



ASSOCIATION OF SALARIED MEDICAL SPECIALISTS

TOI MATA HAUORA

ASMS submission on the Smokefree Environments and Regulated Products (Smoked Tobacco) Amendment Bill

24 August 2022

The Association of Salaried Medical Specialists (ASMS) is the union and professional association of salaried senior doctors and dentists. ASMS was formed in April 1989 to advocate and promote the industrial and professional interests of our members, most of whom are employed by Te Whatu Ora as medical and dental specialists. We have over 5,500 members.

ASMS promotes improved access to health care for all New Zealanders and recognition of the professional skills and training of our members and their significant role in health care provision. We are committed to the establishment and maintenance of a high quality, professionally led public health system throughout New Zealand.

ASMS is an affiliate of the New Zealand Council of Trade Unions Te Kauae Kaimahi.

ASMS is a member of Health Coalition Aotearoa.

Key points

- ASMS welcomes the introduction of the Smokefree Environments and Regulated Products (Smoked Tobacco) Amendment Bill (the Bill)).
- Overall, we support the regulatory regime established by the Bill to reduce smoking prevalence and smoked tobacco availability to minimal levels in Aotearoa New Zealand (Smokefree Aotearoa 2025).
- We strongly support the equity focus of the Bill and that doing nothing (the status quo) would mean government's smokefree goal would not be achieved for Māori until 2061.
- We support the wider equity aims of reducing the health burden of tobacco use on Māori and its disproportionate impact on Pacific peoples, deprived communities, and those with mental health conditions.
- We agree that limiting the nicotine in smoked tobacco products will help people quit smoking and prevent young people from becoming addicted. We consider that the regulations to effect this change should be made as soon as possible.
- ASMS agrees with the smokefree generation policy and amending the age limit restricting access to smoked tobacco products so that it is illegal to sell or supply smoked tobacco products to anyone born after January 2009.
- We are concerned at the increase in vaping by young people and support strengthening vaping regulations, including by aligning them with the proposals for tobacco.

Background

The Bill is the fruition of work undertaken by the Māori Affairs Select Committee in 2010 to inquire into the tobacco industry and the effects of tobacco use on Māori.

The Inquiry heard that the effects included that wāhine Māori have among the highest lung cancer rates in the world; that tobacco-related illnesses like emphysema, cancer and heart disease have terrible effects not just on an individual, but the whole whānau; that smoking has a devastating effect on young and unborn children; and that the cultural cost of tobacco to Māori includes the premature loss of kuia and kaumātua, taking away the opportunity for cultural traditions, knowledge and histories to be passed on to younger generations.

The committee considered this loss a tragedy and was determined “to remove tobacco from our country's future in order to preserve Māori culture for younger generations. It was because of this inquiry the Smokefree Aotearoa New Zealand 2025 goal was set”.¹

Te Tiriti o Waitangi

ASMS strongly supports the inclusion of new sections in the Smokefree Environments and Regulated Products Act 1990 (the Act) giving effect to the principles of Te Tiriti o Waitangi. Addressing the current omission in the Act reflects that this Bill will take a step towards ending the inequitable health consequences for whānau Māori from smoked tobacco use. These consequences include higher incidences of cancer, cardiovascular and respiratory disease, and lower life expectancy for Māori compared to the rest of the population.

We support the provisions in the Bill that will require the Director-General of Health (D-G) to consult with Te Aka Whai Ora Māori Health Authority, iwi-Māori Partnership Boards and other Māori, including iwi. In our view, consultation must represent full partnership in decision-making. This is particularly important for ensuring that the maximum number of approved tobacco retailers declared for an area is not exceeded.

Purposes of this Act

ASMS supports the amendment (in clause 5 of the Bill) to replace section 3A - Purposes of this Act with new purposes relating to the regulation of smoked tobacco products to achieve the smokefree goal.

We are concerned, however, that an existing purpose “to prevent the normalisation of vaping” is lost. While we accept that vaping can assist some smokers to quit, we do not believe it should be normalised. ASMS raised our concerns about the increase in vaping among young people, and the promotion of vaping as a “safer” alternative to smoking, in our submission on the Smokefree Aotearoa 2025 Action Plan.²

A survey in 2021 on the prevalence of vaping products in secondary schools found that 27% of 19,000 respondents reported vaping, with 75% of them vaping daily or several times a day and the majority vaping with high nicotine doses. In addition, 86% of students who were vaping more than once a day reported that they were addicted to vaping and 57% felt that it was having an adverse effect on their health.³

We suggest the order of the purposes for regulating smoked tobacco products set out in section 3A(1) of the Act could be changed so that “to reduce disparities in smoking rates and smoking-related illnesses between New Zealand population groups, and in particular between Māori and other groups” is listed first. This would help emphasise the equity focus of the Smokefree Aotearoa 2025 Action Plan.

The following comments cover key provisions in the Bill to achieve the Smokefree Aotearoa 2025 goal.

Reducing the appeal and addictiveness of smoked tobacco products

ASMS strongly supports the amendment (in clause 31 of the Bill) that enables regulations to be made prescribing the limits for the quantity of nicotine in any smoked tobacco product. Reducing the nicotine content in all smoked tobacco, so it is no longer addictive, is the key to more people giving up smoking and for tamariki and rangatahi to remain smokefree. We believe it will support the equitable decline in smoking rates for Māori, particularly young wāhine Māori.

Smoking is the main cause of lung cancer and chronic obstructive pulmonary disease (COPD). It is also a major cause of other cancers, heart disease and stroke. Evidence from randomised controlled trials has found that people using denicotinised cigarettes from groups with high smoking prevalence, such as people experiencing poor mental health or with lower socio-economic status, are more likely to make a quit attempt and quit smoking. The removal of nicotine will likely result in long lasting benefits for whānau, communities and the general population.⁴

We are concerned, however, at the length of time it will take before regulations setting nicotine limits in smoked tobacco are made. The Bill allows the Minister up to 21 months of commencement of section 31 of the Smokefree Environments and Regulated Products (Smoked Tobacco) Amendment Act 2022. We recommend the timeframe set out in the Bill is brought forward to significantly reduce the harm from tobacco smoking by 2025.

Amending the age limits for sale of smoked tobacco products

ASMS supports amendments to the Act, provided for under clauses 18 to 24 of the Bill, that will make it illegal to sell or supply smoked tobacco to a person born on or after 1 January 2009 (the smokefree generation). We consider the amendments will help achieve the policy intent to prevent young

people, and successive generations, from ever taking up smoking. The fine of \$150,000 for offending is likely to be an appropriate deterrent.

ASMS is concerned about the harms from vaping in adolescents. The New Zealand Youth 19 Survey reports that vaping among adolescents increased sharply after 'pod' devices, under brand names such as JUUL and Vuse, were introduced and heavily marketed to young people as lifestyle products. The survey report states that there is emerging evidence that using pod devices is associated with higher nicotine exposure and nicotine dependence.⁵

The ASH Year 10 Snapshot Survey shows there is a clear trend towards vaping uptake among 14- & 15-year-old students. The rates among rangatahi Māori are of particular concern with data showing that daily vaping rose from 5.9% in 2019 to 19.1% in 2021.⁶

We agree with a recent statement by Professor Janet Hoek, a leading researcher whose studies have informed national and international tobacco legislation, that *"We need a better balance between supporting people who smoke to switch to a less harmful alternative while also protecting young people from products that do not support their wellbeing."*⁷

While vaping may be considered less hazardous than smoked tobacco, we suggest that the sale or supply of a vaping product to people born in 2009 or later should also be illegal. This would recognise that vaping is not safe and that future generations need to be protected from harm and addiction. We note from the Ministry of Health's summary of submissions on the proposals for a Smokefree Aotearoa 2025 Action Plan that other submitters supported strengthening vaping regulations, including by aligning them with the proposals for tobacco.⁸

Reducing retail availability, marketing and advertising

ASMS supports the introduction of a regulated market model to reduce the availability of smoked tobacco products in Aotearoa New Zealand. This includes amending the Act so that only approved retailers can sell smoked tobacco products. We agree with the offences and the level of fines included in the Bill. We trust that they will be reviewed over time to ensure they continue to function as a deterrent.

A crucial provision in the Bill, in clause 13, is the requirement for the D-G to set the maximum number of approved retailers permitted in a certain area. We strongly support this measure because it offers an effective way of reducing availability and smoking prevalence. Studies show the link between the number of retail stores in a community and increased smoking rates, increased smoking-related death and disease outcomes, and the normalisation of tobacco use in a community. Tobacco control experts consider that fewer outlets could reduce smoking initiation among young people who are susceptible to smoking, and help quitters remain abstinent after a cessation attempt.⁹

Setting controls around store numbers, density and proximity should enable a drastic reduction in the disproportionate number of tobacco retail outlets in areas of higher socioeconomic deprivation in Aotearoa New Zealand.

ASMS is concerned at the advertising tactics being used by the vaping industry and the impact it is having on increasing uptake by adolescents. Online promotions and lifestyle marketing likely to appeal to young people include price discounting, competitions, and rewards for referring friends. Other tactics employed are AfterPay and Laybuy options. Researchers have noted that "Although vaping websites may include age verification processes, these can be circumvented simply by entering a false date of birth; the content is thus easily accessible to young people. It is not clear

whether the Ministry of Health monitors industry marketing and enforces provisions designed to deter vaping uptake among young people.”¹⁰

We consider there is an opportunity that should not be missed to strengthen advertising and marketing restrictions for vape products through the Bill.

We note that the regulated market model is likely to require significant investment to set up and will be “more complex and costly to implement” than other options considered.¹¹ Our view is that whatever investment is necessary should be applied to effectively implement a model that will ultimately save whānau, communities and the health system from the costs of smoking related harms, including preventable mortality.

Conclusion and recommendations

ASMS considers the package of measures in the Bill sets up a real expectation that tobacco smoking rates in Aotearoa New Zealand will reduce to less than 5%, including for Māori, Pacific people, under-resourced communities and other vulnerable groups. Following changes to tobacco regulation over the years, the proposed amendments to the Act are the light at the end of the tunnel.

We note that Budget 2022 provided funding of \$5 million over four years for implementing the Smokefree Aotearoa 2025 Action Plan. There is also a separate tagged contingency of \$28 million over four years.¹² ASMS considers that funding for implementing the changes contained in this legislation must be sufficient so that it is effective.

ASMS makes the following recommendations:

1. Include “to prevent the normalisation of vaping” in section 3A (Purposes of this Act) of the Smokefree Environments and Regulated Products (Smoked Tobacco) Amendment Act 2022.
2. Introduce the nicotine limits for smoked tobacco products as soon as possible.
3. Include vape products in the age limit provision that will introduce the smokefree generation policy.
4. Strengthen advertising and marketing restrictions for vape products and ensure the Ministry of Health monitors and enforces provisions designed to deter vaping uptake among young people.
5. Ensure sufficient funding is available to implement the Smokefree Aotearoa 2025 Action Plan.

¹ Report of the Māori Affairs Committee, November 2010. Inquiry into the tobacco industry in Aotearoa and the consequences of tobacco use for Māori. p11 https://www.parliament.nz/resource/en-nz/49DBSCH_SCR4900_1/2fc4d36b0fbdfed73f3b4694e084a5935cf967bb

² ASMS, 31 May 2021. Submission on Proposals for a Smokefree Aotearoa 2025 Act Plan. <https://www.asms.org.nz/wp-content/uploads/2022/05/Submission-on-Proposals-for-a-Smokefree-Aotearoa-2025-Action-Plan.pdf>

³ Asthma + Respiratory Foundation NZ, A 2021 REPORT INTO YOUTH VAPING: The ARFNZ/SPANZ vaping in NZ youth survey. <https://www.asthmafoundation.org.nz/assets/images/A-2021-report-into-youth-vaping.pdf>

⁴ Public Health Expert, Removing the nicotine from tobacco: The key component of the current Smokefree Bill. <https://blogs.otago.ac.nz/pubhealthexpert/removing-the-nicotine-from-tobacco-the-key-component-of-the-current-smokefree-bill/>

⁵ Ball, J., Fleming, T., Drayton, B., Sutcliffe, K., Lewycka, S. and Clark, T.C. (2021), New Zealand Youth19 survey: vaping has wider appeal than smoking in secondary school students, and most use nicotine-containing e-cigarettes. Australian and New Zealand Journal of Public Health, 45: 546-553. <https://doi.org/10.1111/1753-6405.13169>

⁶ https://www.ash.org.nz/ash_year_10.

⁷ Te Pūkai Tara Universities New Zealand, 3 May 2022. Critic and Conscience of Society Award winner highlights vaping threat to health of young New Zealanders. <https://www.universitiesnz.ac.nz/latest-news-and-publications/critic-and-conscience-society-award-winner-highlights-vaping-threat>

⁸ Ministry of Health. 2021. Consultation on Proposals for a Smokefree Aotearoa 2025 Action Plan: Analysis of submissions. Wellington: Ministry of Health, p23. <https://www.health.govt.nz/publication/consultation-proposals-smokefree-aotearoa-2025-action-plan-analysis-submissions>

⁹ L Robertson, Marsh L, Hoek J, and McGee R, New Zealand tobacco control experts' views towards policies to reduce tobacco availability. NZMJ 2 June 2017, Vol 130 No 1456.

¹⁰ Public Health Expert, 08/03/2022. Daily nicotine use increases among youth in Aotearoa NZ: The 2021 Snapshot Y10 Survey. <https://blogs.otago.ac.nz/pubhealthexpert/daily-nicotine-use-increases-among-youth-in-aotearoa-nz-the-2021-snapshot-y10-survey/>

¹¹ Ministry of Health, Regulatory Impact Statement: Smokefree Aotearoa 2025 Action Plan, p23. <https://www.health.govt.nz/system/files/documents/pages/ris-smokefree-aotearoa-action-plan-nov-2021.pdf>

¹² The Treasury, B2 Wellbeing Budget 2022 - A Secure Future - Summary of Initiatives, p124. <https://www.treasury.govt.nz/sites/default/files/2022-06/b22-wellbeing-budget-soi.pdf>