



24th August 2022

**Submission on the 'Smokefree Environments and Regulated Products
(Smoked Tobacco) Amendment Bill'**

To the Select Committee,

This submission is from the Public Health Association of New Zealand (PHANZ),
Kāhui Hauora Tūmatanui.

We would welcome the opportunity to speak to this submission.

You may contact us via email at Alana@PHA.org.nz.

Signed,

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Submission

Thank you for the opportunity to write a submission on the Smokefree Environments and Regulated Products (Smoked Tobacco) Amendment Bill.

The Public Health Association of New Zealand (PHANZ) nationally represents its members across public, private and voluntary sectors. Our vision is 'Good health for all - health equity in Aotearoa' ('Hauora mō te katoa – oranga mō te Ao'). We provide a forum for information and debate about public health action which aims to improve, promote and protect the health of the population through the organised efforts of society. We recognise Te Tiriti o Waitangi as Aotearoa New Zealand's founding document and support it in policy and legislation.

PHANZ comprises members and expertise from across a broad spectrum relating to public health. We endorse both science-based best practices and a precautionary approach where gaps in understanding or community concerns exist. As a Tiriti-aligned organisation, we embrace kaupapa Māori and policy that aligns with Te Tiriti o Waitangi obligations.

Overall we support the purpose of the Smokefree Environments and Regulated Products (Smoked Tobacco) Amendment Bill which aims to; (1) limit the number of retailers able to sell smoked tobacco products; (2) prevent rangatahi from becoming addicted to nicotine by prohibiting the sale of smoked tobacco products to anyone born on or after 1 January 2009; and (3) make smoked tobacco products less appealing and addictive.

Tobacco companies profit via products that kill our people. We want this to stop. To maximise the potential benefits for our people this Bill could offer, we wish to make the following recommendations and comments.

Recommendations and comments:

Crown obligations under 'Te Tiriti o Waitangi'

- We recommend the Bill refers only to 'Te Tiriti o Waitangi' or 'Te Tiriti' and references to 'The Treaty of Waitangi' be removed. The use of the English name potentially referring to the English text document may create confusion as to the Crown's obligations to honour Te Tiriti and the articles as stated in the Te Reo document. As international ruling contra proferentem applies to the two documents, the Te Reo Māori text of Te Tiriti takes precedence.
- We further recommend Te Tiriti o Waitangi obligations be more visible in all aspects of this Bill. We note the Bill requires consultation between the

Director-General and Māori (see 20N), however, consultation may be insufficient if Tiriti partnership is not fostered to better inform the process required. For example, 20N2c requires every iwi in a rohe to be consulted on the application process - without qualifying the need for a relationship to guide the process. More emphasis on interpreting Tiriti obligations around partnership to inform improved relationships and engagement is needed.

- We support calls to establish an independent Māori governance group to provide input into the development of any regulations and the overall implementation and evaluation of the legislation. Although we strongly support the role and guidance Te Aka Whai Ora (the Māori Health Authority) can play in overseeing the implementation of this Bill. It is important to remember that Te Aka Whai Ora is ultimately a crown entity that resides within the Director-General's influence; would not be considered a Māori partner in regards to Te Tiriti o Waitangi and may not last successive government terms.
- Māori world views are holistic and include wairua or spiritual concepts. The strength with which Te Mana o Te Wai has been incorporated into water legislation could benchmark an equivalent concept into smoking legislation - for example 'Te Mana o Te Hau' (mana of the breath or vitality principle in people). If Hau is the vital essence or spark that gives people vitality (not just 'breath'), then smoking of any form brings an unnatural influence that can limit human potential in the world, and so should have greater protection than just personal choice or number of outlets. Therefore we call for the protection of all Māori people from smoking and vaping harm, with a kawa like Te Mana o Te Hau - protecting vital essence of life within a Māori worldview and options for this to express within the regulatory process.

Vaping will harm our rangatahi

- Vaping is on the rise in our rangatahi (1). We must protect our young people from the harmful effects of nicotine addiction, whether that be inhaled via a cigarette or a vape. We recommend that the 'Smokefree Generation' be the 'Nicotine Free Generation' and that all nicotine products be illegal to sell to anyone born after 1 January 2009.
- Nicotine is not a benign drug and vaping is not harm-free (2). Exposure to nicotine, particularly at a young age, negatively affects memory, attention, emotional regulation, executive functioning, reward processing, and learning (2, 3). Studies of vape liquids confirm the presence of toxic, carcinogenic substances in the resultant aerosol (2).
- Research has also shown that vape devices are not always being used as intended. One study found 26% of high school students that have ever tried vaping, have also used the devices for 'dripping' (2). Dripping is when e-liquids are dripped directly onto the heating coils and the vapour produced is inhaled. Users reportedly do this for a greater hit, yet inhalation of the vapour

in this way exposes the user to a greater risk of harm from the higher temperatures and higher toxicity (2).

- Furthermore, prospective research in young people of varying ages suggests that vaping use increases the likelihood of trying smoked tobacco products (4). Therefore, we have a duty of care and must ensure that all policies will protect our young people from vaping and smoking tobacco-related harm both now and in the future. The rise in vaping is a worrying trend that many in the Tupeka Kore and health sector see as 'de ja vu'.
- We are concerned that in Section 3A of the 2022 Amended Purposes of this Act, the previously strong stance taken to discourage young people from vaping has now been weakened. We recommend that you reinstate sections (b) and (c) (ii) – (iv) of the 2020 Act which specifies that vaping is discouraged, particularly in young people, and that all people are to be encouraged to stop vaping.

Support for those to quit vaping and be rid of their nicotine addiction

- Given the restrictions put on the smoking of cigarettes, it is possible that people will turn to vaping as a replacement for their nicotine addiction. Some believe vaping can be used as a harm minimisation technique relative to smoking (5, 6), and may already be inclined or have been recommended to try vaping as a way of quitting or themselves off tobacco. We advocate that additional support and resources be provided to Stop Smoking Services who offer or provide vapes as a cessation aid to quit smoking, ensuring that a plan is in place to stop vaping as well. Empowering our people to become 100% free from their nicotine addiction and free from the commercial interests of tobacco & vaping companies.
- To our knowledge, there is currently limited to nil funding support provided to help people stop vaping, no vaping device has been approved as an official smoking cessation method (7), and no evidence-based protocols exist on how to safely and effectively wean off vaping. Therefore, this policy has the potential to shift people from one method of addiction to another without truly achieving its long-term purpose.
- Furthermore, special consideration needs to be given to how to best support our most vulnerable populations such as hapū māmā (pregnant people) and tangata whai ora (those mentally unwell) to quit and remain vape- and smoke-free for life. We recommend culturally-appropriate interventions be investigated for these populations, and in particular, that hapū māmā's be supported to stop vaping whilst pregnant for their own health as well as the health of their unborn pēpi. We discourage vaping whilst pregnant as a harm minimisation technique relative to smoking and advocate for all hapū māmā's to stop both smoking and vaping whilst pregnant.
- We believe that it is important to ensure that people who may wish to transition from smoking to vaping are provided with all smoking cessation

options available so they can make an informed decision. It needs to be established that all vape retailers and employees complete mandatory training that includes smoking cessation and that referral pathways are set up with their local Stop Smoking Services.

- Māori and community kaitiaki or providers should be enabled via their own data sovereignty or locality programmes to have more of a role in their own protection, such as knowing the hotspots and organising their own initiatives like 'citizens controlled purchase operations' and reduced barriers for voicing concerns into the regulatory process. The Māori Health Authority or independent advisory group could be charged with supporting such as 'pro-active Tiriti partnership goals' that 'shall' be developed and supported.

Best available evidence on vaping

- There is a growing body of evidence about the harmful effects of vaping (8). We want this information to be more easily accessible to ensure New Zealanders are getting comprehensive, evidence-based information about vaping and the potential effects it can have in the short and long term.
- We caution that the best available evidence on vaping may be difficult to find and interpret by a lay person or incorrectly used by the media. One example of this is the often cited phrase that vapes/e-cigarettes are "95% less risky", "95% less harmful", or "95% safer" than combustible cigarettes (9). The research (circa 2013) which led to that particular phrase in the media was significantly limited in its analysis and thus lacked the validity to make such broad claims (9). However, despite its limitations, this phrase is repeated in the media and elsewhere and is in fact even less true in regard to the strength of the vaping products that are available today. Therefore, translation of early vaping research must be done so with caution and an understanding of the differences and limitations.
- The main barrier to achieving our obligation to the WHO Framework Convention on Tobacco Control will be interference by the tobacco industry. Global research has shown that the tobacco industry uses multi-pronged strategies to undermine public health. One strategy is to discredit the science and promote misinformation (10). We urge the Government to take control of the narrative around the known and unknown harms of vaping to counteract the potential spread of misinformation and the perceived lack of negative health effects. Failure to protect the public, including Māori as a Tiriti obligation, could lead to the kind of harm from the likes of misinformation experienced with Covid19.

Freeze on new products entering the market

- We advocate for a freeze on new tobacco products from entering the market. Worldwide, the tobacco industry has been quick to respond to restrictions on the sale of tobacco products and the decline in smoking rates by finding

loopholes and new innovations. Tobacco companies' business is to make our people addicted to their products and they will continue to launch new ways of doing this. One worrying example of this is the Chesterfield Leaf (a cheaper, imitation of a cigarette) that has been developed to manipulate the excise taxes in the hope to deter budget-conscious consumers from quitting smoking by providing a cheaper alternative (11). We believe that new harms and threats will continue to emerge and we must take the time to put in place strong policies and regulations so Aotearoa New Zealand can be proactive and not reactive to such threats.

- Another concern we have is that vape devices and liquids are not always used as intended. For example, devices can be used for other drugs including THC, the consumer could use their device to vape other substances or 'dripping', and liquids have been found containing other recreational drugs e.g., cocaine, LSD, methamphetamine (2). In the United States, calls to the poison control centre about vaping/e-cigarette liquid involved an under 5-year-old 51% of the time (2). Forearmed with sufficient evidence for a precautionary approach, we should be proactive in protecting our communities, particularly Māori. Providers of vapes have little control over how products are used outside of the intended scope and should not be further enabled to create unsafe conditions without remaining liable for mitigating the risks.

Encourage fines to be directed at tobacco companies

- We urge for caution in the application of fines as stated in section 40B 'Supplying smoked tobacco product to smokefree generation prohibited'. Due to the unequal burden of smoking and vaping on Māori and Pacific populations, the fines for supplying products to the smokefree generation will disproportionately affect these groups, further harming them and their whānau. We believe that the tobacco companies are the root cause of the problem and therefore should bear the brunt of any punitive measures.
- To disincentivise tobacco companies from infringing on the annual testing requirements of smoked tobacco products, we advise that the fine be increased from \$10,000 to \$100,000 minimum. We believe this to be an important measure, especially if low nicotine options are mandated. We would also extend the annual testing requirements to vapes and set a maximum allowable nicotine threshold with the same penalties for companies who exceed this limit.

Support for low nicotine options

- We support the proposal for low nicotine products as a method to encourage people to ultimately quit smoking. We want these products to be less addictive so that whānau will have a better chance of quitting, and that our young people who may experiment with smoking will not become addicted also.

- We support calls to lower the nicotine levels in smoked tobacco products that are available for sale in Aotearoa and encourage this to happen as early as possible, given the strong indication that it will have the greatest influence on reducing smoking rates and health inequities in Aotearoa (12, 13). Public health experts have recommended that the implementation of denicotinisation be done as early as 2024 to make our goal for a smokefree Aotearoa in 2025 (12, 13).
- In addition, we call for a maximum nicotine threshold to be set in vape devices also, to limit the addictiveness of vaping. Vape devices are currently being sold with vape liquid up to 50mg/ml of nicotine, significantly higher than an average pack of cigarettes (~22-36mg).

Support reduced availability and proximity restrictions

- We support a reduction in the supply of smoked tobacco and vape products by significantly reducing the density of retailers, particularly in areas with high deprivation. Most people who smoke want to quit and the availability of tobacco products in a person's environment is a major deterrent to this.
- Tobacco products can now be sold online where age-verification restrictions are weakly applied. We believe that online sales should not be allowed as this undermines the purpose of setting a maximum number of retailers within an area. Further, as the age-verification process is considerably weaker when buying online this would further undermine the goal of a smoke-free (or nicotine-free) generation.
- We strongly recommend that the availability of vapes be limited (in physical stores and online) and the density of vape retailers reduced and that vape retail stores be subject to proximity restrictions to sensitive sites (e.g., schools).
- We also have concerns that the purchase of smoking or vaping products could be made using 'buy now pay later' or after-pay schemes and recommend that these types of payment methods not be allowed for nicotine or other addictive products.
- We do not approve of any nicotine products (cigarettes, vapes, or others) being sold in vending machines and recommend sales via vending machines be prohibited.
- We recommend that there be appropriate mechanisms set up to allow communities and organisations the ability to oppose licensing applications for tobacco and vape retailers. Local communities should be given the opportunity to be consulted with and provide feedback on the density/maximum number of retailers and proximity to sensitive areas. We would also expect that licensing fees be set at a high level to disincentivise retailers and that any profit from licensing fees is redirected to stop smoking and vaping strategies.

- We strongly recommend that licences be able to be suspended and revoked in the case that the licence holder does not comply with regulations. Mechanisms should also be put in place that allows for the community to report any premises they are aware of that are not complying with the regulations.
- International trade provisions should also be reviewed with a 'protection of Māori' lens, such that where Te Tiriti or protection of indigenous peoples provides options by which other powers have less control over our tino rangatiratanga and trade expectations are aligned to this from the start to mitigate challenges later.

Reduce the attractiveness of smoking and vaping

- Plain packaging in Aotearoa New Zealand has successfully been implemented for cigarettes, with the positive impact of this change felt within the first 6 months of implementation (14). We believe that vaping products should also be subject to plain packaging, particularly given their attractiveness to our rangatahi.
- We also call for smoking and vaping products to clearly display on the outside of the packaging a list of the constituents within the product alongside their respective quantities. This will help educate the consumer as to what they are putting into their bodies, as well as allow for clearer compliance with constituent regulations.

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