



15 September 2024

NZ Government Health Committee
Parliament Buildings
Wellington

Via Email: Health@parliament.govt.nz

RE: Smokefree Environments and Regulated Products Amendment Bill (No 2)

Dear Committee Members,

The Coalition of Asia Pacific Tobacco Harm Reduction Advocates (**CAPHRA**) respectfully submits its comments for your consideration regarding the above noted amendment.

CAPHRA is an alliance of grassroots consumer safer nicotine user groups within the Asia Pacific region. We are adults who formerly smoked and now vape. Our mission is to educate, advocate and represent the right of at least 15 million adult alternative nicotine consumers in the Asia Pacific region to access and use products that reduce harm from tobacco use.¹

We understand and support the government's intent to curb youth vaping. Whilst we support the removal of single use, non refillable, non rechargeable vape devices (true disposable vapes) from the New Zealand market, we **do not support** the removal of all disposable components of and for closed systems from the market.

The proposed ban, including pre-filled tanks, pods, and cartridges, will create substantial barriers for adults who smoke and older vapers. Many of these individuals rely on simpler, closed system products due to difficulties with dexterity and the complexities of refillable devices. This ban could force them back to smoking cigarettes, which is counterproductive to the Smokefree 2025 goal.

The proposed amendment to the SmokeFree Environments and Regulated Products legislation has us concerned for a number of reasons, which we will outline below. This submission strongly cautions that adopting such a regulation will not help consumers switch to less harmful alternatives and may, in fact, hinder harm reduction efforts.

¹ <https://harmreductionjournal.biomedcentral.com/articles/10.1186/s12954-021-00556-7>.

Our Key Concerns are as follows:

- 1. Misalignment with Consumer Needs and Realities:** The primary purpose of vaping is to offer smokers a less harmful alternative to traditional cigarettes, facilitating harm reduction. As seen in the previous four years, our national smoking rate has decreased dramatically and that is due not only to the legalisation as a consumer product, but the products themselves being simple to use with the advent of closed systems, such as pod vapes, and the availability of flavours beyond tobacco. The overarching amendment to the existing regulations will make it more difficult for adults to access vaping products, potentially pushing them back to smoking.

A regulatory framework should acknowledge and address the unique nature and purpose of these products, enabling rather than obstructing their availability and use. This is especially relevant as the **deadly** disposable product, the combustible cigarette, remains on the open market in New Zealand.

- 2. Impact on Older Vapers and People who Smoke:** The bill's restriction on closed system vaping products will disproportionately affect older adults and those using vaping as a smoking cessation tool. These individuals often lack the dexterity required for handling open tank refillable devices, making the proposed ban a significant hurdle in their journey to quit smoking.

75% of older vapers (55+) use replaceable pod vapes as they find them as easy to use as their former use of cigarettes. There is no fiddling with trying to refill tanks or change coils due to arthritic hands and lack of visual acuity. The Ministry in their RIS has noted that many older former smokers in New Zealand use closed systems such as pod vapes to switch and remain off of combustible tobacco.

- 3. Display Restrictions:** The bill also proposes restrictions on the visibility of vaping products in retail stores and online. This not only places safer technology on the same level as combustible tobacco, it may deter people who smoke from even giving it a go.

We also believe that these measures may not effectively prevent youth access. We have mentioned previously in submissions that **enforcement** is the key issue we are seeing at the ground level. We feel that enforcement could be better managed with age-gated website technologies, such as age-verified identification systems that require government issued id to be input before allowing access to websites that sell vaping products.

- 4. Concerns Regarding Youth Vaping in Aotearoa:** One of the main public health goals is to reduce the prevalence of smoking and the associated health risks alongside the prevention of uptake of nicotine by youth. There are three key points that need to be made and addressed regarding youth vaping. One, The Ministry of Health, as well as ASH NZ, have already stated that access to vaping products in Aotearoa New Zealand is mainly through “social supply”, i.e. friends and family, and NOT via the regulated retail market. Further restrictions on products available on the retail market for adults will not make any noticeable impact on the youth vaping rate.

Two, the ASH NZ Year 10 survey has shown for three years running now that the youth vaping rate is declining steadily, whilst the youth smoking rate is nearly non-existent². The latter should be celebrated loudly whilst the former gives hope that the “fad” of vaping is on the decline, such as it is in other regulated consumer markets globally. In the United States, the rate of youth vaping has dropped dramatically to a third of the peak in 2019. In 2019, the youth vaping rate was 27% and has dropped down to less than 5.9%.³

Third, lastly, is the call for banning flavours other than tobacco to minimise appeal to youth. The previous government already implemented packaging and naming conventions to address this, as well as realising that offering a choice of flavours for adults to make the switch was more effective in maintaining smokefree status.

Studies that have explored the association between switching from combustibles to safer products, such as the one by the US National Institutes of Health⁴ have stated that “*E-cigarette use is positively associated with both making smoking quit attempts and quit success. Those using flavoured e-cigarettes...are more likely to quit successfully.*” A study published in [JAMA Network Open](#) reveals that access to electronic cigarettes (e-cigarettes) with commonly preferred flavours can significantly reduce the frequency of tobacco smoking in adults with psychiatric disorders, opioid use disorder (OUD), and lower educational levels⁵

To address the concerns around youth vaping, government needs to initiate a public education programme, based on facts and evidence, as to who vaping is for and why that is targeted at parents so they are aware and can be made aware of what their children may be doing so they can address it responsibly and actively enforce the existing regulations so that those retailers who are breaking the law, are dealt to in a timely and effective manner.

- 5. Vaping Regulatory Authority Mandate:** One of the main public health goals is to reduce the prevalence of smoking and the associated health risks alongside the prevention of uptake of nicotine by youth. The Vaping Regulatory Authority (VRA) to date, has failed in its mandate (for numerous reasons) to enforce the original legislation, and this has been noted by experts WITHIN the ministry as well as by ASH NZ, Vape Industry Association of New Zealand, AVCA Community group, consumers and CAPHRA.

The VRA has failed, first and foremost, in its communications with the consumers and the independent industry. Because of this, its members are not knowledgeable enough to understand the technical and scientific aspects of safer nicotine products. Secondly, the VRA operates on a part-time basis with limited resources, in knowledge, personnel and with limited financial support.

² https://www.ash.org.nz/ash_year_10

³ https://www.cdc.gov/mmwr/volumes/73/wr/mm7335a3.htm?s_cid=mm7335a3_w

⁴ <https://pubmed.ncbi.nlm.nih.gov/36250607/>

⁵ <https://jamanetwork.com/journals/jamanetworkopen/fullarticle/2823300>

A more appropriate approach would be to ensure that the VRA is sufficiently staffed with individuals who are well versed in the science of vaping, including ASH NZ, consumer and independent NZ industry representatives so that regulations are clear and fit for purpose. The VRA also needs to be sufficiently funded to carry out robust enforcement activities.

6. **Consumer Autonomy and Informed Choice:** Consumers have the right to make informed choices about their health and well-being. It is part of the Right to Health guaranteed under the UN Convention to Human Rights⁶. A regulatory framework that imposes “information restrictions” whereby consumers cannot see the products they are purchasing nor speak with the individuals in Specialist Vape Retailers freely will be a roadblock to access and choice, thereby restricting consumer autonomy. Instead, the focus should be on transparent risk communication and providing consumers with accurate information about the relative risks of different products. This empowers consumers to make decisions that best suit their needs and preferences, ultimately supporting harm reduction and public health. By adopting a pragmatic approach to assessing reduced-risk statements, government can empower consumers to make informed decisions based on scientific evidence and expert guidance.
7. **Focus on Education and Transparent Risk Communication:** One of the primary regulatory focuses should be on ensuring that consumers have access to accurate, transparent information about the relative risks of safer nicotine products. There was a plan in place, prior to the pandemic, to implement public education campaigns about vaping, i.e. who it is for, why it is an option and the need to reach the SmokeFree 2025 goal.

This can be achieved by activating the planned public service announcements and education campaigns for the general public and in schools that provide facts and evidence, such as is shown on the VapingFacts website. By highlighting the facts/truth about vaping, who it is for and what it is, the disinformation campaigns that have been activated in the country by overseas actors that create moral panics and outrage would be invalidated. By emphasising informed consumer choice, the government can better protect public health and support harm reduction efforts. This approach also fosters transparency, trust, and accountability in the regulatory process and with public health officials, ultimately benefiting public health outcomes.

In conclusion, we would like to take this opportunity to refer committee members to the [recommendations](#) from Cancer Research UK regarding closed system vapes, found on page 7: *“Refillable/ reusable e-cigarettes, which are the closest alternative to disposables, must remain easily available and accessible to people who smoke or used to smoke following any increased restriction on disposable products. Governments (across the UK) should work to rectify harm misperceptions between tobacco and vaping, so people who smoke are not discouraged from switching to e-cigarettes. They should also consider commissioning or undertaking research into Disposable e-cigarettes: use and appeal for smoking cessation in*

⁶ <https://www.ohchr.org/sites/default/files/Documents/Publications/Factsheet31.pdf>



adults & optimum vaping cessation to avoid relapse and develop guidance on quitting vaping without relapsing to smoking.”⁷

We have enclosed a hyperlinked reference document for your use in verification the points we have made within this submission.

Lastly, we thank the New Zealand Health Select Committee for their consideration and cooperation by granting us this opportunity to make written submissions on the draft amendment. We thank you for your time and we look forward to the favourable actions of your work in committee.

Very truly yours,

Nancy E. Loucas, Executive Coordinator
on behalf of the Coalition of Asia Pacific Tobacco Harm Reduction Advocates (CAPHRA)
Email: nancy@caphraorg.net

encs.

⁷ <http://bit.ly/3TpvAst>



REFERENCES: