



New Zealand Association of Convenience Stores

## **NZ Association of Convenience Stores – Submission to Health Committee**

This is the New Zealand Association of Convenience Stores (“NZACS”) submission to the Health Select Committee regarding the ***Smokefree Environments and Regulated Products Amendment Bill (No 2)***.

NZACS is a not-for-profit trade association that represents the interests of its member organisations within the convenience retailing industry throughout New Zealand including over 1000 branded Convenience Retailers.

### **Executive Summary**

NZACS broadly welcomes the Government’s approach to strengthening the regulatory framework for vaping to better protect young people. In particular, we support the steps contained within the Bill to increase the penalties for the sale and delivery of vaping devices to people younger than 18 years.

While we understand the need to take steps to address public concerns about youth vaping, we are also disappointed by the truncated nature of this select committee process, which has limited our ability to consult with our members on the impact these proposed changes will have on their businesses.

This Bill effects many thousands of businesses across the country, yet we have only had two weeks to provide considered feedback.

For this reason, when the Committee considers the submissions put before it, we urge Members to reflect carefully on the evidence and facts, rather than responding to the emotional arguments that will inevitably be put forward. What we need is workable, evidence-based policy that delivers demonstrable results.

No one wants to see a young person vaping and vapes certainly shouldn’t be marketed or sold to anyone under the age of 18. But nor do we want to respond with knee-jerk regulation that only succeeds in making vapes harder to access for adults using them to quit smoking, while doing very little to address the root cause of the problem, which is underage accessibility. Unfortunately, we believe that some of the clauses in this Bill risk doing just that, unfairly targeting responsible retailers while doing little to target those avenues where youth are accessing vaping products, such as through friends, family.

New Zealand has made significant progress in reducing smoking rates, and accessibility to convenient vaping products has been essential to this success. But there are still an estimated 350,000 adults who

continue to smoke<sup>1</sup> and switching these users to lower harm products remains a challenge. To achieve and maintain our Smokefree 2025 target, we need to be doing everything we can to encourage these remaining smokers to switch to vaping as a path to quitting. That means avoiding the temptation to respond to a moral panic with poor policy that makes achieving this switch harder.

It is essential we provide smokers visibility and easy access to effective and convenient vaping products to help them quit. This Bill does the opposite of this. It significantly reduces access to vaping devices, and hides them away, making them much less visible to consumers. By treating vaping products the same as tobacco products, you are sending the message that vaping is as bad as smoking. This is clearly not the case, and these actions will make it more challenging to encourage smokers to switch to vaping.

We are particularly concerned about the poorly worded definition of disposable vapes, which we discuss in detail below. The definition in the Bill could result in making vaping products much less accessible than tobacco products are and could see the creation of a vibrant black market given the reduced choice of products available for sale. You just need to look at what has occurred in Australia, where a restrictive vaping regime has resulted in close to 90% of Australians who use vapes sourcing them from the black market<sup>2</sup>.

This risks pushing the sale and supply of vaping products away from responsible retail outlets, who have strict age verification checks in place, and onto international vendors who are not bound by New Zealand law, do not need to meet our product standards, and do not have adequate age checks in place. This can't be allowed to happen in New Zealand.

While we strongly support the aims of this Bill, we need to balance this against the success the current regulatory settings have achieved in reducing New Zealand's smoking rates, as well as the evidence about where young people are sourcing their vaping products.

We don't believe that this Bill currently strikes that right balance, and we encourage the Committee members to consider the following changes, which we believe are necessary to reduce instances of youth vaping while ensuring adults continue to have ready access to vaping products:

- Tighten the definition of a disposable vape to clarify that it only applies to vapes that are not rechargeable and not refillable.
- Retain the exemption that allows for vaping products to be displayed at the point-of-sale in general retail.
- Mandate the use of age verification for online sales of vaping products, and
- Reconsider the six-month transitional period.

We thank the Committee for its consideration.

### **Definition of disposable vaping devices**

We acknowledge that it is Government policy to ban the sale of disposable vapes, and that this legislation aims to give effect to this policy. We are concerned, however, about the current wording in the Bill that defines a disposable vape.

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<sup>1</sup> Ministry of Health New Zealand Health Survey 2022-2023

<sup>2</sup> Australian Association of Convenience Stores 'New Data Exposes Australia's Rampant Vape Black Market'  
<https://aacs.org.au/new-data-exposes-australias-rampant-vape-black-market/>

The common understanding of a disposable vape is a vape that can only be used once. That is, one that is not refillable or rechargeable. The current definition in the Bill, however, appears to take this definition further and, depending on how it is interpreted, it could have a significant impact on the availability of vaping products in general retail.

As currently worded, it is possible rechargeable vapes that use replaceable cartridges (sometimes referred to as pods) could be considered as a disposable vape and would not be able to be sold in New Zealand.

This would capture most, if not all, vaping devices sold in general retail and would result in no vaping products being sold in supermarkets, petrol stations, dairies and similar retail stores. This would create the illogical situation where a consumer can continue purchase tobacco products from their corner dairy or local service station, but not buy a lower risk vaping product. NZACS is concerned that the 'disposable vaping product' definition outlined in the Legislation captures a large part of the market and more clarity is required.

While it is acknowledged that, using the definition above, open tank vaping systems could be sold in general retail, limited consultation with our members indicates an extremely low likelihood that they would be interested in selling these vaping products.

Open tank vaping systems require the consumer to purchase the vaping device and vaping liquid separately. They are much more complex, and consumers often have questions about how to use them, including how to mix the liquids. Staff working in busy petrol stations or supermarkets do not have the time or product knowledge to answer these questions. That is why these devices tend to be the preserve of specialist vape retailers.

Open tank vaping systems are also likely to present a potentially unacceptable liability risk to general retailers, given the legal ramifications of providing the wrong advice to a consumer who is purchasing and mixing their own vape juice. Open tank systems have been the source of harm in overseas markets as they allow the inclusion of other products in the vaping liquids.

That is why general retailers have focussed on selling pre-packaged rechargeable vapes and replaceable tamper-proof pods. These devices come ready to use, are manufactured under strict quality control and are arguably the gold standard in vaping product quality. They are also the devices that many consumers demand, given their convenience, quality control and ease of use.

For these reasons, NZACS requests the Committee clarify the definition of a disposable vape in the legislation so that it only captures disposable vapes, which are vapes that not rechargeable and are not designed to be reused. This could be done by allowing the insertion of a single prefilled container of a vaping substance, which we are currently sold by our members in the form of pods.

This change would provide clarity as to exactly what vapes are captured by the ban on disposable vapes and would allow general retailers to continue selling vaping products to support adults to quit smoking.

### **Restricting retail display**

NZACS believes that the proposed restrictions on the visibility of vaping devices within a general retail environment are unnecessary and contradictory to the New Zealand's Smokefree 2025 Strategy.

If we are to support those New Zealanders who continue to smoke to switch to a lower harm alternative, such as vaping, and get our smoking rate below 5% across all population groups, we need to make sure that these alternatives are highly visible at the point of sale.

Dairies, petrol stations and supermarkets are at the coalface for existing smokers because this is where most New Zealand smokers purchase their tobacco products. If we want to reduce our smoking rate even further, than it is essential that smokers continue to have high visibility of vaping products, which offer them a lower harm alternative.

This was the reason why the exemption allowing for the display of vaping products in general retail was provided in the Smokefree Environments and Regulated Products Act, and it is the reason it should be retained.

There is limited evidence to suggest that the display of vaping products in general retail is a contributing factor in New Zealand's youth vaping rates. Research also shows that youth are not accessing vaping products through retail channels. The Ministry of Health's Regulatory Impact Statement cites the 2023 ASH Survey, which found that the most common source of vapes for daily vapers aged 14-15 years in 2023 was friends (40.1%), followed by family (18.5%) and "bought from a vape shop" (14.6%)<sup>3</sup>. There is little in this Bill to address these informal supply chains.

The vast majority of retailers are highly responsible and have robust age verification processes in place. The rules are clear and there is no justification for selling a vaping product to a minor. While the number of retailers willing to sell vaping products to someone underage will be in the minority, any retailer who does so should be held accountable. That is why we support the increased penalties contained within this Bill and why we would welcome steps to increase compliance and enforcement activities.

General retailers are already subject to numerous vaping restrictions, including restrictions on the flavours they can sell (limited to tobacco, menthol, and mint flavour classes) and are forbidden from discussions with consumers that encourage the use of vaping products, promote their sales, or notify store visitors of product availability.

Requiring general retailers to now remove the display of vaping products from the point of sale removes the only avenue to highlight to consumers the availability of vaping products from retail stores. As a result, someone considering or trying to quit smoking might find themselves in their local dairy or service station with no awareness or visibility about the availability of a harmful vaping product. This would seem to contradict the objectives of New Zealand's Smokefree Strategy.

Given the success that New Zealand has achieved in reducing its smoking rates through the high visibility of vaping devices, and limited evidence that retail display encourages youth vaping, we request the Committee retain the exemption allowing for the display of vaping products at the point of sale.

### **Online sales**

In our previous submission regarding the *Smokefree Environments and Regulated Products (Vaping) Amendment Bill*, we raised concerns about the online sales of vaping products and the potential risk this

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<sup>3</sup> *Supplementary Regulatory Impact Statement: Banning disposable vaping products and increasing penalties for sales to minors.*

presents for youth access. We remain concerned that the regulatory framework relating to online sales is insufficient, and that this could be contributing to the supply of vaping products to minors.

Our view is that most online vendors do not currently undertake adequate measures to prevent minors from accessing vaping products through their website. Given the primary purpose of this Bill is to prevent youth access to vaping products, it is concerning that the bill does not introduce a requirement for age verification software for online sales.

In New Zealand, a 16-year-old can hold a credit or debit card, and anyone can buy a Prezzy Card, which acts as a Visa for online purchases. It is simply not good enough that online vape websites only require a customer to tick a box to confirm that they are over the age of 18, purchase a vape product and have it couriered to them.

There are two measures that NZACS would therefore like to propose for all online vendors of vaping products to prevent youth access:

- 1) Mandatory online age-verification.
- 2) Mandatory NZ/Courier Post age-verification on delivery.

There are numerous tools available for firms to use to undertake robust age verification, in which the consumer must upload identification to prove that they are over the age of 18, and age verification on delivery is already a requirement for other age-restricted items.

We encourage the Committee to give careful consideration of these measures.

### **Summary**

In summary, NZACS welcomes the opportunity to submit to the Health Select Committee on the Smokefree Environments and Regulated Products Amendment Bill (No 2).

NZACS supports the intention of the Bill, which is to strengthen the regulatory framework for vaping to better protect young people, but in doing so it is important this is balanced against the need to ensure that easy to use vaping products remain accessible to adult users who rely on them to stop smoking.

To reduce our smoking rates and achieve Smokefree 2025, NZACS believes that it is important vaping products remain available and visible anywhere that tobacco products are available. We also believe that there are opportunities to strengthen the regulatory framework around online sales to reduce youth access.

For these reasons, NZACS requests that the Health Select Committee make the following changes to the Bill:

- 1) Tighten the definition of a disposable vape so that it only includes those vaping devices that are not rechargeable and reusable.
- 2) Retain the exemption that allows for the display of vaping products at the point of sale in general retail.
- 3) Require online vendors of vape products to undertake mandatory online age-verification and mandatory courier age-verification on delivery.
- 4) Increase the transition period from 6 months to 12 months.

NZACS welcomes any questions from the Health Select Committee has about this written submission and looks forward to answering those through the oral submission process.

Sincerely

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