



New Vaping Bill: Some important progress but critical gaps remain

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Summary

The coalition Government has moved quickly to “crack down” on youth vaping and proposes introducing new measures in a new bill. These include disallowing disposable vapes, reducing the visibility of in-store and online displays and introducing stronger penalties for sales to minors. These steps will help reduce young people’s exposure to vaping products and remove their product of choice: inexpensive single-use vapes.

However, some of the recently released Bill’s proposals raise new questions, particularly the definition of “disposable”. Importantly, the Bill fails to address price promotions, which make vapes highly accessible to children; it also fails to address the number and density of vape store outlets, and the appeal of vaping products.

We analyse the proposed measures and conclude that, if the Government truly wishes to “crack down” on youth vaping, it must take a more comprehensive approach.

When vaping products were introduced to the market, the Ministry of Health accepted they could offer a less harmful alternative to smoking¹ but did not anticipate the vaping prevalence now evident among young people.^{2, 3} Despite regulations introduced in 2020,⁴ vaping among young people aged 15 to 17 has continued to rise; the [most recent New Zealand Health Survey](#) reported 20% vaped currently (at least monthly) and 15.4% vaped daily.^{3, 5} Youth vaping prevalence in Aotearoa [remains very high](#) relative to other countries and [large inequities exist](#) between Māori and non-Māori.^{5, 6} The 2023 ITC survey of youth and young adults (16-29 years) found that vaping among Aotearoa youth was 17.3%, nearly twice as high as estimates from England (9.7%), and almost three times as high Canadian (6.2%) and US estimates (6.4%).² These figures may reflect the intensive youth-oriented marketing that occurred between 2019 and 2020.⁷ Despite subsequent policy changes, vaping products have become more available and more addictive,⁸⁻¹¹ and online promotions have continued.¹²

The coalition Government has [introduced a new bill](#) aiming to “crack down” on youth vaping. The Bill proposes four main changes:

- A complete ban on disposable vapes;
- Increases in the fines that may be imposed on anyone selling vaping products to people aged under-18;
- Measures to restrict the visibility of vaping products from outside specialist vape retailers and online, and end the use of point-of-sale displays within general retailers, including dairies and petrol stations;
- New proximity restrictions that will apply to early childhood education centres.

These measures go further than previous regulations and, with careful implementation and strong enforcement, could reduce vaping uptake among children and youth by denormalising vaping products and making product-types they favour more difficult to access. However, the Bill has important omissions; it fails to address the number and density of vape stores, regulate price discounting), or reduce vaping products’ appeal.

The Bill’s definition of “disposable” includes all vaping products that are not both rechargeable and refillable, thus capturing ‘pod’ and ‘cartridge’ products favoured by adults

who use vaping as an alternative to smoking. Ending sales of the single use disposable vapes preferred by children has a strong rationale; however, the proposed wide definition requires further analysis. For example, disallowing discounting and placing an excise tax on vaping products could reduce the availability of “pocket money” priced products more effectively than disallowing particular product types, given how easily the vaping industry circumvents regulations and brings inexpensive new products to market.

Vaping product availability

Regulating vaping products as consumer goods allows sale by non-experts. Yet, people wishing to stop smoking would benefit more from tailored advice delivered by people with relevant expertise. Restricting vaping products to specialist vape retailers or to pharmacies would reduce their availability to youth while simultaneously retaining access for people who smoke and offering access to advice on transitioning away from smoking. A formal licensing scheme could control vape store numbers and locations, and provide an additional enforcement mechanism (i.e., allow for licence removal from non-compliant retailers).

Regulations introduced in 2023 established some proximity limits for new specialist vaping retailers (SVRs), which could not be located within 300m of schools and marae after August 2023. However, the restrictions did not apply to generic stores selling vapes or retrospectively to SVRs; [media reports suggest some SVRs gamed the implementation date](#) by opening just before the deadline. We recommend that no vaping product retailer (including existing retailers) may operate within 300m of any school, kura or early childhood centre. Alongside stronger proximity measures, density restrictions should apply, particularly in lower-income communities. The Bill does not set out mandatory age verification procedures for online retailers to prevent sales to minors; we suggest requiring an approved third-party verification system.

Furthermore, smoked tobacco products should be regulated more stringently than vaping products, given they pose more physical harms. Currently, there are no restrictions on the retail sale of cigarettes and tobacco; alongside stronger regulation of vaping products’ retail availability, the Government should introduce robust measures to reduce smoked tobacco products’ availability.

Vaping product affordability and appeal

A recent study found several retailers used price discounting to offload outdated (non-compliant) stock;¹⁰ cheap products appeal to young people, who report making retail purchases, despite being under 18.⁹ Disallowing price discounting, loyalty schemes, giveaways and bundling promotions (such as buy-one-get-one-free) could make vaping products less affordable for young people while ensuring they remain less expensive than smoked products.

If refillable tanks, pods and cartridges remain available, excise tax could make these products less affordable to young people while maintaining a price differential with smoked tobacco. A similar approach could increase the cost of flavours that appeal to young people, but ensure these remain less expensive than smoked products. Basing excise tax levels on nicotine strength could provide a financial incentive for consumers to use lower nicotine (i.e., less addictive) products. Mandating standardised (black and white) packaging could also reduce vaping products’ appeal to young people without diminishing interest among adults who smoke.^{13, 14}

In conclusion, while the proposed Bill takes some important steps, it fails to fully address the pricing, promotion and availability of vaping products. As well as developing a more comprehensive strategy, the Government must exclude nicotine product manufacturers from influencing its policy development, in line with Article 5.3 of the Framework Convention on Tobacco Control. While its “crackdown” makes some progress, much more is required before young people receive the protection they deserve.

[Public submissions to the Health Select Committee](#) on the Bill (Smokefree Environments and Regulated Products Amendment Bill (No 2)) are open until 11.59 pm, Friday 27th 2024.

What this Briefing adds

- The Government has proposed introducing new measures that would disallow disposable vaping products, increase penalties for anyone who sells vaping products to youth, restrict vaping product visibility in stores and online, and introduce new proximity limits.
- These measures make some progress, but the Bill creates some ambiguities, including the definition of “disposable”.
- The Bill also fails to regulate price and other sales promotions, and does not address the number and density of vape store outlets.

Implications for policy

- The Government must build on these preliminary steps and take a more comprehensive approach that closes the loopholes we and others have identified.
- Concerns over the influence tobacco companies have had on smokefree policy make it crucial that the Government meets high standards of transparency and excludes the vaping and tobacco industries, including the groups they fund directly and indirectly, from all aspects of the policy process.

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