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**AT THE HEART  
OF THE MATTER,  
NZ DRUG  
FOUNDATION.**  
Te Tūāpapa Tarukino o Aotearoa

## **New Zealand Drug Foundation submission on the Smokefree Environments and Regulated Products (Vaping) Amendment Bill**

Submitted to the Health Select Committee on April 1<sup>st</sup> 2020

## Tēnā koe

While smoking rates in New Zealand have been decreasing since the 1980s, current projections show us failing to reach the goals of Smokefree 2025. Māori, in particular, will miss the goal by a very wide margin. Vaping products have incredible potential to help more smokers quit, but it's crucial they are properly regulated.

Overall, we support the Amendment Bill, which represents a positive step forward in our smokefree legislation. In drafting this submission, we consulted with key stakeholder in New Zealand tobacco control, including Hapai te Hauora and the Cancer Society National Office.

Our submission is structured to address the three key aims of the Bill:

- **PART ONE** Reducing the exposure of non-smokers and young people to regulated products, and preventing the normalisation of vaping
- **PART TWO** Regulating the advertising, promotion, sale and distribution of regulated products
- **PART THREE** Regulating the safety of regulated products and monitoring harmful constituents

Thank you for considering our submission. We also request the opportunity to make an oral submission.

Ngā mihi,



Ross Bell  
Executive Director

The Drug Foundation is a charitable trust. We have been at the forefront of major alcohol and other drug debates for more than 30 years, promoting healthy approaches to alcohol and other drugs for all New Zealanders.

## **PART ONE – Reducing the exposure of non-smokers and young people to regulated products and preventing the normalisation of vaping**

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1. The Amendment Bill proposes to extend the prohibitions against using tobacco products in legislated smokefree areas to all other regulated products.<sup>1</sup> Specialist vaping retailers, as approved by the Director General of Health, will be exempt from these requirements.
2. We support the prohibition of vaping in legislated smokefree areas. However, we argue there should be exceptions for some R18 workplaces, such as bars and prisons.

### **We support banning the use of regulated products in legislated smokefree areas**

3. Unlike second hand-smoking, there is currently no evidence that second-hand vaping causes any harm to the health of bystanders.<sup>2</sup> However, many non-vapers find vapour clouds and smells to be a nuisance. People who don't vape should be free from vaping in their workplaces.
4. Tobacco control efforts in New Zealand and globally, including advertising prohibitions and smokefree workplaces, have successfully de-normalised smoking in our society. This is likely to have contributed to the decrease in smoking rates in New Zealand, from 33% in 1983, to 14% in 2017/18.<sup>3</sup>
5. While vaping products are estimated to be 95% less harmful than tobacco cigarettes, they are not harm free. Because of this, it's crucial that we do not 'normalise' their use and make products popular with non-smokers and young people.

### **We support the exemption of specialist vape stores from legislated smokefree environments areas**

6. Many smokers in New Zealand try vaping products but don't go on to regular use.<sup>4</sup> This is likely because they don't get good support about how best to use

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<sup>1</sup> Regulated products are defined as tobacco products, vaping products, or herbal smoking products.

<sup>2</sup> <https://vapingfacts.health.nz/the-facts-of-vaping/risks-of-vaping/>

<sup>3</sup> [https://tcdata.org.nz/Misc%20data/Misc\\_01.html](https://tcdata.org.nz/Misc%20data/Misc_01.html) and 2018/19 New Zealand Health Survey

<sup>4</sup> Oakly A, Edwards R, & Martin G. (2019). Prevalence of e-cigarette use from a nationally representative sample in New Zealand. *Addictive Behaviors*, 98, 106024.

the devices, which can be complicated to use. To help people stop smoking, it's crucial they have access to knowledgeable vape specialists who can show them how to use the devices properly.

**We think exemptions should also apply to certain R18 workplaces, including bars and prisons.**

*Bars should be exempt from legislated smokefree areas*

7. Vaping devices do a better job at mimicking traditional tobacco cigarettes than traditional nicotine replacement therapy (NRT). They mimic the hand to mouth action from traditional cigarettes and provide a hit to the back of the throat. This may explain why they are twice as effective at helping people stop smoking than NRT.<sup>5</sup>
8. However, they are not a complete substitution for traditional cigarettes and are not viewed by smokers as being as satisfying.<sup>6</sup> While the medium-term effects of switching from smoking to vaping include benefits such as reduced cough and an improved sense of smell, people tend to make decisions based on their immediate consequences. Unfortunately, the short-term benefits of smoking often outweigh the medium- and long-term benefits of switching to vaping.
9. One way to make vaping devices a more attractive option than cigarettes, could be to allow vaping in places where smoking is prohibited, including bars.
10. Drinking is a big driver of social smoking behaviour. In bars, smokers need to go outside to smoke, which removes them from their social group. Allowing vaping in bars would encourage people who smoke to switch to the less harmful behaviour.
11. Confining this discretion to bars would mean people under the age of 18 would not be exposed to the behaviour. It would have the secondary effect of not pushing people outside to vape, making them more visible and potentially adding to the normalisation of vaping (as occurred when smoking was no longer allowed in workplaces).
12. We suggest including an option in the legislation for smokefree areas legislation to be altered as devices develop. Some newer devices, including those which use pre-filled pods, are discrete and don't produce large vapour clouds. Given their discrete nature it is less justifiable to restrict their use in public places.

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<sup>5</sup> Hajek P, Phillips-Waller A, Przulj D, et al. (2019). A randomized trial of e-cigarettes versus nicotine-replacement therapy. *New England Journal of Medicine*, 380(7), 629-637.

<sup>6</sup> Robertson L, Hoek J, Blank ML, et al. (2019). Dual use of electronic nicotine delivery systems (ENDS) and smoked tobacco: a qualitative analysis. *Tobacco Control*, 28(1), 13-19.

*Prisons should be exempt from legislated smokefree areas*

13. We also support allowing vaping products in prisons. In 2011 all New Zealand prisons became smokefree. Unfortunately, smoking in prisons is still common.<sup>7</sup> While smokefree services are available in prisons, the ban has led to some people to smoke in more harmful ways, including the use of “tea-bacco”, where nicotine patches are ripped up, mixed with tea leaves, and smoked.
14. People in our prisons should be able to access and use reduced harm products to stop smoking. Allowing vaping in prisons would provide a more attractive option than harmful alternatives. Prisons could set rules around where in the building vaping was allowed or not allowed, for instance only allowing use outdoors.

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<sup>7</sup> Logan S, Twine S, Bromiley, G, et al. (2018). Factors influencing the smoking status of ex-prisoners reintegrating into the community after release: a pilot study. *The New Zealand Medical Journal*, 131(1470), 94-96.

## **PART TWO – Regulating the advertising, promotion, sale, and distribution of regulated products**

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15. The Amendment Bill proposes extending the existing restrictions on tobacco products - including no sales to people aged under 18 years - to all other regulated products. This includes most advertising restrictions but allows for the display of vaping devices. It also allows vaping retailers and health workers to give advice to smokers about switching to vaping.
16. Fines for those who breach the restrictions will be risk proportionate, with fines for vaping products lower than those for tobacco products.
17. Under the Amendment Bill, internet and vending machine sales of tobacco products remain legal and this is extended to all other regulated products.
18. We support restricting advertising of all regulated products and restricting sales to those over 18. But we argue that no regulated products of any kind (including tobacco cigarettes) should be sold by generic retailers. We also argue no tobacco products should be sold in vending machines or online, but online sales of vaping products should be allowed.

### **We support restricting advertising of vaping and smokeless tobacco products**

19. The Smokefree Environments Act (1990) does not adequately cover vaping and smokeless tobacco products. Companies that sell these products have been able to advertise freely in New Zealand.
20. Many vaping advertisements portray products as healthy, safe, and attractive rather than what they are - a reduced harm product for people who smoke.
21. There is also concern about direct advertising to young people and non-smokers. Restricting advertising will prevent direct marketing to these groups, as well as the potential wider normalisation of vaping.
22. We support advertising restrictions but believe it is important people still have access to good information. The Bill achieves this by allowing specialist retailers and qualified health workers to give advice and recommendations about vaping to quit smoking.

### **Sales of vaping products should be restricted to people over 18, but young people who smoke should be able to access these products to stop smoking**

23. In New Zealand, some young people vape. Fortunately, this seems to be largely confined to experimental use, with 37% of 14- and 15-year olds having ever

tried vaping products, but only 3% using daily.<sup>8</sup> Importantly, daily use in this age group doesn't appear to be increasing in New Zealand.

24. There are some concerns that vaping could lead young people who have never smoked to take up smoking. While there is some evidence that young people who try vaping are more likely to try smoking,<sup>9</sup> large-scale cohort studies like this cannot prove that one thing causes the other.
25. Encouragingly, only 0.8% of 14- and 15-year olds who have never smoked are daily vapers.<sup>10</sup> This is important because it shows that vaping is not as attractive to non-smoking young people as many feared it might be.
26. While vaping products are less harmful than traditional tobacco cigarettes, they are not risk free, and their long-term effects remain unknown. Because of this, non-smokers, particularly young non-smokers, should not use them. We support restricting the sale of vaping products to those over 18 to keep curious young people from trying them.
27. However, around 4% of young people aged 15-17 currently smoke.<sup>11</sup> These young people should have the same access as adults to vaping products that could help them quit. We would like to see an exemption in the Bill for young people who smoke to have access to vaping products to help them quit smoking. Vaping products, along with advice on how to use the products to stop smoking, could come from a qualified health worker or Stop Smoking service.

### **Generic retailers shouldn't sell any regulated products (including tobacco)**

28. The Amendment Bill allows the display of vaping products in all retailers. We think such displays should be limited to specialist vape stores and pharmacies.
29. Ideally, we don't think generic retailers such as dairies and supermarkets should be able to sell any regulated products (including traditional tobacco products) whatsoever. Modelling studies show decreasing the availability of tobacco products is one of the more successful methods to lower smoking rates.<sup>12</sup>
30. We would like to see the sale of tobacco products banned from generic retailers, and other regulated products brought in line with this.

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<sup>8</sup> 2019 ASH year 10 Snapshot

<sup>9</sup> Soneji S, Barrington-Trimis JL, Wills TA, et al. (2017). Association Between Initial Use of e-Cigarettes and Subsequent Cigarette Smoking Among Adolescents and Young Adults: A Systematic Review and Meta-analysis *JAMA Pediatrics*. 171(8).

<sup>10</sup> 2019 ASH Year 10 Snapshot

<sup>11</sup> 2018/19 New Zealand Health Survey

<sup>12</sup> van der Deen FS, Wilson N, Cleghorn CL, et al. (2017). Impact of five tobacco endgame strategies on future smoking prevalence, population health and health system costs: two modelling studies to inform the tobacco endgame. *Tobacco Control*. 27.

*If tobacco products remain for sale in generic retailers, vaping products should also be available, though not on display*

31. Removing the sales of all regulated products from generic retailers is outside of the scope of the Amendment Bill. If tobacco products remain for sale in generic retailers, vaping products should be available also. To help people who smoke switch to vaping products, these products need to be as accessible as traditional tobacco products.
32. Traditional tobacco products are currently stored hidden from sight in retail outlets. This is to prevent normalisation and visibility of these products to people who don't smoke, particularly young people.
33. Unlike specialist vape stores, which will be R18 and only patronised by people who wish to buy vaping products, generic retailers will have many other customers. Vaping displays in these outlets are likely to contribute to the normalisation of vaping and have the potential to influence non-smokers to try vaping.
34. To prevent the normalisation and uptake of vaping by people who don't smoke, vaping products should not be visible to customers in generic retailers. Generic retailers should however be able to display approved harm reduction messages that induce people who smoke to switch to vaping.

### **Selling any tobacco products in vending machines should be banned, and online sales should be restricted to vaping products only**

*Sales of all tobacco products in vending machines and online should be banned*

35. While the Regulatory Impact Statement for this Bill indicated that any changes to sales of regulated products in vending machines and online was out of scope, we believe this should be revisited.
36. One way to achieve the Smokefree 2025 goal is to reduce the availability of tobacco products. A simple way to do this would be to prevent the sales of any tobacco products in vending machines or online, as these have no demonstrable benefit to the public.

*Online sales of vaping products should be allowed*

37. Online sales of vaping products should be allowed to ensure equitable access to these products for people living in rural areas of New Zealand, who may not have access to specialist vape shops.
38. There is a risk that online sales could make vaping products more available to people under 18 years. To prevent this, further protections need to be put in place to ensure people aged under 18 cannot purchase them. This could include identification being required upon delivery.



## **PART THREE – Regulating the safety of regulated products and monitoring harmful constituents**

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39. The Amendment Bill proposes vaping products be required to display health warnings and a list of constituents. It bans oral tobacco products. The Bill also bans the sale of all vaping flavours aside from tobacco, mint and menthol in generic retailers, but allows the sale of flavoured vaping substances in specialist vape retailers.
40. The Amendment Bill states manufacturers and importers must comply with product safety requirements outlined in regulations. It also requires vaping and smokeless tobacco products to be notified before sale, with the notifier obligated to advise the Director-General of any adverse reactions as soon as practicable. The Director-General may issue warnings or suspend product notification if the product poses harm.
41. Our position is that people who use vaping to stop smoking should have access to a wide range of flavours. We also agree safety regulations should be covered in regulations, not legislation, and ask that clarity be given for how the Amendment Bill fits with the Medicines Act (1981).

### **People who vape to quit smoking should have access to a range of flavours**

42. As mentioned previously in this submission, vaping products are not perceived to be as satisfying as traditional tobacco cigarettes, and so are not a complete substitution. Consumers do however see the range of flavours available for vaping as a major positive factor in making the switch.
43. There is concern that many of the flavours appeal to young non-smokers. We'd prefer no regulated products, including tobacco, were sold in generic retailers, where people under 18 can shop. This would have the secondary benefit of decreasing the accessibility of these products for everyone.
44. However, if generic retailers can sell vaping products, we support the compromise to ban the sale of all vaping flavours aside from mint, tobacco and menthol in these retailers, but to allow their sale in specialist vape retailers. Specialist vape retailers will be restricted to people over the age of 18, so young people aren't at risk of buying the wider range of flavours.

### **Safety regulations for vaping products should be covered in regulation not legalisation**

45. As brought up by some members in the first reading of this Amendment Bill, certain safety regulations for vaping products are not included in the legislation. This includes regulations around child-proof products, limiting the refillable devices to 2 mL, and ensuring refillable devices are leak proof.

46. It is the understanding of the Drug Foundation that these and similar issues will be covered under regulations overseen by the Ministry of Health. Given the fast moving and unpredictable nature of vaping and smokeless tobacco products, covering the safety of these products in regulations is preferable. Regulations are more flexible than legislation, and can more quickly adapt to new, as yet unknown devices.
47. We agree the Director-General should be able to prohibit ingredients if satisfied they are unsafe. We agree the notifiers be obligated to advise the Director-General as soon as practical of any adverse events, with the Director-General able to suspend any products from sale which show harm. We think the process outlined in the Amendment Bill is satisfactory for reducing potential harm from vaping products.

**Greater clarity is required to explain how this amendment fits with the Medicines Act (1981)**

48. The Amendment Bill covers regulated tobacco products, but not nicotine products, which are currently covered under the Medicines Act (1981).
49. We would like clarity around where “tobacco free” but nicotine-containing products sit. One example of such a product is tobacco-free ‘snus’. This sort of product will not be covered under the Amendment Bill but is not likely to be considered a medicine. If products like this will remain illegal, this should be clarified in the Amendment Bill.

## **FINAL RECOMMENDATIONS**

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### **Reducing the exposure of non-smokers and young people to regulated products and preventing the normalisation of vaping**

1. The use of regulated products should be prohibited in legislated smokefree areas, with the exemption of specialist vape stores.
2. Exemptions should also apply to certain R18 workplaces, including bars and prisons.

### **Regulating the advertising, promotion, sale, and distribution of regulated products**

3. Advertising of vaping and smokeless tobacco products should be restricted.
4. Sales of vaping products should be restricted to people over 18, but young people who smoke should have some access to these products to stop smoking.
5. Generic retailers should not be allowed to sell regulated products, including cigarettes.
6. If cigarettes continue to be sold in generic retail outlets, all regulated products should be allowed to be sold from the same outlets. However, display of vaping products should only be allowed in specialist vape stores.
7. Selling any tobacco products online and in vending machines should be banned. Online sales of vaping products should be allowed.

### **Regulating the safety of regulated products and monitoring harmful constituents**

8. People who vape to quit smoking should have access to a range of flavours.
9. Safety regulations should be covered in regulation not legalisation.
10. Provide greater clarity as to how this amendment fits with the Medicines Act.