

## **Cancer Society/Te Kāhui Matepukupuku o Aotearoa**

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

**Submitted to: Health Select Committee**

**24 August 2022**

This submission is by the Cancer Society of Aotearoa. We are a registered charity focused on reducing the impact and incidence of cancer in New Zealand.

The Cancer Society wholeheartedly supports all measures in this Bill. We are delighted because these measures will save thousands of lives from cancer and lessen the suffering and disability caused by tobacco. We are ever mindful that many lives have been lost from tobacco-caused diseases since the Smokefree Aotearoa goal and strategies were proposed by the Māori Affairs Select Committee over a decade ago. This Bill is an important step that needs to be taken now.

The measures in this Bill are world-leading, achievable and will have a profound impact on improving health inequities. It will also provide billions of dollars in cost-savings to the health system. We offer our support and thanks for developing the most comprehensive tobacco endgame policy in history.

#### **Our submission is supported by the following co-signers:**

- Canterbury & West Coast Secondary Principals' Association
- Hikina te Ora Ltd
- Te Arawa Whanau Ora ki Mangakino
- Thames High School
- Waikato District Council
- Southland Interagency Forum

In addition, the Cancer Society has been engaging with individuals and community groups across New Zealand. There is strong community support for this Bill as will be evident from the many submissions on the Bill. New Zealanders want to achieve the Smokefree Aotearoa 2025 goal.

We encourage Select Committee members to watch these videos on our website which give a sense of the community support for the Smokefree actions proposed in the Bill:

Interviews with retailers who explain why they have stopped selling tobacco:

<https://drive.google.com/file/d/1a-8lzK2WNOc5vLvNmjShu2T1ugIH5wbm/view>

Interviews with people who explain why they support NZ being Smokefree:

<https://www.youtube.com/watch?v=q-g3Cdmf5cU>

<https://www.youtube.com/shorts/rCK2qH7vYdk>

[https://www.youtube.com/shorts/mAf\\_Z3yX6EA](https://www.youtube.com/shorts/mAf_Z3yX6EA)

<https://www.youtube.com/shorts/leSp858SJ2A>

## Specific Recommendations

We support all measures in this Bill. Our views on the proposals and specific recommendations are set out below:

### **Part 3A 57H (page 24) Limits on nicotine to be prescribed for smoked tobacco products.**

This is a truly game-changing proposal that will have a profound impact on reducing tobacco-related cancers. It has strong public support<sup>1,2</sup>. Over ten years of research on low nicotine cigarettes indicates that they will substantially decrease youth uptake and help those addicted to quit<sup>3-5</sup>. If this measure is introduced, smoking rates for wāhine Māori (20+ years) are modelled to drop from 37% to 10% by 2025 and the Smokefree goal will be achieved for the rest of the population<sup>6</sup>. This may be the only policy that will achieve the Smokefree Aotearoa goal for Māori<sup>6,7</sup>

This measure is feasible because New Zealanders have good access to lower harm nicotine products and cessation treatments, and it does not lead to compensatory smoking (smoking more or puffing more intensely)<sup>3,8,9</sup>. However, investment in appropriate cessation support and health communication campaigns are needed to ensure the success of this policy. We also acknowledge that attempts to smuggle tobacco may increase, but this will be combatted by the Government's \$10 million investment to resource investigation and enforcement capacity within Customs. We also know that the best solution to illicit tobacco is to implement the measures in this Bill as these will result in rapid declines in the number of people smoking.

#### **We recommend:**

- Specify the maximum level of nicotine in the final Act based on evidence of effectiveness (0.4mg or less)<sup>10</sup> and commence this as soon as possible.
- Close monitoring of the real-world impact so that unintended consequences can be quickly addressed.
- Continued commitment to by Māori, for Māori cessation support and health communication campaigns.
- Public health communication campaigns prior to implementation to counter misconceptions and explain why this change is occurring.
- That smoking cessation services will be sustainably resourced to provide comprehensive support for people seeking to quit smoking.

### **Subpart 3 40A (page 17) Smokefree Generation – prohibiting the supply of tobacco to anyone born from 2009**

This is a key step in ensuring a Smokefree future for our children and protection from a consumer product that kills. New Zealanders do not want their children to become addicted and suffer from the devastating consequences. This ground-breaking measure will support the aspirations of our communities and will no longer send a misleading signal to young people that 18 years is an acceptable age to start smoking. Teen smoking is now rare (1%), but substantial uptake continues to occur among young adults 18-24 year olds (12% currently smoke)<sup>11</sup>. This means that each year thousands of young adults are starting on a pathway to a lifetime of addiction. This Smokefree

Generation policy will prevent the tobacco industry from recruiting young customers and will create freedom from addiction.

**We recommend:**

- Sustained investment in enforcement and monitoring.
- Authentic engagement with rangatahi to help shape implementation of the Smokefree Generation policy.

**Part 1B 20M (page 12): maximum numbers of approved smoked tobacco retailers**

The Cancer Society has been advocating for this measure to be introduced for a number of years and is very thankful for its inclusion. We agree that a consumer product that is addictive and kills as many as two thirds of its long-term consumers should not be sold in thousands of retail outlets across the country or cluster in our low income communities<sup>12, 13</sup>. Widespread availability has dangerously normalised tobacco use and is a major factor contributing to relapse and the number of young people who start smoking each year<sup>14</sup>.

There is substantial support among the general public, people who smoke and many tobacco retailers for reducing the number of tobacco retail outlets<sup>15, 16</sup>. Retailers who have chosen not to sell tobacco have done so because they consider it less of a security risk, tobacco has very low profit margins and insurance costs are lower<sup>17</sup>. Post purchase surveys of over 3,500 customers reported that tobacco is included in only a minority of transactions in convenience stores (14%) and does not drive the purchase of other items<sup>18-20</sup>.

This measure will prevent tobacco companies from targeting our low-income communities and will lead to reductions in tobacco use and health inequalities<sup>21</sup> providing it is implemented per the following recommendations.

**We recommend:**

- Reduce the number of tobacco retailers by 95% without delay.
- When granting approval, the Director-General should carefully consider the density and proximity of tobacco outlets and no longer allow outlets to concentrate in any given area or near schools/kura or in deprived areas.
- Tobacco should only be sold in approved outlets with a good track record of tight surveillance and careful checking of customer ID and staff trained in giving cessation advice. Ideally, when granting approval the Director-General should consider the desirability of tobacco only being sold in R18 restricted outlets.

**Part 1B Subpart 2 (page 13) Vape retailer approval**

The number of young people vaping is too high and rising, largely due to the period when the market was unregulated. An estimated 25,000 (12%) of rangatahi aged between 15-17 years are regularly vaping and 12,000 (5.8%) of this age group are daily vaping<sup>11</sup>. Regular vaping for Māori Year 10 female students more than doubled from 19.1% in 2019 to 40.7% in 2021<sup>22</sup>. We understand that policy options must take in to account its use as a complete substitute for people who smoke whilst

preventing illegal sales to young people. However, it is crucial that we prevent minors from becoming long-term vape customers that continue to be manipulated by commercial interests.

The Cancer Society supports the obligations for vape retailers and distributors as outlined in the Bill, and the requirement for the Director-General to consider the relevant population and location of the vape shop before granting approval. We call for strengthening regulations on generic retailers as outlined below.

**We recommend:**

- Not allowing retail outlets selling vaping products to cluster in any given area or establish near schools and other higher-risk or sensitive locations.
- Clarify if **all** specialist vape retailers are required to apply for approval.
- Require general retailers to apply for approval.
- Apply a cap on the number of retail outlets selling vapes.
- Require specialist vape retail staff to be trained in providing advice about smoking cessation and safe use.
- Ensure rigorous enforcement of R18 online and brick and mortar vape sales and delivery, including online ID age verification.
- Resource services to support people seeking to quit vapes.

**Section 5 - Purposes of this Act**

The Bill proposes to change the Purposes of the Act, to remove specific reference to protecting children and young people from taking up vaping and smokeless tobacco products (STPs).

**We recommend:**

- The Purpose of the Act retains wording that refers to preventing the normalisation of vaping and smokeless tobacco and discouraging young people and non-smokers from taking up vaping.

**Part 1, Section 3.6 3AB (page 8): Meet Te Tiriti o Waitangi obligations**

The Bill states that in order to provide for the Crown's intention to give effect to the principles of Te Tiriti o Waitangi/The Treaty of Waitangi, the Director-General is required to consult with Māori before determining the maximum number of tobacco retailers and area they are located. We note that there are inconsistencies in the Crown's obligation to include Te Tiriti in all aspects of the Bill and consider that consultation alone does not give effect to Te Tiriti O Waitangi. We call for a partnership decision-making process. The Māori Health Authority, iwi boards and representatives from the Māori community should have an equal opportunity to make decisions about Smokefree policy.

Further, there is only a commitment to consult about the reduction of retail availability. There is nothing toward the other key aspects of the Bill including creating a Smokefree Generation, regulating tobacco constituents and, in particular, markedly reducing nicotine content in tobacco. The Smokefree 2025 goal was first set out by Māori leaders over a decade ago and included supply

reduction strategies that government is only now proposing, despite the many thousands of tobacco-caused deaths that have occurred in the interim. This underscores the importance of Māori self-determining the hauora of their communities and is something we all benefit from.

The Crown has a significant obligation to protect Māori from tobacco related harm as a signatory of the Framework Convention on Tobacco Control (Preamble and Article 4/2c) and the United Nations Declaration on the Rights of Indigenous Peoples). The Bill text has utilised Te Reo and English names Te Tiriti/The Treaty of Waitangi throughout – we consider that the Crown in its commitment to reducing inequities in tobacco related harm to protect Māori should in good faith, and where the international rule contra proferentem applies, implement the solitary use of Te Reo Māori text within all aspect of this Bill.

**We recommend:**

- Te Tiriti Of Waitangi principles be embedded in all key aspects of the Bill.
- The replacement of wording from consultation to partnership used throughout.
- The Māori Health Authority, iwi boards and representatives from the Māori community should have equal partnership say in Smokefree policy.
- Te Tiriti of Waitangi be the only reference used throughout the Bill.

**Part 13AB (b) (page 8) Consultation to determine the maximum number of tobacco retailers**

For many years, we have heard community members express concern over the clustering of tobacco and vaping outlets in their neighbourhoods and near to schools but have felt powerless to respond. Before determining the number and location of approved tobacco retailers we support a mechanism that will allow affected communities to put forward their concerns and have a say over where outlets are located.

**We recommend:**

- That there is a mechanism for affected communities and organisations to object to applications for tobacco and vape outlet approval.

**Part 1, Section 3A (c) (page 7): Give effect to the Framework Convention on Tobacco Control**

It is stated that the purpose of this Act is to “give effect to certain obligations and commitments that New Zealand has as a party to the WHO Framework Convention on Tobacco Control” (FCTC). In particular, we call on the Government to maintain awareness and compliance of Article 5.3 consistently across all Government departments and agencies. This will help to ensure that this Smokefree policy is protected from the vested interests of tobacco companies and their allies.

**We recommend:**

- Awareness and compliance of FCTC Article 5.3 requirements should be consistent across all Government departments and agencies (alongside the continued commitment by the Ministry of Health and Customs New Zealand to be transparent in their dealings with tobacco companies).

- Submissions made by tobacco companies and groups they fund should not be given the same consideration as submissions made by community and non-tobacco funded groups/organisations.
- Ensure that submissions and other representations made by groups that are funded by tobacco companies correctly disclose tobacco industry links to avoid disclosure omissions that have occurred in the past during Parliamentary processes.

### **Smokefree environment**

The Cancer Society would like to take this opportunity to urge the inclusion of Smokefree environment policy in Government tobacco control legislation. Extending Smokefree environments is a crucial piece of de-normalising smoking and there is wide public support. Extending Smokefree environments will also reduce pollution from tobacco waste in our environment and complement actions in the Smokefree Aotearoa Action Plan.

Councils currently manage this space, and the result is we have a patchwork approach across the country. This creates confusion and undermines the Auahi Kore messaging. Councils have indicated they want an even playing field on Smokefree outdoor spaces. Local Government NZ (LGNZ) has been calling for national legislation for smokefree outdoor hospitality areas (cafes, restaurants, and bars) since 2015. The current legislation's definitions of where people can or cannot smoke in hospitality areas have been repeatedly before the courts. We urge Government to make all hospitality areas smokefree to provide consistency and clarity.

### **We recommend:**

- Smokefree policies are consistent across Aotearoa, and not dependent on local initiatives.
- Smokefree outdoor public spaces as the norm are effectively communicated by mandated and monitored signage, media/social campaigns, health promotion resources and other means.

Priority spaces for Smokefree outdoor legislation need to include:

All outdoor hospitality areas and all council and Government owned, leased, or funded land, buildings, and surrounds, including:

- parks, playgrounds, sports grounds and green spaces, cycle ways and beaches
- pedestrian civic spaces (e.g. malls, plazas or boulevards), public outdoor seating, including stadia
- Tertiary education, hospital and health facility campuses and grounds, including public land within 100 metres of school and pre-school entrances transport hubs, railway stations, and airports, within 10 metres of doorways and openings of buildings that the public use.

### **Cross-party support**

Given the Labour Government currently has a majority in Parliament this Bill is likely to pass. However, it's important that the tobacco industry is sent a strong message that these policies have cross-party support.

**We recommend:**

We recommend all Select Committee members support the Bill for the health benefits of all New Zealanders

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

Lucy Elwood Chief Executive, Tumu Whakarae, Cancer Society of New Zealand National Office

**References**

1. McKiernan A, Stanley J, Waa AM, et al. Beliefs among Adult Smokers and Quitters about Nicotine and Denicotinized Cigarettes in the 2016-17 ITC New Zealand Survey. *Tobacco regulatory science*. 2019;5(5):400-409.
2. Cancer Society of New Zealand. 85% (n717) of community respondents wanted the Government's Smokefree Action Plan to include 'lowering nicotine levels and making cigarettes less appealing'. *Cancer Society*.
3. Benowitz N, Dains K, Hall S, et al. Smoking Behavior and Exposure to Tobacco Toxicants during 6 Months of Smoking Progressively Reduced Nicotine Content Cigarettes. *Cancer Epidemiology Biomarkers & Prevention*. 2012;21(5):761-769.
4. Donny EC, Denlinger RL, Tidey JW, et al. Randomized Trial of Reduced-Nicotine Standards for Cigarettes. *The New England journal of medicine*. 2015;373(14):1340-1349.
5. Donny EC, White CM. A review of the evidence on cigarettes with reduced addictiveness potential. *International Journal of Drug Policy*. 2022/01/01/ 2022;99:103436.
6. Scalable Health Intervention Evaluation (SHINE). *Unpublished modelling commissioned by the Ministry of Health, carried out by the University of Melbourne, using the SHINE Tobacco Research platform*. Melbourne: University of Melbourne; 2022.
7. Ministry of Health Manatū Hauora. Regulatory Impact Statement: Smokefree Aotearoa Action Plan. *Ministry of Health* Available at: <https://www.health.govt.nz/system/files/documents/information-release/ris-smokefree-aotearoa-action-plan-nov21.pdf>.
8. Hatsukami DK, Kotlyar M, Hertsgaard LA, et al. Reduced nicotine content cigarettes: effects on toxicant exposure, dependence and cessation. *Addiction*. 2010;105(2):343-355.
9. Hatsukami DK, Luo X, Dick L, et al. Reduced nicotine content cigarettes and use of alternative nicotine products: exploratory trial. *Addiction*. 2017;112(1):156-167.
10. Hatsukami DK, Luo X, Jensen JA, et al. Effect of Immediate vs Gradual Reduction in Nicotine Content of Cigarettes on Biomarkers of Smoke Exposure: A Randomized Clinical Trial. *Jama*. Sep 4 2018;320(9):880-891.
11. Ministry of Health. New Zealand Health Survey (NZHS). Wellington; 2020/21.
12. McDowall C R, R, . Accessibility of tobacco retailers and specialist vape retailers to New Zealand schools map series (Edition 1). *ARPHS, Ngā Tai Ora / Smokefree and Northern Regional Alliance*. Available at: [https://drive.google.com/drive/folders/16L\\_SvGZLej\\_TOB53JRjv4KdG22lVX8nw](https://drive.google.com/drive/folders/16L_SvGZLej_TOB53JRjv4KdG22lVX8nw).
13. Banks E, Joshy G, Weber MF, et al. Tobacco smoking and all-cause mortality in a large Australian cohort study: findings from a mature epidemic with current low smoking prevalence. *BMC medicine*. 2015;13(1):1-10.
14. Leatherdale ST, Strath JM. Tobacco retailer density surrounding schools and cigarette access behaviors among underage smoking students. *Annals of Behavioral Medicine*. 2007;33(1):105-111.
15. Te Hiringa Hauora Kupe Data Explorer. Attitudes to tobacco. *Te Hiringa Hauora* Available at: <https://kupe.hpa.org.nz/#!/tobacco/attitudes-to-tobacco>.
16. Edwards R, Peace J, Hoek J, Wilson N, Thomson G, Marsh L. Majority support among the public, youth and smokers for retail-level controls to help end tobacco use in New Zealand. *NZ Med J*. 2012;125(1357):169-174.
17. Department of Health and Human Services. Why Retailers Stop Selling Tobacco and Implications for Tobacco Control. Tasmanian Government; 2017.
18. Marsh L, Cameron C, Quigg R, et al. Is the tobacco 'footfall' argument justified for tobacco purchases in New Zealand convenience stores? *Tobacco Control*. 2022;31(3):438.
19. Robertson L, Cameron C, Hoek JA, et al. Prevalence and characteristics of tobacco purchases in convenience stores: results of a postpurchase intercept survey in Dunedin, New Zealand. *Tobacco Control*. 2019;28(6):696.
20. Marsh L, Doscher C, Cameron C, Robertson L, Petrović-van der Deen FS. How would the tobacco retail landscape change if tobacco was only sold through liquor stores, petrol stations or pharmacies? *Australian and New Zealand Journal of Public Health*. 2020/02/01 2020;44(1):34-39.
21. Lee JGL, Kong AY, Sewell KB, et al. Associations of tobacco retailer density and proximity with adult tobacco use behaviours and health outcomes: a meta-analysis. *Tobacco control*. 2021:tobaccocontrol-2021-056717.
22. Action for Smokefree 2025 (ASH). ASH Year 10 Snapshot Survey 2021: Regular smoking and regular vaping. 2022.