



## **Submission on the Smokefree Environments and Regulated Products (Vaping) Amendment Bill**

**For the attention of**

Committee Secretariat  
Health Select Committee  
Parliament Buildings  
Wellington

**The Cancer Society wish to speak to our submission.**

March 2020

## Contents

Introduction .....	3
Executive summary .....	5
Cancer Society priorities .....	5
The Cancer Society supports the following aspects of the Bill .....	5
The Cancer Society makes the following suggestions for changes.....	6
General comments.....	7
Proposed principles.....	8
Response to proposed approach on key regulatory issues .....	10
Sale to minors .....	10
Access by minors.....	11
Flavours.....	16
Smokefree areas .....	17
Advertising, sponsorship.....	19
Labelling/packaging .....	21
Product safety .....	22
Product notification .....	23
Advice to customers.....	23
Giveaways, discounting, and loyalty points.....	25
Vaping within retail stores .....	25
Retailer registration .....	25
Summary of consultation with Te Tai Tokerau Iwi and other health providers .....	26
Summary of public support for strengthening the vaping legislation .....	29
Other issues .....	33
References .....	39

## Introduction

Thank you for the opportunity to respond to the Smokefree Environments and Regulated Products (Vaping) Amendment Bill ('the Bill').

The Cancer Society of New Zealand is a non-profit organisation (hereafter "the Cancer Society") that is committed to reducing the incidence and impact of cancer in the community and reducing cancer inequities. We work across the cancer continuum with a focus on prevention, supportive care, provision of information and resources, and funding of research.

Tobacco smoking kills as many as two-thirds of people who smoke long-term<sup>1</sup>. It is the single biggest cause of cancer, and cancer is the main cause of death for New Zealanders. Stopping people from becoming addicted to smoking in the first place is the most effective way we have of reducing both smoking-related harm and inequalities in cancer outcomes.

New Zealand's comprehensive approach to tobacco control since the introduction of the Smokefree Environments Act in 1990 has been very effective in reducing smoking prevalence across all age groups, but particularly in young people. ASH Year 10 Survey data shows that regular (daily, weekly, monthly) smoking prevalence declined among 14-15-year olds from 28.6 % in 1999 to 4.7 % in 2016.

However, since 2015 the decline in youth smoking slowed and began to reverse, and in 2019 regular smoking in this age group had increased from 4.7 % in 2016 to 5.9 %. This increase has occurred alongside a rapid increase in regular youth vaping in both New Zealand (12% in 2019) and worldwide. The Cancer Society is very concerned with this recent development. We are also concerned to see that between 2018 and 2019, regular smoking increased significantly in Māori Year 10 students, from 11.6 % to 13.6 % (Walker et al., 2020).

It is timely to reflect on all effective policy options for reducing the great harm caused by tobacco smoking. There is a need to strengthen the Smoke-free Environments Act 1990 by reducing the availability of all tobacco products. Restricting access would send a clear message that tobacco is no ordinary product. Because of its uniquely harmful and addictive nature, it should be subject to rigorous policy and regulatory approaches aiming to minimise its use and support current users to quit.

The Cancer Society supports strengthening the Smokefree Environments Act and investing in effective strategies to make progress on Smokefree Aotearoa 2025 goals and aspirations. These include

- **A substantial reduction in the number of retail outlets selling tobacco and vaping products**
- **Making tobacco products less affordable**
- **Reductions in nicotine levels in cigarettes and tobacco**
- **A sinking lid on tobacco supply**
- **Tobacco-free generation policies**
- **Extending smokefree areas.**

The Cancer Society welcomes this new legislation that is intended to help some people to quit smoking through vaping, while addressing concerns about vaping in young people. This legislation is urgently needed.

---

<sup>1</sup> Retrieved from Health Promotion Agency website <https://www.smokefree.org.nz/footnotes> on 19 March 2020.

We would like to see the draft legislation strengthened to better protect young people from becoming addicted to nicotine through vaping.

The Cancer Society has a position statement on vaping<sup>2</sup> and in July 2019 completed a comprehensive review of research evidence and policy issues on the use of vaping and smokeless tobacco products<sup>3</sup>. These documents are attached and inform the society's submission to the Bill.

Finally, the Cancer Society is completely independent and receives no funding nor has any affiliation to the tobacco industry or the vaping industry.

**We request that the Health Select Committee ask all oral submitters to disclose whether they receive any funding or have any affiliations whatsoever with the tobacco or vaping industry. We also request that all submitters be asked to disclose any commercial interests.**

We are aware that organisations such as the Foundation for a Smokefree World and the International Network of Nicotine Consumer Organisations (INNCO) receive tobacco industry funding and have key representatives in New Zealand as part of the research and consumer advocate networks. The New Zealand Government signed up to the WHO International Framework Convention on Tobacco Control (FCTC). Article 5.3 of the FCTC requires that "in setting and implementing their public health policies with respect to tobacco control, Parties shall act to protect these policies from commercial and other vested interests of the tobacco industry in accordance with national law".

---

<sup>2</sup> Ministry of Health Vaping Fact Sheet retrieved on 20 March 2020 from <https://www.health.govt.nz/system/files/documents/pages/hp7325-vaping-fact-sheet-21feb2020.pdf>

<sup>3</sup> Cancer Society Auckland Northland, 2019. *Vaping: degrees of harm. E-cigarettes and smokeless tobacco products. Summary of Evidence*. Download from <https://auckland-northland.cancernz.org.nz/reducing-cancer-risk/what-you-can-do/smoking-and-cancer/e-cigarettes-and-smokeless-tobacco-products/>.

## Executive summary

### *Cancer Society priorities*

Preventing cancer, reducing the harm caused by tobacco smoking, and reducing inequalities in health outcomes are priorities for the Cancer Society in New Zealand. The organisation is very interested in the potential for vaping and smokeless tobacco products to help adults to quit smoking.

Based on the findings of our evidence review<sup>4</sup> (2019), the Cancer Society supports a precautionary approach to legislation and argues against the widespread promotion of, and access to vaping and smokeless tobacco products. There is emerging evidence that supports e-cigarettes being made available in the context of comprehensive smoking cessation programmes. But there is also emerging evidence about the risks to non-smokers and young people. These include

- the potential for nicotine addiction and the impact of nicotine itself on cognitive development in children and young people
- the increased risk that non-smokers who vape will begin to smoke conventional cigarettes
- respiratory and cardiovascular health impact, and
- the need to protect people from the as-yet-unknown long-term impacts of using these products.

Preventing the uptake of vaping and smoking in young people is a key priority for the Society. Vaping has become 'normalised' among young New Zealanders, and this submission provides recommendations that are intended to 'de-normalise' vaping for youth.

**The Cancer Society has concluded that vape sales should be restricted to R18 specialist vape shops and pharmacies, and through smoking cessation services. Alongside restricting access to smokeless tobacco and vaping products, the Society supports a planned process to substantially reduce the availability of smoked tobacco products by removing them from generic retailers such as dairies, petrol stations and supermarkets.**

There is good quality international evidence summarised in our attached report, suggesting that young people who start vaping are more likely to start smoking, although a causal relationship has not yet been established. Minimising access to all tobacco and vaping products for children and young people is a necessary step to protect young people from nicotine addiction and taking up smoking.

We note that there is emerging evidence that the recent increase in vaping among school students (nearly 40 % had tried vaping in 2019, and 12 % were vaping regularly<sup>5</sup>) has been accompanied by an increase in regular youth smoking. While it is too soon to say whether these are trends, or whether vaping is responsible for this increase in youth smoking, we are very concerned about these new findings.

### *The Cancer Society supports the following aspects of the Bill*

- 1. The alignment of current legislation governing smoked tobacco products with those for e-cigarettes and smokeless tobacco products.**

---

<sup>4</sup> <https://auckland-northland.cancernz.org.nz/assets/Uploads/CSAN-VapingSummaryReport-Web3.pdf>

<sup>5</sup> From ASH Year 10 and Youth19 data, 2020)

2. **The prohibition of marketing and sponsorship of regulated products and sales to minors, including for multi-national sporting or other events.**
3. **The prohibition of vaping and using smokeless tobacco products in legislated smokefree areas.**
4. **Tailored packaging requirements** and public consultation on these.
5. **Product safety standards on the design, constituents and other attributes of vape products, and mechanisms by which to hold manufacturers and retailers accountable.**
6. **Standardised packaging** which will reduce the appeal of these products to children and non-smokers.
7. **The requirement for retailers to notify regulated products and provide sales information to the Ministry of Health** (*Part 4 of the Bill; Part 5 of the Bill; subpart 4*).

*The Cancer Society makes the following suggestions for changes*

1. Prohibit sales to persons under 18 years of age **and prohibit the procurement of regulated products on behalf of minors. The minimum age should increase if the age of purchase for smoked tobacco products is increased so that they align.**
2. **Online sales and marketing to children and young people need to be addressed within the Bill** to protect our younger generation. Recommendations are included in this submission.
3. **Extend the legislation to restrict the sales of cigarettes and tobacco** including a planned removal from generic retailers such as dairies, petrol stations and supermarkets.
4. **The Cancer Society strongly supports limiting the sale of e-cigarettes and smokeless tobacco products to specialist stores and pharmacies, or through smoking cessation services.** Vaping products should not continue to be sold in dairies, supermarkets and petrol stations across NZ, which will not be able to support people wanting to use the products to quit smoking. Sales to minors in these retailers will be impossible to monitor and enforce.
5. **All retailers must provide their staff with accredited training in smoking cessation so that good quality advice can be provided.** There is good evidence that many people experience barriers to using vaping to quit, and proper technical and personal support is needed. This could include online or telephone support.
6. We support the statement from the ASPIRE submission to the Bill, that “**the primary aim of regulating vaping products should be to support the realisation of the Smokefree 2025 goal**, which aims to reduce smoking prevalence to minimal levels among **all** population groups in New Zealand.”
7. **Extend legislated areas to include all outdoor hospitality areas as smokefree and vape-free.**
8. We recommend extending the provisions of the smokefree areas covered in Part 1 of the Bill so these **explicitly disallow vaping in vehicles with children under 18 years of age.**
9. We support **licensing rather than registration of all retailers.** There is no evidence that vaping retailers have behaved responsibly in the sales and marketing of these products to young people and non-smokers in recent years. A strong signal is needed from Government that the status quo is no longer acceptable.
10. We support **stronger regulations for smokeless tobacco** eg. tobacco warning and a mechanism for public to have a say in DG decision-making e - little is known about the health impacts of Heat-Not-Burn (HNB) products, which argues for more restrictions on these products. For example, HNB packaging should state that the product contains tobacco and include warnings.
11. **We oppose tobacco industry ownership of retail outlets and their provision of smoking cessation advice.** There is already at least one Philip Morris International (PMI)-owned IQOS shop in NZ and the Ministry has advised that tobacco industry ownership of retail outlets may still be permitted under new legislation subject to agreement with the Director General.

**Please note more detailed recommendations are provided in the body of the submission.**

## General comments

The **Report of the Attorney-General (2019)** in response to the Bill concludes “the provisions of the Bill prohibiting the advertising, promotion or sponsorship of vaping products and smokeless tobacco devices *are inconsistent with the right to freedom of expression* affirmed in S14 of the Bill of Rights Act” (p). **When the Health Select Committee considers this report, we ask that they weigh the Attorney-General’s finding with the rights of children to be protected from the promotion of addictive products.** Controlling advertising and marketing to young people is key to limiting the influence of companies who seek to create a source of new vape customers. In 2010 the Attorney-General made a similar finding in response to another proposed SFEA amendment, stating that freedom of expression would be curtailed if the display of tobacco products were banned.

We wish to point out that this became law in 2011 and has contributed to a reduction in regular smoking and tobacco purchases among NZ youth (Edwards et al, 2016). It is expected that the appeal of vaping among young New Zealanders will also lessen if companies are no longer permitted to market their products to directly appeal to children and teenagers. Under section 5 of the Bill of Rights Act, Parliament may pass legislation notwithstanding the view of the Attorney-General if satisfied the provisions in the Bill impose reasonable limits that are demonstrably justified in a free and democratic society. Given the evidence of actual harm being caused and risk of further harm eventuating (particularly to young people) from the marketing activities, the Cancer Society considers the restrictions are demonstrably justified.

**The Cancer Society agrees that there is emerging evidence that e-cigarettes can help some people to quit smoking.** However, the legislation in its current form is not balanced in addressing the needs of both adults who smoke, and young people – specifically it does not provide adequate protections for children and young people.

**The Cancer Society notes that the harm reduction approach being taken in the proposed legislation draws heavily from that being taken in the UK,** and publications from Public Health England. The regulatory environment in the UK initially had some similarities to that in New Zealand, but the situation has changed recently for both countries. As part of the European Union, England has had to comply with EU regulations on vaping since 2015<sup>6</sup>. Perhaps as a result of the stronger regulatory framework, youth vaping has remained relatively low in the UK compared with NZ, and youth smoking prevalence in the UK has continued to decline. This has not been the case in NZ.

**Lack of regulation has resulted in large numbers of children and young people experimenting with and regularly using vaping products.** New Zealand’s 20-year decline in smoking prevalence in young people appears to have been stalled in recent years and in 2019, reversed, alongside this rapid growth in vaping. Furthermore, 2019 data suggests that inequities between Māori and non-Māori may be increasing. It would be disastrous for the prevention of cancer, and for our efforts in improving health outcomes for Māori, if these recent trends continue.

**The normalisation of vaping amongst young people needs to be reversed.** This will require a stronger regulatory framework than is being proposed as well as monitoring and enforcement of the new regulations. Significant additional resources will be required for this, especially if the Government decides to allow sales in generic stores.

---

<sup>6</sup> Summary of regulatory background in the UK retrieved on 26 March 2020 from <https://ash.org.uk/wp-content/uploads/2019/06/ASH-Factsheet-Youth-E-cigarette-Use-2019.pdf>

The Society argues for a **smokefree=vapefree approach in both legislated and Council-designated smokefree areas**, for reasons outlined in this submission.

**The Ministry of Health's upcoming tobacco plan must prioritise a significant, planned reduction in retail availability for all tobacco products.** These products are currently available throughout the country in over 6,000 retail outlets. We strongly oppose the argument that because conventional tobacco products are so widely available, e-cigarettes and smokeless tobacco products should be at least as widely available. Rather, the Government should move quickly to reduce the availability of conventional tobacco products while restricting access to e-cigarettes.

## Proposed principles

The following principles have been developed to guide feedback to the Bill. They are based on a 2016 background report of the NZ National Smokefree Working Group, and principles developed by the Australian Department of Health<sup>7</sup>.

### 1. Regulation/policy should be evidence-based

Policy and regulation should be informed by interpretations of evidence and conclusions reached by credible health and scientific agencies.

Decisions should be consistent with good quality research evidence on the potential benefits and harms of e-cigarettes (ECs) and on effective strategies for reducing smoking prevalence.

Health claims for ECs should be rejected by health authorities in the absence of robust supporting scientific evidence to substantiate these claims.

### 2. Regulation/policy should contribute to achieving Smokefree Aotearoa 2025

Policy on e-cigarettes should support the achievement of the Smokefree 2025 goal of reducing tobacco prevalence to minimal levels for all New Zealanders.

Priority should be given to reducing smoking in Māori, Pacific, low-income and other high-prevalence groups.

Policy should aim to maximise the benefits of supporting smokers to quit, while minimising the health risks from their use due to initiation of EC use by non-smokers (particularly children and young people) or possible gateway effects leading to smoking.

Regulation of ECs should not be more stringent than regulatory measures in place for smoked tobacco products.

New Zealand's current smokefree strategies and activities should be maintained, continuously improved, and intensified.

### 3. Precautionary approach.

The precautionary approach acknowledges the potential risks associated with the long-term use of ECs, particularly among non-smokers, and most importantly among adolescents and young adults.

This approach requires that regulation and policy concerning the sale and marketing of ECs should seek to minimise the risk of their uptake among non-smokers, particularly adolescents and young adults.

---

<sup>7</sup> Retrieved from <https://beta.health.gov.au/resources/publications/principles-that-underpin-the-current-policy-and-regulatory-approach-to-e-cigarettes-in-australia> on 10 July 2019.



#### 4. Protecting public health gains.

Regulations and policy for ECs should be consistent with the best available evidence for how to maximise the degree to which ECs support smokers to successfully quit or transition to using them as complete substitutes for smoked tobacco products, while minimising use of ECs among non-smokers.

The Ministry of Health should continue to monitor evidence from New Zealand and internationally on the impacts of ECs and regulatory and policy frameworks on smoking prevalence so that policy and practice can be rapidly updated in light of emerging evidence.

#### 5. Protecting public health policy from all commercial and other vested interests related to e-cigarettes

Parties with a commercial interest in the sale and marketing of ECs ought not to be placed in advisory positions to New Zealand Government policy or programme development in this area.

#### 6. Complementary with jurisdictional regulation and existing health and social policy frameworks.

Any action taken at a national or local government level for ECs supports existing health and social policy frameworks.

## Response to proposed approach on key regulatory issues

This section provides comments and detailed recommendations in response to particular aspects of the Bill, as outlined in Ministry of Health's *Fact sheet on the Smokefree Environments and Regulated Products (Vaping) Amendment Bill*<sup>8</sup> and the Bill itself.

### *Sale to minors*

**Regulated products and toy regulated products (including tobacco products, vaping products and smokeless tobacco products) must not be sold to persons under 18 years of age.**

#### Comments

The Cancer Society supports the proposed restrictions on sales to minors and notes the section (Subpart 3, p.50) outlining the appointment of enforcement officers who will be empowered to enforce these restrictions and others.

It is unclear whether the Government intends to increase the number of enforcement officers currently employed in Smokefree Environment Act work, to allow for the additional workload involved in monitoring and enforcing restrictions on sales of vaping products to minors. Monitoring and enforcement costs will be significantly higher if the Government continues to allow the sale of regulated products to thousands of retailers as proposed in the Bill. There is good evidence that New Zealand children have relatively easy access to conventional tobacco products from dairy owners (Robertson, 2017) and this is likely to be the case for e-cigarettes as well.

Regulations make a big difference to vaping and smoking prevalence. A recent comparison of different nicotine vaping products regulations in 14 countries examined awareness, ever-use and current use, and sales and marketing of the products (Gravely et al., 2019). Generally, ever- and current-use of the products were found to be lower in countries with the most restrictive policies [ever-use: 7.1% to 48.9%; current use: 0.3% to 3.5%] relative to countries with less restrictive policies [ever-use: 38.9% to 66.6%; current-use: 5.5% to 17.2%]. Gravely and colleagues (2019) concluded that with a few exceptions, awareness and use of nicotine vaping products varies by the strength of national regulations governing sales/marketing, and by country income.

It is worth noting that in the UK, the regulatory environment has been effective in keeping the uptake of e-cigarettes among young people relatively low since 2015<sup>9</sup>, when an age of sale for e-cigarettes of 18 was introduced making it illegal to sell e-cigarettes containing nicotine to under 18s or to purchase them on behalf of under 18s.

In May 2016 a regulatory framework for e-cigarettes was introduced under the EU Tobacco Products Directive. From that date the advertising or promotion, directly or indirectly, of electronic cigarettes and re-fill containers on media platforms with cross border impact was prohibited, including on television, radio, newspapers and magazines. The nicotine level of all EC products, including JUUL<sup>10</sup>, is capped at 20mg/mL, health warnings are required, and marketing is highly restricted. This has not

---

<sup>8</sup> Retrieved from <https://www.health.govt.nz/system/files/documents/pages/hp7325-vaping-fact-sheet-21feb2020.pdf> on 29 March 2020.

<sup>9</sup> Retrieved from <https://ash.org.uk/information-and-resources/fact-sheets/statistical/use-of-e-cigarettes-among-young-people-in-great-britain-2019/> on 25 March 2020.

<sup>10</sup> JUUL complies with this limit in Europe but elsewhere the products contain much higher levels. Details can be found on Truth Initiative site: <https://truthinitiative.org/research-resources/emerging-tobacco-products/behind-explosive-growth-juul>

been the case in New Zealand for the last 20 months or so. High-nicotine pod vapes (up to 60mg/ml) have been easily available, and vaping products aggressively marketed, including to young people and non-smokers (Hoek & Freeman 2019). The products have also become widely available from thousands of retailers throughout New Zealand<sup>11</sup>, and easily bought by minors. New products have been introduced and the market continues to become more diverse.

Perhaps as a result of the stronger EU regulations, ASH UK reported that in 2019, only 15.4% of 11-18-year olds had tried vaping<sup>12</sup>, and 1.6% were using e-cigarettes more than once a week. This compares with 37.3% of 14-15-year olds in New Zealand having ever used e-cigarettes, and 3% reporting using e-cigarettes daily (ASH NZ). Although this data compares slightly different age ranges, it is also notable that the UK figures have been largely unchanged between 2015 and 2019, in sharp contrast to trends in New Zealand over the same period.

## Recommendations

- Prohibit sales to persons under 18 years of age *and* the procurement of regulated products on behalf of minors. The minimum age should increase if the age of purchase for smoked tobacco products is increased so that they align.
- Licensing is preferred to 'registration' of specialist retailers – licensing fees could provide resources for monitoring and enforcement
- Clear obligations need to be placed on retailers to demonstrate compliance with age restrictions, including ID checks if a consumer appears under 25
- Requirements for a dialogue tick box should be required of all online vaping retailers, as well as other age verification processes such as electronic verified ID checks and requiring signature and ID on courier delivered packages
- Stronger penalties are needed to enforce the minimum purchase age – fines of up to \$10,000 for specialist vape retailers who do not take reasonable steps to prevent minors from entering their premises (p. 35) do not compare well with fines of up to \$200,000 for those who advertise regulated products (p. 15)
- Additional resources must be allocated to enable the employment of sufficient enforcement officers to monitor and enforce the minimum purchase age and other restrictions in the Bill
- All retailers selling regulated products (including smoked tobacco) should be licensed and required to provide sales information and data
- Restrictions on density of retailers and proximity to schools, early childhood centres

## Access by minors

### GENERIC RETAILERS

**There are no age restrictions on who may enter a generic retail premise.**

### SPECIALIST VAPE RETAILERS

**All reasonable steps must be taken to prevent the entry onto the premise of persons under the age of 18 years.**

---

<sup>11</sup> VYPE products are available from over 2,500 retailers identified on their website at <https://vype.co.nz/pages/store-locator> retrieved 12 March 2020.

<sup>12</sup> Retrieved on 26 March 2020 from <https://ash.org.uk/wp-content/uploads/2019/06/ASH-Factsheet-Youth-E-cigarette-Use-2019.pdf>

## Comments

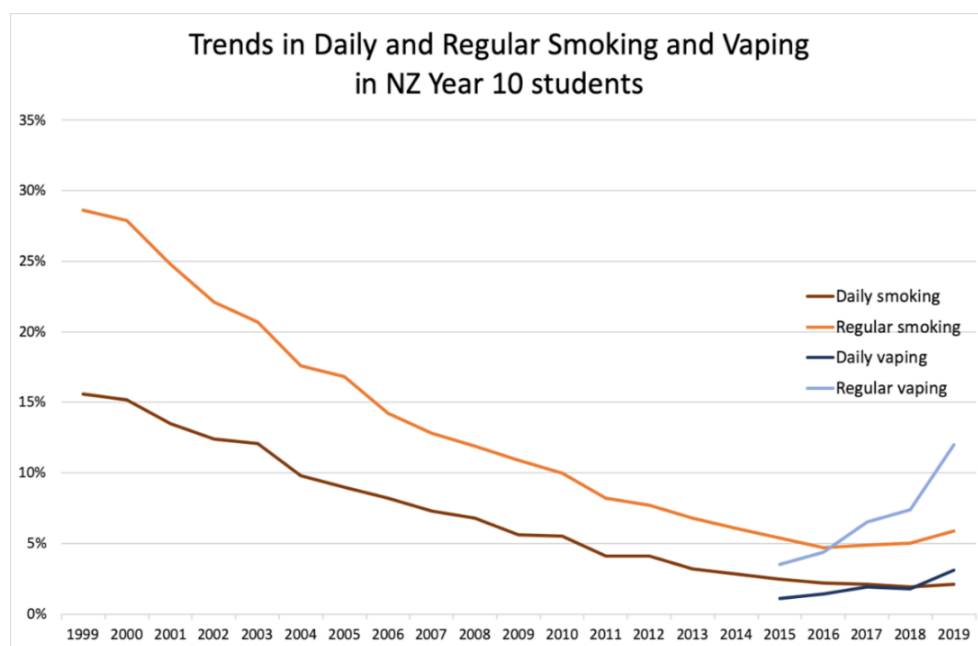
### *R18 restrictions are essential but will have limited effectiveness*

Having R18 restrictions along with those on marketing and sponsorship will help to prevent children and young people accessing vaping products. However, due to aggressive industry marketing and easy access to these products over the last 18 months or so, there is now a large cohort of Year 10 (14-15-year olds) who have experimented with (37.3%) or regularly used (12%) e-cigarettes in 2019.<sup>13</sup>

The ASH Year 10 results for 2019 were similar to those of the Youth19 survey<sup>14</sup> of 13-18-year olds ( $n=7,700$ ), which found that 38% of students in Northland, Auckland and Waikato regions had tried vaping, 10% vaped regularly, and 6% vaped weekly or more often.

The authors also reported that nearly two-thirds (65%) of students who had ever vaped, and nearly half (48%) of regular vapers had never smoked cigarettes. They concluded that “these findings call into question the idea that vaping is displacing smoking. The alternative possibility, that vaping is fuelling smoking, must be taken seriously by communities and policymakers.”

For the first time in 20 years, smoking prevalence in school-aged children has increased rather than decreased, and this reversal occurred over the last few years, alongside a rapid increase in vaping among young New Zealanders (see Figure 1 below).



**Figure 1. Trends in daily and regular smoking and vaping in NZ Year 10 students**

Source: Daily and regular smoking data 1999-2019 and vaping data 2015-2019 obtained from ASH NZ website.

Cancer Society divisions have anecdotal reports that minors are easily accessing current products through both generic and specialist retail shops, sometimes through older siblings or friends. Many

<sup>13</sup> ASH Year 10 Survey data retrieved on 14 March from

[https://d3n8a8pro7vhmx.cloudfront.net/ashnz/pages/70/attachments/original/1583197938/2019\\_ASH\\_Y10\\_Snapshot\\_E-cigs\\_and\\_vaping\\_FINAL.pdf?1583197938](https://d3n8a8pro7vhmx.cloudfront.net/ashnz/pages/70/attachments/original/1583197938/2019_ASH_Y10_Snapshot_E-cigs_and_vaping_FINAL.pdf?1583197938)

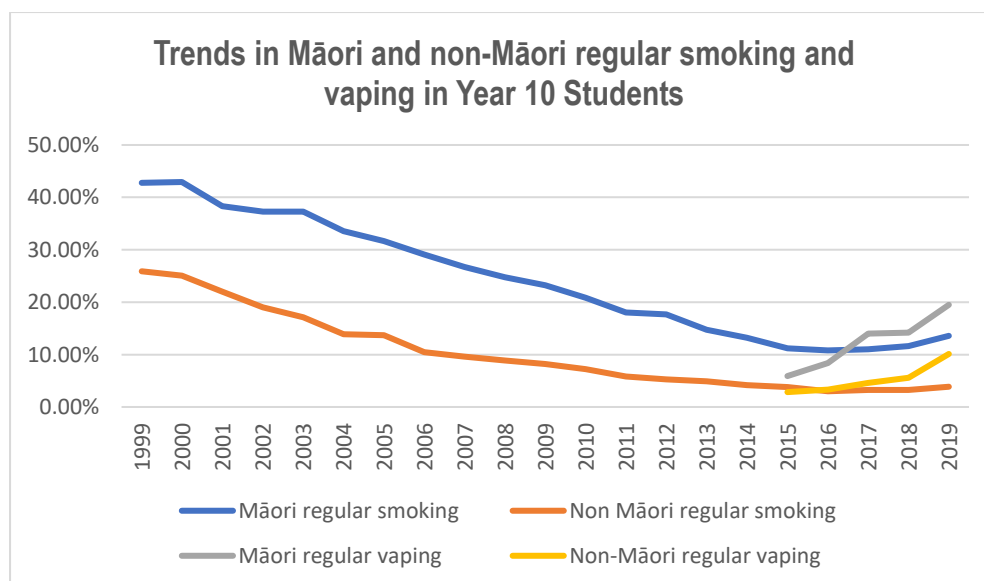
<sup>14</sup> Youth-19 Vaping Fact Sheet retrieved from <https://www.youth19.ac.nz/publications/2020/3/27/vaping-fact-sheet> on 27 March 2020.

parents believe that vaping is harmless and Cancer Society school surveys have provided reports of parents buying vapes for their teenagers.

In recent years, the extent to which vaping is a problem in young New Zealanders has been the subject of much debate among researchers. There have been different interpretations of research evidence, sometimes from the same data, which has contributed to public confusion. For example, since 2015 when the ASH Year 10 Survey began collecting information on vaping from 14-15-year-old students, ASH has reported that “...daily use of e-cigarettes is rare and largely confined to those who have smoked”.<sup>15</sup> This message conflicts with recent reports from school principals who report large numbers of intermediate and secondary students vaping, when smoking has virtually disappeared in many schools. Differences in perceptions about youth vaping were discussed in a recent Public Health Expert Blog (Hoek et al., 2019)<sup>16</sup>.

The assumption that low prevalence of vaping among never smokers but quite high prevalence among current smokers as unproblematic was questioned in the blog. The authors pointed out that “the vast majority of 14-15-year olds are never smokers, thus even a low prevalence may represent a significant proportion of regular e-cigarette users. We estimate around 20% of weekly or daily vapers are never smokers and less than half are current smokers” and that “while most regular vapers may be occasional or regular smokers at the time of the survey, we do not know if they were never smokers when they first vaped, and to what degree these adolescents graduated to smoking as a result of vaping (the proposed gateway effect).”

The increase in Māori smoking prevalence was significantly higher than non-Māori, raising concerns about the possibility of a widening of ethnic inequities in young people, which had been gradually narrowing since 2000 (see Figure 2 below).



**Figure 2. Trends in Māori and non-Māori regular smoking and vaping in Year 10 students**

Source: Māori and non-Māori data 1999-2018 obtained from ASH NZ website. Data for regular Māori and non-Māori vaping use from Walker et al.2020. (Supplementary Appendix Table 3).

<sup>15</sup> ASH New Zealand. 2018 ASH Year 10 Snapshot E-Cigarettes and Vaping 2019 retrieved from [https://d3n8a8pro7vhmx.cloudfront.net/ashnz/pages/70/attachments/original/1554281098/2018\\_ASH\\_Y10\\_Snapshot\\_E-cigs\\_FINAL.pdf?1554281098](https://d3n8a8pro7vhmx.cloudfront.net/ashnz/pages/70/attachments/original/1554281098/2018_ASH_Y10_Snapshot_E-cigs_FINAL.pdf?1554281098) on 16 May 2019.

<sup>16</sup> Retrieved from <https://blogs.otago.ac.nz/pubhealthexpert/2019/12/02/is-youth-vaping-a-problem-in-new-zealand/> on 11 March 2020.

Data from the New Zealand Health Survey (NZHS) show that daily smoking prevalence among 15-17-year olds was 3.0% in 2018/19 and current smoking prevalence (smoked in the last 28 days) was 3.8%. The NZHS identified that almost 20% of 18-24-year olds were current smokers in 2018/19. Between 2011/12 and 2016/17, prevalence in this age group declined, but the rate of decline had slowed since 2016/17, leading Edwards and colleagues (December 2019) to note that uptake of smoking in young adults “continues to contribute to maintaining a substantial level of smoking among the adult population in Aotearoa”.<sup>17</sup>

This slowing of the decline in prevalence across youth age groups occurred during a period when the uptake of vaping (trial, regular and daily use) has increased rapidly across all age groups and ethnicities. Regular (at least monthly) use of e-cigarettes in the adult population increased from 1.4% in 2015/16 to 4.7% in 2018/19, with the biggest increase in ‘ever use’ in the 18-24-year-old age group (47.3%).

### *Online sales to children*

The Cancer Society supports the banning of sales of regulated products to under-18-year-olds as an essential step in protecting minors. However, children and young people can easily access e-cigarettes online and have been doing so for some years. Our research shows that many children ignore the screening process which supposedly prevents their access to vaping websites (as outlined in Part 1 Section 43 of the Bill; p. 28).

A study of 59 New Zealand e-cigarette vendor websites (Gurram et al., 2019) found that less than half (47%) used a pop-up or dialog/tick box to ‘verify’ age for access to the site and 41% did not use any detectable form of age verification. To make a purchase, only 10% of sites required identity proof (eg, scanned driver’s licence or passport). Some of these may have been sites based outside New Zealand.

Section 43 (3) - **Internet-sales purchase age information or warnings** states

“The health warning information or warnings that are required to be visible must -

- (a) do no more than communicate information or warnings to the effect that the sale of regulated products to people who are younger than 18 years is prohibited; and
- (b) comply with the applicable requirements of those regulations.

The fine for non-compliance will not exceed \$2,000.”

The requirement above would be a major improvement on the current situation but is not nearly strong enough. Youth access to online sales and marketing are difficult to monitor and control, but these issues must be considered and properly addressed. The wording of the Bill and the fine are not adequate to either prevent youth sales or provide a disincentive to retailers to sell products to minors.

It must be mandatory for specialist retailers to implement age verification mechanisms for online purchases and at delivery, and fines for non-compliance must be much higher than proposed.

### *Restricting availability*

Tobacco products (including e-cigarettes) can now be bought from over 6,000 ‘generic’ retailers around New Zealand – dairies, supermarkets, computer stores, petrol stations and so on. Vype alone

---

<sup>17</sup> Retrieved from <https://blogs.otago.ac.nz/pubhealthexpert/2019/12/17/ten-things-we-can-learn-from-new-smoking-and-vaping-data-about-progress-to-smokefree-aotearoa-2025/> on 8 March 2020.

advertise that their products can be purchased from 2,500 stores and like many businesses, provide an online store locator to customers<sup>18</sup>. Children have been widely exposed to these products which have been sold for nearly two years alongside the lollies and behind the ice-cream counter. They have watched their peers, older siblings and parents buying the products with their bread and milk.

NZ research tell us that that quality of information about vaping products is poor in generic retailers, so they are less likely to provide a sustainable route to help people vape to quit.

We note that Section 3A states that one of the purposes of this Act is “to prevent the normalisation of vaping” (p.35, 1b). Vaping is already normalised and must now be de-normalised, especially in the minds of children and young people. This process must include removing vaping products from all retailers other than specialist stores and pharmacies.

*Liberalising access to vaping products may encourage people to quit smoking but will also expose children and young people to harm*

The Cancer Society accept that based on current evidence, vaping and other smokeless tobacco products are less harmful than smoked tobacco, and that some people find e-cigarettes helpful in quitting smoking particularly when people are supported through smoking cessation advice and programmes. But they are not safe, especially when used by children and young people, and the long-term health effects are not known.

The Cancer Society rejects the notion that vaping products need to be available on every street corner to be effective in smoking cessation. While it may be more difficult for people living in rural areas to access e-cigarettes, the real problem is that conventional tobacco products are so easy to access. A planned reduction in access to all tobacco products is needed. Meanwhile, people who want to use the products to quit smoking can purchase them from specialist stores, pharmacies, and online, with support from smoking cessation services.

Making vaping products available by generic retailers will continue to normalise vaping and make continued access far too easy for children and young people. It will also make monitoring and enforcement of R18 restrictions extremely difficult in generic retail outlets and will require significant additional resources.

The logical and evidence-based solution (ASPIRE 2017) is to restrict access to *all* tobacco products by removing them from most current retailers including generic retailers.

#### **Public support for reducing the number of places selling tobacco**

Last year Cancer Society conducted electronic and paper-based surveys/ submissions at our Relay for Life and other events nationwide to gauge public support for regulations to reduce the number of places selling tobacco. There is very high support for the Smokefree Environments Act to be strengthened to reduce the number of outlets able to sell cigarettes and tobacco.

Of the 1481 submissions collected nationally 92% said they wanted regulations to reduce the number of places selling tobacco. Across all regions there was very high support for this: Otago/ Southland 94% (total number of participants n = 521) Auckland/Northland 95% (n = 367), Wellington/ Marlborough 86% (n=140), Canterbury/West Coast 86% (n = 95), Central Districts/Waikato 91% (n=358).

---

<sup>18</sup> Retrieved from <https://vype.co.nz/pages/store-locator> on 13 March, 2020.



## Recommendations

- Reduce access to all tobacco products, including smoked tobacco and e-cigarettes
- Vaping and smokeless tobacco products should only be available from R18 specialist retailers and pharmacies, and through smoking cessation services. Sales through ‘generic retailers’ (dairies, services stations, supermarkets) should be prohibited
- Prohibit sales through vending machines.
- The promotion of vaping products should be permitted in specialist stores only and products should not be visible from outside the store
- Verifiable proof of age must be placed on specialist vaping retailers for both in-person and online sales
- ECs must be easily available to adults wanting to quit, from specialist shops, pharmacies and through quit smoking services, so people who smoke get good practical support

## Flavours

### GENERIC RETAILERS

**Only tobacco, mint and menthol flavoured vaping liquid may be sold. This will come into effect 6 months after the date on which the Act receives Royal Assent.**

### SPECIALIST VAPE RETAILERS

**Any flavours that have not been prohibited may be sold. This will come into effect 6 months after the date on which the Act receives Royal Assent.**

## Comments

As previously stated, the Cancer Society strongly opposes the sale of any vaping products from generic retailers as this will continue to provide easy access to minors. Restricting the flavours able to be sold by generic retailers to tobacco, mint and menthol at this stage is likely to have a fairly minimal impact on youth uptake, as there is evidence that children and young people like mint and menthol as well as fruit flavours.

We are also sceptical about preventing online access to minors, many of whom have been able to get around current restrictions very easily. Unless specialist retailers are more effective in preventing online access, minors will continue to access flavoured products online.

Systematic reviews suggest that flavours increase product appeal, decrease harm perception, and may be the most important factor in young people trying e-cigarettes (Meernik et al., 2019). Adult smokers tend to prefer tobacco flavouring, while young people prefer non-tobacco flavoured e-cigarettes and overall prefer sweet, menthol and fruit flavours (Zare et al., 2018).

There is some evidence that adults wanting to vape to quit also prefer fruit flavours, and concerns have been raised that if they are banned altogether, this will reduce the potential for adult smokers to quit. The argument goes that by making fruit flavours only available through specialised vaping retail outlets, adults will still be able to access the full range of flavours, while these may be less accessible to minors.

However, there are currently hundreds of flavours available, far more than needed for the purpose of supporting people wanting to vape to quit. We note that there is no intention to restrict any flavourings at this point but are pleased to see that there is provision in the Bill to do so in future.

We suggest that the large number of flavours currently available should be reduced at this stage, based on emerging evidence of harm. For example, Soneji and colleagues (2019) note that the



thermal decomposition of flavour-containing e-cigarette liquid produces several known and probable carcinogens at levels higher than deemed safe by occupational standards, and that product standards are needed to reduce harms in tobacco and e-cigarette products that occur because of the flavour compounds themselves.

In a study investigating the toxicity classification of e-cigarette flavouring compounds based on European Union regulation (Farsalinos & Lagoumintzis, 2019), most flavouring compounds in e-cigarette liquids were found to be present at levels lower than needed to classify them as toxic. But there were exceptions. Any flavouring compounds that have been identified as a likely risk to health when vaped ought to be prohibited in New Zealand.

### Recommendations

- Restrict mint and menthol flavours to specialist retailers as these flavours improve overall palatability and have been shown to facilitate youth uptake
- Restrict the range of flavours and prohibit flavour names and packaging (in SVRs) that appeal to children and youth (e.g. Honey Bear, Stoned Smurf, Unicorn Milk). Names and packaging are also forms of marketing
- Reduce the large number of flavours currently available at this stage rather than at some stage in the future, based on emerging evidence of harm – for example, flavouring compounds that have been identified as likely to be a risk to health when vaped
- Vapers trying to quit should have access to flavourings, but not the full range currently available
- Restrictions on flavours should come into effect earlier than 6 months after the Act gets Royal Assent

### *Smokefree areas*

**Vaping (and using smokeless tobacco products) is prohibited in legislated smokefree areas (e.g. indoor workplaces (except for approved vaping premises – see Retailer registration below), early childhood centres, schools).**

**The Bill does not change the ability of local authorities to determine whether to include vaping in outdoor smokefree areas (e.g. outdoor dining areas, children’s playgrounds).**

### Comments

The Cancer Society supports vaping and smokeless tobacco products being prohibited in legislated smokefree areas. However, there is a good rationale for smokefree=vapefree for all legislated smokefree areas as well as outdoor areas designated smokefree by Territorial Authorities.

The Society argues for a smokefree=vapefree approach in both legislated and Council-designated smokefree areas, for the following reasons.

*A consistent approach across smokefree indoor and outdoor areas will make smokefree=vapefree easier to enforce and enhance citizen-led enforcement.*

In order to achieve high compliance, the legislation needs to be easily understood by the general public, including those who vape, and by enforcement officers. Allowing vaping in some smokefree areas and not others, risks creating confusion. If vaping is allowed in smokefree areas, there is also a possibility that people who smoke will question and defy the smokefree status of a place, risking societal conflict.

At a distance smoking and vaping can look similar, particularly to children, as both produce visible clouds when exhaled. Some people who vape cite the visual similarity as a reason why they don’t

vape around people eating (Farrimond et al., 2016). Having all smokefree areas as vape-free will minimise role modelling of both smoking and 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.

There is a risk that allowing vaping in some smokefree areas will 're-normalise' smoking and continue to normalise vaping and nicotine addiction as a socially acceptable, relatively harmless recreational activity.

New Zealand research shows that many people who smoke and also vape (dual use) report vaping in smokefree settings and believe second-hand aerosol (SHA) is simply steam (Haggart et al., 2020).

Emissions vary depending on the device and how it is used. The long-term health impacts of exhaled vapour from vaping products is still unclear.

New Zealand and US research found that many people who smoke, support smokefree areas partly because these areas encourage them to quit (Wilson et al., 2010; Nagelhout et al., 2015).

Societal exposure to other people vaping may risk relapse among people who have recently quit smoking or vaping.

An experimental study found that exposure to a video showing vaping significantly increased the urge to smoke as well as desire for both regular and e-cigarettes among young adult smokers (King et al., 2016).

Vaping generates potentially hazardous "second-hand aerosols"

The long-term health impacts of exposure to exhaled vapour from vaping products are not yet known, but one systematic review of 16 studies reported that passive exposure to electronic cigarette vapour has the potential to lead to adverse health effects (Hess 2016).

A review commissioned by the WHO concluded that second-hand aerosols (SHA) are a new air contamination source for particulate matter, which includes fine and ultrafine particles, as well as toxic metals and nicotine (WHO 2016). The report states that

"the levels of some metals such as nickel and chromium are higher in SHA from ENDS (electronic nicotine delivery systems) than in second-hand smoke (SHS) and certainly background air. Compared to air background levels, PM 1.0 and PM 2.5 [hazardous fine particulates] in SHA are between 14 and 40 times, and between 6 and 86 times higher respectively. In addition, nicotine in SHA has been found between 10 and 115 times higher than in background air levels, acetaldehyde between two and eight times higher, and formaldehyde about 20% higher. Except for heavy metals, these compounds are generally found at lower concentrations than those found in SHS. At present, the magnitude of health risks from higher than background levels of these compounds and elements are empirically unknown."

"While some argue that exposure to SHA is unlikely to cause significant health risks, they concede that SHA can be deleterious to bystanders with some respiratory pre-conditions. It is nevertheless reasonable to assume that the increased concentration of toxicants from SHA over background levels poses an increased risk for the health of all bystanders." (WHO 2016)

Of concern to the Cancer Society, the fine particulates found in SHA are considered to be proven causes of cancer by the International Agency for Research on Cancer.

Making all smokefree areas (both legislated and Council designated) vape free would signal that second-hand aerosols are not harmless and would protect clean-air settings and prevent exposure to second-hand aerosols.

This would also allow a more supportive environment for children, non-smokers, people who have quit smoking and/or vaping, and people wanting to vape to quit.

### Public support for smokefree areas being vapefree

Last year Cancer Society conducted electronic and paper-based surveys/ submissions at our Relay for Life and other events nationwide to gauge public support for smokefree areas being vapefree. We wanted to hear what New Zealanders thought should be strengthened in the Smokefree Environments Act. Across regions surveyed, there was very high support for smokefree areas also being vapefree. Of the 1481 submissions collected nationally 89% said they wanted smokefree areas to also be vapefree. Across all regions there was very high support for smokefree areas to be vapefree: Otago/ Southland 89% (total number of participants  $n=521$ ) Auckland/Northland 94% ( $n=367$ ), Wellington/ Marlborough 89% ( $n=140$ ), Canterbury/West Coast 91% ( $n = 95$ ), Central Districts/Waikato 84% ( $n=358$ ).

### Recommendations

- Require all smokefree areas be vapefree including designated local Council smokefree areas and any future legislated smokefree areas e.g. cars
- The same SFEA exemptions as tobacco e.g. ventilated rooms in care homes should apply
- The SFEA should be extended to make all hospitality areas (including outdoors) smokefree and vapefree instead of trying to define 'open areas' in regulations.

### *Advertising, sponsorship*

**Advertising and sponsorship are prohibited (in addition to the existing prohibitions on tobacco products) for all vaping and smokeless tobacco product parts, including vaping liquids.**

**The Bill exempts public health campaigns that are approved by the Director-General of Health from this prohibition.**

### Comments

The Cancer Society is pleased to see that marketing and advertising of regulated products will be prohibited. Tobacco and vaping industries have marketed their products aggressively over the last 18 months, including to young people via youth music concerts, radio stations and events.

This prohibition on marketing will have a positive impact on reducing vaping uptake in children, young people and non-smokers, provided it is properly monitored and enforced.

However, the vaping industry has shown little interest in promoting vaping to quit in their online marketing internationally and have used social media popular with young people to market vaping products. US Communicable Diseases Centre research<sup>19</sup> on this topic included analysis of 1,156 vaping advertisements on Twitter (Sowles et al., 2016). At the time of the study, roughly one-third of Twitter's active users were young people aged 16 to 24 years. Colourful vape pens were advertised in nearly half of the tweets (47%), followed by e-juice (21%), which commonly mentioned flavours (42%). Coupons or price discounts were frequently observed (32%).

---

<sup>19</sup> Retrieved from [https://www.cdc.gov/pcd/issues/2016/16\\_0274.htm](https://www.cdc.gov/pcd/issues/2016/16_0274.htm) on 29 March 2020.

Only 3% of tweets mentioned vaping as a way to quit smoking or as an alternative to smoking.

The authors concluded that vaping poses a threat to smoking prevention progress, and noted the importance of “countering the tactics used by vaping companies to entice their consumers, especially on social media where young people can easily view the content”.

### *Online marketing to children and young people*

New information from the UK shows that tobacco companies are deliberately flouting attempts to regulate marketing and sales to minors, underlining the difficulties posed in regulating to align tobacco and vaping industry commercial interests with those of public health.

The Guardian reported that British American Tobacco (BAT) is marketing e-cigarettes and heated cigarettes with pictures of young models and using hashtags such as “I dare you to try it”, despite a crackdown last year.<sup>20</sup> “Tobacco companies like British American Tobacco maintain that their marketing is only ever targeted to and intended for current adult smokers. Yet much of the content posted from these BAT-run accounts mirrors the **youth-oriented content promoted by influencers**,” according to Caroline Renzulli, a spokeswoman for the Campaign for Tobacco-Free Kids, who said that BAT was clearly working “to circumvent the new policies”. She added: “Tobacco companies exploit every loophole to advertise to young people – so it’s no surprise that British American Tobacco has already found a way around Facebook and Instagram’s new policies.”

### *Tobacco and vaping industry commercial imperatives conflict with public health objectives*

A new Public Health Expert blog<sup>21</sup> (Robertson et al., 2020) summarises emerging evidence of British American Tobacco’s ambitious plans for its nicotine products, and highlights the disjunction between tobacco companies’ profit goals and public health objectives. The authors discuss recent British American Tobacco (BAT) presentations designed to promote their new nicotine products to investors and analysts. The biggest tobacco company operating in New Zealand, BAT has clearly identified e-cigarettes and other ‘new generation products’ (NGPs) as an expanding market and a growth opportunity (see Figure 3 below).

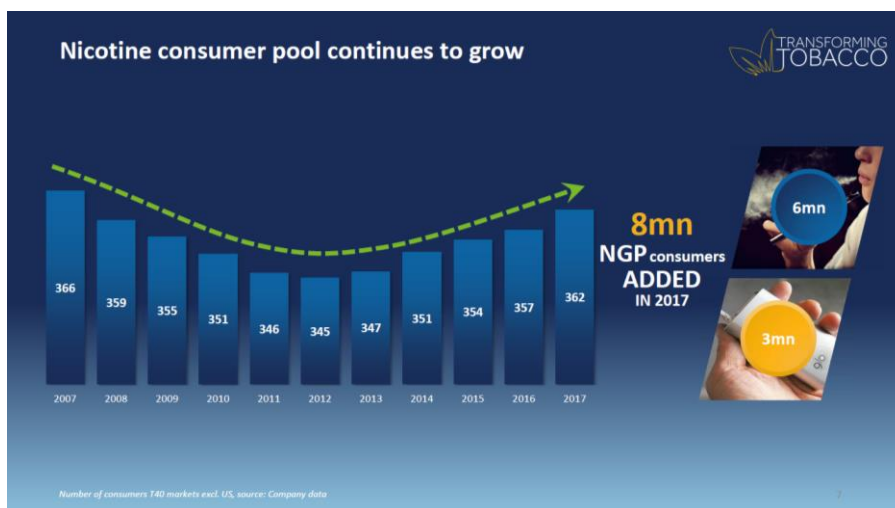


Figure 3. Slide from British American Tobacco (BAT) Analyst Briefing, Oct 2018

<sup>20</sup> Retrieved from <https://www.theguardian.com/business/2020/mar/17/british-american-tobacco-circumventing-ad-ban-experts-say> on 20 March 2020.

<sup>21</sup> Retrieved from <https://blogs.otago.ac.nz/pubhealthexpert/2020/03/27/regulating-vaping-and-new-nicotine-products-are-tobacco-companies-goals-aligned-with-public-health-objectives/> on 28 March 2020.

The authors draw two conclusions from the material discussed.

1. British American Tobacco (BAT) claims the NGP market is “additive”. This claim means that NGPs do not aim to replace cigarettes and tobacco, but will increase total nicotine users. In other words, BAT claims NGPs attract new nicotine users who would otherwise not have used tobacco products.
2. BAT views high rates of dual-use and poly-use (i.e. using conventional cigarettes and one or more new nicotine product) as desirable because these usage patterns drive “growth” and are highly profitable.

The BAT presentations suggest that they will seek to use new generation products “to encourage poly-use; rather than to enable quitting; and that they will seek to increase the total number of users by attracting new users” (Robertson et al., 2020).

### Recommendations

- Prohibit direct marketing (eg at youth music events)
- Prohibit all advertising and promotion of all regulated and tobacco products including e-liquid on TV, radio, internet, movies, email and text message advertising, and printed publications, paid blogs/reviews, buses, posters, celebrity endorsement (with the exception of ‘non-promotional’ information on retailers’ websites, and public health campaigns/information cessation advice) and point of sale
- Prohibit e-cigarette sponsorship of television and radio programmes, and e-cigarette product placement in TV programmes and film
- Prohibit e-cigarette sponsorship of activities, events or individuals
- Prohibit advertising and promotion inside or outside generic retailers, and/or able to be seen outside specialist retailers
- Ensure all online advertising sponsorship is prohibited, monitored and enforced with appropriate penalties
- Prohibit industry use of influencers on social media
- Prohibit advertising and sponsorship for multi-national sporting or other events for all regulated products and manufacturers

### *Labelling/packaging*

**Tailored packaging requirements for vaping products and smokeless tobacco products will be set in regulations. There will be public consultation before these are finalised. It is proposed that New Zealand will follow the UK model.**

### Comments

The Cancer Society supports plain (standardised) packaging for all tobacco products including vaping and heated tobacco products, to reduce their appeal to children and young people, as outlined in Part 3 of the Bill (pp. 31-33).

This approach will also make warning messages and images more noticeable.

### Recommendations

- As in the EU, all regulated products containing nicotine should carry a health warning covering 30% of the surfaces and any outside packaging stating that the product contains nicotine which is a highly addictive substance
- All regulated products should be required to be in standardised (plain) packaging

- The level of nicotine needs to be displayed in a standard way (eg mg/ml) to enable comparisons with other products
- Include new labelling requirements and warnings (all ingredients should be listed on the label; packs should include an information leaflet about safe use of the product such as storage, battery use, e-liquid etc).

### *Product safety*

**Products will need to comply with any product safety requirements that are set out in regulations, for example, maximum nicotine content of vaping liquids, standards for vaping liquid containers, and standards for vaping devices. These requirements will be publicly consulted on before being finalised. They will come into effect 6 months after the date on which the Act receives Royal assent.**

**It will be the responsibility of the importer or manufacturer to ensure that products meet product safety requirements. Retailers must not sell products that do not meet safety requirements. A searchable database will be available to support retailers to meet this requirement.**

**Manufacturers and importers must advise the Director-General of any adverse reactions to regulated products as soon as they become aware of them. This will come into effect upon commencement of the Act.**

**The Bill allows for ingredients to be prohibited.**

**Prohibited ingredients will be publicly consulted on before being finalised and published on the Ministry of Health's website. This will come into effect upon commencement of the Act.**

**The Director-General of Health may issue warning statements about products if he or she has reasonable grounds to believe that the product poses a risk of harm to people. Other product-safety powers the Director-General will have include recall of products, and suspension and cancelling of product notifications.**

**There is provision in the Bill to prohibit flavours. No flavours are prohibited at this stage. Rules relating to flavours for specialist vape retailers differ from those for generic retailers (e.g. dairies, service stations, supermarkets) as set out below.**

### *Comments*

The Cancer Society supports the provisions set out in the Bill for ensuring future product safety. We look forward to seeing the actual product safety requirements and being consulted on them.

### *Recommendations*

- Require nicotine-containing products or their packaging to be child-resistant and tamper evident
- Vaping products that contain nicotine must display a warning e.g. **WARNING this product contains nicotine which is a highly addictive substance. It is not recommended for use by children, pregnant women and non-smokers.**
- Minimum standards for the safety and quality of all e-cigarettes and e-liquids
- Vaping products (e-liquids, pods) needs to display a recommendation to keep out of the reach of children
- Vaping products should include safety instructions, contra-indications, warnings for specific risk groups, and possible adverse effects

- Addictiveness, toxicity, information on nicotine dose and uptake, and contact details of the manufacturer or importer should be provided
- Restrict e-cigarette tanks to a capacity of no more than 2ml
- Restrict the maximum volume of nicotine-containing e-liquid for sale in one refill container to 10ml
- Restrict e-liquids to a nicotine strength of no more than 20mg/ml (as per EU restrictions)
- Ban certain ingredients including colourings, caffeine and taurine
- Require EC manufacturers to inform the Ministry of Health if they consider a product to be unsafe or not of good quality or a danger to human health
- Support regulations that provide ability to rapidly recall.

### *Product notification*

**Manufacturers and importers must notify products to the Ministry of Health before they can be sold in New Zealand. This will come into effect 6 months after the date on which the Act receives Royal Assent.**

**While the primary responsibility is on the importer or manufacturer, retailers must not sell regulated products that are not notified. A searchable database will be available to support retailers to meet this requirement.**

**A fee will be charged for product notification. The fee will be consulted on and set out in regulations.**

### *Comments*

The Cancer Society supports the requirement for manufacturers and importers to notify products to the Ministry of Health before they can be sold in New Zealand.

### *Recommendations*

- Require all ECs and e-liquids be notified to the Ministry of Health before they can be sold (pre-market review). Manufacturer to include information on components, ingredients, labelling, packaging, methods of manufacture and processing
- Provide information to retailers so they can check if the EC is a notified product
- Manufacturers and importers must notify products before they can be sold to the Ministry of Health within 3 months (not 6 months) after the Act receives Royal Assent.
- Regulations should be responsive to new products & technologies.

### *Advice to customers*

#### **GENERIC RETAILERS**

**Retailers may, in response to a request, do no more than identify the regulated products (including tobacco products, vaping products and smokeless tobacco devices) available for purchase and indicate their price.**

#### **SPECIALIST VAPE RETAILERS**

**Retailers may provide advice, recommendations and demonstrations of regulated products to customers.**

### *Comments*

The Cancer Society does not support the sale of tobacco or regulated products from generic retailers for reasons outlined elsewhere in this submission.



The Cancer Society notes that there is good evidence that vaping can be as or more effective than some nicotine replacements therapy (NRT) products in helping people to stop smoking (Hajek et al., 2019), but research points to the need for vaping products to be provided in the context of comprehensive smoking cessation services. Evidence shows that people who smoke need specialist support in using e-cigarettes for quitting, as there are many barriers to people using the products for this purpose (HPA, 2019)<sup>22</sup>.

Part 1 of the Bill allows Specialist Vape Retailers (SVRs) to “give advice and recommendations about vaping products to a customer within that place of business” (p. 3). This does not place any obligations on SVRs to assist people to quit.

Edwards and colleagues (2019)<sup>23</sup> note that the increase in vaping in New Zealand has not been accompanied by reductions in population smoking prevalence, or an increase in quit rates. Given that these products have been available now for many years, this might be expected if large numbers of smokers were using the products to quit.

International and NZ research suggests that while many people start vaping to quit smoking, the majority will use both products (dual use) long-term (Cancer Society Auckland Northland 2019). Even if there is a reduction in the number of cigarettes smoked, this provides little health benefit. Nicotine is a very addictive substance, quitting smoking typically requires many quit attempts. Many people who dual use find that vaping enables them to avoid both smoking restrictions and the social stigma associated with smoking. This can provide a disincentive to quitting.

We note that generic retailers are only able to identify regulated products. In this case why let them sell vaping products when they cannot provide advice on smoking cessation? The Ministry supports and promotes these products for smoking cessation, so they should not be sold as everyday consumer items in the absence of vape to quit advice. This only reinforces the normalisation of these products.

All vape retailers will need to provide appropriate and helpful advice on using vaping products to quit smoking. accredited smoking cessation training to their staff prior to advising people who smoke on how to use their products to quit.

## Recommendations

- All retailers should be required to provide accredited smoking cessation training to their employees, prior to staff advising people who smoke on how to use their products to quit
- Prohibit manufacturers, retailers and others from promoting a vaping product (packaging, promotional material) as having a health benefit or as a smoking cessation product unless it has been subjected to the same safety and effectiveness scrutiny as NRT products
- Regulations should set out a selection of authorised statements regarding the relative health risks of vaping products
- Consumers must not be misled about the health benefits/risks of these products (NOTE no specific vaping products have yet been proven to be effective and safe in smoking cessation).

---

<sup>22</sup> Retrieved on 12 March 2020 from <https://www.hpa.org.nz/research-library/research-publications/m%C4%81ori-womens-perspectives-and-experiences-with-smoking-and-vaping>.

<sup>23</sup> Retrieved from <https://blogs.otago.ac.nz/pubhealthexpert/2019/12/17/ten-things-we-can-learn-from-new-smoking-and-vaping-data-about-progress-to-smokefree-aotearoa-2025/> on 26 March 2020.



*Giveaways, discounting, and loyalty points*

### **GENERIC RETAILERS**

**Give-aways, discounting and loyalty points are prohibited for regulated products (including tobacco products, vaping products and smokeless tobacco products).**

### **SPECIALIST VAPE RETAILERS**

**Give-aways, discounting and loyalty points are allowed for vaping products but not for other regulated products (including tobacco products)**

#### **Comments**

The Cancer Society does not support give-aways, discounting or loyalty points for vaping products or any other regulated products, as these initiatives are likely to attract non-smokers and encourage people who have successfully quit to continue vaping. Keeping it simple (ie all regulated products prohibited from these marketing initiatives) will make monitoring the activities much easier to manage and less resource intensive.

#### **Recommendation**

- Give-aways, discounting and loyalty points should be prohibited from all vape retailers, online and at other venues (eg music concerts, expos).

*Vaping within retail stores*

### **GENERIC RETAILERS**

**Vaping is prohibited in retail stores and all other workplaces (as well as early childhood centres and schools).**

### **SPECIALIST VAPE RETAILERS**

**Vaping is allowed within approved premises so that smokers can be better supported to successfully switch.**

#### **Comments**

The Cancer Society supports restricting instore vaping to specialist vaping retailers, and only to people who want to vape to quit smoking. Non-smokers should not be able to try out products instore as this is inconsistent with the Government's intention to reduce uptake by people who do not smoke.

#### **Recommendations**

- Restrict instore vaping to specialist vaping retailers and only with people who smoke and are being supported to use vaping to quit.

*Retailer registration*

### **GENERIC RETAILERS**

**There are no provisions for retailer registration.**

### **SPECIALIST VAPE RETAILERS**

**Retailers may apply to the Director-General of Health to be a "specialist vape retailer" and for their nominated premises to be "approved vaping premises".**

**Approval criteria include that the premise is a fixed permanent structure and that 85% of total sales from the retail premise are or will be from vaping products.**

**Other criteria may be set out in regulations.**

**Approved vaping premises must be R18 and the retailer must take all practicable steps to prevent under-18s from entering.**

**The Bill requires specialist vape retailers to report sales information annually (by 31 January) to the Ministry of Health.**

**A fee will be charged for specialist vape retailer applications. The fee will be consulted on and set out in regulations.**

### Comments

The Cancer Society is concerned that the Government is intending to allow vaping products to continue to be sold at any retailer with the only restrictions being a ban on sales on minors and restricted flavourings. This will be very hard to monitor in dairies, supermarkets, service stations, computer and \$2 shops, and there appears to be no intention to do so. This will make it very easy for children to buy the products.

The Society wants e-cigarettes to be sold only from licensed R18 specialist stores, pharmacies and through smoking cessation services, which can provide support for people who want to use vaping to quit smoking. Research indicates that vaping needs to be provided in the context of comprehensive smoking cessation services to be effective (Hajek et al., 2019).

The Cancer Society would prefer a positive licensing system rather than retailer registration, which seems comparatively weak in terms of accountability. As outlined elsewhere in this submission, the vaping/tobacco industries have not demonstrated a willingness to protect the interests of young people and has marketed and sold vaping to non-smokers as fun, cool, recreational products. This is not surprising, as the commercial incentives for these businesses are to sell products, not provide smoking cessation services.

### Recommendations

- Annual sales data reporting requirements for tobacco and vaping industries
- All retailers must be licensed with conditions (not just registered) and fees covering monitoring and enforcement
- All staff selling vaping products require smoking cessation certification

## Summary of consultation with Te Tai Tokerau Iwi and other health providers

The following is a summary of Tai Tokerau Iwi health providers' feedback on the Bill, collated by the Cancer Society's Northland office. The following providers were consulted through either their CEs or Health Promotion Managers.

**Te Hā Oranga** - Alexa Forrest-Pain, Maori Public Health Manager

**Te Hiku Hauora** - Bill Halkyard, CEO

**Whaingaroa Health Services Trust**

**Kia Ora Ngatiwai Health Services** - Lynette Stewart, CEO

**Ngati Hine Health Trust** - Geoff Milner, CEO

**Mahi Tahi Hauora** - Ngaire Rae, Wellbeing Health Promotion Leader

Te Tai Tokerau iwi Health providers are very concerned by the currently unregulated market and wide availability of vaping products that have flooded the market not only in Tai Tokerau but across Aotearoa New Zealand. In particular, there is frustration to see rangatahi and even younger tamariki taking up vaping and smoking. Iwi providers want an end to the deadly generational impact of tobacco and nicotine on whanau, hapu and iwi.

There is united support for strong vaping regulations and huge opposition to the harms of tobacco and the yet to be understood harms of vaping. Well-resourced monitoring to prevent more young people starting to vape or smoke is a priority.

### Summary of responses to each question

#### 1. E-cigarettes sold only as a smoking cessation tool

All organisations are strongly of the view that e-cigarettes should be restricted and available only as a cessation tool. They do not want to see uptake by rangatahi non-smokers because of risks of harms and believe strong controls and monitoring are needed to protect young people.

*“... we particularly don’t want to see uptake of vape use by rangatahi who would otherwise not smoke cigarettes”*

*“I want to see limitations on it – the verdict is still out on it, as there isn’t enough evidence to assuage doubt – (regulations) need to be done with the utmost caution and based on scientific facts”*

*“The products contain nicotine and are addictive. Although less harmful than smoking research and data are limited on the long term effects”*

#### 2. Regulating and restricting availability of e-cigarettes/vapes

Restricting availability is viewed by all organisations as an important strategy to reduce youth uptake of vaping and tobacco smoking. Some organisations believe close monitoring of online and other retailers is essential.

*“... restricting availability to young people is one strategy to stop rangatahi from experiencing harm from vaping ...However there needs to be adequate controls on online purchases”*

*“We know vaping is increasing and so is smoking in young people, which is the first time in a long time, so it must be related to vaping as nothing else has changed”*

*“... closely monitoring suppliers will contribute to protecting young people”*

#### 3. R 18 restrictions

All respondents strongly support the restriction of sales to those under 18 years of age.

*“An absolute must”*

#### **4. Sale of e-cigarettes at dairies, garages and supermarkets**

About half of the providers do not want e-cigarettes to be available in generic stores. Others think if e-cigarettes are to be used as cessation aids, they should not be harder to get than tobacco, and vaping products should therefore be available in generic stores. They view it as important whānau have the choice of a less harmful product. Adequate monitoring is needed.

*“They should only be sold at specialist stores that know and understand what they are selling”*

*“They should be sold at selected retailers where there is close scrutiny and review. Dead against wide availability as we know many retailers won’t give two hoots”*

*“Limiting access to specialist retailers would be manageable as opposed to dairies, petrol stations and supermarkets. Too many suppliers will weaken the ability to monitor”*

*“... To make these aids harder to access, makes it easier for whanau to choose tobacco”*

*“We support these products to be sold in the same places tobacco is sold”*

However, these providers support restricting availability of vaping products to specialist stores if tobacco is similarly restricted.

*“... we support an eventual move for both vaping and tobacco products to be moved to specialised stores”*

*“... better having people buy vaping products than cigs so if there is an opportunity to further regulate where tobacco products are sold this should also happen, otherwise shouldn’t have stronger rules for vaping than tobacco. Although having said that, maybe if we got tough regulations for vaping, maybe we could use that to push for further strengthening of tobacco products. I guess we should push to get the strongest regulations we can get.*

#### **5. Prohibiting advertising and sponsorship**

All providers strongly support this and acknowledge the power and influence of marketing on young people.

*“Marketing, sponsorship and adverts have a large influence on all people, but especially our priority groups – youth, Māori and Pasifika”*

*“Yes, absolutely. We need to be really clear vaping is a tool for cessation only”*

*“It is very important there is not allowed to be a free market -subliminal advertising, as this is very powerful to our young people....”*

#### **6. Vaping in designated Smokefree areas**

All providers agree there should be no vaping in designated Smokefree areas and that vaping and smoking should be treated equally to avoid role modelling and the risk of uptake.

*“It needs to be viewed the same as tobacco smoking”*

*“Restricting and making the behaviours socially unacceptable will contribute to the reduction and/or uptake”*

*“... it is important it (vaping) is not role modelled behaviour for younger people”*

*“If e-cigarettes and vaping are seen as aids to stop smoking, then to have vaping in smokefree areas has the potential to see e-cigarettes and vaping products merely replace tobacco use in public areas. If the intent is to support whānau to quit smoking, then they should both be treated equally”.*

#### **7. Do you agree with the following vaping regulations?**

- Prohibition on displaying vaping products in shops e.g. dairies
- Requirement to disclose product content and composition
- Restrict sales to specialist shops
- Regulations to restrict flavours in dairies, service stations & supermarkets to Tobacco Menthol and Mint
- Requirement for standardised (plain) packaging
- Health warnings that nicotine is addictive

All providers agreed with all of the above being included in vaping regulations with the exception of two organisations that did not want vaping products restricted to specialist stores unless tobacco products are as well, to enable whānau to have an equal chance of buying tobacco or vaping products.

*“if you make it harder for whānau to access this (e-cigarettes) as a smoking cessation aid, it makes it easier for whānau to choose the cigarettes.”*

#### **Conclusions**

All Tai Tokerau iwi providers submitting here support strong regulations as summarised in the consultation findings above.

They also support the additional control measures above, including the requirement to disclose product content and composition, restricting flavours, plain packaging including health warning that nicotine is addictive.

The joint submitters support many of the Government’s existing draft regulations but want the Government to go further by restricting both vaping and tobacco products to R18 specialist stores.

### **Summary of public support for strengthening the vaping legislation**

This section summarises the feedback of individuals who have recently attended Cancer Society events around the country and provided written feedback on vaping legislation. These submissions are attached to the Cancer Society submission as PDFs.

In the lead up to the submissions phase, the Cancer Society developed and distributed paper-based submission templates with a set of recommendations to stop e-cigarettes being marketed and sold to young people. The submissions were gathered at Relay for Life events in Waikato, Palmerston

North and Waimate, Christchurch. All other Relay for Life events nationally were cancelled due to the COVID 19 outbreak and restrictions on large gatherings.

A total of 233 submissions were completed: 51 from Relay for Life Canterbury, 62 from Palmerston North, 112 from Waikato and 8 from a Wānanga event in Auckland. The individual submissions collected at Relay for Life are attached as PDFs to our Cancer Society submission with the Auckland submissions sent directly to the Health Select Committee. We expect that all the attached submissions will be treated as individual submissions.

People who submitted believed that legislation was urgently needed to stop e-cigarettes being marketed and sold to young people. Almost all (99%) of those completing the attached submissions supported the following recommendations:

- restricting advertising and marketing of e-cigarettes, including online
- getting all e-cigarettes and ordinary cigarettes out of dairies, petrol stations & supermarkets
- restricting flavourings that appeal to young people including in specialist R18 vape shops
- ensuring that e-cigarettes can't be sold to minors (under 18-year-olds)
- making all smokefree areas vape-free (so we don't normalise vaping)
- setting a standard for nicotine levels to have an upper limit of 20mg/mL as in UK and Europe.

People were given the option to delete any recommendations they didn't support. Only five submitters out of 233 chose to delete one or more recommendation. Some people wanted even stronger recommendations such as banning all vape sales and increasing the age of purchase to 25 for vapes and cigarettes.

#### **Comments centred mainly on their concerns about young people's easy access and uptake of vaping.**

"It is very common at school and negatively effects young people for their future" (Raiyan, 17 yrs, Hamilton)

"I see many youth who have never smoked taking it up and then going onto become cigarette smokers. I have also heard global experts saying that smoking and vaping prove a serious issue with this new viral infection. ... Selling age should be 25 as it should be for alcohol and cigarettes. ...vaping is an epidemic among young." (Ann, Palmerston North)

"It is increasing in society, not as a tool to give up smoking but it is the smoking and many people are taking up this bad habit. Many people very young are taking up this under 18 and they are very easy for kids my age to get a hold of." (Amellia, 17 yrs, Waimate)

"I have teenage children and am concerned about the availability of these products to their age group without adequate safety information and regulation." (Emma, Palmerston North)

"It limits the children's concentration and health in NZ and is too available to young people." (Aaron, 17 yrs, Hamilton)

"People think it's safe and its accessible to teenagers." (Mark, Cambridge)

"It is affecting lots of young people's lives." (Bella, 14 yrs, Cambridge)

"The health implications long term is still unknown and it's becoming a real concern for parents with the target market audience being their children." (Deborah, Hamilton)

“It is becoming a really bad addiction within the 16-24 age bracket.” (Claudia, 19 yrs, Hamilton)

**There was considerable concern about non-smokers taking up vaping.**

“Two of my nephews who have never smoked have taken up vaping. Sucked in by the glamorous advertising. Here we go again – a repetition of what happens with tobacco.” (Judy, Whanganui)

“They are a gateway to smoking cigarettes! I personally know 20+ people in their late 20s who now smoke e-cigarettes but have never smoked before that. They now all smoke normal cigarettes socially as well.” (Susan, Wellington)

“It has become more than a means to stop smoking. Non-smokers are now vaping.” (Diane, Temuka)

“My 16-year-old daughter’s peers all vape even though they never smoked. They believe it’s the cool thing to do. Vaping ads should not be allowed!” (Sarah, Waimate)

**Many are concerned about the impact of marketing and advertising of vapes.**

“It is so accessible for kids nowadays, and it is promoted as ‘cool’ on social media. A lot of my friends who have never smoked have started vaping recently because of this and because it is shown as safer than smoking cigarettes and the negative effects aren’t explained.” (Becky, 17yrs, Palmerston North)

“While safer than cigarettes, it is NOT a safe thing for NZers to be doing. Directing ads towards the young is particularly harmful as it brings kids to nicotine addiction in a soft, legal way.” (Elizabeth, Oamaru)

“It is harmful to young people inhaling toxic chemicals, advertised as ‘sexy, ‘cool’ to young people.” (Deborah, Whanganui)

“It is dangerous for young people and is often advertised as a safer option to smoking but it is just as harmful and can affect brain development, concentration and can cause anxiety.” (Charlotte, 16yrs, Tamahere, Hamilton)

“Teenagers are so easily influenced into thinking vaping is “cool” despite its clear damages.” (Lily, 17yrs, Pirongia, Hamilton)

“I don’t think people really understand how harmful it is and how addictive it can be. It is being targeted at young people.” (Katie, Palmerston North)

**Others expressed concern about flavours.**

“Just as dangerous as smoking. Young lungs can’t take the chemicals (flavours) that lure people to vape.” (Faye, Palmerston North)

“Too many flavours appealing to young people, products should be sold in specialist stores, age limit needed.” (Alison, Waimate)

“Health concerns around flavours. The type of flavours attract young people.” (Jeffrey, Palmerston North)

“The flavours start young people into vaping/smoking. Both are very bad for health!! Vaping doesn’t stop smoking!” (Les, Palmerston North)

“Nothing should be in lungs except air or medical O2. Vaping had replaced smoking by youth. Sweet flavours are hooking youth who never or previously smoked.” (Maureen, Hamilton)

**People want smokefree areas to be vapefree.**

“Smokefree should include vaping so we can do more to keep our community smokefree and reduce heart and lung disease.” (Jan, Palmerston North)

“Of health risks, especially of young children who inadvertently have to inhale the “spent” air. Please think of our younger generation and lead by example.” (Margaret, Palmerston North)

“Environmental = health effects are unknown. I also don’t enjoy walking through clouds of vape in the street.” (Fiona, Timaru)

**Others expressed concern about vaping devices being used with other substances.**

“I am a paramedic (in a small rural centre). I see the effects of such a habit. The health risks, the cost of both the habit and on the families trying to support the habit. I do wonder what people will try to vape ie Products that ‘Are’ harmful (cleaning products, carcinogens, poisons, anything to the “buzz”) (Bridget, Waimate, South Canterbury)



## Other issues

### Harm reduction

The Cancer Society notes that the harm reduction approach being taken in the proposed legislation draws heavily from that being taken in the UK, and publications from Public Health England. The regulatory environment in the UK had some similarities to that in New Zealand in 2015, but the situation has changed since then for both countries. We argue that there may now be more similarities in vaping regulation between New Zealand and Canada, which is also showing early signs of a possible reversal of the long-term decline in youth smoking prevalence (Hammond et al., 2019).

As part of the European Union, England has had to comply with EU regulations on vaping since 2015<sup>24</sup>. The nicotine level of all vaping products sold as consumer items, including JUUL<sup>25</sup>, is capped at 20mg/mL, health warnings are required, and marketing is highly restricted. This has not been the case in New Zealand for the last 20 months or so, since a mid-2018 District Court Judge decision meant that the Smokefree Environments Act 1990 was no longer able to be applied to e-cigarettes or other smokeless tobacco products.

High-nicotine pod vapes (up to 60mg/ml) have been easily available since then, and vaping products aggressively marketed, including to young people and non-smokers (Hoek & Freeman 2019). The products have also become widely available from thousands of retailers throughout New Zealand<sup>26</sup>, and easily bought by minors. New products have been introduced and the market continues to become more diverse.

Perhaps as a result of the stronger EU regulations, ASH UK reported that in 2019, only 15.4% of 11-18-year olds had tried vaping<sup>27</sup>, and 1.6% were using e-cigarettes more than once a week. This compares with 37.3% of 14-15-year olds in New Zealand having ever used e-cigarettes, and 3% reporting using e-cigarettes daily (ASH NZ). Although this data compares slightly different age ranges, it is also notable that the UK figures have been largely unchanged between 2015 and 2019, in sharp contrast to trends in New Zealand over the same period.

New Zealand is starting to see the impact of a very liberal regulatory environment, but this will not be reflected clearly in youth smoking and vaping prevalence for at least another year. Consequently, New Zealand youth surveys have not yet fully picked up the impact of recent marketing activity and ease of access.

In the meantime, the extent to which vaping is a problem in young New Zealanders has been the subject of much debate among researchers. There have been different interpretations of research evidence, which has contributed to public confusion.

For example, since 2015 when the ASH Year 10 Survey began collecting information on vaping from 14-15-year-old students, ASH has reported that "...daily use of e-cigarettes is rare and largely

---

<sup>24</sup> Summary of regulatory background in the UK retrieved on 26 March 2020 from <https://ash.org.uk/wp-content/uploads/2019/06/ASH-Factsheet-Youth-E-cigarette-Use-2019.pdf>

<sup>25</sup> JUUL complies with this limit in Europe but elsewhere the products contain much higher levels. Details can be found on Truth Initiative site: <https://truthinitiative.org/research-resources/emerging-tobacco-products/behind-explosive-growth-juul>

<sup>26</sup> VYPE products are available from over 2,500 retailers identified on their website at <https://vype.co.nz/pages/store-locator> retrieved 12 March 2020.

<sup>27</sup> Retrieved on 26 March 2020 from <https://ash.org.uk/wp-content/uploads/2019/06/ASH-Factsheet-Youth-E-cigarette-Use-2019.pdf>

confined to those who have never smoked”.<sup>28</sup> This message conflicts with recent reports from school principals who report large numbers of intermediate and secondary students vaping, when smoking has virtually disappeared in many schools. Differences in perceptions of youth vaping were discussed in a recent Public Health Expert Blog (Hoek et al., 2019)<sup>29</sup>.

Hoek and colleagues pointed out that “the vast majority of 14-15-year olds are never smokers, thus even a low prevalence may represent a significant proportion of regular e-cigarette users. We estimate around 20% of weekly or daily vapers are never smokers and less than half are current smokers” and that “while most regular vapers may be occasional or regular smokers at the time of the survey, we do not know if they were never smokers when they first vaped, and to what degree these adolescents graduated to smoking as a result of vaping (the proposed gateway effect).”

It is likely that a large cohort of New Zealand school children are now at high risk of becoming addicted to vaping as a result of the extensive marketing activity that has been occurring since the 2018 District Court decision. We are in a very different situation from England, and our regulatory framework must take account of the ground that has been lost.

## Definitions

The Cancer Society is concerned that the Bill will “differentiate vaping products from tobacco products”, based on “the relatively lower risk of vaping compared with smoking” (Ministry of Health Cabinet Paper 2020).

Most e-cigarettes contain nicotine, which is a tobacco product, and the tobacco industry produces most vaping products. The World Health Organisation (WHO) recommends that vaping products (electronic nicotine delivery systems or ENDS) are regulated as “tobacco products, products imitating tobacco, or as a specifically defined category” as they are “undoubtedly harmful” (WHO 2019, p. 57).

Furthermore, while the evidence currently shows that e-cigarettes are less harmful than smoked cigarettes, there is emerging evidence of harm, and the long-term effects are unknown.

It is clear that additional ‘new generation products’ are being developed quite rapidly by the tobacco industry (Robertson et al., 2020), and the Society is concerned that the proposed definitions will not allow for ongoing variation of nicotine-containing products, designed to increase the number of individuals who become addicted to tobacco products.

The Cancer Society supports amending the definition of “regulated product” to provide the Director-General with the ability to expand the meaning of what constitutes a regulated product as follows.

Amend the definition of ‘regulated product’ to:

- Capture other tobacco and nicotine-containing products such as Heat-Not-Burn by inserting the term “*nicotine-containing product*” and introduce a supporting definition for this term in Section 2.
- Empower the Director-General to expand the types of products captured by the definition
- Broaden the Act’s definition of “tobacco product” to include all associated products used in the consumption of tobacco.

---

<sup>28</sup> ASH New Zealand. 2018 ASH Year 10 Snapshot E-Cigarettes and Vaping 2019 retrieved from [https://d3n8a8pro7vhmx.cloudfront.net/ashnz/pages/70/attachments/original/1554281098/2018\\_ASH\\_Y10\\_Snapshot\\_E-cigs\\_FINAL.pdf?1554281098](https://d3n8a8pro7vhmx.cloudfront.net/ashnz/pages/70/attachments/original/1554281098/2018_ASH_Y10_Snapshot_E-cigs_FINAL.pdf?1554281098) on 16 March 2020.

<sup>29</sup> Retrieved from <https://blogs.otago.ac.nz/pubhealthexpert/2019/12/02/is-youth-vaping-a-problem-in-new-zealand/> on 11 March 2020.

## Relative risk

While current evidence suggests that vaping is less harmful than smoking, the Cancer Society notes that the relative risk is unknown. The often-quoted estimate of “95% safer than smoking”<sup>30</sup> was developed seven years ago through a consensus rather than scientific process. Young peoples’ belief that vaping is harmless is reinforced by this kind of messaging, and it has been widely criticised by academics as a ‘factoid: unreliable information that is repeated so often that it becomes accepted as fact’<sup>31</sup>. The risks associated with vaping long-term are largely unknown, although there is emerging evidence of respiratory and cardiovascular harm.

## Tobacco industry ownership of specialist retailers

Both vaping and tobacco industries have a significant commercial interest in the manufacturing, marketing and sales of vaping products. To date, neither industry has consistently demonstrated practices to restrict sales to either non-smokers or minors. We understand that the Bill allows for the provision of smoking cessation advice by specialist retailers that could potentially be owned by the tobacco industry (subject to agreement by the Director General of Health). This would represent an unacceptable conflict of interest and should not be allowed. We request that measures are put in place to prevent tobacco industry interests in the ownership of specialist vaping retail stores.

## Open areas proposal

The Bill proposes to amend the SFEA to enable regulations to clarify whether a space within a premise is open (where smoking is allowed) or closed (where smoking is prohibited). It proposes to amend the definition (interpretation) of ‘open area’ as follows

“open area, in relation to any premises, means a part of the premises that is not an internal area as determined in accordance with any criteria or means prescribed in regulations” (Part 1 Section 2 (1) Interpretation Open Area, page 7).

Open areas are usually used to clarify the smoking/non-smoking areas of hospitality settings. Recent New Zealand court judgements have shown that the current SFEA legislation is inadequate to clearly determine areas where smoking is permitted or not. These court judgements have highlighted legal complexities and practical difficulties about what constitutes ‘internal areas’ or ‘open areas’ for smoking.

Clearly defining an ‘open area’ has been fraught with difficulties and regulations could result in similar court findings. For example, regulations based on air quality measurements will be difficult to prove and defend in court, will not fix the current problem as there is no known safe level of second-hand smoke (Surgeon General). Furthermore, it will probably continue to result in complicated and expensive disputes in court, generate extra costs for District Health Board compliance officers, and not protect staff and the public from being exposed to the harms of second-hand smoke.

Instead of just amending the definition of open areas through regulations the Cancer Society strongly recommends extending the SFEA to ensure all hospitality services (eating and drinking) accessible to the public including private and publicly owned areas (e.g. footpaths) are required to be smokefree and vape-free.

---

<sup>30</sup> Ministry of Health

<sup>31</sup> Eissenberg et al., (2020). Australian Journal of Public Health, 110:2. Editorial p161.

Regulations need to define 'inside' as any structure with a roof in any form (no reference to walls, openings etc.) **plus** requiring areas outside to be smokefree, including within 10m of any entrance or opening to buildings used by the public or as workplaces. Exposure to dangerous second-hand smoke is higher in outdoor dining and drinking areas compared with other public places in New Zealand (Wilson et al 2011).

The Smoke-free Environments Act purpose is to protect all workers and the public from exposure to second-hand smoke. Amending the legislation to make all outdoor hospitality areas smokefree will achieve this and protect staff and the public from exposure to second-hand smoke. Making all hospitality areas smokefree and vape-free in the Smokefree Environments Act will:

- Provide a clear and easily understood rule for the public, businesses and enforcement officers
- Provide a level playing field for hospitality businesses – wherever they are they must all abide by the same rules
- Protect hospitality staff and patrons from the harmful effects of second-hand smoke
- Provide hospitality staff the basic right of a safe workplace
- Support people who are trying to quit by removing visual cues and triggers to smoke
- Reduce young peoples' exposure to smoking and help reduce the pressure on them to start smoking
- Highlight the fact that smoking is not a necessary part of socialising
- Improve the enjoyment of most people eating and drinking outdoors.

Many comparable countries already ban smoking in outdoor dining and drinking areas, including Australia, North America (33 states and 332 municipalities have 100% smokefree outdoor dining and bars)<sup>32</sup> and Canada (7 provinces have 100% smokefree outdoor patios)<sup>33</sup>.

Smokefree hospitality areas are good for business. New Zealand businesses that have made their outdoor areas smokefree say it provides a better environment for staff and for customers<sup>34</sup> and it was easy to implement<sup>35</sup> National and international evidence shows there is usually either a positive or neutral impact on hospitality business from smokefree outdoor areas.<sup>36</sup>

---

<sup>32</sup> American Nonsmokers Rights Foundation *Municipalities with Smokefree outdoor dining and bar patio laws* Accessed April 2019 <http://no-smoke.org/wp-content/uploads/pdf/SmokefreeOutdoorDining.pdf>

American Nonsmokers Rights Information (2019) *States, Commonwealths, and Municipalities with 100% Smokefree Laws in Non- Hospitality workplaces, restaurants or bars* Accessed April 2019: <https://no-smoke.org/wp-content/uploads/pdf/100ordlist.pdf>

<sup>33</sup> Canadian Cancer Society (2017) *Overview Summary of Federal/Provincial/ Territorial Tobacco Control Legislation in Canada* Accessed April 2019 [http://convio.cancer.ca/documents/Legislative\\_Overview-Tobacco\\_Control-F-P-T-2017-final.pdf](http://convio.cancer.ca/documents/Legislative_Overview-Tobacco_Control-F-P-T-2017-final.pdf)

<sup>34</sup> Cancer Society, Canterbury DHB (2017) *Evaluation of The Fresh Air Project: Piloting smokefree outdoor dining areas in Christchurch.*

<sup>35</sup> Gendall P.J. (2017) *Palmerston North City Council Smokefree outdoor dining permit condition evaluation.* <https://www.otago.ac.nz/wellington/otago661624.pdf>

Li J, Newcombe R. *Acceptability of extended smokefree areas and smokefree cars.* Wellington: Health Promotion Agency Research and Evaluation Unit, 2013.

Palmerston North City Council press release 14 July 2017. *Café managers say going smokefree is easy.*

Accessed 3 May 2019: <http://www.scoop.co.nz/stories/AK1707/S00366/cafe-managers-say-going-smokefree-is-easy.htm>

<sup>36</sup> Cancer Society, Canterbury DHB (2017) *Evaluation of The Fresh Air Project: Piloting smokefree outdoor dining areas in Christchurch.*

Gendall P.J. (2017) *Palmerston North City Council Smokefree outdoor dining permit condition evaluation.* <https://www.otago.ac.nz/wellington/otago661624.pdf>

Local Government New Zealand, on behalf of Councils, strongly supports legislation to ensure all outdoor hospitality areas (dining and drinking) are smokefree (LGNZ AGM remit 2015).

Smokefree outdoor hospitality areas offer a significant step towards the national goal of a smokefree New Zealand by 2025.

### Public support for all outdoor hospitality areas to be smokefree.

The vast majority of the New Zealand public want smokefree outdoor hospitality areas<sup>37</sup> Support from those who smoke for smokefree outdoor hospitality areas, is likely to sharply increase once they experience the policy (Edwards et al., 2008; Cooper et al., 2010; Borland et al., 2006). In Queensland, 20 % more people said they visited outdoor dining/bars after the smokefree law change was introduced.<sup>38</sup>

Last year Cancer Society conducted electronic and paper-based surveys/ submissions at our Relay for Life and other events nationwide to gauge public support for all outdoor areas in cafes, restaurants and bars to become smokefree. There is very high support for the smokefree Environments Act to be strengthened to ensure all outdoor hospitality areas are smokefree. Of the 1481 submissions collected nationally 92% said they wanted all outdoor areas in cafes, restaurants and bars to be smokefree. Across all regions there was very high support for smokefree outdoor hospitality areas: Otago/ Southland 94% (total number of participants n = 521) Auckland/Northland 95% (n = 367), Wellington/ Marlborough 93% (n=140), Canterbury/West Coast 92% (n = 95), Central Districts/Waikato 89% (n=358).

### Recommendation

- Extend legislated areas to include all outdoor hospitality areas as smokefree and vape-free including within 10m of any entrance or opening to buildings used by the public or as workplaces.

### Monitoring

The Ministry of Health must allocate sufficient additional resources to provide for

- Monitoring of relevant research, trends and emerging health impact issues (such as Vitamin E acetate/THC in pods)
- Monitoring of toxicological, electrical, flammability, or other hazards associated with vaping products, and may take further action regarding any product determined to be a danger to human health or safety.
- 'New Generation Product' (NGP) trends, including product types and design characteristics, information on preferences of various groups
- Monitoring of the evolution of the vaping and smokeless tobacco industry and associated marketing of NGPs – particularly online marketing and sales to youth and non-smokers
- Ongoing assessment of the impact of vaping products on the overall tobacco market
- Use this information to develop and refine future policies and regulations regarding vaping
- Routinely collect data from manufacturers: details of the product, design, ingredients, product sales data, promotional activities, research and development. Market surveys, mode of sale of the product.

---

<sup>37</sup> Li J, Newcombe R. *Acceptability of extended smokefree areas and smokefree cars*. Wellington: Health Promotion Agency Research and Evaluation Unit, 2013.

<sup>38</sup> Queensland Health. 2007 *Review of smoke-free laws: Discussion paper*. Queensland Health. Brisbane.

**Thank you for the opportunity to make this submission**

A handwritten signature in blue ink, appearing to read 'L Elwood', is centered on the page. The signature is fluid and cursive, with the first letter 'L' being particularly large and stylized.

Lucy Elwood

Chief Executive Cancer Society of New Zealand

## References

- ASPIRE, University of Otago, Quitline and Hapai te Hauora. (2017). *Achieving Smokefree Aotearoa by 2025*. Wellington. New Zealand.
- Borland, R., Yong, H. H., Siahpush, M., Hyland, A., Campbell, S., Hastings, G., ... & Fong, G. T. (2006). Support for and reported compliance with smoke-free restaurants and bars by smokers in four countries: findings from the International Tobacco Control (ITC) Four Country Survey. *Tobacco control*, 15(suppl 3), iii34-iii41.
- Cancer Society Auckland Northland (2019). *Vaping: degrees of harm – e-cigarettes and smokeless tobacco products*. Download from <https://auckland-northland.cancernz.org.nz/reducing-cancer-risk/what-you-can-do/smoking-and-cancer/e-cigarettes-and-smokeless-tobacco-products/>
- Cooper, J., Borland, R., Yong, H. H., & Hyland, A. (2010). Compliance and support for bans on smoking in licensed venues in Australia: findings from the International Tobacco Control Four-Country Survey. *Australian and New Zealand journal of public health*, 34(4), 379-385.
- Edwards R, Ajmal A, Healey B, Hoek J. Impact of removing point-of-sale tobacco displays: data from a New Zealand youth survey. *Tob Control* 2016; doi:10.1136/tobaccocontrol-2015-052764.
- Edwards, R., Peace, J., Hoek, J., Wilson, N., Thomson, G., & Marsh, L. (2012). Majority support among the public, youth and smokers for retail-level controls to help end tobacco use in New Zealand. *NZ Med J*, 125(1357), 169-174.
- Edwards, R., Thomson, G., Wilson, N., Waa, A., Bullen, C., O’dea, D., ... & Woodward, A. (2008). After the smoke has cleared: evaluation of the impact of a new national smoke-free law in New Zealand. *Tobacco control*, 17(1), e2-e2.
- Eissenberg, T., Bhatnagar, A., Chapman, S., Jordt, S. E., Shihadeh, A., & Soule, E. K. (2020). Invalidity of an Oft-Cited Estimate of the Relative Harms of Electronic Cigarettes. *AJPH* 161-162.
- Farrimond, H. (2016). E-cigarette regulation and policy: UK vapers' perspectives. *Addiction*, 111(6), 1077-1083.
- Farsalinos, K., & Lagoumintzis, G. (2019). Toxicity classification of e-cigarette flavouring compounds based on European Union regulation: analysis of findings from a recent study. *Harm reduction journal*, 16(1), 48.
- Gravelly, S., Driezen, P., Ouimet, J., Quah, A. C. K., Cummings, K. M., Thompson, M., ... & Thrasher, J. F. (2019). Prevalence of awareness, ever-use, and current use of nicotine vaping products (NVPs) among adult current smokers and ex-smokers in 14 countries with differing regulations on sales and marketing of NVPs: Cross-sectional findings from the ITC Project. *Addiction*.
- Gurram, N., Thomson, G., Wilson, N., & Hoek, J. (2019). Electronic cigarette online marketing by New Zealand vendors. *The New Zealand Medical Journal (Online)*, 132(1506), 20-33.
- Haggart, K., Robertson, L., Blank, M. L., Popova, L., & Hoek, J. (2020). It’s Just Steam: a qualitative analysis of New Zealand ENDS users’ perceptions of second-hand aerosol. *Tobacco Control*.
- Hajek, P., Philips-Waller, A., Przuli, D., Pesola, F., Myers Smith, K., Bisal, N., ...McRobbie, H. (2019). A randomised trial of e-cigarettes versus nicotine-replacement therapy. *New England Journal of Medicine*.
- Hammond, D., Reid, J. L., Rynard, V. L., Fong, G. T., Cummings, K. M., McNeill, A., ... & O’Connor, R. (2019). Prevalence of vaping and smoking among adolescents in Canada, England, and the United States: repeat national cross-sectional surveys. *bmj*, 365, l2219.
- Hess, I. M., Lachireddy, K., & Capon, A. (2016). A systematic review of the health risks from passive exposure to electronic cigarette vapour. *Public Health Res Pract*, 26(2), e2621617.



- King, A. C., Smith, L. J., Fridberg, D. J., Matthews, A. K., McNamara, P. J., & Cao, D. (2016). Exposure to electronic nicotine delivery systems (ENDS) visual imagery increases smoking urge and desire. *Psychology of Addictive Behaviors*, 30(1), 106.
- Meernik, C., Baker, H. M., Kowitt, S. D., Ranney, L. M., & Goldstein, A. O. (2019). Impact of non-menthol flavours in e-cigarettes on perceptions and use: an updated systematic review. *BMJ open*, 9(10), e031598.
- Nagelhout, G. E., Zhuang, Y. L., Gamst, A., & Zhu, S. H. (2015). Do smokers support smoke-free laws to help themselves quit smoking? Findings from a longitudinal study. *Tobacco control*, 24(3), 233-237.
- National Academies of Sciences, Engineering, and Medicine. 2018. *Public Health Consequences of E-Cigarettes*. Washington, DC: The National Academies Press. doi: 10.17226/24952.  
[http://nationalacademies.org/hmd/Reports/2018/public-health-consequences-of-e-cigarettes.aspx?utm\\_source=Hootsuite&utm\\_medium=Dashboard&utm\\_campaign=SentviaHootsuite](http://nationalacademies.org/hmd/Reports/2018/public-health-consequences-of-e-cigarettes.aspx?utm_source=Hootsuite&utm_medium=Dashboard&utm_campaign=SentviaHootsuite)
- Robertson, L. (2017). *Regulating the Tobacco Retail Environment in New Zealand* (Doctoral dissertation, University of Otago).
- Soneji, S. S., Knutzen, K. E., & Villanti, A. C. (2019). Use of Flavoured E-Cigarettes Among Adolescents, Young Adults, and Older Adults: Findings from the Population Assessment for Tobacco and Health Study. *Public Health Reports*, 134(3), 282-292.
- Sowles SJ, Krauss MJ, Connolly S, Cavazos-Rehg PA. (2016) A Content Analysis of Vaping Advertisements on Twitter. *Prev Chronic Dis* 2016;13:160274.
- Walker, N., Parag, V., Wong, S. F., Youdan, B., Broughton, B., Bullen, C., & Beaglehole, R. (2020). Use of e-cigarettes and smoked tobacco in youth aged 14–15 years in New Zealand: findings from repeated cross-sectional studies (2014–19). *The Lancet Public Health*.
- Wilson, N., Weerasekera, D., Blakely, T., Edwards, R., Thomson, G., & Gifford, H. (2010). What is behind smoker support for new smokefree areas? National survey data. *BMC Public Health*, 10(1), 498.
- World Health Organization. (2016). Electronic nicotine delivery systems and electronic non-nicotine delivery systems (ENDS/ENNDS). *Report by WHO. Conference of the Parties to the WHO Framework Convention on Tobacco Control, Seventh session, Delhi, India, 7–12 November 2016. Provisional agenda item 5.5.2. Geneva: World Health Organization, 2016.* [http://www.who.int/fctc/cop/cop7/FCTC\\_COP\\_7\\_11\\_EN.pdf?ua=1](http://www.who.int/fctc/cop/cop7/FCTC_COP_7_11_EN.pdf?ua=1).
- Zare, S., Nemati, M., & Zheng, Y. (2018). A systematic review of consumer preference for e-cigarette attributes: Flavor, nicotine strength, and type. *PLoS One*, 13(3).