

# Mind the gap: Associate Health Minister's actions conflict with Ministry advice, align with tobacco industry lobbying

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## Summary

Recently released documents from the Ministry of Health and Associate Health Minister Casey Costello's office reveal the Ministry of Health advised that repealing key smokefree measures would undermine the Smokefree 2025 goal. The Ministry also advised against introducing oral nicotine products, such as snus and oral nicotine pouches. The Associate Health Minister did not take her Ministry's advice but instead heeded calls by tobacco companies to allow sales of these products. In this Briefing, we examine Ministry of Health advice, outline arguments from tobacco companies and groups affiliated with them, and review the Associate Health Minister's actions

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The Smokefree Environments Regulated Products (Smoked Tobacco) Amendment Act 2022 (SERPA) introduced three measures designed to reduce smoking prevalence rapidly and equitably, and realise the Smokefree 2025 goal for all population groups (see Appendix).

However, coalition agreements the NZ First and ACT parties negotiated with the National party stipulated that this legislation would be repealed, despite the National Party Health Minister, Dr Shane Reti, having previously strongly supported denicotinisation while in opposition. The repeal drew widespread criticism from health professionals, researchers, and the public.

NZ First Minister Shane Jones admitted taking “soundings” from a tobacco company staff member, dismissing his obligations under the Framework Convention on Tobacco Control. Further analyses revealed government MPs’ arguments paralleled tobacco industry submissions, raising questions about what had motivated the SERPA Act repeal.

From December 2023, the Ministry of Health (MOH) provided detailed advice to the Minister of Health and the Associate Health Minister responsible for tobacco policy. This briefing contrasts official advice on the Smokefree 2025 goal with the Associate Health Minister’s comments, and considers alignment with tobacco industry statements.

## **Realising the Smokefree 2025 goal**

Documents released pro-actively by the Ministry of Health and following an Official Information Act request reveal senior Ministry staff expressed strong concerns about the repeal, which they stated would jeopardise the Smokefree 2025 goal, prolonging the entirely preventable deaths caused by smoking.

Several Ministry documents explain that, although smoking rates are declining, substantial inequities persist, with Māori daily smoking prevalence at 17%. Officials therefore concluded there is still much to be done to realise the Smokefree 2025 goal, defined as smoking prevalence less than 5% among all population groups.

Officials warned that repealing the SERPA measures would have particularly detrimental effects on Māori, Pacific peoples, and people living in low socioeconomic communities. They specifically noted that modelling predicted the ‘business as usual’ measures the Minister has advocated would not realise the goal until 2061 for Māori.

Despite this advice, the Associate Health Minister asserted that “good progress” is being made towards the goal without acknowledging the risks posed by the SERPA repeal.

Table 1 (see Appendix) compares the Ministry’s advice with the Minister’s approach.

## **Regulation of oral nicotine products**

The MOH also offered advice on alternative measures signalled in the NZ First Coalition agreement, including the commitment to “Reform the regulation of vaping, smokeless tobacco and oral nicotine products...”. NZ First’s policy statement included its intention to legalise Swedish snus which, like oral nicotine pouches, cannot legally be sold in Aotearoa New Zealand.

On 31 January, senior Ministry staff advised that proposals to allow sales of oral nicotine products “would risk increasing young people’s exposure to nicotine products without adding clear benefits for people who smoke or the achievement of the Smokefree 2025 goal”.

Specifically, senior MOH staff reported there was only “weak evidence” of snus’s

effectiveness as a smoking cessation tool and noted that snus may increase the risk of some cancers. They stated there was not good evidence to support use of oral nicotine pouches as a reduced harm alternative to smoking, and they found no evidence of this product's effectiveness as a smoking cessation tool. Importantly, the MOH noted evidence from other countries that oral nicotine pouches have been marketed to children and were associated with nicotine dependence and addiction among young people. The MOH therefore did not recommend legalising the sale of snus and oral nicotine pouches.

However, the Associate Health Minister did not adopt the MOH's advice. While she quoted from a briefing the Director General of Health provided on 16 February, Associate Health Minister Costello took the opposite approach to that advised by the Director General Health when she recommended allowing sales of these products.

The Associate Health Minister and Ministry staff differed not only in how they viewed the regulation of oral nicotine and tobacco products, but also in how they arrived at these conclusions. The MOH considered both product safety **and** product efficacy as a smoking cessation tool, whereas the Associate Health Minister has typically considered only product safety. While the MOH focussed on smoking cessation and the 2025 goal, the Associate Health Minister focussed on offering people who smoke more "choice". Her apparent belief that greater variety will increase smoking cessation stands in stark contrast to the evidence her Ministry has provided.

The Associate Health Minister's rationale for allowing sales of oral nicotine products draws on similar points made by British American Tobacco in their submission on the SERPA regulations; both note the importance of expanding the "choice" people who smoke have (see Table 2).

This argument is also made in a document of unknown provenance that appears to have informed the Associate Health Minister's thinking. Eventually released in response to an Official Information Act request (but previously leaked), this document states: "It is not a one size fits all approach and New Zealand smokers should have access to the widest range of smokefree products possible to achieve our 2025 objective".

These documents, and the Associate Health Minister's subsequent statements, contrast sharply with the MOH's concern that there is only weak evidence (or no evidence in the case of oral nicotine products) these products are effective stop smoking tools. It is not clear why the Associate Health Minister appears to have found arguments made by tobacco companies more persuasive than the high-quality advice provided by the MOH.

## **What did the Minister know?**

In a briefing dated 03 April, we explained how marketing campaigns used to promote oral nicotine pouches targeted under-age young people. When asked to comment on the concerns raised, RNZ reported that "Associate Health Minister Casey Costello said no one had raised any problems about the sale of these products with her prior to the Public Health Communication Centre putting out its statement on Wednesday". Her statement appears at odds with the official advice provided in January about the marketing of oral nicotine pouches to children.

The New Zealand public deserves an explanation for this divergence plus a clear answer about the source of a document outlining strong tobacco-industry friendly arguments that appears to have influenced her thinking.

## What this Briefing adds

- Recently released documents reveal the Ministry of Health (MOH) strongly advised Associate Health Minister of Health Casey Costello against introducing oral nicotine products.
- Evidence from British American Tobacco's submissions on the SERPA regulations shows the company lobbied strongly to allow sales of oral nicotine products, as did the author of a document from an unknown source, which also makes strongly pro-industry arguments.
- Associate Health Minister Costello adopted industry arguments ahead of advice tendered by her Ministry.

## Implications for policy and practice

- The Minister must offer the New Zealand public an explanation of why she did not follow her Ministry's advice.
- The Minister must also clarify the source of the document outlining pro-tobacco industry arguments.
- Failure to provide honest and full explanations will see trust in the Minister's decision-making continue to decline.

### Authors details

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### Appendix 1. SERPA Overview

The Smokefree Environments Regulated Products (Smoked Tobacco) Amendment Act 2022 (SERPA) introduced three measures designed to reduce smoking prevalence rapidly and equitably, and realise the Smokefree 2025 goal for all population groups. Decreasing the supply of tobacco products would have reduced smoking uptake among young people and made it easier for people who smoke to quit and remain smokefree. Denicotinisation would have rendered tobacco essentially non-addictive, thus reducing the powerful cravings that lead people to continue smoking, even when they wish to quit, and minimising the risk that adolescents who experiment with tobacco became addicted. The smokefree generation policy would have protected future generations from the numerous harms smoking imposes. The SERPA legislation marked a turning point in how governments addressed the tobacco pandemic and inspired international debate.

### Table 1. Comparison of official advice and Government and Associate Health Minister's statements or decisions (bold emphasis added unless noted)

Official Advice

Government and Associate Health Minister's statements or decisions

## Implications of repealing SERPA measures and Associate Health Minister's actions

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**Source:** Document H2023033250: **Briefing - Reversal of legislative changes to the smoked tobacco regulatory regime. Dr Diana Sarfati, Dr Andrew Old (06 December 2023).**

Summary

5. *Given the inequitable impact smoking has on Māori, Pacific peoples and for people living in low socioeconomic communities, reversing the changes is likely to have a disproportionately negative impact on these groups in the absence of alternate measures.*

Main document

15. *The reversal of changes brought about by the Amendment Act, would limit efforts to reduce smoking rates to health promotion, smoking cessation services, high (existing) excise tax, plain packaging, advertising restrictions and smokefree areas. **These measures were, and remain, vitally important in tobacco control. However, modelling predicts these alone will not achieve the goal of less than 5% smoking rates for all population groups until 2061.*** (emphasis in original)

**Source: Smokefree 2025: cracking down on youth vaping. Office of the Associate Health Minister. Attached to Cabinet minute dated 18 March 2024.**

2. *Good progress is being made towards the Smokefree 2025 goal of less than 5% of New Zealanders smoking daily, with 6.8% of New Zealand adults smoking daily in 2022/23.*

**Source:** Document H2023032869. **Briefing to the incoming Minister of Health: Public health, population health and prevention. Dr Diana Sarfati, Dr Andrew Old (08 December 2023).**

53. *As a result of decades of tobacco control action, we are now seeing impressive downward trends in smoking rates **the Smokefree Aotearoa goal of having less than 5% smoking prevalence is in sight but there is still much more to do to reach this target.** Smoking prevalence remains highest among Māori with 19.9% smoking daily and 18.2% of Pacific peoples. Amendments in 2022 to the Smokefree Environments and Regulated Products Act were aimed at accelerating the push towards the Smokefree 2025 goal by addressing availability, appeal and addictiveness of tobacco.*

**Source: Smokefree 2025: cracking down on youth vaping. Office of the Associate Health Minister. Attached to Cabinet minute dated 18 March 2024.**

2. *Good progress is being made towards the Smokefree 2025 goal of less than 5% of New Zealanders smoking daily, with 6.8% of New Zealand adults smoking daily in 2022/23.*

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**Source: Document H2023033250: Briefing - Reversal of legislative changes to the smoked tobacco regulatory regime. Dr Diana Sarfati, Dr Andrew Old (06 December 2023)**

Main document

12. *The retail reduction, low nicotine, and smokefree generation legislative policies were developed as a comprehensive “endgame” package to make a step-change in the broader environment so that smoked tobacco became progressively less accessible, appealing and addictive. Implementation of all 3 policies is modelled to result in a rapid reduction in smoking rates, with a reduction in mortality rates to follow. This modelling was peer reviewed and published in the journal Tobacco Control.*<sup>13</sup> *Vincy Huang et al. independently ranked the modelling highest when compared to 25 other international tobacco control models.*<sup>14</sup>

15. *The reversal of changes brought about by the Amendment Act, would limit efforts to reduce smoking rates to health promotion, smoking cessation services, high (existing) excise tax, plain packaging, advertising restrictions and smokefree areas. **These measures were, and remain, vitally important in tobacco control. However, modelling predicts these alone will not achieve the goal of less than 5% smoking rates for all population groups until 2061.*** (emphasis in original)

**Source: Document H2024034952: Briefing - Getting to Smokefree 2025: reform of vaping, smokeless tobacco and consumer nicotine product regulation. Dr Diana Sarfati, Jane Chambers (31 January 2024)**

6. *Smoking is a leading cause of preventable death and disease in New Zealand. Although smoking rates continue to decline, **there is still a long way to go to achieve the smokefree 2025 goal of less than 5% of all population groups smoking daily** (6.8% of adults were daily smokers in 2022/23, down from 8.6% the previous year and 16.4% in 2011/12; significant inequities remain with 17% of Māori smoking daily in 2022/23).*

**Source: 1News Breakfast interview with Associate Health Minister Costello (28 Feb 2024)**

*"We're now dealing with addicted nicotine smokers, there's less than 300,000 smokers who have been smoking for a long time and, as much as we'd like to think it, reducing supply does not reduce demand."*

*"The last government was moving towards an untested regime that ignored how well quit smoking initiatives were working, and the potential downside of taking a prohibitionist approach for smokers, or for retailers and crime."*

*"The progress New Zealand has made in reducing smoking means that those who currently smoke are mostly long-term smokers who are addicted to nicotine and that's who we need to focus on. We want an approach that is practical and helps smokers to quit, rather than one based on ideology,"*

**Source: Smokefree 2025: cracking down on youth vaping. Office of the Associate Health Minister. Attached to Cabinet minute dated 18 March 2024.**

2. *Good progress is being made towards the Smokefree 2025 goal of less than 5% of New Zealanders smoking daily, with 6.8% of New Zealand adults smoking daily in 2022/23.*

**Advice on permitting sales of oral nicotine products and Associate Minister's actions**

**Source: Document H2024034952: Briefing - Getting to Smokefree 2025: reform of vaping, smokeless tobacco and consumer nicotine product regulation. Dr Diana Sarfati, Jane Chambers (31 January 2024)**

79. Some smokeless tobacco products are unlawful in New Zealand, including chewing tobacco, snus and dissolvables. Chewing tobacco, which is associated with mouth cancer, should remain unlawful. However, if there are products with a similar risk profile to vaping, then there may be an argument for making them available as options for smokers, however this needs to be weighed against the likelihood that minors could also begin to use these products. This is a problem that Scandinavian countries have had to respond to in recent years by tightening up regulations, eg, Norway has mandated plain packaging for snus.

81. Nicotine pouches are small pouches for oral use. They do not contain tobacco leaf. They contain nicotinic salts, microcrystalline cellulose, various other salts (including sodium bicarbonate), citric acid and other flavours. They are relatively new to the international market. There is not good evidence to date to support their possible use as a reduced harm alternative to smoking and there is currently no evidence of their effectiveness for smoking cessation. There is evidence of them being marketed to children in other countries, and they are associated with nicotine dependence and addiction. Children, adolescents and non-smokers are considered at high risk of dependence.

**82. On balance, we do not recommend extending the range of nicotine products available for sale in New Zealand. Vaping and heated tobacco products are already available, with vaping a popular reduced-harm option. Additional products will likely compound existing concerns about young peoples' addiction to nicotine for little benefit.**

**Source: Cabinet Minute of Decision 0071 Report attached to Cabinet Social Outcomes Committee: Period Ended 08 March 2024**

23. *These approaches are inter-linked. Technology has provided additional tools to help people who smoke to quit. A responsible government must not stand in the way of adult smokers accessing products that will reduce the number of cigarettes they smoke.*

**Source: Smokefree 2025: cracking down on youth vaping. Office of the Associate Health Minister. Attached to Cabinet minute dated 18 March 2024.**

19. *Agreed in principle to allow the sale of reduced harm smokeless tobacco and oral nicotine products (e.g., Swedish snus and nicotine pouches), subject to the products meeting safety requirements and regulatory controls to prevent youth access.*

**Source: Cabinet Paper - Smokefree 2025: Progressing Coalition Agreement Commitments. Office of the Associate Minister of Health (Released 23 May 2024).**

*Vaping has supported many New Zealanders to quit smoking, but it may not work for everyone. There are other products on the international market that could contribute to achieving our Smokefree 2025 goal.*

62. *Nicotine pouches are another form of smokeless tobacco product for oral use. They are relatively new to the international market and, as such, evidence of their safety, and their effectiveness to help people stop smoking is limited. Most published data is from industry and suggests that nicotine pouches have substantially lower levels of toxicants compared to smoked tobacco. Like all nicotine products there is a risk of addiction. There are increasing concerns internationally of their promotion to young people.*

63. *I propose the Committee agree in principle to allow the sale of smokeless tobacco and nicotine products where the evidence shows they are significantly less harmful than smoking (ie, they have a similar risk profile to vaping), and meet safety requirements and regulatory controls to prevent youth access.*

**Recommendations**

22. *agree in principle to allow the sale of reduced harm smokeless tobacco and oral nicotine products (eg, Swedish snus and nicotine pouches), subject to products meeting safety requirements and regulatory controls to prevent youth access.*

**Source: Document H2024035870: Briefing - Smokefree 2025: progressing Coalition Agreement commitments. Dr Diana Sarfati (16 February 2024)**

*35. Nicotine pouches are relatively new to the international market and, as such, evidence of their safety and effectiveness to help people stop smoking is limited. Most published data are from industry and show that nicotine pouches have substantially lower levels of toxicants compared to smoked tobacco. Like all nicotine products there is a risk of addiction. There are increasing concerns internationally of their promotion to young people.*

**Associate Health Minister Costello (Hansard record)**

*We have seen that approach is working and I will soon be taking a package of measures to Cabinet to increase the tools available that will actually help quit smoking, while at the same time tightening regulations on vaping to prevent young people accessing vapes.*

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**Table 2: Comments made on SERPA submissions and Associate Minister's actions**

**Tobacco company and affiliated group's statements on oral nicotine products**

**Government and Associate Minister's statements or decisions**

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**Source: British American Tobacco Submission on SERPA regulations:**

*Ensuring greater smoker access to significantly less harmful alternatives would mitigate the financial impact on these businesses while supporting the government's objective of reducing smoking prevalence.*

*Two specific measures to do this are:*

*(a): permitting the sale of oral nicotine alternatives to combusted tobacco.*

*Our comments below on the proposed regulations are provided in the context of this evidence demonstrating the potential harm reduction benefits that vaping products and smokeless oral nicotine products, such as nicotine pouches, can provide, and the critical role that the proposed regulations will have in enabling these benefits to be maximized."*

*Comments on retailers: "We strongly encourage that any successful applicant must also sell reduced risk alternatives such as vaping and heated tobacco products, and ideally this would be extended to oral nicotine products.*

*Conversely, those stores who lose the ability to sell smoked tobacco products should be availed of alternative revenue streams including additional vaping flavours and oral nicotine products to assist their economic viability as well as support adult smokers to switch to reduced harm alternatives.*

*Support to help offset the financial impact of losing the right to sell tobacco products could be provided by enabling an expanded range of vaping flavours to be sold by general retailers, as well as providing for the sale of oral nicotine products.*

*Considering the impending removal of traditional smoked tobacco products from more than 90% of current general retailers, followed by the complete removal of those products from the entire market, we believe it is timelier, and more important than ever, to revisit the regulation prohibiting the import and sale of oral nicotine products. Regulating smokefree oral nicotine pouches as a 'notifiable product', more closely aligned with Vaping Products able to be imported and sold without being subject to the Medicines Act, will provide two immediate benefits:*

*1) It would support the Smokefree 2025 ambition by improving the support available to adult smokers impacted by the legislative prohibitions on traditional tobacco products through the provision of a harm reduction alternative for those adult smokers who will also lose access to traditional tobacco products, and particularly for those whom vaping has not proven successful.*

*2) It would provide an alternative revenue stream for 'general retailers' who will lose the ability to sell traditional tobacco products from 1 July 2024*

**Source: Smokefree 2025: cracking down on youth vaping. Office of the Associate Health Minister. Attached to Cabinet minute dated 18 March**

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**Source: Cabinet Paper - Smokefree 2025: Progressing Coalition Agreement Commitments. Office of the Associate Minister of Health (Released 23 May 2024).**

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**Associate Health Minister Costello (Hansard record)**

*We have seen that approach is working and I will soon be taking a package of measures to Cabinet to increase the tools available that will actually help quit smoking, while at the same time tightening regulations on vaping to prevent young people accessing vapes.*

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19. **Agreed in principle** to allow the sale of reduced harm smokeless tobacco and oral nicotine products (e.g., Swedish snus and nicotine pouches), subject to the products meeting safety requirements and regulatory controls to prevent youth access.

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**Source: Submission from NZ Association of Convenience Stores (Includes British American Tobacco and Imperial Tobacco as members)**

By providing 'general retailers' to sell a wider range of harm reduction products including additional vaping flavours, and oral products such as snus or tobacco-free pouches, retailers will be able to offset some of the lost tobacco revenues. Moreover, their adult smoking customers will be provided far greater choice of proven, effective less harmful alternatives to switch to at the places they usually buy cigarettes.

**Source: Associate Health Minister Costello (Hansard record)**

We have seen that approach is working and I will soon be taking a package of measures to Cabinet to increase the tools available that will actually help quit smoking, while at the same time tightening regulations on vaping to prevent young people accessing vapes.

**Source: NZ Herald article quoting Associate Health Minister Casey Costello (08 December 2023)**

Associate Health Minister Casey Costello stated: "Early information I have got around oral nicotine is that it was used highly successfully in Scandinavian countries".

"I think Sweden was one of the first countries in Europe to reach below that 5 per cent threshold. And how much oral nicotine products contributed to that - I'm really interested to understand how that worked."

**Source: Associate Health Minister Costello "Office Notes" (unknown origin)**

"It is not a one size fits all approach and New Zealand smokers should have access to the widest range of smokefree products possible to achieve our 2025 objective."

"We will open up a wider range of smokefree products to give smokers the widest range of tools to quit smoking while regulating them in proportion to the risk posed."

**Source: Smokefree 2025: cracking down on youth vaping. Office of the Associate Health Minister. Attached to Cabinet minute dated 18 March**

19. **Agreed in principle** to allow the sale of reduced harm smokeless tobacco and oral nicotine products (e.g., Swedish snus and nicotine pouches), subject to the products meeting safety requirements and regulatory controls to prevent youth access.

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*“Early information I have got around oral nicotine is that it was used highly successfully in Scandinavian countries”.*

*“I think Sweden was one of the first countries in Europe to reach below that 5 per cent threshold. And how much oral nicotine products contributed to that - I’m really interested to understand how that worked.”*

**Source: The Post op-ed from Dr Eric Crampton, New Zealand Initiative (tobacco companies are members)(09 December 2023).**

*“Chewing tobacco has long been banned in New Zealand. But the legislation currently also bans snus, an oral tobacco pouch that is less risky than chewed tobacco and far less risky than smoked tobacco. Snus has been an important part of Sweden’s decline in smoking rates. Legalising it here would provide one more alternative for those wishing to quit smoking and who have not found vaping appealing.”*

*“Look past the often-partisan rhetoric. The coalition’s promise to avoid tobacco prohibition will hardly convert the country to smoking. It will instead mean that New Zealand continues its path toward lower smoking rates as more smokers shift to a broader range of reduced harm alternatives.”*

**Source: Smokefree 2025: cracking down on youth vaping. Office of the Associate Health Minister. Attached to Cabinet minute dated 18 March**

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**Source: The Post op-ed from Dr Eric Crampton, New Zealand Initiative (tobacco companies are members)(27 January 2024).**

*“The change in approach with the change in government is far less about the country’s commitment to the SmokeFree goal than it is about the approach that should be followed in getting there. Heated tobacco products have helped reduce smoking in Japan. Oral tobacco products, like snus, have helped Sweden sharply reduce smoking rates. Taxing heated tobacco as though it is as harmful as cigarettes, and maintaining a ban on snus, seems inconsistent with harm-reduction.”*



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