

Proposed vaping regulations for NZ: Strengths and limitations

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Minister Jenny Salesa announced the Government’s long-awaited Smokefree Environments and Regulated Products (Vaping) Amendment Bill on Sunday 23 February. The Bill contains some important provisions as it works to strike a balance between ensuring regulated products are available to smokers wishing to quit, while at the same time minimising uptake by young people. Its proposed extension of prohibitions on advertising and sponsorship from tobacco products to all vaping and smokeless tobacco products, including e-liquids, are important steps. However, there are also opportunities for the Bill to go further to protect young people from vaping uptake. In this blog, we discuss the provisions, as summarised in the Ministry of Health’s Factsheet, and outline important questions that we argue the final Act should address.

The Bill brings the prospect of some welcome clarity about the regulation of vaping products, and ensures that they will be widely available to smokers who wish to use them to help them stop smoking or as substitutes for cigarettes. It has been designed to apply to future ‘harm reduction’ products and several sections extend provisions that currently apply to smoked tobacco products, to what are now known as “regulated products”. For example, regulated products, like smoked tobacco products, may not be sold to people aged under 18 years.

Several of these extensions will address key concerns raised by members of the public, parents and teachers, as well as by public health researchers and advocates. For example,

the Bill addresses some concerns over aggressive marketing of vape products and increasing vaping uptake by young people that we summarised in a previous blog and clarifies that the ban on tobacco advertising and sponsorship also applies to regulated products.



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The Bill also extends existing smokefree area provisions so these apply to regulated products, a measure that we have supported previously.¹ Beliefs that exhaled vaping aerosol are simply steam mean indoor vaping could become normalised and the Bill's provisions reduce this risk.² These provisions will simplify enforcement and ensure indoor areas are both smoke- and vape-free (with important exemptions for specialist vape stores, whose customers will need to trial vaping devices). As with smoking, local authorities will be able to designate vape-free outdoor areas. Many local authorities have designated parks, sports grounds, events, and CBD areas smoke-free to protect young people from seeing smoking practices modelled by others.³ These regulations recognise that although exposure to second-hand smoke is less hazardous in outdoor settings, exposure to smoking behaviours risks making smoking appear normal to young people. We hope local authorities will draw on the same principles to make smokefree outdoor areas vape-free as this measure would minimise role modelling of vaping to children and lessen the risk that they come to view vaping as a recreational behaviour rather than a tool to help smokers switch to a less harmful nicotine source.

From vapers' perspective, the Bill introduces important product safety standards that will provide them with greater confidence in the devices and e-liquids they use. Although vaping is widely viewed as being much less harmful than smoking, it is not risk-free, there is no long-term safety profile for vaping, and vape products containing nicotine are likely to

be addictive.⁴ It is therefore important the Bill not only signals that upcoming Regulations will set product safety standards, but that it provides a mechanism to enable rapid recall of any products later found to pose harm to users.

The Bill differentiates between “generic retailers” and “specialist retailers”; the former are generally subject to more restrictions, such as the range of flavours they may sell and the use of words such as “vape” in trading names. These partial restrictions on the locations able to sell vaping products are important, as too is the requirement that specialist stores are R18 premises, though strong monitoring and enforcement of this measure will be vital.

However, despite these restrictions, it is concerning to see the Bill proposes that generic retailers (e.g., dairies, supermarkets and petrol stations) will still be able to retail vape products, including devices. The widespread availability of regulated products in these stores may increase the risk that young people are able to purchase vapes and e-liquids. Our work in NZ has highlighted that these generic retailers may know little about the vape products they sell.⁵ Limiting the flavour range these retailers may sell does not address the concern that they may provide inadequate, incomplete, or incorrect advice. Smokers who do not receive high quality advice may be less likely to switch successfully from smoking to vaping, which would reduce the health, social and financial benefits they hope to gain. We suggest allowing generic retailers to sell e-liquids (within the same restricted flavour range) but not vape devices. This approach would minimise availability to minors yet would ensure people who run out of e-liquid are easily able to purchase additional supplies, thus reducing the potential risk that they will relapse to smoking.

Disallowing sales of vape devices by generic retailers would help ensure regulated products are sold to people wishing to switch from smoking to vaping, and would help ensure those people received supportive and high quality advice. As the Bill currently stands, generic retailers may only identify the products they have for sale and the price of these. While this provision limits the potential damage incorrect advice may cause, it does not recognise that smokers may require advice, as some will find the transition from smoking to vaping complex and challenging.⁶ Limiting the sale of vaping devices to specialist retailers would help ensure smokers received higher quality advice. It would also reduce children’s exposure to vaping products and limit the curiosity this exposure might arouse.

We recognise that people who smoke and who live in smaller communities may not have access to a bricks and mortar vape store, which could potentially limit their ability to switch from smoking to vaping. However, many NZ-based vape stores run online stores and helplines, which could ensure people throughout the country may access vaping products and obtain cessation advice from store staff. Regulations requiring specialist vape store staff to complete certified smoking cessation accreditation would also help ensure smokers who wish to switch to vaping receive high quality, best-practice advice. Setting these standards would also establish benchmarks that would facilitate monitoring by Smokefree Enforcement Officers.

It is disappointing that generic stores are required neither to be registered nor to provide the sales information and data that specialist vape stores will have to submit. Comprehensive data on the sale of regulated products would provide important insights into the overall market structure; such data would also enable more detailed monitoring and more rapid recalls, if harmful products are identified.

More importantly, the Bill provides a crucial opportunity to require registration (ideally, licensing) of all stores selling smoked tobacco products. While we support registration

requirements, if applied across the sector, for regulated products, it is illogical not to extend these requirements to smoked tobacco products, which are more hazardous and remain widely available throughout communities. More broadly, the Bill creates an anomaly that must be addressed urgently – dairies, supermarkets and petrol stations will be able to sell a restricted range of vaping products but have no restrictions on the far more deadly smoked tobacco products that they can sell. Such a situation defies logic and undermines efforts to protect the health of current and future generations.

Aside from restricting the flavours that generic retailers may sell to tobacco, mint and menthol, the Bill does not outline further flavour restrictions (specialist retailers may sell any flavour). We see two problems with this approach. First, it risks continuation of marketing aimed at young people. Many flavours have names more likely to appeal to young people than to established smokers; names such as Honey Bear, Stoned Smurf and Unicorn Milk risk promoting experimentation among young non-smokers. We note the Regulations propose applying standardised packaging to regulated products and hope these will also limit flavour names to generic descriptions so this marketing is more effectively controlled. Second, menthol flavours are used in smoked tobacco to reduce the harshness of smoking and improve its overall palatability, these flavours have similar effects when used in e-liquid.⁷ Careful debate is required to assess whether allowing menthol flavours in regulated products could facilitate youth uptake.⁸

The upcoming Select Committee hearings will enable clarification of these important points. We hope all parties support the Bill to ensure it moves quickly to the Select Committee stage where the questions we have outlined, alongside those raised by other health researchers, may be debated.

Debate over the Bill's provisions should also foster discussion of other measures that are essential if a Smokefree Aotearoa is to be achieved for all peoples. These measures must include greatly reducing the availability of smoked tobacco products and legislating to ensure these products are much less addictive and palatable to young people. This dual approach would greatly reduce smoking uptake by young people; reducing the supply of smoked tobacco would also encourage and support smokers to stop smoking completely, particularly if those selling vaping products offered high quality smoking cessation support. The Bill provides a unique opportunity for the Government to deliver on its promise (made nearly two years ago) that it will develop and implement a comprehensive strategy and action plan to achieve a Smokefree Aotearoa.

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