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Health Committee
Parliament Buildings
Wellington

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Submission: Smoke-Free Environments and Regulated Products (Vaping) Amendment Bill

Thank you for the opportunity to make a submission on this critical legislation. We congratulate the government on its intention to regulate the sale, promotion and use of electronic nicotine delivery devices, called in the legislation “vaping” in reference to its already prevalent cultural behaviour.

The Public Health Association (PHA) supports the government’s aspirational goal of a Smoke-Free New Zealand by 2025, and shares the vision of a Tupeka Kore Aotearoa/Tobacco Free New Zealand:

That future generations will be free from exposure to tobacco and will enjoy Smoke-Free lives.

We see this legislation as part of the decisive evidence-based action towards government’s goal of a Smoke-Free nation by 2025. We regard this bill as a vital measure to continue denormalising tobacco consumption, and prevent uptake of smoking and vaping among future generations.

Who are we?

The PHA is a national association with members from the public, private and voluntary sectors. Our organisation’s vision is ‘Good health for all - health equity in Aotearoa’, or ‘Hauora mō te katoa – oranga mō te Ao’, and our purpose is to advocate for the health of all New Zealanders.

To achieve this, we provide a forum for information and debate about public health action in Aotearoa New Zealand. Public health action aims to improve, promote and protect the health of the whole population through the organised efforts of society.

We recognise Te Tiriti o Waitangi as Aotearoa New Zealand’s founding document, defining respectful relationships between tangata whenua and tangata Tiriti, and we are actively committed to supporting Te Tiriti Articles in policy and legislation. Accordingly, we recommend that the bill include explicit reference to upholding Te Tiriti o Waitangi and achieving health equity for Maori, as objectives of this legislation.

Aotearoa is signatory to the World Health Organisation's Framework Convention on Tobacco Control

The New Zealand Government ratified the WHO Framework Convention on Tobacco Control in 2004, and has consistently reported progress on its international obligations. However to date, it has not adopted a comprehensive strategy to achieve its own Smokefree Aotearoa goal. The Ministry of Health website advises that its current tobacco control policy aims to reduce the uptake of smoking, increase quitting, and reduce exposure to second-hand smoke.

For the first time in 20 years, regular smoking prevalence in 14-15-year olds has increased rather than decreased in New Zealand. ¹This has occurred over the last few years alongside a rapid increase in vaping. We cannot afford to let this trend continue.

The vectors for smoking uptake, quit rates and smokefree areas are not good enough to assure us we will achieve the Smokefree 2025 Goal. We urgently recommend government fast tracks the Associate Minister Jenny Salesa's proposed national plan of tobacco control with adequate planning and funding; namely a comprehensive, funded strategy to achieve the Smokefree 2025 goal, and ensuring a kaupapa Māori approach as recommended by the Māori Affairs Select Committee Report (2010¹⁷).

The Treaty of Waitangi and effects of tobacco on Māori Rangatiratanga and development

The Māori Affairs Select Committee Inquiry report made clear the government's responsibility to address the inequity for Māori caused by the introduction and promotion of tobacco during days of colonisation. It called for the government's commitment to making Aotearoa New Zealand Smokefree by 2025:

With smoking rates amongst Māori double that of the general population, tobacco has a particularly devastating impact on Māori, and accounts for a significant portion of the life expectancy differential between Māori and non-Māori. More than 600 Māori die prematurely each year from smoking-related illnesses, and this loss, as well as the preceding addiction, erodes economic, social, and cultural wellbeing, and hinders Māori development aspirations and opportunities. Tobacco smoking delivers a major insult to whānau ora.²

The Committee's report was adopted by Parliament, including the goal of Smokefree Aotearoa by 2025.⁴ The report recommended a comprehensive approach to tobacco control in New Zealand, including actions to hold the industry accountable; reduce both supply and demand for tobacco; increase smokefree environments and enforcement; prioritise actions to stop young people from starting; and promote quitting for pregnant women and Māori. It recommended Māori be included in all tobacco planning and policy development. To date, Government have only implemented a small proportion of the recommendations of the Māori Affairs Select Committee.³

Since the time of the inquiry, tobacco consumption and smoking rates have continued to decline for all groups of New Zealanders, however projections suggest that the goal will be challenging to achieve. We are likely to reach it for some, but not all population groups, particularly Māori. These inequitable outcomes for Māori, despite government's aspirational goal and considerable efforts by Māori advocates and the wider public health sector, indicate not enough is being done by government to engage fully with Māori communities to support Māori who smoke to quit, nor to protect Māori children from their higher level of exposure to smoking. This is a breach of te Tiriti o Waitangi Articles.

Turning to this legislation, we make the following recommendations;

Smokefree areas must also be vapefree

We strongly support a requirement that all smokefree areas be vapefree also, including designated local Council outdoor smokefree areas and any future smokefree areas. Making smokefree areas also vapefree will reduce the risk of vaping becoming normalised, particularly among non-smokers and young people. Having smokefree areas as vapefree will minimise role modelling of vaping to children and lessen the risk that they see vaping as a cool recreational behaviour, rather than a tool to help people who smoke to switch to vaping. Having smokefree areas also vape free will reduce public confusion and make Smokefree/vapefree easier to enforce.

Many people who vape in smokefree settings believe second-hand aerosol (SHA) is simply steam.⁴ Systematic reviews have found that vaping products emit numerous toxic substances depending on the device and how it is used.⁵ The long-term health impacts of exhaled vapour from vaping products is still unclear.

People who vape to quit smoking can be supported by Smokefree/vapefree areas, if vaping areas are designated much like / instead of areas that are designated for people who smoke, but the two areas should be kept separate from one another.

Prohibit Advertising and Sponsorship

We strongly support prohibiting advertising and sponsorship of all vaping products including on-line marketing. Currently the tobacco and vaping industries are aggressively marketing their products to young people. In addition to advertisements on tv, radio and billboards young people say they are being bombarded with vaping marketing on social media.

The most recent data from 2019 shows an increase in regular smoking and vaping for Year 10 students, with a greater increase for Maori than non-Maori. We urgently need this legislation to protect young New Zealanders and ensure inequities reduce rather than widen.

Support Minimum Age Restrictions

We strongly support restricting the sale of all vaping products and smokeless tobacco products (e.g. heat not burn) to those over 18 years. A key purpose of this legislation is to discourage young people and children from taking up smoking or vaping. Despite vaping products being R18, in a 2019 New Zealand school survey 37.3% of 14- 15-year olds said they had tried vaping.⁶ This equates to more than 22,000 14 – 15 year olds who said they'd tried vaping. In the same study more than half (58.5%) of Māori 14-15-year olds had tried vaping.⁷

Additional resources will be needed to effectively monitor and enforce the legislation to ensure minors do not access tobacco or vaping products.

Restrict Availability of Tobacco and Vaping Products

We do NOT support the sales of any vaping products by generic retailers. Currently vaping products are widely available and sold at dairies, service stations, supermarkets, two-dollar shops and bottle shops (generic retailers). Having vaping and tobacco products so widely available makes them far too easy for young people to access.

New Zealand research found generic retailers have little knowledge about the vaping products they sell.⁸ People who smoke need high quality advice to successfully quit smoking using vaping products.

Limiting the flavour range generic retailers can sell doesn't address concerns that they will be unable to provide useful or accurate advice on how to quit smoking.

We strongly recommend that vaping products should only be available through specialist R18 vape shops, pharmacies and cessation providers. Restricting vaping products to licensed R18 specialist shops, pharmacies and cessation providers will mean that products are more likely to be sold to people wishing to switch from smoking to vaping and reduce the likely uptake by minors and non-smokers. If the Government does decide to allow three flavours of vaping liquids to be sold in generic stores, we urge that vaping devices only be sold in R18 stores, as a barrier to youth uptake.

Further, we recommend all staff at specialist vape shops and anywhere else vaping products are sold be required to complete certified smoking cessation training. Many people who smoke find vaping unsatisfying or difficult to master. People wanting to quit smoking need specialist advice to successfully quit and switch to vaping. Having certified trained staff will help ensure that people who are trying to quit receive supportive and higher-quality, best practice advice. Vaping is more effective in helping people stop smoking when used with ongoing support from a Quit programme.

Further, we recommend that all retailers selling vaping products and or cigarettes and tobacco should be licensed (not just registered). All stores selling vaping products need to be licensed and be required to provide sales information and data. Licensing fees should be set to cover the additional monitoring and enforcement required to ensure minors do not have access to vaping products and that other legislative requirements are met. Licence conditions need to be placed to limit the density of vaping retailers and restrict their proximity to schools and early childhood centres/care centres.

Further, we strongly recommend the Bill be extended to prohibit the sale of ordinary cigarettes and tobacco by generic retailers (dairies, service stations and supermarkets). Currently tobacco can be sold at any place, at any time and by anyone in New Zealand. It doesn't make sense that there are currently no restrictions on where cigarettes and tobacco, our most deadly legal products, are sold. Cigarettes have been shown to kill as many as two-thirds of its long-time users^{9,10} yet it is more available than bread and milk in New Zealand.

There are nearly four times more shops selling tobacco in low income communities compared to higher income communities in New Zealand.¹¹ When tobacco is more available more children start smoking and fewer people quit. Restricting the availability of tobacco (e.g. removing it from generic retailers) would greatly reduce uptake of smoking by young people and would also encourage and support people who smoke to quit, as tobacco wouldn't be as easy to access.

There is strong public support (68%) for reducing the number of places allowed to sell cigarettes and tobacco in New Zealand with only 16% disagreeing.¹² We urgently need legislation to make this deadly product less available in our communities to help New Zealanders live healthier, happier lives.

We do NOT support displays of vaping products in stores and believe the in-store display restrictions on tobacco should also extend to vaping products. It is really important that vaping products are not permitted to be displayed in generic stores or in shop front windows of specialist shops. The marketing of vaping products and e-liquids use bright colours and sophisticated yet subtle cues to attract children and young people's attention.

Plain packaging and health warnings are needed

We support plain packaging (standardised packaging) being applied to all vaping products (including heat-not-burn products). Currently vape marketing is aimed at young people. Packaging and names

of vape products are a key marketing tool used by vape manufacturers. They use colour, design and names to appeal to young people. Many flavours have names that have strong appeal with young people but not necessarily established smokers e.g. Unicorn Milk, Honey Bear, Stoned Smurf. Names such as these, promote experimentation among young non- smokers.¹³

Plain packaging will reduce the appeal of vaping products to children. All avenues of marketing through packaging should be made plain and standard as is required for cigarettes and tobacco. Standardised packaging needs to be applied to all vape products and e-liquids. Restrictions need to limit flavour names to generic descriptions to effectively control marketing of these products particularly to young people.

We support health warnings on all nicotine products. All nicotine products need to have large warning labels stating Nicotine is highly addictive.
Products need safety standards

Further, we strongly support the need to regulate the safety (including for inhalation) of vaping products, smokeless tobacco products and future products brought to the market. Vaping products should be required to be assessed through the same safety standards already applied to other Quit smoking tools such as nicotine replacement therapies.

Restrict flavours that appeal to young people

We strongly support restricting all flavours that appeal to children including in specialist R18 vape shops. Limiting the range of flavours at generic retailers to tobacco, mint and menthol will not prevent youth accessing vaping products as research shows both mint and menthol flavours are very appealing to young people. Systematic reviews found flavours increase the appeal, decrease the perception of harm and increase willingness to try e cigarettes.¹⁴

Flavours may be the most important reason for adolescents trying e -cigarettes.¹⁵ New Zealand research found flavours play a major role in vaping initiation for current smokers, former smokers and never smokers including young people.¹⁶ Fruit flavours were most popular among all three groups while people who have never smoked also liked confectionary/ sweets and lolly flavours.¹⁷

Flavours such as fruit, chocolate and bubble gum are attractive to young people. Many flavours also have names that have strong appeal to young people such as Honey Bear, Unicorn Milk and Stoned Smurf.¹⁸ The legislation needs to ensure that flavours that are most appealing to young people and non- smokers are banned including in R18 specialist shops, as many young people will still access products online and from older family members and friends. This would reduce the uptake of vaping by young people and non-smokers.

Restrict nicotine levels

We strongly recommend restricting maximum nicotine levels to 20mg/ml. Some e-cigarettes, particularly ones that have had huge youth uptake overseas (e.g. JUUL) have very high concentrations of nicotine. Nicotine is very addictive and it impacts on young people's brain development. New Zealand should restrict levels of nicotine allowed in vaping products to 20mg/ml to align with European regulations.

Conclusion

We congratulate government on moving forward with these vaping regulations, however we urge the select committee to recommend government demonstrate stronger commitment to the Smoke-Free 2025 goal with a National Workplan that implements all of the following further measures:

- Innovations to reduce demand for tobacco through regulatory controls on tobacco products, such as a nicotine reduction schedule for tobacco products, and/or a ban on all flavourings and additives in tobacco products
- Develop more effective tax legislation that includes continuation of regular and substantial (preferably greater than 20% per annum) tobacco tax increases to deter new smokers and to encourage those who currently smoke to quit
- Disabling the tobacco industry's capability to pass this increased cost on to the consumer via pricing which can disproportionately affect low socioeconomic groups
- Allocation of excise tax revenue to fund the tobacco control plan, most importantly targeted and proven effective quit services and treatments for population groups with highest prevalence
- Support current smokers to quit by providing free cessation services, particularly to serve the needs of Māori and Pacific communities, pregnant women, mental health communities and communities with high deprivation
- Ensure proven effective cessation treatments are fast-tracked

We look forward to speaking to this submission.

Yours sincerely

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CEO

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⁷ Walker N, Parag V, Wong SF, et al. Supplementary appendix to: Use of e-cigarettes and smoked tobacco in youth aged 14- 15 years in New Zealand: findings from repeated cross-sectional studies (2014-19). *Lancet Public Health* 2020; published online Jan 22. 2020; published online Jan 22. [https://doi.org/10.1016/S2468-2667\(19\)30241-5](https://doi.org/10.1016/S2468-2667(19)30241-5).

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