

- Are there any aspects that need to be clearer?

In accordance with the Act's commitment to engage with Māori, we recommend the regulations clarify how this engagement will happen. We note the Crown's obligations as Te Tiriti partners, and their obligations as an FCTC signatory, to ensure that Māori are fully engaged in decisions regarding tobacco retailer applications.

We also suggest adding more information about how wider communities will be able to have input into the decision-making process about STR approval decisions.

We strongly recommend establishing a process for Māori and community input that explains how community concerns will influence decisions. In particular, communities/lwi could:

- Provide input about preferences between potential STRs being ranked (which have met the minimum requirements criteria),
- Provide input about places of community significance that should have a 1km protection radius,
- Be invited to register complaints about STRs using an online process the MOH would establish to ensure communities' interests continue to be considered once designated STRs have begun to operate.

We recommend that all aspects of the approval process are fully funded through the application fees; costs will include: time required from Ministry of Health staff, Te Whatu Ora staff and Smokefree Enforcement Officers to assess applications, engage with communities, undertake site inspections, perform controlled purchase operations, analyse sales data, and complete annual reviews to establish STRs for the following year. We note

the fees will also be required to cover any other tasks necessary to ensure a rigorous application review process.

As outlined above, we also believe the approvals process needs greater specification and suggest the following:

- An annual review process, which would make it clear to permit holders that the Ministry expects permit numbers to decline and eventually move to a minimal supply model with a restricted range of store types (see appendix);
- A provision enabling automatic revocation of a permit, should any non-compliance with the regulations be identified (either as a result of a complaint or via an enforcement check or compliance operation);
- A requirement that permit licences may not be transferred. For example, if a permit holder begins to operate from a different or an additional store, the permit cannot be extended to cover those premises. A permit cannot be passed on should a premise be sold; in these situations, the applicant must apply for a new permit.
- Clarity about any rights of appeal and appeal processes.

Click or tap here to enter text.

- If you have any changes or additions to the criteria we have proposed, please write them here.

We have outlined various suggested changes above.

- What do you think are the most and least important things to take into account when assessing an application?

We believe applicants' history of compliance with sales to minors is crucial. More generally, we recommend that all additional minimum criteria outlined above should be incorporated into the assessment process.

Of the ranking criteria outlined by the Ministry of Health, we suggest weighting these as follows:

1. Proximity and location e.g., in relation to schools, playgrounds etc and to other STRs
2. Business-related e.g., security, sales systems, supply chain and training (beyond minimum requirements)

We also suggest that community/Iwi and SFEO input should be added and given similar weighting to business-related factors, and finally that store type could also be considered.

Click or tap here to enter text.

## Additional retail questions

- Do you have any feedback on additional decision-making criteria and processes for selling smoked tobacco products online?

We do not support online sales, which we believe undermine the policy intent, namely to greatly reduce retail availability of STPs and specify a maximum number of retailers. We are particularly concerned that online sales could undermine the smokefree generation policy as current age verification processes (e.g., for vaping product sales) are risible and delivery checks are difficult to enforce, at best.

Should online sales be permitted, we strongly recommend that they should only be allowed following establishment of an effective age verification process for purchase and delivery; the Ministry of Health would have an obligation to review and approve the age verification process and involve appropriate experts in this assessment. This process could be modelled on the government "RealMe" software for example. All retailers must be required to use this age verification process prior to completion of sales and at the point of delivery.

The regulations should prohibit any contracting out of age verification at delivery (e.g., by passing the responsibility on to a delivery company). Failure to employ specified age verification procedures at the point of delivery should result in the permit to sell smoked tobacco products being revoked.

These restrictions should also apply to purchases of vaping products, which should not be permitted via on-demand delivery services such as Delivery Easy or Uber Eats. Use of buy now, pay later schemes, should also be prohibited for all smoked and vaping products.

Should online sales be permitted, same day deliveries should be prohibited to avoid inadvertent undermining of the policy intent, namely to restrict retail availability. We recommend that a restriction should also be introduced on the total purchase of cigarettes/tobacco allowed in a single transaction to minimise the risk of bulk purchasing being used to undermine the aim of restricting availability of STPs.

Should online sales be permitted, online retailers should only be permitted to deliver in the applicable geographical area for that retailer. This should be monitored/audited and any breach of this requirement should result in revocation of the permit to sell smoked tobacco products.

Click or tap here to enter text.

- Do you have any feedback on possible support for retailers who are no longer able to sell smoked tobacco products?

ASPIRE members held varied views on this question. Some view support for commercial businesses that have profited from tobacco sales as inappropriate, particularly given the prolonged time period retailers have had to adapt since the Smokefree 2025 goal was first announced in 2011. Also, given pressures on government funding arising from recent devastating weather events, allocation of substantial funding to support retailers seems low

priority. Others felt it is reasonable to provide some support to retailers facing making a transition away from selling STPs.

Early and unpublished results from work undertaken by ASPIRE researchers with a small number of retailers who operate within neighbourhoods experiencing higher deprivation (i.e., those for whom tobacco could account for a larger proportion of overall revenue) found little enthusiasm for stocking alternative products (e.g., food items, flowers, laundry service, EV station). Some retailers had attempted unsuccessfully to transition to alternative products.

Retailers' views on possible business support varied. Given many stores are operated by only a small number of staff, attending business advice seminars could be difficult, though pre-recorded online advice sessions could be more accessible. It is likely that the most useful assistance would be bespoke advice. However, implementing this measure would be very expensive and thus is unlikely to be financially or politically feasible.

On balance, given many stores envisage a substantial drop in revenue, establishing some basic level of advice and support seems reasonable. For example, an online resource with ideas for alternative product lines and suggestions to support movement away from smoked tobacco products could provide high level advice and be a reasonable compromise which ensures that retailers who want it will have access to some support delivered through a low cost and efficient mechanism which is more easily justifiable politically and economically. The development and maintenance of the online resource could be funded from the application fees for STRs,

Click or tap here to enter text.

# Regulatory proposal 2: Low nicotine requirements

From 1 April 2025 only low nicotine smoked tobacco products will be allowed in Aotearoa. This section focusses on the details of testing and product requirements, application processes as well as product packaging updates needed.

You can find more details on this proposal in the consultation document.

- Do you agree that a suitable testing method may include a method based on WHO SOP4, validated to account for the low nicotine levels prescribed?

Yes

No

We agree that a suitable, validated testing regime is required, and using the WHO SOP4 is a reasonable approach. However, we suggest that the final decision on which testing regime is adopted is taken after consultation with appropriate experts such as the WHO Study Group on Tobacco Product Regulation (TobReg) and the WHO Tobacco Laboratory Network (TobLabNet), and also with members of the Ministry of Health's Technical Advisory Group.

We suggest that the testing regime for nicotine levels in STPS and associated administrative processes and systems should be funded by STP manufacturers and distributors, and that these costs are included in the cost-recovery calculation when setting the fees for approval of STPs and for STP distributors (see below).

We note that the regulations specify a maximum level of nicotine of 0.8mg/g tobacco. However, there is no consultation question related to the selection of this maximum level. Hence, we are unsure of the rationale for choosing this nicotine concentration. The evidence from trials is clear that the greatest positive impacts (e.g., reducing numbers smoked, reduced dependence and encouraging quitting) from reducing nicotine in cigarettes and tobacco occurs when people are given cigarettes or tobacco with 0.4mg nicotine per gram tobacco. (Hatsukami, Xu, and Ferris Wayne 2022; Donny and White 2022; Donny et al. 2017)

We therefore believe the aim should be that immediately or over time (as soon as it is feasible) all STPs have a mean nicotine concentration of no more than 0.4mg/g tobacco.

We understand that the 0.8mg/g level may have been chosen as it allows for a small degree of variability in nicotine content in individual batches of product, and possibly because it is more compatible with a variety of approaches to reducing nicotine content in tobacco (extraction, selective breeding, genetic modification etc). We therefore think the regulations should be expanded to state a maximum mean concentration (say 0.5mg/gm) for any batch testing of individual STPs, and no individual product within a batch tested should exceed 0.8mg/g.

We also note there is limited detail given about how the testing regime will be implemented in practice. We believe the regulations should specify additional details (which could be agreed with the Technical Advisory Group). For example, we believe the approval criteria for STPs need to explicitly require that full compliance of the STP with the nicotine concentration standard will be documented through test results from a prescribed number of products and manufacturing batches.

It is important that, as well as testing products for initial approval, an ongoing testing process is also established to ensure that products (including those for sale to people who smoke) continue to meet the low nicotine standard. We suggest repeated annual testing completed by random product testing (e.g., products sampled through store purchases ) for compliance testing between annual assessments.

We also believe that the regulations should specify the consequences if maximum nicotine levels are exceeded. We suggest products that fail the initial approval, between test or repeat approval tests should have approval refused/withdrawn with re-application not allowed for a minimum period (e.g., one year) for a first episode and with permanent exclusion in the event of repeated non-compliance. If multiple products from the same company fail tests, there should be the facility for the DGH to exclude all of that company's products from approval for sale for a limited period (we suggest two years) or with repeated offences permanently.

Requirements specified in the section '*Other product safety requirements for smoked tobacco products*' indicate the allowed colour and smell of STPs, prohibit other constituents (e.g., synthetic nicotine analogues), and prohibit nicotine or nicotine-like substances in any other part of the cigarette other than the tobacco leaf or filler. However, the consultation document does not specify a testing regime to ensure compliance at the time of product approval or subsequently. We strongly recommend that the regulations set out a clear process for monitoring and ensuring compliance with these requirements.

Similarly, the proposed regulations document specifies that systems in place for other notifiable products are replicated for STPs. For example, investigation and resolution of complaints about products and product recall procedures. However, the consultation document does not provide details of how this process will be implemented. We suggest specifying these details, outlining procedures and standards, monitoring/reporting requirements, and setting out a process to check compliance.

As with the system for testing nicotine levels, the testing regimes for other product safety requirements and associated administrative processes and systems, including complaints and recall processes, should be funded by STP manufacturers and distributors. These costs should be included in the cost-recovery calculation when setting the fees for approval of STPs and for STP distributors (see below).

- Do you have any other suggestions for suitable chemical analytical methods?

No, we suggest that the final decision on analytical methods is taken after consultation with appropriate experts such as the WHO Study Group on Tobacco Product Regulation

(TobReg) and the WHO Tobacco Laboratory Network (TobLabNet), and also with members of the Ministry of Health's Technical Advisory Group.

- Do you agree with the proposal that the main packaging change should be to allow the words 'very low nicotine' on qualifying smoked tobacco products?
  - Yes
  - No

The Ministry of Health has proposed including the message: "Very low nicotine" (VLNCs) on smoked tobacco packaging. While this message would differentiate regular and VLNCs, it may risk fostering perceptions that VLNCs are less harmful than regular cigarettes. If people who smoke see VLNCs as less harmful, they may be less likely to quit, reduce their tobacco consumption or switch to less harmful alternatives. Similarly, non-smokers, particularly young people, may be more likely to start smoking VLNCs if they interpret reduced addictiveness as reduced harmfulness. Given many young people view smoking as a temporary behaviour they will stop when they choose, conflating reduced addictiveness with perceptions of reduced harm at the individual level could see smoking experimentation increase.

We have conducted research in Aotearoa New Zealand to investigate this issue. To explore perceptions of VLNCs, we conducted an as yet unpublished (and non-peer reviewed) on-line survey with 354 people who smoked daily, weekly, or less than weekly, 142 people who formerly smoked, and 214 people who had never smoked regularly. More than half of those who smoked regularly (56%), formerly smoked (60%) or who had never smoked regularly (54%) thought VLNCs were less harmful than regular cigarettes. However a large majority of all groups thought VLNCs still contained harmful chemicals and would still cause lung cancer and other diseases. Just over two thirds of all groups thought nicotine caused most of the smoking-related health problems. We also tested whether adding mitigating messages could reduce misperceptions about nicotine (no cigarettes are safe; all cigarettes kill; all cigarettes contain poisons, and all cigarettes cause cancer) and found this had minimal effect on perceptions of people who smoked regularly. Overall, our study suggests beliefs that VLNCs would be less harmful than regular cigarettes are widespread. Adding a "very low nicotine" label to denicotinised tobacco is likely to reinforce this misperception.

In addition, labelling tobacco products as 'very low nicotine' is arguably not necessary to differentiate VLNC products from regular nicotine content STPS as all STPs will be very low in nicotine content from April 1 2025.

In summary, we therefore do not agree with the proposal to add 'Very Low Nicotine' wording to cigarette packs and tobacco pouches.

However, we agree that information about the change and its rationale should be widely communicated as part of a wider campaign to increase the self-efficacy of people who smoke and advise them of the support available to those wanting to make a quit attempt.

With regards to on pack messaging, we believe it is essential to thoroughly review the research evidence to identify emerging best practice, as studies are currently underway and being reported. There may be alternative approaches that are better and which should be explored – for example, adding a more neutral statement to the effect that the cigarettes or tobacco comply with the NZ nicotine content standard might identify these products and inform users, but not imply reduced harm. This could be combined with an additional mitigating statement such as “*All Cigarettes Cause Cancer*” or “*All Cigarettes Contain Poisons*” to minimise the risk of conveying the message that VLNCs are reduced in harm. There are many other possible approaches that could be investigated.

Do you agree with the proposal to require an insert in smoked tobacco product packs?

- Yes  
 No

We strongly support this proposal.

As well as communicating information about VLNCs and providing information on cessation support, inserts can increase people’s self-efficacy in quitting. Efforts to increase efficacy draw on the Extended Parallel Process Model (EPPM), which posits that enhancing self-efficacy could increase the positive impact of pictorial warning labels .

Efforts to increase self-efficacy help people who smoke feel more confident they can make a successful quit attempt. Enhancing self-efficacy is particularly important, given many people who smoke have tried unsuccessfully to quit. Self-efficacy messaging may also encourage people who smoke to see past quit attempts as learning opportunities, reduce stress due to concerns about inability to quit, and foster confidence in quitting. Inserts provide an opportunity to communicate practical tips that can help people navigate triggers or other barriers they have previously experienced. Efficacy messaging can also enhance response efficacy, or people’s expectation a proposed action (such as quitting) will reduce risks they face and bring benefits. These benefits may include better health and a longer life, but may also include other non-health benefits, such as continuing to play important roles within a whānau, providing for tamariki, and continuing whakapapa.

To date, Canada is the only country to require within pack inserts; studies from Canada indicate that using inserts to provide information on quitting and enhance efficacy is effective and complements PWLs. (Thrasher et al. 2015; Thrasher et al. 2016)

Observational studies of Canadians who smoke have found that people who read inserts were subsequently more likely to show increased self-efficacy to quit and make a quit attempt, and were more likely to make a quit attempt lasting for at least a month. For example, in a longitudinal study of Canadians who smoked, between 26% and 31% of respondents in each study wave reported having read a pack insert at least once in the preceding month. These people were more likely to be younger, female, have higher income, intend to quit, have recently tried to quit, and have thought more frequently about health risks because of warning labels. Analyses that adjusted for these variables and other

potential confounders found respondents who read the inserts a few times or more in the past month were more likely than people who had not read the inserts to have made a quit attempt at the subsequent wave. (Thrasher et al. 2015)

NZ research examining efficacy messaging in Roll Your Own (RYO) tobacco pouches found that placing gain-framed response-efficacy messages on the inside flap of the pouches could elicit emotional responses, beliefs and projected behaviours associated with future quit attempts more effectively than the current Quitline information. People most likely to benefit from these messages included people who had high baseline response efficacy and who intended to make a quit attempt. (Blank, Hoek, and Gendall 2021)

Qualitative work we are currently undertaking with people who smoke RYO cigarettes has found strong support for efficacy messaging on RYO pouches (and on tobacco packaging more generally). In-depth interview participants in this work have found they expressed a strong desire to see more supportive and positively framed messaging. This study has also probed the effectiveness of existing PWLs, which have suffered from wear-out and require more frequent refreshment.

We therefore strongly support the proposed regulation to require pack inserts in cigarette packs and suggest this is strengthened to require similar content is placed on RYO tobacco pouches. We also suggest that the rotation frequency of on-pack warning labels and suggest closely monitoring the Australian process, currently underway.

If you have any additional feedback on smoked tobacco packaging, please comment here.

Click or tap here to enter text.

Do you agree with the product application requirements?

- Yes  
 No

If you have further comments on product application requirements, please write them here.

We broadly agree with the product application requirements. However, as noted above, we believe that more detail should be provided specifying minimum requirements for the testing of nicotine content and other constituents e.g., full compliance of the STP with the nicotine concentration and any other product standards is documented through test results from a proscribed minimum number of products and manufacturing batches.

Click or tap here to enter text.

• Do you agree with the proposed requirements for temporary approvals?

- Yes

No

Yes for research and testing purposes, no for niche products.

If you have any comments on the proposed requirements for temporary approvals, please write them here.

We agree that exceptions for research and testing purposes should be allowed as set out. However, we think additional detail should be provided about the nature of research and testing that would allow exceptions. For example, the regulations could specify that exemptions would be allowed for research and testing conducted by an academic institution for non-commercial purposes, or, if by industry, only for purposes of compliance (for example, importing reference cigarettes for testing). If industry testing is permitted, a regime would be required for limiting how much comes in and how it is tracked and labelled so no leakage occurs (with penalties for non-compliance).

However, we are not clear what 'niche products' would include and why this exemption is needed as it seems to create potential loopholes for the tobacco industry to market STPs that do not have minimal levels of nicotine, which could undermine the impact of mandated denicotinisation. We note that the proposals state evidence would be required to establish that a product is a niche product and not one with mass appeal. However, the Regulations Proposal document does not define a niche product (or how such a product would be assessed). Nor does the Regulations Proposal document outline the process to be used to demonstrate conclusively that a product does not have mass appeal. The danger of a 'niche' STP product having mass appeal when it has much higher levels of nicotine than other STPs which are denicotinised seems inherently high. Given these potentially serious problems, we do not think exemptions for niche products should be permitted.

## Regulatory proposal 3: Fees

This section focusses on fees for applications, registrations and product approvals.

You can find more details on this proposal in the consultation document.

- Do you agree that Manatū Hauora should charge for these processes?

Yes

No

Yes, we strongly agree there should be a fee for each of these processes.

What processes do you suggest we charge for?

Click or tap here to enter text.

- Do you agree with the level of each of the fees?

- Yes
- No

If not, how much do you suggest we charge?

**Fee for approved STR application** – we suggest this should be set at a level that reflects full cost recovery, i.e., covers not only the application process costs but also monitoring and compliance testing, funding for legal advice and support in the event of legal challenges, etc. We suggest these costs should also cover other implementation costs such as the development of an online resource to support retailers to transition away from selling STPs. Including these costs is likely to require fees to be set at a higher level than the proposed range.

**Fee for STP application** – again this fee should reflect full cost-recovery and cover not only the application process but also monitoring and compliance testing, legal support etc. We believe the cost-recovery assessment should also include costs of environmental impacts (e.g., clean-up costs for littered butts/packaging) on a ‘polluter pays’ principle. We suggest that these costs should be levied on the manufacturers of STPs.

**Fees for temporary approvals** – we believe the fees for products that are intended for research purposes by non-industry funded/associated research should be kept low (just the application process costs covered) so as not to discourage legitimate research. We do not agree with an exception for niche products (see comments above) but if this option is retained, the application should be on a full cost recovery basis as for approved STR and permitted STP applications.

**Registration fees for smoked tobacco distributors, general vape retailers, and retailers of other notifiable products.** We are concerned that this fee is set far too low, particularly for registration of STP distributors. A low fee implies that registration is a ‘tick-box’ exercise with minimal requirements or subsequent scrutiny, and may not represent a full cost-recovery fee.

For example, we believe the registration process for STP distributors should involve scrutiny of compliance with rigorous and detailed criteria, and there should be requirements for approval for re-registration at intervals no longer than every two years. Criteria/requirements for approval should be specified e.g., to provide detailed data annually using MoH templates with pre-specified fields on: (i) amount, nature and source of products imported, stored and distributed, (ii) product prices, (iii) destination/volume of products distributed, and (iv) evidence of compliance with appropriate regulations.

The fee should cover appropriate assessment and monitoring/compliance processes and could also incorporate a levy to cover environmental costs (as per fees for individual products, see above) e.g., for littered product and packaging clean-up costs.

We therefore believe the cost-recovery based fee should be set much higher than \$80 for STP distributors.

Click or tap here to enter text.

- Do you agree with our cost recovery approach?

Yes

No

If not, what approach do you suggest we use?

See above, We agree with the principle of a cost-recovery approach, but cost-recovery should be comprehensive and cover all aspects of registration/approval processes including monitoring and compliance costs, funding for legal support (vs legal challenges), and a levy to cover additional societal costs (such as environmental impacts).

Click or tap here to enter text.

# Regulatory proposal 4: Notification requirements

This section is about the process for distributors of smoked tobacco products and retailers of notifiable products to tell the Director-General about their business.

You can find more details on this proposal in the consultation document.

- Do you agree with the proposal that distributors and general retailers be required to re-register annually?

Yes, but as noted above the process followed needs to be more than a perfunctory exercise. Registration should also be for a limited period of time (we recommend no longer than a two yearly interval) with a requirement for re-registration/approval for distributors and retailers. Re-registration should assess compliance with all requirements during the current registration period and review whether criteria for registration approval are still met.

- Yes  
 No

If you have any further comments (including how frequently registration should be required) please write them here.

Click or tap here to enter text.

## Regulatory proposal 5: Youth vaping

Youth vaping rates are currently increasing. We propose extending vaping packaging and product restrictions to further improve product safety and reduce the appeal of these products to young people, specifically through restricting flavour names and introducing product safety requirements for single use vaping products.

You can find more details on this proposal in the consultation document.

- Do you agree with the proposal to restrict the flavour names of vaping products to minimise their appeal to youth?

We strongly support measures that will address rising youth vaping rates and are particularly alarmed by high vaping rates among rangatahi Māori. We do not believe any of the measures in the Regulations Proposals will make a substantive impact on rising youth vaping rates and consider that new legislation is required to address availability and addictiveness of vaping products for young people. We outline our rationale for not supporting the proposed flavour restrictions in this section and detail additional measures we believe are required in the following sections.

The egregious practice of labelling e-liquids flavours with names such as 'unicorn milk' and 'gummy bear' are clearly targeted to appeal to young people. Therefore, we support measures preventing use of such names. However, even with these provisions in place, a varied range of vaping flavours and descriptors that appeal to young people could continue to be sold. For example, studies have found menthol type and fruit flavoured vapes are particularly appealing to young people. (Groom et al. 2020). Therefore, although we strongly support introducing requirements for regulating flavour names, we believe the proposed limited restrictions based on the flavour wheel are inadequate and would allow a large number of flavour names (and flavours) that continue to appeal to youth.

We understand vaping flavours provide people who smoke and who have not been able to quit smoking using other methods with an appealing less harmful source of nicotine. The number of flavours permitted should be the minimum number required to achieve this purpose.

In addition to introducing a maximum number of vaping flavours that could be sold we also believe implementing more neutral descriptors could be explored, and recommend further work to investigate possible approaches. For example, this could include examining the use of numbering to designate flavours as a more neutral alternative to adjectival descriptors.

- Yes  
 No

If not, why not? If you agree, which names do you think should be excluded or replaced on the example e-liquid flavour wheel set out in the consultation document?

Click or tap here to enter text.

- Do you agree with the proposal to extend product safety requirements for disposable vaping products?

Yes

No

While we agree the proposed requirements would make disposable vapes safer and slightly less addictive, we do not support these proposals as we believe disposable vapes are inherently undesirable products for at least three reasons. As such, we strongly recommend that disposable vapes should no longer be allowed to be sold.

First, these products are primarily targeted at youth and young people to encourage vaping uptake. We agree with Minister Verrall, who noted that disposables are an “easy gateway product to vaping” among young people. A high and disproportionate number of disposable vape users in multiple settings are young people. There have been growing calls for such measures in other jurisdictions (e.g., the UK) where youth vaping and use of disposable vaping products has rapidly increased in the last one to two years.

Second, disposable vapes are poorly suited to supporting people who smoke to quit smoking and switch to vaping. People who smoke and wish to transition to vaping will require devices that operate for weeks or months; disposable vapes last only for days and so offer low utility as devices that support transitions from smoking to vaping. Removing disposable products from the market would protect young people and be unlikely to deter switching among people who smoke.

Finally, these products are highly unsustainable and environmentally damaging. Disallowing disposable vaping products would recognise the threat these products pose to the environment when discarded. Disposable vaping devices are non-recyclable and result in considerable littering; ending sale of these products is thus also justifiable on environmental protection grounds. Sustainability concerns have led some UK supermarkets to withdraw these products voluntarily, see: <https://www.thegrocer.co.uk/waitrose/waitrose-withdraws-from-disposable-vape-market-citing-environmental-concerns/674993.article>

Other jurisdictions, e.g., Scotland, are considering a ban on environmental protection grounds: <https://www.bbc.com/news/uk-scotland-64336216> .

- If you have further comments on the proposal to extend product safety requirements for disposable vaping products, please write them here.

None to add to the above.

- Do you agree with the proposal to restrict where Specialist Vape Retailers can be located?

- Yes
- No

If you have any further comments on where Specialist Vape Retailers are located (including any particular locations that are important to you), please write them here.

Click or tap here to enter text.

We believe reducing young people’s access to vaping products is critical to reduce youth uptake of vaping and we strongly support any proposal that would achieve this outcome.

We support in principle proposals to apply proximity restrictions to new specialist vape retailer applications by considering the store’s *“location relative to the distance from schools and sports grounds or other considerations specific to certain communities”*. This measure could help prevent further growth in numbers of SVRs located close to schools, including the recent *“store-within-a-store”* tactic practised by some dairies.

However, overall we cannot support the proposals as we believe they are wholly inadequate to restrict youth access to vaping products. We note with concern that existing SVRs will not be covered by the proposed schools proximity measure. In addition, current generic vape stores will continue to be allowed to operate near schools and new generic vaping retailers will still be allowed, even if they are in close proximity to schools. As well as considering the growth of specialist vape retailers, the Government needs to consider total vape store numbers and introduce measures that will effectively reduce the accessibility of vaping products to young people (which the recent rapid growth in youth vaping suggests is far too high).

In addition, we are concerned that the proposed measures only address outlet proximity; they do not consider the problem of retailer density that in 2022 led Local Government NZ members to pass a remit calling for a reduction in vape store numbers.

We therefore strongly believe that additional restrictions on availability are required. These are likely to require further legislation.

We urge that these additional restrictions should include disallowing sale of vaping products by generic stores. This measure is highly justifiable as the large numbers of SVRs mean the vast majority of people who smoke now have easy access to these products. This measure will restrict sale of vaping products to stand-alone R18 specialist stores, and hence reduce youth exposure to and access to vaping products.

Removing vaping products from dairies, supermarkets and service stations and allowing sales only in R18 SVRs would achieve several important benefits. First, it would recognise vaping products are not low-involvement, low-risk consumer products, and end the implicit framing of vaping products as everyday products.

Second, transferring vaping product sales exclusively to SVRs would encourage people who smoke to visit these outlets, where staff are typically knowledgeable about the products sold. To enhance retailers’ knowledge, new regulations could also require all specialist retailers to have basic training in smoking cessation methods and knowledge of referral

pathways (e.g., Stop Smoking Services or the Quitline). This proposal would acknowledge that people who smoke need support and advice to transition away from smoking. For example, they may need help to identify an appropriate device, flavour(s), nicotine level(s), and practices to successfully transition to vaping. NZ research has found that dairy owners selling vaping products often had poor knowledge of the products they sold and sometimes gave incorrect advice. (Bateman et al. 2020) The mere availability of vaping products does not in itself support the sometimes complex transition from smoking to vaping; this switch is better supported by knowledgeable staff at SVRs, many of whom have made similar transitions themselves.

Third, it would greatly reduce young people's exposure to vaping products, which would no longer be displayed behind cash registers at generic retailers like dairies (which young people frequently visit) in 'powerwalls' reminiscent of former smoked tobacco product displays. It would also likely greatly restrict the ability of adolescents to purchase vaping products. A recent survey of secondary school students reported that a large proportion (50%) of underage young people who vape obtained vaping products from dairies. (Harding et al. 2022)

We also support amending legislation to enable greater control over the location of existing SVRs, thus restrictions on proximity to schools and playgrounds would apply to all SVRs not just new stores. Restrictions on opening hours could further protect young people as late opening times appear likely to facilitate access for young people rather than for people who smoke and who are trying to quit or switch. However, this point requires research to establish if this is the case.

We also suggest that, as for STRs, the Ministry of Health should implement an SVR approvals process that includes a mechanism to engage with communities/Iwi and SFEOs about the location of SVRs and ensure community members' and SFEOs' views are considered when approving SVRs.

Although reducing overall store numbers is crucial to controlling young people's access to vaping products, the consultation document notes that restricting generic retail outlet numbers will require a legislative amendment. Omissions from the initial vaping Act and the most recent Act have limited the Government's ability to manage overall store numbers. We urge the Government to introduce legislation that provides for greater control over total vape store numbers.

### **Other suggested regulatory changes**

The proposed regulatory changes do not address several other aspects of the regulation of vaping products. We believe that these also need to be addressed in order to reduce youth vaping prevalence.

#### **1. Better regulation of social media and point of sale promotions.**

At present, all stores may feature vaping product displays and vaping power-walls have replaced the smoking power-walls associated with youth smoking experimentation. Young people walking within a CBD are exposed to alluring window displays that function as product advertisements. Social media promotions include free offers, lifestyle marketing that positions vaping as a social connector, and competitions all visible to anyone willing to click a link to indicate they are aged over 18 years.

We suggest the Government disallow in-store promotions such as point-of-sale displays in generic retail outlets (if these are permitted to continue selling vaping products), require all stores to ensure that vaping products are not visible from the street, introduce and enforce robust age verification procedures for online and in-person sales (see suggestions in earlier sections), disallow sales promotions (e.g., 'buy one get one free' and referral promotions), and apply pre-vetting procedures to social media promotions to ensure these comply with the new regulations.

## **2. Plain packaging**

We also recommend introducing mandatory plain packaging of all vaping products. Plain packaging in this context would be simple black and white packaging, not dissuasive packaging, which would remain reserved for combusted tobacco products. This measure would remove the colourful designs likely to appeal to young people, thus closing the loophole allowing marketers to recreate flavour connotations using on-pack imagery. There is preliminary evidence emerging that plain packaged vaping products reduce their appeal to youth but not older adults who smoke. (Taylor et al. 2023)

## **3. Nicotine salt concentration reduction**

We support the principle of reducing the nicotine salt concentration, but believe this measure should apply to all nicotine salt devices (not simply disposables, as proposed). The 35mg/ml nicotine limit proposed for disposables is higher than that allowed by other jurisdictions (e.g., the 20mg/ml permitted in the EU), and we are uncertain of the evidence underlying this choice. We strongly recommend that a maximum level is set at a level empirically shown to be significantly less addictive to young people.

## **4. Compliance and enforcement**

Evidence of underage sales, and findings that more than 50% of young people reported buying vaping products from dairies, indicate funding is needed to resource enforcement officers and ensure they can monitor compliance and undertake more frequent store surveillance operations. Stronger penalties for stores found to have sold to minors are also required; these could include prohibitions on offenders' ability to sell vaping products, including the possibility of long-term bans on selling for recidivist offenders. In tight financial times we recognise the challenge of allocating more funding and note that removing vaping products from generic stores would greatly reduce store numbers, thus enabling more detailed and cost-effective store surveillance.

Another aspect of compliance monitoring required is nicotine levels of products. We believe a monitoring programme should be instituted to undertake routine testing of e-liquid nicotine content, particularly given recent evidence that some products sold in NZ have exceeded their stated content. This monitoring is important not only because of concerns products with higher than permitted nicotine content are offered for sale but also because a recent review found that a large percentage of e-liquid samples analysed across 20 studies deviated by 10% from the labelled nicotine concentration. (Miller et al. 2021)

## **5. Minimum price/excise tax**

The proposals do not include measures to introduce minimum prices or an excise tax on vaping products shown to differentially appeal to young people. While it is important not to create barriers that could deter people who smoke from switching to vaping, the Government should consider minimum prices or excise taxes if the ongoing monitoring and evaluation described below demonstrates that youth vaping does not decline rapidly. Such

price signals should be set at levels that maintain a positive price differential for vaping compared to smoking cigarettes or tobacco.

#### **6. Monitoring and evaluation**

Finally, we urge the Government to monitor and evaluate the impact tighter regulation of vaping products and store locations have on youth vaping prevalence (and use of vaping products to support quitting smoking). Detailed monitoring will require relevant surveillance information, including studies examining reasons why people use vaping products, their perceptions of these, usage practices (e.g., devices and flavours used), and sources. If monitoring shows that youth vaping prevalence either does not decline or remains disproportionately high among some population groups, the regulatory approach should be reviewed.

## Appendix Possible options for second stage of reduced supply

While we understand that the Ministry of Health is considering how existing stores could meet the approval criteria for STR outlets, we believe other approaches also merit consideration, probably as a stage 2 option. The STRs in the second stage could be restricted to one or more of the following store types.

### 1. Pharmacy-only supply

There are approximately 900 pharmacies within Aotearoa New Zealand; An NZ modelling study found pharmacy-supply that included cessation advice could increase reductions in smoking prevalence. (Petrovic-van der Deen et al. 2019) A survey of pharmacists explored the feasibility of pharmacy supply. We recommend further exploration of a pharmacy-only supply model once the number of outlets falls below 100. (Petrovic-van der Deen and Wilson 2018)

We have conducted recent work with pharmacists to explore the possibility that they would supply tobacco. Our preliminary findings probed this idea with 17 community pharmacists working in predominantly higher deprivation areas within Dunedin city. While some pharmacists opposed supplying a product they knew caused harm, others were more open to this idea if supply focussed was accompanied by enhanced cessation support, utilised their skills as health professionals, and was clearly differentiated from a commercial tobacco transaction model. (Hoek and Muthumala March 1-4, 2023)

Additional benefits of a pharmacy-supply model include an overall reduction in retailer numbers, more limited opening hours, stronger stringent adherence to regulations, and providing people who smoke new opportunities to access health-care services and cessation support. Furthermore, pharmacies have greater density in high deprivation areas; because smoking prevalence is higher among people living in more deprived neighbourhoods, supply via pharmacies could provide greater access to cessation support and may thus help reduce disparities in smoking prevalence. Other possible advantages include (Edwards et al.):

- A pharmacy-supply model would provide additional protection to young people as pharmacies are less likely to sell tobacco to minors than other retail outlets (i.e., health professionals running pharmacies would be less likely to breach regulations due to their strong professional ethics and would have a strong incentive to comply with regulations because of the reputational damage that a breach would cause).
- Pharmacies can provide access to alternative nicotine (of pharmaceutical grade) to people who smoke and could be required to have appropriate training (many already do) and provide smoking cessation advice with each tobacco purchase.
- Pharmacies typically have good levels of security, given they also hold prescription medicines.

There are some possible disadvantages/challenges

- Some pharmacists believe supplying tobacco products is not consistent with their Code of Ethics and would not be willing to support this approach.

- There are some logistical questions (e.g., storage, facilities for consultation, staff training) that would need to be addressed as not all pharmacies may have the space to allow product storage or have sufficient space to offer sufficient private consultation facilities. Furthermore, because pharmacists would view this role as part of their professional service, resourcing for staff time would be required.

## 2. R18 specialist store only sales

Some Scandinavian countries have established government-run stores that are the only outlets permitted to sell alcohol. For example, the Norwegian law allows only Vinmonopolet stores to sell alcohol products that exceed 4.75% abv. Vinmonopolet stores are wholly state owned and aim to remove the commercial motives that underpin typical for-profit retail operations. More information on this system is available here:

<https://www.vinmonopolet.no/social-responsibility>. Similar restrictions on sale of alcohol are in place in Sweden and Ontario in Canada.

Similar government run not-for-profit stores could be established to sell STPs during the second stage once outlet numbers are at 100 or less. Possible advantages of this approach include:

- Stores could be R18 with ID checks on entry, thus enabling more effective control over sales to minors. This approach would also support introduction of the smokefree generation policy in due course.
- Because stores would be government owned, it would be easier to introduce requirements that staff receive smoking cessation training and provide cessation advice to all people purchasing tobacco. This requirement could facilitate the introduction of very low nicotine cigarettes (VLNCs) and ensure people who purchase tobacco products receive advice and referral information about the support available to them once the denicotinisation policy is fully implemented.
- The stores could have a common design, thus enabling enhanced security arrangements such as external bollards, to prevent ram raids, and designated internal security systems.
- Tobacco tax revenue could be used to develop and operate these stores.
- Because the stores would be state-owned, they would not aim to maximise profit; furthermore, state ownership would remove tobacco companies' ability to mobilise store owners to oppose smokefree policy measures (e.g., <https://www.nzherald.co.nz/nz/politics/revealed-big-tobacco-behind-dairy-owners-postcard-protest-at-parliament/LH6HUI76LHLKGOHX26PCTLNMCE/>).
- Because these stores would only sell smoked tobacco products, they would not compete with other retail outlets, particularly small dairies.
- This system could also be extended to encompass sale of vaping products, an approach that could help reduce rising youth vaping prevalence.

### Possible challenges

- NZ does not have a tradition of government-owned stores so this approach would represent a departure from current approaches. Nonetheless, it would follow

international precedents for alcohol products, could be funded via taxes on tobacco products, and would enhance implementation of other policies (e.g., mandated denicotinisation and Smokefree Generation).

### **3. Supermarket-only sales:**

Another possible approach is to limit sales to supermarkets. This approach has the following possible advantages.

- Restricting tobacco sales to only supermarkets would simplify the system; if supermarket numbers exceeded the allocation for a particular area, another criterion e.g., a school distance limit could be used to determine outlet allocation.
- Restricting tobacco sales to only supermarkets may help reduce sales to young people, given that supermarkets are more likely to be law-abiding with regard to sales to minors than other outlets (i.e., supermarket chains have more reputational concerns than sole-operator dairies).
- Restricting tobacco sales to only supermarkets could enhance overall store security. Supermarkets are less vulnerable to ram raids and other robberies than are dairies; if only supermarkets sold tobacco, ram raid crimes could decrease; in turn, the distribution of lower-priced stolen tobacco within the community would also decrease

This approach also has some possible disadvantages/challenges

- Supermarkets can be clustered (e.g., in CBD areas) a process would be required to prevent that (i.e., not every supermarket will get a permit)
- Dairies/convenience stores might argue a supermarket only allocation is unfair and undermines them commercially, although that is less likely to be a major issue if this strategy is implemented as a stage 2 option, when the STP market and the number of STRs has been minimised.

## References

- Bateman, J., L. Robertson, L. Marsh, L. Thornley, and J. Hoek. 2020. 'New Zealand tobacco retailers' understandings of and attitudes towards selling Electronic Nicotine Delivery Systems: a qualitative exploration', *Tobacco Control*, 29(e1): e25-e30.
- Blank, Mei-Ling, Janet Hoek, and Philip Gendall. 2021. 'Roll-your-own smokers' reactions to cessation-efficacy messaging integrated into tobacco packaging design: a sequential mixed-methods study', *Tobacco Control*, 30: 405-12.
- Donny, E. C., N. Walker, D. Hatsukami, and C. Bullen. 2017. 'Reducing the nicotine content of combusted tobacco products sold in New Zealand', *Tobacco Control*: e37-e42.
- Donny, E. C., and C. M. White. 2022. 'A review of the evidence on cigarettes with reduced addictiveness potential', *Int J Drug Policy*, 99: 103436.
- Edwards, R., E. Johnson, J. Hoek, A. Waa, E-S. Tautolo, J. Ball, and J. Stanley. The Smokefree 2025 Action Plan: key findings from the ITC New Zealand (EASE) project. *Public health Expert July 5 2021*. Wellington: University of Otago.
- Edwards, R., L. Marsh, L. Robertson, F.S. Petrović-van der Deen, N. Wilson, and J. Hoek. 'A Smokefree Aotearoa – could making tobacco products available only through community pharmacies help us get there?', *Public health Expert*, August 12 2021. Wellington: University of Otago.
- Gendall, Philip, Janet Hoek, Louise Marsh, Richard Edwards, and Benjamin Healey. 2014. 'Youth tobacco access: trends and policy implications', *BMJ Open*, 4: e004631.
- Groom, Allison L., Thanh-Huyen T. Vu, Anshula Kesh, Joy L. Hart, Kandi L. Walker, Aida L. Giachello, Clara G. Sears, Lindsay K. Tompkins, Delvon T. Mattingly, Robyn L. Landry, Rose Marie Robertson, and Thomas J. Payne. 2020. 'Correlates of youth vaping flavor preferences', *Preventive Medicine Reports*, 18: 101094.
- Harding, L., S. Harding, P. Larsen, and P. Pattemore. 2022. *A 2021 report into youth vaping: The ARFNZ/SPANZ vaping in NZ youth survey*. Asthma and Respiratory Foundation of New Zealand: Wellington.
- Hatsukami, D. K., D. Xu, and G. Ferris Wayne. 2022. 'Regulatory Approaches and Implementation of Minimally Addictive Combusted Products', *Nicotine and Tobacco Research*, 24: 453-62.
- Hoek, J., and C. Muthumala. Introducing a pharmacy-supply model for tobacco: a qualitative analysis of pharmacists' perspectives. *SRNT Conference March 1-4, 2023, San Antonio, Texas*.
- Miller, Donald R, Kelly Buettner-Schmidt, Megan Orr, Katelyn Rykal, and Elizabeth Niewojna. 2021. 'A systematic review of refillable e-liquid nicotine content accuracy', *Journal of the American Pharmacists Association*, 61: 20-26.
- Pearson, A. L., F. S. van der Deen, N. Wilson, L. Cobiac, and T. Blakely. 2015. 'Theoretical impacts of a range of major tobacco retail outlet reduction interventions: modelling results in a country with a smoke-free nation goal', *Tobacco Control*, 24: e32-8.
- Petrovic-van der Deen, F. S., T. Blakely, G. Kvizhinadze, C. L. Cleghorn, L. J. Cobiac, and N. Wilson. 2019. 'Restricting tobacco sales to only pharmacies combined with cessation advice: a modelling study of the future smoking prevalence, health and cost impacts', *Tobacco Control*, 28: 643-50.
- Petrovic-van der Deen, F. S., and N. Wilson. 2018. 'Restricting tobacco sales to only pharmacies as an endgame strategy: are pharmacies likely to opt in?', *Australian and New Zealand Journal of Public Health*, 42: 219-20.
- Taylor, Eve, Deborah Arnott, Hazel Cheeseman, David Hammond, Jessica L. Reid, Ann McNeill, Pete Driezen, and Katherine East. 2023. 'Association of Fully Branded and Standardized e-Cigarette Packaging With Interest in Trying Products Among Youths and Adults in Great Britain', *JAMA Network Open*, 6: e231799-e99.
- Thrasher, James F, Amira Osman, Erika N Abad-Vivero, David Hammond, Maansi Bansal-Travers, K Michael Cummings, James W Hardin, and Crawford Moodie. 2015. 'The use of

cigarette package inserts to supplement pictorial health warnings: an evaluation of the Canadian policy', *Nicotine & Tobacco Research*, 17: 870-75.

Thrasher, James F, Kamala Swayampakala, K Michael Cummings, David Hammond, Dien Anshari, Dean M Krugman, and James W Hardin. 2016. 'Cigarette package inserts can promote efficacy beliefs and sustained smoking cessation attempts: a longitudinal assessment of an innovative policy in Canada', *Preventive Medicine*, 88: 59-65.