

31 March 2020

Committee Secretariat  
Health Committee  
Parliament Buildings  
Wellington

By email: [he@parliament.govt.nz](mailto:he@parliament.govt.nz)

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

Dear Sir/Madam

The New Zealand Medical Association (NZMA) wishes to provide feedback on the above Bill. The NZMA is New Zealand's largest medical organisation, with more than 5,000 members from all areas of medicine. The NZMA aims to provide leadership of the medical profession, and to promote professional unity and values, and the health of all New Zealanders. We recognise the principles of te Tiriti o Waitangi and the special obligations to Māori, particularly to ensure equity and active protection. Current disparities in health outcomes between Māori and non-Māori are unacceptable. The NZMA is committed to advocating for policies in health and the social and wider determinants of health that urgently address these disparities and contribute to equity of health outcomes. Our submission has been informed by feedback from our Board and Advisory Councils.

Smoking remains a leading cause of morbidity and mortality in New Zealand and is a significant contributor to the disparity in health outcomes for Māori. Furthermore, New Zealand is falling behind progress in meeting Smokefree Aotearoa 2025 goals. The NZMA welcomes the Smokefree Environments and Regulated Products (Vaping) Amendment Bill. While we recognise that vaping can help some people quit smoking, we believe that the regulation of vaping is urgently required to protect against harms while supporting a switch from smoking to vaping.

Our statement on Smokefree 2025 New Zealand summarises the NZMA's position on vaping.<sup>1</sup> We have also previously endorsed the following joint position on vaping:<sup>2</sup>

- the best thing you can do for your health is be smokefree and vape free
- vaping is not for children or young people
- vaping can help some people quit smoking.
- vaping is not harmless but it is much less harmful than smoking.
- vaping is not for non-smokers.

<sup>1</sup> NZMA. Smokefree New Zealand 2025. July 2017. Available from <https://bit.ly/33MJkmi>

<sup>2</sup> <https://vapingfacts.health.nz/our-position-on-vaping.html>

We note the Bill aims to take a balanced approach to the regulation of vaping and smokeless tobacco products. It acknowledges that vaping and smokeless tobacco products are less harmful than smoking and that they may help some people to quit smoking. At the same time, it reflects concerns about children's and young people's access to and use of these products. We support the approach taken in the Bill and are in broad agreement with most of the measures that the Bill proposes. Our specific comments on the key areas are provided in the paragraphs below.

### **Sale to minors**

We strongly support the proposed prohibition of the sale of vaping products to people under the age of 18 years.

### **Advertising and sponsorship**

We welcome the restrictions that will be placed on the advertising, promotion and sale of all vaping products. We note that vaping products will be exempt from some of the provisions that apply to tobacco products in order to reach smokers and encourage switching to vaping. For example, retailers will be enabled to display vaping products in-store, in contrast to requirements that require tobacco products to be out of the public's sight. We are generally comfortable with this approach which aligns with recommendations by tobacco control experts.<sup>3</sup>

### **Smokefree areas**

We note the Bill prohibits vaping in legislated smokefree areas such as indoor workplaces, early childhood centres and schools, and does not change the ability of local authorities to determine whether to include vaping in outdoor smokefree areas such as outdoor dining areas and children's playgrounds. We are broadly supportive of this approach. However, we recognise that there are some concerns in the tobacco control sector that unduly tight restrictions on where vaping is allowed could force people who are trying to quit smoking by vaping to share designated smoking areas with smokers. It has also been pointed out that unlike with smoking, there is no evidence of a plausible material risk to bystanders arising from vaping.

### **Labelling / packaging**

We note that the Bill applies provisions enabling standardised packaging requirements to be set in regulations for all regulated products. The intent is to set tailored requirements for different product types that acknowledge their different risk profiles. We believe there should be a full list of the ingredients for all products as well as warnings about harmful effects. We note that a key purpose of the provisions enabling standardised packaging and labelling is to reduce the appeal of vaping for non-smokers, particularly for children and young people. We support this approach to labelling and intend providing further feedback on the detail in the regulations once these are out for consultation.

### **Product safety**

We support the need for product safety requirements that will be set out in regulations and address, for example, maximum nicotine content of vaping liquids, standards for vaping liquid containers, and standards for vaping devices. We intend providing further feedback on the detail in the regulations once these are out for consultation. We also welcome the Bill's provision for ingredients as well as flavours to be prohibited.

### **Product notification**

We support the requirement for manufacturers and importers to notify products to the Ministry of Health before they can be sold in New Zealand.

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<sup>3</sup> Bates, C, Beaglehole R, Laking G, et al. A Surge Strategy for Smokefree Aotearoa 2025: The role and regulation of vaping and other low-risk smokefree nicotine products. Auckland: ASH New Zealand and End Smoking New Zealand. October 2019; Available from [https://www.ash.org.nz/surge\\_strategy\\_smokefree2025](https://www.ash.org.nz/surge_strategy_smokefree2025)

### **Requirements and permitted activities for generic and specialist vape retailers**

We note that the Bill recognises two types of retailers—generic retailers and specialist vape retailers—and stipulates different requirements and permitted activities for each. We are comfortable with this approach and are generally supportive of the different requirements that have been proposed relating to retailer registration, trading names, access by minors, advice to customers, give-aways / discounting, and vaping within stores.

### **Flavours**

We note that the Bill proposes restricting flavours of vaping liquid sold at generic retailers to tobacco, mint and menthol, but no restrictions on flavours (other than those that have been prohibited) to vaping liquid sold at specialist vape retailers. While the rationale for having flavoured vaping liquid available is that the flavours may support smokers to quit and take up vaping, this must be balanced against the appeal of flavours to children and young people.

We recognise that the tobacco control sector has differing views on where to strike this balance. At one end, there is a view that a range of flavours should be available at all points of sale to help ex-smokers distance themselves from tobacco, and that restricting flavours to only those that emulate tobacco could have the unintended consequence of perpetuating youth smoking. At the other end, there are concerns that non-traditional flavours could make vaping more appealing to youth and that restrictions to flavours should apply at all points of sale, not just generic retailers.

There are also concerns that allowing a range of flavours at specialist vape shops only could have unintended negative impacts on health equity and fairness. For example, in rural populations where Māori suffer a disproportionate burden from smoking, there are no specialist vape shops but many tobacco outlets. Many ex-smokers migrate from tobacco-flavoured to fruit-or desert-flavoured vaping options and identify access to flavours as important to ongoing abstinence from smoking. If vaping flavours other than those emulating tobacco are banned from sale at these generic outlets in a region with no specialist vape stores, an unintended consequence could be to perpetuate smoking in some smokers who may otherwise use flavoured vaping options to quit.

While we believe the Bill generally strikes the right balance, given the range of views above, it will be important to carefully evaluate the impacts of restrictions on flavours on both vaping and smoking patterns, and to make adjustments if necessary.

### **Monitoring and evaluation**

We believe that rigorous monitoring and evaluation of the impacts of the proposed Bill are essential. The Government must be able to amend or adjust the proposed measures as necessary to both mitigate any unintended consequences and maximise the opportunity for smokers to switch to vaping.

In light of the current situation with COVID-19, we have not been able to elicit the normal level of feedback to inform this submission. If an extension to the deadline for submissions is made, we request the right to withdraw and resubmit our response on this Bill. We would like to request the opportunity for an oral hearing, should that be possible in the circumstances, to speak to our submission.

Yours sincerely



Dr Kate Baddock  
NZMA Chair