Regulatory Impact Statement: Visibility of vape products and proximity of Specialist Vape Retailers – reducing youth vaping

Coversheet

Purpose of Document	
Decision sought:	*Analysis produced for the purpose of informing final Cabinet decisions on the visibility of vape products and the proximity of vape retailers, with the objective of reducing youth vaping.*
Advising agencies:	*Public Health Agency (within the Ministry of Health)*
Proposing Ministers:	*Hon Casey Costello, Associate Minister of Health*
Date finalised:	*11 June 2024*

Problem Definition

Vaping plays a part in helping us achieve Smokefree 2025 – it has contributed to recent significant reductions in smoking rates, and it should continue to be available to support smoking cessation.

However, too many young people have taken up vaping. This is a problem because, while less harmful than tobacco, vapes are not without harm. While evidence of physical harm is developing, evidence of addiction is clear. They should only be used by people who smoke, as a support for smoking cessation.

Executive Summary

Youth vaping rates have increased rapidly in recent years. This is not without risk, as while vapes are significantly less harmful than tobacco, they are not without harm. The longer-term health harms of vaping are still being established. But shorter-term harms are clear. Vapes generally contain high levels of nicotine, which is very addictive. Addiction can have wide-ranging and long-term consequences.

It is likely that visibility of vaping products has contributed to youth uptake, due to the attraction and normalisation of vaping as a regular consumer product, instead of being seen as a harm reduction tool for people who smoke.

Proliferation of vaping retailers, combined with colourful and highly visible in-store and window displays has contributed to this visibility.

Display restrictions for all vape retailers (specialist, general and online) should reduce this visibility, thereby reducing appeal to youth.

In 2023, regulations were introduced that prevented any new Specialist Vape Retailers (SVRs) from opening within 300m of a school or marae. This restricted visibility of new vaping stores near where young people frequent. Cabinet has requested consideration of extending this proximity requirement to also include licensed Early Childhood Education services (ECEs).

The objective sought is to reduce youth vaping without creating barriers to using vapes as a smoking cessation tool. This will be achieved by reducing visibility of vapes rather than reducing supply. Specifically, by:

- requiring vapes to be out of sight in places where young people might otherwise see them, thereby reducing the attraction and normalisation of these products to youth, and
- restricting the proximity of new SVRs close to places young children frequent (specifically ECEs), and
- maintaining access to vapes as a smoking cessation tool for people who smoke.

Other options considered to reduce visibility were to only restrict window displays of SVRs, and to introduce plain packaging for vaping products. These were not the preferred options because the former does not necessarily impact General Vape Retailers' (GVR) instore displays, which young people would still see, and the latter may have limited impact (due to industry innovation) s 9(2)(h) .

People who smoke might be less likely to use vapes if they are out of sight in shops, because they are less aware of their availability or because this could send an implicit message that vaping is as harmful as smoking. This risk will be offset somewhat by retailers being able to display signs that vaping products are available. It could be further offset through targeted health promotion messaging that supports the use of vapes for smoking cessation.

Extending the proximity requirements will effectively come close to capping the number of SVRs at existing levels, so new retailers will not easily be able to enter the market.

The display policy is likely to be supported by the majority of the public who will see reduced visibility of vaping products in all retail spaces. There may be some objection from retailers who will incur a cost to change their vape displays.

While the ECE proximity policy is likely to have support from the public, there may be discontent that it does not apply retroactively - removing existing SVRs near ECEs - and because it does not apply to GVRs. There is likely to be some objection from retailer groups that this curtails the ability to open new stores.

Implementation of the preferred policies will require amendments to the Smokefree Environments and Regulated Products Act, and the Smokefree Environments and Regulated Products Regulations 2021.

Impact on smoking cessation will be monitored through the International Tobacco Control study and the New Zealand Health Survey. Impact on youth smoking and vaping rates will be monitored through the Action for Smokefree 2025 (ASH) Year 10 survey.

Limitations and Constraints on Analysis

Due to time pressures and lack of modelling, UK estimates have been relied on in some instances.

Due to limited vaping evidence, some of these UK estimates are based on modelling of equivalent changes in tobacco policy.

Responsible Manager(s) (completed by relevant manager)

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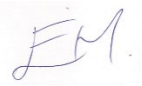

11 June 2024

Quality Assurance (completed by QA panel)	
Reviewing Agency:	Quality assurance to be undertaken by the Ministry of Health.
Panel Assessment & Comment:	"The Ministry of Health QA panel has reviewed the Impact Statement titled "Visibility of vape products and proximity of Specialist Vape Retailers – reducing youth vaping", produced by the Ministry of Health and dated 30 May 2024. The panel considers that the Impact Statement **Meets** the quality assurance criteria. The Impact Statement is clear, concise, complete, consulted and convincing. The analysis is balanced in its presentation of the information and impacts are identified and assessed." The Climate Implications of Policy Assessment (CIPA) team has been consulted and confirms that the CIPA requirements do not apply to this proposal, as the threshold for significance is not met.

Section 1: Diagnosing the policy problem

What is the context behind the policy problem and how is the status quo expected to develop?

1. The sale of vaping products is regulated under the Smokefree Environments and Regulated Products Act 1990 (the Smokefree Act). General Vape Retailers (GVRs), include many retailers that children frequent (supermarkets, petrol stations, 'dollar' stores and convenience stores), and some that are mostly or entirely adult-only (adult shops, liquor stores and barbers). GVRs must notify the Ministry of Health that they sell vape products. They are limited to selling three flavours of vapes. The products can be displayed openly in store.
2. Specialist Vape Retailers (SVRs) can sell any vape flavours but must apply to the Vaping Regulatory Authority to have their store(s) be an approved vaping premise, and at least 70% of their turnover must be from vaping products. As of 21 September 2023, new SVRs cannot open within 300m of a school or marae, but significant numbers already operate within proximity to schools. SVRs are 18+ only spaces, but products are currently openly displayed in store and can be highly visible from the street.
3. Any online retail business must be connected to a physical specialist vape retailer. They can promote vapes online to existing customers only. Almost a third of vape

sales in Aotearoa are online, though we understand some of these sales are to Australian customers.[1]

4. As of May 2023, at least 6,749 stores sold vape products in Aotearoa – 989 SVRs and at least 5,760 GVRs. By May 2024, the number of SVRs had increased to 1,280, meaning there are now over 7,000 physical vape retailers. In addition, there are 146 SVR websites selling vapes. Similarly to tobacco stores, the density of vape stores is greater in areas of higher deprivation and higher smoking prevalence.
5. There is good evidence for vapes supporting smoking cessation – smoking quit rates are higher for those using vapes than for those using nicotine replacement therapy, behavioural support only or no support.
6. Vapes are regarded by some as a low-risk normal consumer product rather than a smoking cessation device, leading to high youth uptake.
7. This is a problem because, while less harmful than tobacco, vapes are not without harm. The longer-term health harms of vaping are still being established. But shorter-term harms are clear. Vapes generally contain high levels of nicotine, which is very addictive. Addiction can have wide-ranging and long-term consequences, including impact on educational attainment, increasing smoking rates, psychological harm, economic harm, switching to other more harmful coping techniques, impact on health system access, environmental harm, cultural harm and impact on whānau and communities.
8. Consultation with Māori has told us, "Māori models of health view harm from nicotine addiction in much more holistic terms (including how addiction impacts whānau and wairua)." They do not want addiction to tobacco to be replaced by addiction to vaping.

What is the policy problem or opportunity?

9. Proliferation of vaping retailers, combined with colourful and highly visible in-store and window displays has coincided with rapidly increasing youth uptake of vaping (10.1% in 2022 and 2023, up from 3.1% in 2019).[2]
10. The dramatic increases in youth vaping rates seen between 2019 and 2021 are now levelling off for most measures, and in some cases decreasing. This may be, in part, the result of earlier regulation (such as limits on nicotine levels and proximity of stores) taking effect. However, there are still clear inequities – with higher rates for Māori (22.3%, with over a quarter of Māori girls are vaping daily) and Pacific students (13.7%), and those from low socio-economic status (SES) schools. In fact, daily vaping rates for low SES students are still increasing (19.1% daily vaping in Low SES compared to 5.9% in High SES schools in 2023). Youth vaping therefore requires further action.
11. For slightly older age groups, new data from the new International Tobacco Control (ITC) Youth Study recently carried out in New Zealand has found New Zealand has among the highest youth vaping rates in the world. In 2023, 17.3% of 16-19-year-olds said they vaped 20+ days in the past month, compared to 9.7% in England, 6.4% in the US and 6.2% in Canada. 31% of New Zealand 16-19-year-olds vaped in the past 30 days (compared to England 25%, US and Canada 14%). 61% of them were using

[1] This is likely to change under the new Australian legislation restricting imports.

[2] 2023 ASH survey of Year 10s (aged 14-15).

vapes for reasons such as curiosity, enjoyment, nicotine and flavour, rather than for harm reduction reasons. 51% said they used vapes to deal with stress or anxiety.

12. It is likely that visibility of the products has contributed to this uptake due to the attraction and normalisation of vaping as a regular consumer product, instead of being seen as a harm reduction tool for people who smoke. Young people walking within a CBD are exposed to alluring SVR window displays that function as product advertisements. 'Power walls' (large, visually appealing displays) within GVRs expose young people to vaping products alongside regular grocery items.
13. UK research indicates increasing levels of children noticing vape displays in stores,[3] and further research has found exposure to displays increases the willingness of young people to use vapes in the future.[4] A survey in Scotland identified that young people who recalled seeing vape point of sale displays in small shops and online were more likely to have tried a vape, and those who recalled seeing vape point of sale displays in small shops and supermarkets were more likely to intend to use vapes in the next 6 months.[5]
14. Two recent United Kingdom studies found the main appeal of packaging was the colours – in particular of disposables - that contributed to bright displays in-store and in shop windows.[6] In one of the studies, participants expressed that vape packaging is 'everywhere' and reported seeing vapes in various public locations such as shops, advertising and as litter on the street. Overall, the high visibility and exposure to e-cigarettes was seen to have a normalising effect.
15. Previous public consultation in New Zealand has told us there is strong public agreement that every effort needs to be taken to reduce youth appeal. Submissions from Māori showed strong consensus that the visibility of vape marketing, including in online and media promotions, adds to the appeal.
16. A comparable product is smoked tobacco, which traditionally was also highly visible in stores that young people frequent. The regulatory response in that case was to require tobacco to be stored in closed cupboards in stores. Analysis of this policy in England found it reduced children's exposure to tobacco. The likelihood of noticing cigarettes decreased from 81% in 2018 to 66% in 2022 for small shops and from 67% to 59% in supermarkets. This also coincided with a decrease in buying cigarettes in shops.[7] Similarly, analysis for New Zealand found that the tobacco display ban

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[3] Parnham JC, Vrinten C, Cheeseman H*, et al* Changing awareness and sources of tobacco and e-cigarettes among children and adolescents in Great Britain*Tobacco Control* Published Online First: 30 July 2023. doi: 10.1136/tc-2023-058011

[4] Dunbar MS, Martino SC, Setodji CM, Shadel WG. Exposure to the Tobacco Power Wall Increases Adolescents' Willingness to Use E-cigarettes in the Future. Nicotine Tob Res. 2019 Sep 19;21(10):1429-1433. doi: 10.1093/ntr/nty112. PMID: 29868869; PMCID: PMC6751521.

[5] Best, C., Haseen, F., van der Sluijs, W. *et al.* Relationship between e-cigarette point of sale recall and e-cigarette use in secondary school children: a cross-sectional study. *BMC Public Health* **16**, 310 (2016). https://doi.org/10.1186/s12889-016-2968-2

[6] E-cigarette packaging and retail appeal in the UK: Summary for policymakers of two commissioned research projects examining e-cigarette packaging in the UK and recommendations, Cancer Research UK, September 2023 cruk_policy_briefing_e-cigarette_packaging_and_retail_appeal_reports_final.pdf (cancerresearchuk.org)

[7] Parnham JC, Vrinten C, Cheeseman H*, et al* Changing awareness and sources of tobacco and e-cigarettes among children and adolescents in Great Britain *Tobacco Control* Published Online First: 30 July 2023. doi: 10.1136/tc-2023-058011 https://tobaccocontrol.bmj.com/content/early/2023/07/27/tc-2023-058011

introduced in 2012 reduced experimentation, smoking prevalence and initiation in 14- and 15-year-olds.[8]

17. SVRs are intended to be 18+ only spaces, but this restriction is rendered less effective by the current tendency of SVRs to reach out into public spaces with their window displays, exposing young people to what is effectively advertising.
18. GVRs are limited in the flavours they can sell, but significant and colourful displays of the products they do sell, in places such as dairies and petrol stations, mean they are eye catching and highly visible to youth.
19. Approximately a third of vaping product sales are made online from about 200 online retailers. Any considerations of visibility should also include advertising and display material via other mechanisms, such as online marketing. While youth online purchasing is consistently very low (1.5% of those who have ever tried vaping, 2.3% of daily vapers in 2023), this may change, particularly in response to any other vaping changes. Also, they may browse online before purchasing instore, or requesting others to do that for them.
20. In 2023, regulations were introduced that prevented any new SVRs from opening within 300m of a school or marae. Cabinet has requested consideration of extending this proximity requirement to also include licensed Early Childhood Education services (ECEs).
21. Research published in May 2024[9] found almost 97% of all SVRs were located within 1600m (20 min) of schools, with 29% within 400m (5 min) of a school. They found that with increasing area-level deprivation there was an increase in the number of SVRs - a greater percentage of schools in the most deprived quintile have a vape shop within 1 km of them. Students of Pasifika origin were in general closer to SVRs than European students. Some schools had up to 37 vape retailers within 1600m of schools and some of our most underserved communities had up to 7 vape retailers within 400m of the school.
22. The other place that youth are exposed to vaping is social media. While retailer-sponsored social media falls under the same restrictions as other advertising, there is significant 'user-generated' vaping content. This is not something we can easily address. While we could investigate options to restrict youth exposure to vaping in tv and film, addressing social media is a considerable task requiring an international and joined-up approach, which is not considered further as it would require considerable resources and longer-term international collaboration.
23. Vapes are an important smoking cessation tool for adults who smoke. It is therefore essential that in regulating vapes, we do not create barriers to smoking cessation. This is particularly important for groups with higher rates of smoking, such as Māori, Pacific,[10] people from lower socio-economic communities, people from rainbow

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[8] Edwards R, Ajmal A, Healey B*, et al* Impact of removing point-of-sale tobacco displays: data from a New Zealand youth survey *Tobacco Control* 2017;**26:**392-398.

[9] I. Waterman, L. Marek, A. Ahuriri-Driscoll, J. Mohammed, M. Epton, M. Hobbs, Investigating the spatial and temporal variation of vape retailer provision in New Zealand: A cross-sectional and nationwide study, Social Science & Medicine, Volume 349, 2024, 116848, ISSN 0277-9536, https://doi.org/10.1016/j.socscimed.2024.116848. (https://www.sciencedirect.com/science/article/pii/S0277953624002922)

[10] Smoking data for Pacific peoples has fluctuated considerably over the last few years. This variability is due to sample sizes being smaller than usual, which is the result of COVID-19 impacts on data collection. Work is underway to improve the

communities and people with disabilities. We want to limit visibility of vapes and proximity near where young people congregate, not overly restrict access to adults who need them.

What objectives are sought in relation to the policy problem?

24. The objective sought is to reduce youth vaping, and its associated harms, without creating barriers to using vapes as a smoking cessation tool. This will be achieved by reducing visibility of vapes rather than reducing supply. Specifically, by:
    - requiring vapes to be out of sight in places where young people might otherwise see them, thereby reducing the attraction and normalisation of these products to youth, and
    - restricting the proximity of new SVRs close to places young children frequent (specifically ECEs), and
    - maintaining access to vapes as a smoking cessation tool for people who smoke.

Section 2: Deciding upon an option to address the policy problem

What criteria will be used to compare options to the status quo?

25. The criteria we have used are:
    1. **Reduces inequity**: will the policy reduce inequities in smoking and vaping rates, smoking-related illnesses and vaping-related harm?
    2. **Decreases vaping initiation among young people**: will the policy reduce vaping initiation among young people and make it easier for young people to remain vape free?
    3. **Does not decrease the likelihood of people who smoke quitting smoking**: will the policy create barriers for people who smoke to quit?
    4. **Ease and cost of implementation**: is the policy able to be implemented with the likely available budget and within the necessary timeframe?
    5. **Clear and workable for New Zealand**: are New Zealanders likely to understand, support and champion the intentions, implementation and enforcement of the policy?
26. The majority of these have an overall aim of supporting harm reduction. The second and third criteria can often only be achieved at the expense of each other.

What scope will options be considered within?

Has the scope of feasible options been limited by Ministers' commissioning or previous policy decisions?

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sample size for Pacific peoples in future surveys. The Pacific daily smoking rate in 2022/23 showed a sharp drop at 6.4%. But a 3-year rolling average (as can be seen here New Zealand's smoking rates continue to decline | Ministry of Health NZ) makes it easier to see the trend in daily smoking for Pacific peoples. Ie it is coming down, but is still higher than for other groups and the overall NZ rate.

27. At its meeting on 18 March 2024, Cabinet agreed to further work on the policy direction for Smokefree 2025 [CAB-24-MIN-0084 refers]. A report back to Cabinet was requested, outlining recommendations for:

    - restricting display of vapes, including in the storefronts of specialist vape retailers (SVRs)
    - including registered ECE centres in proximity restrictions for SVRs.

28. Proximity restrictions already exist for schools and marae, so this would be an addition to existing proximity restrictions. For these reasons, the scope of feasible proximity options is limited to adding ECEs to the existing proximity restriction (as it stands) or maintaining the status quo.

29. Display restrictions were considered in relation to existing restrictions on the display of traditional (smoked) tobacco products. These cannot be displayed in any retail setting.

Have you considered relevant experience from other countries (if any) when setting the scope for options identification?

30. Among countries where vapes can legally be sold, visibility policies have been, or soon will be, implemented in countries such as the UK, Canada and Denmark. Hungary has also implemented storefront requirements for tobacco that provide relevant learnings.

United Kingdom

31. The UK is considering point of sale restrictions for general retailers.[11] On 20 March 2024, the Tobacco and Vapes Bill was introduced to the UK Parliament, seeking to gain new powers to regulate how and where vaping products can be displayed in stores. The intention is to ensure that any new regulations brought in will balance the need to protect children, with the need to ensure that vaping products are still accessible for adult smokers and vapers.

32. Like in New Zealand, current UK legislation requires that tobacco products must not be displayed in stores, and so they are often stored in closed cabinets or behind opaque screens. However, there are separate regulations for specialist tobacconists, allowing them to advertise and display specialist tobacco products inside their store so long as they are not visible from outside the shop. The recent vaping consultation also sought views on whether similar alternative measures should be allowed for specialist vape shops.

33. The Bill had its second reading in the House of Commons on 16 April 2024. The Government intends for these regulations to come into force in April 2025 to coincide with a proposed disposable vape ban.

Canada

34. Canada has prohibited visible product display and vape advertising in shops. R18 stores have blackened out windows so products are not visible from the street. General

[11] A 2023 ASH public support survey found that 74% of adults in England support prohibiting point of sale promotion of vapes. Action on Smoking and Health. Public support for Government action on tobacco in Great Britain: Results of the 2023 ASH Smokefree GB. London: ASH, 2023. Public-support-for-Government-action-on-tobacco-in-Great-Britain-Results-of-the-2023-ASH-Smokefree-survey.pdf

stores have the product hidden. Outdoor signage is restricted, and shops are only allowed to show availability and price.[12]

35. All prohibitions that apply to tobacco promotion also apply to vape shops. Promoting a vaping product or brand through advertising that can be seen or heard by young persons is prohibited.

36. Advertising of vaping products online must be done in ways that cannot be seen or heard by young persons. Advertising of vaping products online must effectively restrict youth access by verifying the age and identity of all visitors. These measures can take different forms, but simply requiring visitors to "check the box" to attest to their age or to self-declare their date of birth or age on a website or social media page is not considered sufficient verification.

Denmark

37. Denmark prohibits the visible placement and presentation of vapes at points of sale, including on the internet. Lists of the products and prices may be provided to buyers upon request. The point-of-sale prohibition does not apply to specialist vape shops.

Hungary

38. In 2012, Hungary introduced the National Tobacco Shop franchise system, standardising tobacco shops. This included requiring the windows of shops to be covered with non-transparent foil, so products are not visible to people under 18. Since then, there have been reports that requiring proprietors to screen tobacco products from the outside presented a safety issue, as it leaves the shops vulnerable to robbery and burglary.

39. After the murder of a tobacco shop assistant,[13] it was clarified that foil does not need to be applied to windows, so long as products on shelves are not visible to people passing by a shop.

Other jurisdictions

40. Bermuda takes a different approach in that cigarette products (which includes vape products there) cannot be displayed “by means of a countertop display, in any manner that allows the purchaser to handle the product before purchasing it, or within three meters of confectionary, snacks, toys, and other items that may reasonably appeal to minors.”

41. Belarus prohibits a buyer having direct access to a vape product. Bolivia prohibits the display “in places that allow direct access by the consumer or that are within the reach of children.”

42. Costa Rica requires that display cabinets be covered so that tobacco products and vapes are not visible at points of sale.

43. This is not an exhaustive list of countries with display limits.

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[12] “Within your store, you can inform customers that you have vapour products for sale, using basic signs with general information such the price range of single use or refillable products. The information must be small black letters that on a white background and the page cannot be larger than a standard letter size page”

[13] Kaposvár reeling from senseless national tobacco shop murder - The Budapest Beacon

What options are being considered? – first issue

Reducing visibility

Option One - No change

44. Recent regulation of vapes may lead to youth vaping rates slowing or reversing but is unlikely to lead to a significant reduction in rates, or a reduction in the inequity gap between population groups, without further regulation.

45. The status quo is incompatible with the government's goals of reducing youth vaping and achieving better health outcomes.

Option Two - Vaping products not visible from the street (SVRs only)

46. This option would require all SVRs to ensure vaping products are not visible from the street.

47. Given that SVRs are intended to be 18+ only spaces, reducing visibility of vaping products from the street would mean SVRs are not reaching out into public spaces, exposing young people to what is effectively advertising.

48. This option would not apply to GVR instore displays, which young people would still see.

49. Retailers could be given a range of options to comply. Canada has achieved this option with vaping product retailers, by requiring frosted windows. Hungary has used that approach with tobacco retailers, but has found it poses some potential security issues, with armed robberies being effectively invisible from the street. Alternative options (open to individual retailers to choose) could include requiring vapes to be stored behind frosted display cases, or closed cabinets (such as with tobacco), or in a backroom. In this situation, adult customers can be advised on the appropriate product for them rather than just selecting off the shelf.

50. It may be preferable to explicitly exclude the option of allowing frosting/covering of street windows due to the increased risk it poses. Having transparent front windows might also be preferable so as to not give coverage for retailers making underage sales.

51. This option reduces visibility of vapes to young people rather than reducing access to adults who smoke.

52. Given the disproportionate number of SVRs in low-socioeconomic communities,[14] this option is likely to particularly benefit those in low-socioeconomic communities, who have higher rates of vaping and smoking.

53. There will be some cost for retailers to comply.

Option Three - Vaping products not visible from the street, or in stores that children may enter (SVRs and GVRs)

54. This option would encompass option 2 but also require vaping products not to be visible in any store that a child may enter. Effectively GVRs, such as dairies and petrol stations, would be required to apply existing rules for the sale of tobacco to the sale of

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[14] I. Waterman, L. Marek, A. Ahuriri-Driscoll, J. Mohammed, M. Epton, M. Hobbs, Investigating the spatial and temporal variation of vape retailer provision in New Zealand: A cross-sectional and nationwide study, Social Science & Medicine, Volume 349, 2024, 116848, ISSN 0277-9536, https://doi.org/10.1016/j.socscimed.2024.116848.

vapes (eg, to have all stock in closed cupboards). Given installing closed cabinetry would pose a cost to retailers, they could be given a range of options to comply. For example, keeping vape products under a counter or in a back room, out of sight, could be compliant.

55. Signs in-store could still be used to alert adult customers to availability and price, so access for smoking cessation purposes would not be reduced.

56. This option reduces visibility of vapes to young people rather than reducing access to adults who smoke.

57. Given the disproportionate number of SVRs in low-socioeconomic communities, this option is likely to particularly benefit those in low-socioeconomic communities, who have higher rates of vaping and smoking.

Option Four - Vaping products not visible from the street, or in stores that children may enter, or on online retailers' websites (SVRs, GVRs and online)

58. This option would encompass option 3 but also require vapes not to be visible in online stores. For those stores with websites, online advertising would be restricted to a list of names and prices – no pictures. This is similar to existing rules for tobacco.

59. To give effect to this option we would also propose that exemptions allowing communication with existing customers are narrowed or removed, to make sure that the policy is effective overall. The Act has broad restrictions on advertising, but certain exemptions for retailers to communicate about vapes to existing customers. The Ministry interpretation of this exemption requires that an existing customer is someone who has previously purchased a product. However, many retailers are interpreting a customer as someone who has self-selected (by tick box) on their website, and interpreting communication to include a broad range of product advertising. This allows children to browse freely and be targeted with attractive, brightly coloured product advertising online.

60. While youth online purchasing is consistently very low (1.5% of those who have ever tried vaping, 2.3% of daily vapers in 2023), this may change, particularly in response to any other vaping regulation changes. This option would protect young people more thoroughly than the others, but with no added restriction for people who using vapes for smoking cessation.

Key for qualitative judgements:

++	much better than doing nothing/the status quo/counterfactual
+	better than doing nothing/the status quo/counterfactual
0	about the same as doing nothing/the status quo/counterfactual
-	worse than doing nothing/the status quo/counterfactual
- -	much worse than doing nothing/the status quo/counterfactual

How do the options compare to the status quo/counterfactual?

	Option One - [*Status Quo / Counterfactual*]	Option Two - Vaping products not visible from the street	Option Three - Vaping products not visible from the street, or in stores that children may enter	Option Four - Vaping products not visible from the street, or in stores that children may enter, or on online retailers' websites
Reduces inequity	0	+ While this reduces youth exposure to SVR window displays, vapes would still be highly visible within GVRs, which young people frequent. Given the disproportionate number of SVRs in low-socioeconomic communities, this option is likely to particularly benefit those in low-socioeconomic communities, who have higher rates of vaping and smoking	++ Likely to reduce youth usage but not impact adult usage for cessation. Given the disproportionate number of SVRs in low-socioeconomic communities, this option is likely to particularly benefit those in low-socioeconomic communities, who have higher rates of vaping and smoking	++ As per option three but with added protection of online retail spaces where it is very difficult to monitor and restrict what children are exposed to.
Decreases young people's initiation of vaping	0	+ Likely to have only a limited impact on youth vaping, given they would still be very visible within GVRs	++ Likely to have a reasonable impact on youth vaping given visibility would be severely decreased	+++ As per option three, but extending also to online retail spaces, and therefore may be more effective in decreasing youth vaping
Does not decrease likelihood of adults quitting smoking	0	++ Unlikely to have much impact on adults who quit – they can still access all vape stores and see vape products displayed inside	++ Unlikely to have much impact on adults who quit – they can still enter an SVR, and signs can denote availability of vapes within a GVR. May send an implicit message (or amplify existing beliefs) that vaping is as harmful as smoking, which	++ As per option three

			could be mitigated with targeted health promotion	
Ease and cost of implementation	0	- Action required only by SVRs to restrict visibility – they could be given a range of ways to implement this, with varied cost options	- Action required by SVRs and GVRs to restrict visibility – they could be given range of ways to implement this, with varied cost options	- As per option three, with addition of changes to websites, which should have minimal additional costs
Would the policy be clear and workable for New Zealand?	0	+ May be supported by the public as moving in the right direction, given the community frustration over the current visibility of SVRs. However, likely to be criticised for only applying to some retailers (SVRs) and not others (GVRs)	++ Likely to be supported by the majority of public who will see reduced visibility in all physical retail spaces. There may be some objection from retailers who will incur a cost to change their vape displays.	++ Likely to be supported by the majority of public who will see reduced visibility in all retail spaces. There may be some objection from retailers who will incur a cost to change their vape displays, and may make fewer sales
Overall assessment	0	4 This option will likely have less impact on the objective of reducing youth vaping than the other options, except for the status quo	7 This option is likely to achieve the objective of reducing youth vaping without impacting smoking cessation. It is likely to be supported by the public (because it addresses the issue of high street visibility).	8 This option is most likely to achieve the objective of reducing youth vaping without impacting smoking cessation. It is likely to be supported by the public (because it addresses the issue of high street visibility), and extends to online, where it is very difficult to monitor and restrict what children are exposed to.

What option is likely to best address the problem, meet the policy objectives, and deliver the highest net benefits?

Reducing visibility

61. The preferred option is Option Four - Vaping products not visible from the street, or in stores that children may enter, or on online retailers' websites.

What options are being considered? – second issue

Proximity

Option One – *No change*

62. Research published in May 2024[15] found almost 97% of all SVRs were located within 1600m (20 min walking distance) of schools, with 29% within 400m (5 min) of a school. They found that with increasing area-level deprivation there was an increase in the number of SVRs - a greater percentage of schools in the most deprived quintile have a vape shop within 1 km of them. Students of Pasifika origin were in general closer to SVRs than European students. Some schools had up to 37 vape retailers within 1600m of schools and some low-socioeconomic communities had up to 7 vape retailers within 400m of the school.

63. Regulation, that took effect on 21 September 2023, required that new SVRs must:

- be further than 300m from the location point for a school on the Ministry of Education database
- be further than 300m from a Marae as listed on the Te Puni Kōkiri website.

64. Since these regulations took effect, 69 applications have been declined for being located less than 300m from schools or marae. In that time, 45 applications have been approved, with another 69 under assessment.

65. Analysis of a sample of 2 major cities (Auckland and Christchurch) and 2 provincial cities (Palmerston North and Invercargill) found that:

- 49-53% of SVRs in major cities that were approved prior to 21 Sept 2023 are within 300m of a school or marae
- 20-39% of SVRs in provincial cities that were approved prior to 21 Sept 2023 are within 300m of a school or marae.

66. These numbers align with data generated by the Institute of Environmental Science and Research (ESR) looking at SVR distribution across New Zealand that found approximately 50% of SVR retail premises as of January 2024 were within 300m of a school or marae.

Option Two – Restrict proximity of SVRs near ECEs

67. Proliferation of vaping retailers has contributed to the visibility of vaping products. Cabinet has requested recommendations for extending the proximity restrictions for

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[15] I. Waterman, L. Marek, A. Ahuriri-Driscoll, J. Mohammed, M. Epton, M. Hobbs, Investigating the spatial and temporal variation of vape retailer provision in New Zealand: A cross-sectional and nationwide study, Social Science & Medicine, Volume 349, 2024, 116848, ISSN 0277-9536, https://doi.org/10.1016/j.socscimed.2024.116848. (https://www.sciencedirect.com/science/article/pii/S0277953624002922)

SVRs to include registered ECE centres. This would not apply to GVRs, and would not be retroactive, so would only apply to new SVR applications.[16]

68. Analysis of the same cities noted above found that if ECEs had been included in the 21 September 2023 regulation, an additional 22 SVR applications would have been declined. In absolute numbers this would mean that between 21 September 2023 and 5 May 2024, had ECE proximity also been a factor:

    - of the 25 approved SVR retail premises in Auckland, only 5 would have been approved
    - the only approved SVR retail premises in Christchurch would have been declined
    - the only approved SVR retail premises in Invercargill would have been declined
    - both of the approved SVR retail premises in Palmerston North would still have been approved.

69. There are 4,425 ECEs, compared to 2,540 schools and 978 marae, though some ECEs are co-located with schools or marae, so there will be some overlap. Geo-mapping shows that with the addition of ECEs there would be very few remaining areas where an SVR could be set up. Generally, the only options would be rural areas or the fringes of some suburban areas.

70. There may be areas that do not yet have access to an SVR, but the new restrictions would not prevent a GVR opening in their area. Therefore, this option should not restrict access to vapes for smoking cessation purposes.

[16] Retailers that have been assessed and approved in good faith under existing rules can not be expected to meet requirements introduced after their approval. The only way to apply new requirements to all retailers is to remove everyone's right to sell, and then allocate new approvals under the new requirements.

How do the options compare to the status quo/counterfactual?

	Option One – *Status Quo*	Option Two – Restrict proximity near ECEs
Reduces inequity	0	- Low socio-economic areas already have disproportionately higher numbers of SVRs and some may have already reached saturation levels. This policy does nothing to address the imbalance of higher numbers of vape stores in areas of higher deprivation, and in fact may entrench the gap between high and low socio-economic areas, because it will prevent a similar proliferation of SVRs in high socio-economic areas
Decreases young people's initiation of vaping	0	+ There would be very few remaining areas where new SVRs could be established. This would stop the further proliferation of SVRs. This may have some impact on visibility of vaping products for young people, which may in turn slow any additional increase in youth vaping. It is unlikely to reduce current levels of youth vaping, as it has no impact on the number of existing retailers.
Does not decrease likelihood of adults quitting smoking	0	+ While there may be areas that do not have yet have access to an SVR, there will be nothing to stop a GVR being established there. This option should not decrease the likelihood of adults quitting smoking.
Ease and cost of implementation	0	++ This is a straightforward policy to implement, via a change in regulations.
Would the policy be clear and workable for New Zealand?	0	+ While likely to have support from the public, there may be discontent that it does not apply retroactively - removing existing SVRs near ECEs - and because it does not apply to GVRs. There is likely to be some objection from retailer groups that this curtails the ability to open new stores.
Overall assessment	0	4 While this policy is not expected to be overly effective at achieving the objectives of reducing youth vaping, it scores more highly than the status quo

What option is likely to best address the problem, meet the policy objectives, and deliver the highest net benefits?

Proximity

71. The preferred option is Option Two – Restrict proximity near ECEs.

What are the marginal costs and benefits of the option?

Affected groups *(identify)*	**Comment** *nature of cost or benefit (eg, ongoing, one-off), evidence and assumption (eg, compliance rates), risks.*	**Impact** *$m present value where appropriate, for monetised impacts; high, medium or low for non-monetised impacts.*	**Evidence Certainty** *High, medium, or low, and explain reasoning in comment column.*
Additional costs of the preferred option compared to taking no action			
Regulated groups - retailers	Retailers will need to alter displays, which may, for example require building alterations or new cabinetry Will effectively come close to capping the number of SVRs at existing levels, so new retailers will not be able to easily enter the market.	Uncosted but likely to be a low cost, especially if a range of options are permitted, and given some retailers will already have closed storage cabinets due to selling tobacco.	
Regulators			
Others (eg, wider govt, consumers, etc.)	Security issue for retailers mitigated if they are given a range of options for complying. Possible slight reduction in smoking cessation	Based on UK estimates, adult current vaping could drop from 11.9% to 11.4% over 10 years. Note this includes adult non-smokers.	Low – based on UK estimates, originally for tobacco
Total monetised costs			
Non-monetised costs		*(High, medium or low)*	
Additional benefits of the preferred option compared to taking no action			
Regulated groups			
Regulators	May decrease number of SVR applicants.		
Others (eg, wider govt, consumers, etc.)	Reduction in youth vaping	Based on UK estimates, 14-15-year-old regular vaping could drop from 16.4% to 13.9%	Low – based on UK estimates, originally for tobacco
Total monetised benefits			
Non-monetised benefits		*(High, medium or low)*	

72. The UK government is considering similar point of sale restrictions for vapes. They have estimated the reduction in the number of people they would expect to take up vaping based on parallels from the display regulations currently in place for tobacco.[17]

73. Their impact assessment on the prohibition of tobacco displays in shops estimated a reduction of around 15% in the prevalence of regular smokers aged 11 to 15. Assuming a similar scale of impact for display regulation of vapes, they estimate regular[18] vaping prevalence of 3.7%[19] among 11-17-year-olds, could decrease to 3.1%.[20]

74. Applying this same calculation to New Zealand regular[21] vaping rates for 14-15-year-olds, we might expect to see a reduction from 16.4% in 2023 to 13.9%.

75. For adults in England, the impact assessment on the prohibition of tobacco displays in shops estimated an average annual reduction in smoking prevalence of 0.04 percentage points over 10 years. Assuming a similar scale of impact for display regulation of vapes, they estimate adult regular vaping prevalence in England could reduce from 8.4%[22] to 8.0% over 10 years.

76. Applying this same calculation to New Zealand at least monthly vaping rates (assuming this is closest to 'regular') for those aged 15+, we might expect to see a reduction from 11.9% to 11.4% over 10 years.

Section 3: Delivering an option

How will the new arrangements be implemented?

Reducing visibility

77. The visibility policy would require amendments to the Smokefree Environments and Regulated Products Act, with relevant penalties and infringements introduced. The requirement would come into effect after a notification period. Enforcement would be carried out by Smokefree Enforcement Officers.

78. Currently vaping products are the only products regulated under the Smokefree Act that may be visible from a place of business, either from the outside or inside those areas the public may enter. To remove exemptions for vaping products, the following amendments would be required:

    - the current exemption for vaping products would need to be removed from section 37: *Regulated product (other than vaping product) must not be visible from place of business*, and
    - the current exemption for vaping products that prevents the application of section 23: *Publishing regulated product advertisement prohibited* would need to be removed by repealing section 24(g): *Specified publications exempt from advertising prohibition* and section 25(5): *Subsections (1)(a) and (b) and (4) do not limit the*

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17 *Tobacco and Vapes Bill: Impact assessment*, 20 March 2024, Department of Health and Social Care, Tobacco and Vapes Bill - impact assessment (publishing.service.gov.uk)

18 Regular here means more than once a week.

19 Based on 2023 figures.

20 The time period is not specified so this is assumed to be over a year.

21 Regular here means daily, weekly or monthly combined.

22 Based on 2022 figures.

exemption in section 24(g) relating to the display of, and provision of information relating to, vaping products.

Proximity

79. The ECE policy would require an amendment to the Smokefree Environments and Regulated Products Regulations 2021. The Vaping Regulatory Authority would then be required to decline any new SVR applications that did not meet the new proximity restriction.

80. There may be a swell of applications between the announcement of the policy and when the restrictions come into force, to avoid the new restrictions.

How will the new arrangements be monitored, evaluated, and reviewed?

81. People who smoke might be less likely to use vapes if they are out of sight in shops, because they are less aware of their availability or because this could send an implicit message that vaping is as harmful as smoking. This risk will be offset somewhat by retailers being able to display signs that vaping products are available. It could be further offset through targeted health promotion messaging. The periodic International Tobacco Control (ITC) study is a possible source of data to monitor the individual vaping attitudes and behaviours of people who smoke. The annual New Zealand Health Survey (NZHS) can be used to monitor population level changes in adult smoking and vaping rates.

82. We would expect to see a decrease in youth vaping rates. A subsequent increase in young people smoking is less likely than in response to other possible measures, because reducing visibility should reduce interest rather than reducing access (which could lead to addicted youth turning to other nicotine options such as tobacco). Youth smoking and vaping rates can be monitored via the annual Action for Smokefree 2025 (ASH) Year 10 survey.

83. Compliance with new requirements will also be monitored through continuing regular Smokefree Enforcement Officer compliance visits to retailers, and monitoring of online stores, to ensure that retailers are compliant with display restrictions.