

# Departmental Disclosure Statement

Smokefree Environments and Regulated Products Amendment Bill (No 2)
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The departmental disclosure statement for a government Bill seeks to bring together in one place a range of information to support and enhance the Parliamentary and public scrutiny of that Bill.

It identifies:

- the general policy intent of the Bill and other background policy material;
- some of the key quality assurance products and processes used to develop and test the content of the Bill;
- the presence of certain significant powers or features in the Bill that might be of particular Parliamentary or public interest and warrant an explanation.

This disclosure statement was prepared by the Ministry of Health.

The Ministry of Health certifies that, to the best of its knowledge and understanding, the information provided is complete and accurate at the date of finalisation below.

August 2024.

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## Part One: General Policy Statement

The Government is committed to reducing smoking rates and this means ensuring that people have the practical tools and support to quit smoking, including access to vapes. Many people have switched from smoking to vaping. That has been a contributing factor to recent reductions in smoking rates.

Despite that, the number of young people vaping remains a concern. The measures this Bill introduces seek to strengthen the regulatory framework for vaping to better protect young people. The Government's objectives are to remove from the market vaping products that have been particularly popular with young people, to increase penalties for selling regulated products (including vapes) to minors to reflect the seriousness of that offence, and to reduce the visibility and access of vaping products to children and young people.

This Bill amends the Smokefree Environments and Regulated Products Act 1990 by-

- banning of the manufacture, sale, supply, and distribution of disposable vapes
- increasing penalties for unlawful sales of regulated products to minors
- imposing retail visibility restrictions for vaping products
- including early childhood education centres in proximity restrictions for specialist vape retailers.

## Part Two: Background Material and Policy Information

### Published reviews or evaluations

<b>2.1. Are there any publicly available inquiry, review or evaluation reports that have informed, or are relevant to, the policy to be given effect by this Bill?</b>	<b>NO</b>

### Relevant international treaties

<b>2.2. Does this Bill seek to give effect to New Zealand action in relation to an international treaty?</b>	<b>YES</b>
<p>The Bill supports the implementation of the <u>World Health Organization (WHO) Framework Convention on Tobacco Control</u>:</p> <p>The below report from the tenth session of the Conference of the Parties to the Framework Convention on Tobacco Control includes a number of WHO recommendations related to Electronic Nicotine Delivery Systems (ENDS), including:</p> <ul style="list-style-type: none"> <li>- that parties consider very strong regulation of disposable ENDS, which could include a ban, to protect children and adolescents</li> <li>- that governments should prevent the availability and marketing of products to children and adolescents to ensure that tobacco control efforts are not undermined</li> <li>- that governments should consider banning all commercial marketing of novel and emerging tobacco products, including in social media and through organizations funded by and/or associated with the tobacco industry.</li> </ul> <p>This Bill significantly increases regulation of vapes, with the intention of protecting children and adolescents, including specifically reducing ability to market these products.</p> <p><u>Progress report on technical matters related to Articles 9 and 10 of the WHO FCTC (Regulation of contents and disclosure of tobacco products, including waterpipe, smokeless tobacco and heated tobacco products) (storage.googleapis.com)</u></p>	

<b>2.2.1. If so, was a National Interest Analysis report prepared to inform a Parliamentary examination of the proposed New Zealand action in relation to the treaty?</b>	<b>YES</b>
<p>The National Interest Analysis for the WHO Framework Convention on Tobacco Control was prepared by the Ministry of Health and presented to the New Zealand House of Representatives in accordance with Standing Orders 384 and 385 on 7 October 2003.</p> <p>The National Interest Analysis was subsequently published as an Appendix to the International Treaty Examination of the World Health Organization Framework Convention on Tobacco Control, 11 December 2003 (<i>as reported by the Foreign Affairs, Defence and Trade Committee</i>). The Analysis can be accessed on the New Zealand Parliament website at the following: <a href="http://www.parliament.nz/en-nz/pb/sc/documents/reports/47DBSCH_SCR2638_1/international-treaty-examination-of-the-world-health-organization">http://www.parliament.nz/en-nz/pb/sc/documents/reports/47DBSCH_SCR2638_1/international-treaty-examination-of-the-world-health-organization</a></p>	

## Regulatory impact analysis

<b>2.3. Were any regulatory impact statements provided to inform the policy decisions that led to this Bill?</b>	<b>YES</b>
<p><i>Regulatory Impact Statement: Visibility of vape products and proximity of Specialist Vape Retailers – reducing youth vaping</i>, Ministry of Health, 11 June 2024. This impact analysis is available on: <a href="#">Visibility of vape products and proximity of Specialist Vape Retailers   Ministry of Health NZ</a></p> <p><i>Supplementary Regulatory Impact Statement: Banning disposable vaping products and increasing penalties for sales to minors</i>, Ministry of Health, 12 August 2024. This impact analysis is available on <a href="https://www.health.govt.nz/information-releases/supplementary-regulatory-impact-statement-banning-disposable-vaping-products-and-increasing">https://www.health.govt.nz/information-releases/supplementary-regulatory-impact-statement-banning-disposable-vaping-products-and-increasing</a></p>	

<b>2.3.1. If so, did the RIA Team in the Treasury provide an independent opinion on the quality of any of these regulatory impact statements?</b>	<b>NO</b>
<p>The Treasury RIA team agreed that the respective Regulatory Impact Statements (RIS) could be assessed by the Ministry of Health's Papers and Regulatory committee (PARC).</p> <p>PARC considered that the RIS: <i>Visibility of vape products and proximity of Specialist Vape Retailers – reducing youth vaping</i> met the quality assurance standards.</p> <p>PARC considered that the RIS: <i>Banning disposable vaping products and increasing penalties for sales to minors</i> partially met the quality assurance standards.</p>	

<b>2.3.2. Are there aspects of the policy to be given effect by this Bill that were not addressed by, or that now vary materially from, the policy options analysed in these regulatory impact statements?</b>	<b>NO</b>

## Extent of impact analysis available

<b>2.4. Has further impact analysis become available for any aspects of the policy to be given effect by this Bill?</b>	<b>NO</b>

<b>2.5. For the policy to be given effect by this Bill, is there analysis available on:</b>	
(a) the size of the potential costs and benefits?	<b>NO</b>
(b) the potential for any group of persons to suffer a substantial unavoidable loss of income or wealth?	<b>NO</b>

<b>2.6. For the policy to be given effect by this Bill, are the potential costs or benefits likely to be impacted by:</b>	
(a) the level of effective compliance or non-compliance with applicable obligations or standards?	<b>YES</b>
(b) the nature and level of regulator effort put into encouraging or securing compliance?	<b>YES</b>

Any details related to costs and benefits are provided in the respective RIS documents. However, as noted in the RIS documents, due to the timeframes, lack of consultation and absence of detailed market data regarding vape products, costs and benefits have not been quantified.

## Part Three: Testing of Legislative Content

### Consistency with New Zealand's international obligations

<b>3.1. What steps have been taken to determine whether the policy to be given effect by this Bill is consistent with New Zealand's international obligations?</b>
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The Ministry of Health has worked closely with the Ministry of Foreign Affairs and Trade to consider the implications of trade restrictive policies. World Trade Organisation members, including New Zealand, have the right to implement measures necessary to protect public health. The vaping policies are designed to achieve health objectives in a manner consistent with our international trade obligations.
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### Consistency with the government's Treaty of Waitangi obligations

<b>3.2. What steps have been taken to determine whether the policy to be given effect by this Bill is consistent with the principles of the Treaty of Waitangi?</b>
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Although there was no consultation with Māori on the proposals in the Bill, officials consulted with relevant government agencies and analysed the proposals in this Bill against the principles of the Treaty of Waitangi and the Crown's Treaty obligations.
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Māori have strong interests in policies that impact on their health and wellbeing. Policies that aim to reduce New Zealand's high youth vaping rates and the associated harms from this will therefore be of interest, particularly given disproportionate rates of vaping among Māori youth. Vaping is also used by many smokers as a smoking cessation tool and Māori will also have interests in policies that may impact on smoking cessation due to the ongoing disproportionate harm smoking has on Māori.
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Strengthening the regulation of vapes to protect young people would demonstrate good government within the context of the Treaty of Waitangi.
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### Consistency with the New Zealand Bill of Rights Act 1990

<b>3.3. Has advice been provided to the Attorney-General on whether any provisions of this Bill appear to limit any of the rights and freedoms affirmed in the New Zealand Bill of Rights Act 1990?</b>	<b>YES</b>
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The Ministry of Justice has provided advice to the Attorney-General and this is usually available on the Ministry of Justice's website at <a href="https://www.justice.govt.nz/justice-sector-policy/constitutional-issues-and-human-rights/the-bill-of-rights-act/advice/">https://www.justice.govt.nz/justice-sector-policy/constitutional-issues-and-human-rights/the-bill-of-rights-act/advice/</a>
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### Offences, penalties and court jurisdictions

<b>3.4. Does this Bill create, amend, or remove:</b>	
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<b>(a) offences or penalties (including infringement offences or penalties and civil pecuniary penalty regimes)?</b>	<b>YES</b>
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<b>(b) the jurisdiction of a court or tribunal (including rights to judicial review or rights of appeal)?</b>	<b>NO</b>
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The Bill creates offences and penalties to support the new obligations introduced regarding the:
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| <ul style="list-style-type: none"><li>• the manufacture, sale, supply and distribution of disposable vapes</li><li>• display restrictions for vaping products</li></ul> |
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Some existing penalties are increased regarding existing display restrictions and unlawful sales of regulated products to minors.
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<b>3.4.1. Was the Ministry of Justice consulted about these provisions?</b>	<b>YES</b>
The Ministry of Justice was consulted on the proposed changes. Specifically, feedback was sought on the proposed changes to offences and penalties and the guidance provided was reflected in the Bill where appropriate.	

### Privacy issues

<b>3.5. Does this Bill create, amend or remove any provisions relating to the collection, storage, access to, correction of, use or disclosure of personal information?</b>	<b>YES</b>
Amendment to section 94(2)(b)(i) of the primary Act to replace “name and address” with “name, address and date of birth.” The current infringement notice form in Schedule 6 of the Regulations requires date of birth to be included, but currently section 94 does not give enforcement officers the power to require date of birth. Collecting this detail is important to ensure infringements are issued to the correct person.	

<b>3.5.1. Was the Privacy Commissioner consulted about these provisions?</b>	<b>NO</b>

### External consultation

<b>3.6. Has there been any external consultation on the policy to be given effect by this Bill, or on a draft of this Bill?</b>	<b>YES</b>
The Ministry of Health consulted externally with different agencies to support the drafting of this Bill. The following agencies were consulted: the Crown Law Office, the Department of the Prime Minister and Cabinet, Ministry for Ethnic Communities, Ministry for Pacific Peoples, Ministry of Business, Innovation, and Employment, Ministry of Disabled People   Whaikaha, Ministry of Education, Ministry of Foreign Affairs and Trade, Ministry of Justice, Ministry of Social Development, New Zealand Customs Service, New Zealand Police, Oranga Tamariki, Parliamentary Counsel Office, Te Arawhiti   Office for Māori Crown Relations, Te Puni Kōkiri   Ministry of Māori Development, Ministry for the Environment, and the Treasury.	

### Other testing of proposals

<b>3.7. Have the policy details to be given effect by this Bill been otherwise tested or assessed in any way to ensure the Bill's provisions are workable and complete?</b>	<b>NO</b>



## Part Four: Significant Legislative Features

### Compulsory acquisition of private property

<b>4.1. Does this Bill contain any provisions that could result in the compulsory acquisition of private property?</b>	<b>NO</b>

### Charges in the nature of a tax

<b>4.2. Does this Bill create or amend a power to impose a fee, levy or charge in the nature of a tax?</b>	<b>NO</b>

### Retrospective effect

<b>4.3. Does this Bill affect rights, freedoms, or impose obligations, retrospectively?</b>	<b>NO</b>

### Strict liability or reversal of the usual burden of proof for offences

<b>4.4. Does this Bill:</b>	
<b>(a) create or amend a strict or absolute liability offence?</b>	<b>YES</b>
<b>(b) reverse or modify the usual burden of proof for an offence or a civil pecuniary penalty proceeding?</b>	<b>NO</b>
<p>A new strict liability offence is created for breaching the new prohibition of disposable vaping products (new section 20FA).</p> <p>Some of the penalty levels of existing strict liability offences are increased: ie relating to publishing a regulated product advertisement (section 23), the visibility of products (section 37), selling regulated products to minors (section 40).</p>	

### Civil or criminal immunity

<b>4.5. Does this Bill create or amend a civil or criminal immunity for any person?</b>	<b>NO</b>

### Significant decision-making powers

<b>4.6. Does this Bill create or amend a decision-making power to make a determination about a person's rights, obligations, or interests protected or recognised by law, and that could have a significant impact on those rights, obligations, or interests?</b>	<b>NO</b>

### Powers to make delegated legislation

<b>4.7. Does this Bill create or amend a power to make delegated legislation that could amend an Act, define the meaning of a term in an Act, or grant an exemption from an Act or delegated legislation?</b>	<b>NO</b>

<b>4.8. Does this Bill create or amend any other powers to make delegated legislation?</b>	<b>NO</b>

### Any other unusual provisions or features

<b>4.9. Does this Bill contain any provisions (other than those noted above) that are unusual or call for special comment?</b>	<b>NO</b>