

Supplementary Regulatory Impact Statement: Banning disposable vaping products and increasing penalties for sales to minors

Coversheet

Purpose of Document	
Decision sought:	This analysis was produced as a supplementary analysis following Cabinet’s decisions on 18 March and 24 June 2024 to ban disposable vaping products and increase penalties for unlawful sales of vaping and other regulated products to minors.
Advising agencies:	The Ministry of Health
Proposing Ministers:	Hon Casey Costello, Associate Minister of Health
Date finalised:	12 August 2024
Problem Definition	
<p>Vaping plays a part in helping to achieve the Smokefree 2025 goal. It has contributed to recent significant reductions in smoking rates and should continue to be available to support smoking cessation.</p> <p>However, many young people have taken up vaping. This is a problem because, while less harmful than tobacco, vaping is not without harm. Vaping products should only be used by people who smoke, as a support for smoking cessation.</p>	
Executive Summary	
<p>Context</p> <p>On 18 March 2024, (CAB-24-MIN-0084 refers) Cabinet agreed to amend the Smokefree Environments and Regulated Products Act 1990 (the Smokefree Act) to:</p> <ul style="list-style-type: none"> - ban the manufacture and sale of disposable vaping products - set the maximum penalty for illegal sales of regulated products to minors at \$100,000 for a body corporate (increased from \$10,000) and \$10,000 for an individual (increased from \$5,000) - set related infringement offences at \$1,000 for individuals (increased from \$500) and \$2,000 for a manufacturer, importer, distributor or retailer (increased from \$500). <p>On 24 June 2024 (CAB-24-MIN-0218 refers), Cabinet agreed to further details regarding the scope and nature of the ban on disposable vaping products:</p> <ul style="list-style-type: none"> - the ban will apply to vapes that are not rechargeable and refillable, and to single-use containers such as prefilled tanks, pods and cartridges - the ban will apply to the supply and distribution of disposable vaping products. 	
<p><i>Banning disposable vaping products</i></p>	

There is evidence to indicate that banning disposable vaping products will see a reduction in youth usage by preventing young people from accessing these cheap products that are driving youth uptake. Recent study findings indicate disposable vapes are disproportionately used by children and young people.

In addition to having a positive impact on reducing youth vaping, the ban may also have a positive impact on the environment. Vapes are made up of components which, unless disposed of safely and responsibly, can last in landfill for years. Vapes that are specifically designed or intended to be used only once or a limited number of times before being disposed of or discarded are wasteful.

Narrow versus wide definition of disposable vape

The Ministry of Health (the Ministry) considered two main approaches to implementing the disposable ban as compared to the status quo / counterfactual:

- **Option 1: Status quo / Counterfactual** – no change, disposable vapes remain legal
- **Option 2: Narrowly defined scope** – all vapes that are not both rechargeable and refillable are banned

Option 3: Widely defined scope – all vapes that are not both rechargeable and refillable are banned, as well as all single-use containers such as tanks, pods and cartridges.

The Ministry's preferred option is option 2. This will ban vape products that have been very appealing to young people, is consistent with definitions proposed by our trading partners (the United Kingdom and Australia), ^{s 9(2)(h)} and is unlikely to create barriers to adults using or considering using vapes as a smoking cessation tool.

A disposable ban is likely to be most impactful on youth vaping when paired with other measures. For instance, introducing restrictions on the visibility of vaping products and targeted measures to increase the overall cost of vaping products such as the introduction of a minimum price or imposition of excise tax. The overall impact will also be dependent on the ability to enforce the ban.

Extending the ban to the supply and distribution of the products in New Zealand and imports

Cabinet agreed to ban the manufacture, sale, supply and distribution of disposable vaping products. The Ministry additionally considered whether an import ban should apply. The New Zealand Customs Service advises it will be operationally difficult to enforce an importation ban at the border. A prudent approach is to defer decisions on imports to allow time for assessment of the effectiveness of the sale, manufacture, supply and distribution ban, along with detailed costs of introducing import controls.

Increased penalties for sales to minors

The current level of fines and infringements for selling regulated products to minors does not appear to be a strong deterrent. The prohibition on sales to minors is undermined by non-compliant sellers.

The Ministry's preferred option is to significantly increase the maximum fine level for illegal sales to minors and to also increase the related infringement fee. This will signal to retailers that selling these products to minors is a serious offence and provide for stronger specific and general deterrence.

Limitations and Constraints on Analysis

This analysis has been constrained by:

- **Narrow scope:** Cabinet has already made decisions, so the RIS only assesses the impact of the agreed policies. The RIS reflects advice the Ministry gave to the Associate Minister of Health.
- **Lack of consultation:** The timeframes in which the policy proposals were considered and agreed by the Government did not allow for consultation beyond governmental agencies, and this was itself limited. As the proposed changes require legislative amendment, the Select Committee process will provide an opportunity for public consultation.
- **Data and / or evidence limitations:** Information available about the vaping market is incomplete. The information manufacturers and importers provide the Ministry when they notify a vaping product does not provide a detailed breakdown of whether a product is disposable or reusable. It tells us broadly whether it is a vaping device (which has a particular meaning under the Smokefree Act) or a substance, and information about the contents of a vaping substance (eg, the nature of the nicotine content being freebase or salt, and information on the ingredients).
- Available data regarding the types of vaping products (eg, disposable, pod or tank products) most used by young people, and by adults for smoking cessation purposes, predates the most recent regulation changes. Consequently, there is limited evidence on some aspects of the policy proposals discussed (or potentially outdated evidence given the pace at which trends shift).

A longer timeframe could have allowed officials to consult publicly, including with groups most affected by youth vaping and other stakeholders. This could have enabled more fulsome advice on the impacts and any operational challenges of the proposals to be canvassed.

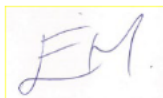
Given the timeframe available, possible costs and benefits have been identified, but have not been able to be costed.

Responsible Manager

Emma Hindson

Acting Manager, Public Health Policy and Regulation

Ministry of Health



12 August 2024

Quality Assurance

Reviewing Agency: Ministry of Health

Panel Assessment & Comment: "The Ministry of Health QA panel has reviewed the Impact Statement titled "*Banning disposable vaping products and increasing penalties for sales to minors*," produced by the Ministry of Health and dated July 2024.

The panel considers that the Impact Statement **Partially Meets** the quality assurance criteria.

The Impact Statement is clear, concise, complete and consulted. The analysis is balanced in its presentation of the information and impacts are identified and assessed. The Panel does not consider the analysis meets the criteria to be convincing due to the limited options available, but that this is a consequence of the decision making process in this case.”

“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. Banning disposable vaping products and increasing penalties for sales to minors could see a reduction in waste related emissions however, any potential emissions impacts are difficult to quantify at this stage.”

Section 1: Diagnosing the policy problem

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

Vaping harm

1. The international scientific and medical community agrees that vaping causes health harms in non-smokers. 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. Nicotine addiction can have wide-ranging and long-term consequences, including impact on educational attainment, possibly 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.
2. New Zealand youth score higher comparative to other young people in comparable jurisdictions with feelings of addiction,¹ and there are associated impacts on mental health and learning, including when a young person is excluded from school due to vaping.
3. A systematic review published in 2021² found that vaping in young people has been associated with an increased incidence of mental health conditions, though it did not consider whether this association was correlation or causation. The researchers suggested that mental health comorbidities “*generally parallel those of combustible cigarette use, with a few exceptions.*”

¹ From the ITC survey, of those 16-19-year-olds who vaped in the past month, 74% felt addicted (33% very addicted.) This was significantly higher than for youth in comparable countries (ranged from 59-64%) and higher than for those New Zealand youth who reported smoking (66% addicted, 12% very addicted).

² Timothy D Becker, Melanie K Arnold, Vicky Ro, Lily Martin, Timothy R Rice, Systematic Review of Electronic Cigarette Use (Vaping) and Mental Health Comorbidity Among Adolescents and Young Adults, *Nicotine & Tobacco Research*, Volume 23, Issue 3, March 2021, Pages 415–425, <https://doi.org/10.1093/ntr/ntaa171>

4. A New Zealand report (the Hā Collective Vaping Survey, 2022) found vaping serves as a coping mechanism for some young people. Some preferred vaping over more harmful coping mechanisms.

Prevalence of youth vaping (and smoking) in New Zealand

ASH Year 10 Snapshot survey (Ash survey) of 14–15-year-olds

5. The ASH Year 10 Snapshot surveys 20,000-30,000 students every year on their smoking and vaping behaviour and attitudes. In 2023, for the third year running, daily vaping remained stable at 10%.
6. Youth vaping disproportionately affects some young people more than others. Rates for smoking and vaping remain higher for Māori and Pacific students compared to European students, and for students from low socioeconomic communities compared to medium and high socioeconomic communities. Across all demographics, Māori boys have the highest rate of daily smoking at 3.1% and Māori girls have the highest rate of daily vaping at 26.6%.

International Tobacco Control (ITC) Youth Study of 16–19-year-olds

7. Data from the new International Tobacco Control (ITC) Youth Study recently carried out in New Zealand has found New Zealand has amongst 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 United States (US) and 6.2% in Canada.

Use of disposable vapes by young people

8. Disposables have quickly become the most popular vape product used by young people in New Zealand and around the world. The lower cost of disposables is a key factor that makes them more attractive to young people, as does the use of bright colours, ease of use and their small size (making them easy to conceal).³
9. In 2023, the ASH year 10 survey found disposable vapes were used by 58.1% of Year 10 students who had ever tried vaping, and 68.1% of those who vaped daily (rapid increases from 12.2% and 9% respectively in 2021).⁴ Disposable vapes are the most used device for young people across all ethnicities, with the highest rate of use among Pacific and Māori students at 64.9% and 63.1% in 2023.
10. The 2023 ITC study of 16–19-year-olds found 65% were using disposable devices (compared to 30% pods and 20% tanks)⁵. By comparison, data from the 2022 ITC

³ 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\(cancerresearchuk.org\)](https://www.cancerresearchuk.org/press-releases/cruk-policy-briefing-e-cigarette-packaging-and-retail-appeal-reports-final).

⁴ Action for Smokefree 2025 (ASH). 2023. ASH Year 10 Snapshot Survey 2023 – Youth smoking and vaping in Aotearoa New Zealand. Unpublished. Students were asked about the type of device they used most often as between the following four options: disposable; reusable plus pods; reusable plus tank, and don't know. A limitation to this information is that it is self-reported. There are a range of different products marketed as disposable, including both pod and tank products which are arguably partly or fully reusable. We are seeing an increase in responses from young people that they do not know which kind of device they use, which may reflect a confusion over whether something is disposable.

⁵ This data was collected before the battery and child safety requirements came into effect, after which the Ministry observed that the number of disposables on the market reduced.

study of New Zealand adults found 25.7% of adults who smoke and 14.6% of adults who recently quit smoking used a disposable vape.⁶

Access to vaping products by young people

11. Minors typically access vaping products through retail stores, or from friends/someone their own age (social supply). According to the 2023 ASH survey, 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%).

Overview of regulatory settings for vaping and vaping products

12. Vaping products were first regulated in 2020 under the Smokefree Act. This included prohibiting sales of vaping products to under-18s, introducing product safety standards, and prohibiting sponsorship and advertising, as well as vaping in legislated smokefree areas.
13. New vaping regulations came into force on 21 September 2023 and have progressively come into effect. Consequently, any new specialist vape retailers (SVRs) must now be at least 300 metres from a school or marae, and all vaping products need to use permitted flavour descriptions and meet new product safety requirements such as reduced nicotine levels and labelling requirements.
14. The term disposable vape is not used in the Smokefree Act or related regulations. Under the Smokefree Environments and Regulated Products Regulations 2021, a **single-use vaping device** means a vaping device that is pre-filled with a vaping substance or heated tobacco product and that is not designed to be refilled once used. A **reusable vaping device** means a vaping device other than a single-use vaping device.
15. Since 21 December 2023, it has been a requirement that all single-use vaping products must have a child safety mechanism to prevent it from being activated or accidentally operated by a child, and must have a removable battery.

The size and nature of the disposable vaping product market in New Zealand






16. The vaping market has rapidly expanded and grown in New Zealand since vaping products first became available in the mid-2000s. It has also adapted quickly in response to the introduction of regulatory restrictions. One area of rapid growth has been the manufacture and sale of products that are cheaply made and intended to be disposed of after use. These are typically referred to as ‘disposable vapes.’
17. Prior to the most recent regulatory changes in December 2023,⁷ many of the vaping products available in New Zealand had the entire vape presented in one package inclusive of the battery and the vaping substance (**Example 1** in the table below refers). Once the substance was used up, the entire product would be disposed of.

⁶ Nip J, Zhang J, Edwards R. *Unpublished preliminary analysis*. EASE Project, Wellington, 2024. Adults were asked about the type of device they used most often as between the following four options: It is disposable, not refillable (battery is non-rechargeable); It uses pre-filled pods, caps, or cartridges that must be replaced when they are empty (battery is rechargeable); It uses re-fillable pods, caps, or cartridges (battery is rechargeable), and It has a tank that you fill with liquids (battery is rechargeable).

⁷ In particular, the new requirement that has been in force since 21 December 2023 requiring all single-use vaping products to meet the following requirements: the concentration of nicotine must not exceed 20 mg/mL, the devices must have removable batteries and child-safety mechanisms to improve their safety and better protect our young people.

Since the new regulatory requirements for all single-use vaping devices to have removable batteries and child-safety mechanisms, most of these original all-in-one vaping products have been replaced by a new range of products.

Table of examples of vape products available in New Zealand

Example 1	Example 2	Example 3	Example 4	Example 5
Disposable all-in-one vape ⁸	Single-use pod ⁹	Refillable pod ¹⁰	Refillable tank ¹¹	Single-use tank ¹²
				

18. Observationally, there are still some products on the New Zealand market that fall into this “all-in-one disposable vape” category. However, pod vapes currently make up most of the vaping market in New Zealand, followed by tank products. Both pod and tank products would fall under the current definition of a reusable vaping device.
19. A pod¹³ can be an enclosed container that holds the vaping substance and can be clipped on or into the vape. Often, the pod is pre-filled and can only be used once before needing to be replaced (**Example 2** refers), though there are also refillable pods (**Example 3** refers). Some pod-style vapes are packaged as one and marketed as “disposables,” others are marketed as reusable, in the sense that the device part that holds the battery can be re-used by inserting or clicking on a new pre-filled pod. A tank will typically have a lid and can be (re)filled by the vape user (**Example 4** refers), though like pod-products some tanks are single-use (**Example 5** refers).

⁸ Example shown is the Solo Plus Disposable Vape, described as “Fully charged and pre-filled with nicotine salt e-juice for a pod-free, hassle-free experience”: [Shop Mint solo plus Disposable Vape | VAPO NZ](#) (accessed 18 June 2024).

⁹ Example shown is the Bud Replacement Pod 2-Pack, description states “Once you’ve finished your pod, replace it with a new one!”: [Shop Tobacco Bud Replacement Pod 2-Pack | VAPO NZ](#) (accessed 18 June 2024).

¹⁰ Example shown is the Salty Pro Bar Refillable Replacement Pod: [Salty Pro Bar Refillable Replacement Pod - Vape Devices | Shosha NZ](#) (accessed 6 May 2024).

¹¹ Example shown is the IJOY Shogun (Katana) Sub-ohm Tank a 6ml capacity tank with “easy top refill”: [IJOY Shogun \(Katana\) Sub-ohm Tank - Vape Devices | Shosha NZ](#) (accessed 18 June 2024)

¹² Example shown is the Shosha Disposable Tank 4ml is “designed to be thrown away with the end of the coil”: [Shosha Disposable Tank 4ml | Vape Kits | Shosha NZ](#) (accessed 6 May 2024).

¹³ Other commonly used terms are a ‘cartridge’ or a ‘cap’.

Current settings for sales of regulated products to minors

20. The Smokefree Act provides the framework for the regulation of tobacco products, vaping products, and herbal smoking products (ie, regulated products). The sale and delivery of regulated products to people younger than 18 years is prohibited. It is also prohibited to supply a regulated product to a person younger than 18 years in a public place (or supply it to another person with the intent that it be supplied to a minor).
21. Smoked tobacco products are widely available and can be sold by any retailer providing they meet the other requirements that apply under the Smokefree Act such as those relating to plain packaging and prohibitions on advertising.
22. Penalty levels for unlawful sales to minors are currently:
 - a. fines of \$10,000 for a body corporate (including most retailers) and \$5,000 for others (including sales assistants) on conviction before a court
 - b. infringement fees (ie, on the spot fines) of \$1,000 for a manufacturer, importer, or distributor, and \$500 for others (eg, sales assistants, and retailers in this instance.)
23. Non-compliance with the prohibition on regulated product sales to minors is both illegal and concerning as it leads to underage vape, tobacco and herbal smoking use.

Compliance

24. Controlled purchase operations (CPOs) are carried out in retailers as a key compliance activity.
25. In the 2023-2024 year to March, 14.5% of retailers tested had sold vaping products to minors. The compliance rates were almost identical for general retailers (15%) and specialist vape retailers (SVRs) (14.3%) selling vaping products. For tobacco products, non-compliance was 9.9%. In comparison, in 2023, around 10% of general vape retailers (eg, dairies, supermarkets) and 17% of SVRs sold vaping products to minors in CPOs, compared to around 5% for tobacco sales.
26. To date, charges have been filed against three individuals or organisations in relation to vaping products, including five charges of sales to a minor (section 40) and six charges related to selling a product that is a flavour that the retailer is not permitted to sell (section 65).

Consultation

27. While the timeframe has not allowed for consultation or engagement to occur, we have referred to previous consultations and recent petitions to identify any key issues.
28. Many submitters on the Smokefree Environments and Regulated Products (Smoked Tobacco) Amendment Bill made recommendations to the Health Committee for further tightening the regulation of vaping products,¹⁴ including banning disposable or single use vape products. Māori health and community organisations raised concerns about the impact of vaping on youth and supported changing the regulatory settings to better protect children and young people.

¹⁴ For instance, organisational submitters, including the Smokefree Aotearoa 2025 Pacific Assurance Group, ASPIRE, Takiri Mai Te Ata Whānau Ora Collective Regional Stop Smoking Service, Public Health Association of New Zealand, Tala Pasifika and Health Coalition Aotearoa. [Smokefree Environments and Regulated Products \(Smoked Tobacco\) Amendment Bill \(bills.parliament.nz\)](https://bills.parliament.nz).

29. The impact of disposable vapes on the environment was a key concern for Māori respondents to the consultation on the Smokefree Aotearoa 2025 Action Plan. Māori respondents also mentioned vape sales to minors as a key concern, with several Māori respondents recommending strong implications for non-compliance.
30. The Hashtags, a group of rangatahi¹⁵ from Wellington, have made various submissions on vaping. In response to a Health Committee question on what should happen to vape stores that are selling vapes to minors, the Hashtags said that the penalty should first be a large fine, and that larger players should be shut down.¹⁶

What is the policy problem or opportunity?

Overview

31. Children and young people should not vape. Strengthening the regulation of vapes to protect children and young people would demonstrate good government within the context of the Treaty of Waitangi (Cabinet Office Circular (19) 5 refers).

Intersection with smoking - youth

32. There is risk that reducing youth access to vapes will lead to higher youth smoking rates. This has happened in some parts of the United States.¹⁷

Intersection with smoking - adults

33. Vaping is used by many adult smokers as a smoking cessation tool. Actions to reduce youth vaping need to be targeted towards young people and minimise any barriers on adults wanting to access vapes to quit smoking. The 2022 EASE / International Tobacco Control New Zealand Survey of adults who currently or recently smoked, found in the past 12 months, 60.0% of people who currently smoke used a vape as part of a quit attempt. This figure rose to 64.3% of people who quit smoking.¹⁸
34. For adults, smoking rates are trending downwards for all population groups, but inequities persist, particularly for Māori and low-income earners. We do not want to exacerbate the inequities already present.

Banning disposable vaping products

35. There is an opportunity to remove vaping products from the market that are targeted at, and appealing to, young people. If no action is taken, it is likely that cheap disposable vaping products will continue to find their way into the hands of young people. Disposable products make vapes more affordable for children and youth.
36. While banning disposables may prevent further young people taking up vaping, it may not stop vaping in those cohorts who are already doing it regularly. Vapes are incredibly addictive, and young people are adaptive – they have previously moved rapidly from using tanks to pod vapes to disposables. Although difficult to predict or quantify, it is likely that current daily vapers will move to using reusable products.

¹⁵ Hashtags (Holistic Action Sustainable Health Through All Generations) consist of rangatahi from a range of cultural backgrounds, including but not limited to Māori and Pasifika youth.

¹⁶ Report of the Health Committee, "*Petition of the Hashtags: Require licences for all vape retailers and restrict their density and location*", August 2023, [Final report \(Petition of The Hashtags\) \(2\).pdf](#) (accessed 27 June 2024).

¹⁷ Friedman, Abigail and Liber, Alex C. and Crippen, Alyssa and Pesko, Michael, E-cigarette Flavor Restrictions' Effects on Tobacco Product Sales (January 29, 2024). Available at SSRN: <https://ssrn.com/abstract=4586701> or <http://dx.doi.org/10.2139/ssrn.4586701>

¹⁸ Nip J, Zhang J, Edwards R. *Unpublished preliminary analysis*. EASE Project, Wellington, 2024.

Reusable vapes may legally contain higher maximum nicotine levels than disposable vapes, which may have the unintended consequence of exposing these youth to higher nicotine levels.

37. The primary driver of the ban is to protect children and young people from the harms associated with vaping, however an added opportunity is to reduce the negative impacts disposable vapes have on the environment. The UK's Regulatory Impact Statement provides comprehensive analysis and evidence regarding the significant environmental impact from allowing the sale and supply of disposable vapes.¹⁹ The UK also holds a similar position to New Zealand regarding support of the use of vapes for treating current smokers.²⁰

Increasing penalties for selling regulated products to minors

38. It is unlikely that current penalty levels are a strong deterrent compared to the potential gains from non-compliance. If no legislative action is taken, it is likely that illegal sales to minors will continue and that in cases where a breach is found, it will only be in the public interest to commence a prosecution where there is evidence of repeated non-compliance.²¹

What objectives are sought in relation to the policy problem?

39. The overarching objective is to reduce New Zealand's high youth vaping rates and the associated harms from this.
40. A further objective is to support the Smokefree 2025 goal that by 2025, daily smoking rates for all population groups will be less than 5%. Tobacco use remains a leading cause of preventable disease and death among New Zealanders and vaping remains a part of New Zealand's approach to reducing smoking and smoking related harms. It is therefore important to avoid creating barriers to adults using or considering using vapes as a smoking cessation tool.
41. Specific objectives are to:
- a. **remove vaping products that are popular with young people from the market**, noting a major part of the appeal of these products to youth is that they are inexpensive, brightly coloured and easy to conceal.
 - b. **improve retail compliance with the existing prohibition on sales to minors**, noting vaping, tobacco and herbal smoking products are only legally able to be sold to those 18 years and over.
42. Although not a direct or specific objective, there may be positive environmental benefits from implementing a disposable vape ban.

¹⁹ A concept known as negative environmental externalities. Proposal to ban the sale and supply of disposable vapes (UK wide assessment [disposable-vapes-impact-assessment.pdf \(publishing.service.gov.uk\)](#), March 2024.

²⁰ UK Department of Health and Social Care, 'Smokers urged to swap cigarettes for vapes in world first scheme,' (11 April 2023). Available at: [Smokers urged to swap cigarettes for vapes in world first scheme - GOV.UK \(www.gov.uk\)](#) (accessed 10 July 2024).

²¹ It is not the rule that all offences for which there are sufficient evidence must be prosecuted. Prosecutors must exercise their discretion as to whether a prosecution is required in the public interest. Just as history of recurring conduct, and harm to children and young people may weigh in favour of prosecution, the likely imposition of a very small penalty can be a reason against pursuing prosecution, particularly given the cost to the taxpayer of taking a prosecution may exceed the possible fine that could be imposed if the prosecution is successful.

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

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

43. The criteria we have used:
1. **Decreases vaping initiation (and use) among young people:** will the policy reduce vaping initiation among young people, help them to quit, and make it easier for young people to remain vape-free?
 2. **Supports ongoing availability and accessibility of vapes to adult smokers to help them to quit smoking:** does the policy support achievement of the Smokefree 2025 goal through enabling adult smokers to quit through vaping?
 3. **Ease and cost of implementation:** is the policy able to be implemented with the likely available budget and within the necessary timeframe?
 4. **Clear and workable for New Zealand:** are New Zealanders likely to understand, support and champion the intentions, implementation, and enforcement of the policy?
44. The majority of these have an overall aim of supporting harm reduction. Consideration of the impact on reducing inequities present in both vaping and smoking rates and associated harms is encompassed in the first and second criteria.

What scope will options be considered within?

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

45. The scope was limited by Cabinet's decision on 18 March 2024, to ban the manufacture and sale of disposable vaping products and to increase penalties for unlawful sales of regulated products.
46. Officials have only additionally considered the nature of the products covered by the disposable ban, and whether the ban should extend to supply and distribution, and to import. These additional considerations do not go beyond the scope of Cabinet's further decisions on 24 June 2024.
47. The Smokefree Act does not define what a disposable vape is. Although the regulations define a single-use vaping device, this definition may not capture the range of products available that could be considered disposable. There is also not a standard international definition for what a disposable vape is. We have therefore looked at how other countries are approaching defining what a disposable vape is, particularly in the context of banning the products.

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

Australia

48. From 1 January 2024, Australia prohibited the importation of disposable vapes, subject to very limited exceptions. In March, the Australian Government introduced the Therapeutic Goods and Other Legislation Amendment (Vaping Reforms) Bill 2024 to prevent the domestic manufacture, advertisement, supply and commercial possession of disposable vapes, to ensure comprehensive controls across all levels of the supply chain.

49. The Australian definition of a disposable includes that the vape is “prefilled” and not “designed or intended to be disassembled” and “not designed or intended to be refilled”. This definition appears to primarily target the all-in-one vape and would not capture pod vapes or the refillable tank vapes which would be considered either reusable or refillable.

1 Regulation 2

Insert:

disposable therapeutic vape means a therapeutic good:

- (a) that is a vaping device of the kind referred to in paragraph (a) of the definition of *vaping device* in this regulation; and
- (b) that is fully assembled with all the constituent components fixed permanently in place and that is not designed or intended (by the person under whose name the vaping device is or is to be supplied) to be disassembled; and
- (c) that is pre-filled with a therapeutic vaping substance; and
- (d) that is not designed or intended (by the person under whose name the vaping device is or is to be supplied) to be refilled.

United Kingdom (UK)

50. In January 2024, the UK announced it would ban disposable vapes as part of ambitious government plans to tackle the rise in youth vaping and protect children’s health. Disposable vapes have been a key driver behind the alarming rise in youth vaping, with the proportion of 11- to 17-year-old vapers using disposables increasing almost ninefold in the last two years. The Environmental Protection (Single-use Vapes) (England) Regulations 2024²² states:

Meaning of single-use vape 3.—(1) A single-use vape is a vape which is not designed or intended to be re-used (a “single-use vape”) and includes any vape which is— (a) **not refillable**, (b) **not rechargeable**, or (c) **not refillable and not rechargeable**.

(2) For the purposes of this regulation, **a vape is not refillable** unless it is designed to include— (a) a single-use container which is separately available and can be replaced, or (b) a container which can be refilled.

(3) For the purposes of this regulation, **a vape is not rechargeable** if it is designed to contain— (a) a battery which cannot be recharged, or (b) a coil which is not intended to be replaced by an individual user in the normal course of use, including any coil which is contained in a single-use cartridge or pod which is not separately available and cannot be replaced.

51. Like Australia, the definition includes the inability to refill the vape. It also explicitly covers vapes that are not rechargeable. The definition does not cover single-use pods and tanks which are considered “refillable”.

France

52. France is on track to pass a bill that proposes the prohibition of disposable e-cigarettes by the end of 2024. The definition of disposables is that the vape have at least one of two characteristics:

Translation - The manufacture, possession with a view to sale, distribution or offering free of charge, the offering for sale, sale, distribution or free offer of the electronic vaping devices referred to in 1° of Article L. 3513-1, with the exception of cartridges, which have at least one of the following two characteristics, are prohibited:

"1° **Be pre-filled with a liquid and cannot be refilled;**

"2° **Have a non-rechargeable battery."**

53. The focus is on removing vapes that cannot be refilled and/or recharged. Cartridges are not included, suggesting that the pod-style vape would not be covered.

²² [The Environmental Protection \(Single-use Vapes\) \(England\) Regulations 2024 \(publishing.service.gov.uk\)](https://www.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/124444/2024-01-23-Environmental-Protection-Single-use-Vapes-Regulations-2024.pdf)

Belgium

54. Belgium will ban all disposable e-cigarettes with and without nicotine from 1 January 2025. The machine-translation from the bill is as follows:

"It is prohibited to market electronic cigarettes in the form of an integral disposable product. An integral disposable product means a product that is pre-filled with a liquid and is not refillable."

55. The focus is on a disposable product not being refillable in any way.

What options are being considered? – disposable ban

Banning disposable vaping products – options

Option 1 – Status Quo / Counterfactual

56. Under the status quo, any existing regulatory restrictions would continue to apply. For instance, product safety requirements for “single-use vapes” include that they have removable batteries, child safety mechanisms and that the concentration of nicotine must not exceed 20mg/mL.
57. While implemented with the intention of improving safety rather than banning disposable vapes, the recent regulations have had the effect of removing most (but not all²³) traditional all-in-one disposable vaping products from the New Zealand market. Due to data limitations, the Ministry acknowledges this is an observation and not able to be substantiated with market data.²⁴
58. Without further change, it is likely that these types of disposable vaping products will continue to be available in New Zealand and remain appealing to young people. With ongoing industry innovation, it is possible that new disposable vapes that meet the new product safety requirements may emerge and that this section of the market may increase again. The status quo / counterfactual is incompatible with a harm reduction approach.

Option 2 – Narrowly defined scope – all vapes that are not both rechargeable and refillable are banned (preferred)

59. This option would model the definition of disposable vapes on the UK’s definition which is the most comprehensive of the respective definitions canvassed above. All vapes that are not both rechargeable and refillable would be banned. This will have the effect of completely removing any remaining all-in-one disposable vapes from the market. These kinds of vapes have been extremely popular with young people and have significant harmful impacts on the environment.
60. However, Option 2 will not capture all vaping products at the low-priced end of the market. For instance, low priced products that utilise either a replacement pod or a refillable pod will be allowed. Given the observed market changes, Option 2 may therefore largely maintain, rather than significantly change, the market. This is unlikely

²³ See [Shop Banana solo Disposable Vape | VAPO NZ](#) (accessed 6 May 2024).

²⁴ Information manufacturers and importers are required to provide the Ministry about vaping products does not include whether the product is disposable or reusable. The Ministry would need to physically examine the vaping products as this information is not collected. A further limitation is that the information the Ministry does receive, such as sales related information from Specialist Vape Retailers, is due annually by 31 January each year. This means that the sales information from 2024 will not be provided until January 2025 so there is an inevitable delay in the currency of the information.

to address public and stakeholder concerns that any ban will be worked around with similarly low-price reusable vapes.

61. Using indirect or proxy measures, such as design requirements, to control price is unlikely to be effective in the medium to long-term. We have seen this play out with the rapid evolution of vaping products that became available in New Zealand following the December 2023 regulations. Low priced vapes have remained widely available, despite the need for redevelopment of products to meet the new product safety requirements.
62. Option 2 will effectively remove easy access to those kinds of disposable vapes that have been disproportionately used by children and young people. Option 2 does not create a material barrier to adults using (or considering using) vapes as a smoking cessation tool. Of adults who currently smoke, 74.3% use pre-filled or refillable pod-style vapes or tank vapes, and of adults who have recently quit smoking this percentage rises to 85.4%.²⁵

Option 3 - Widely defined scope – all vapes that are not both rechargeable and refillable are banned, as well as all single-use containers such as tanks, pods and cartridges

63. A wider definition could seek to ban all vapes that are not rechargeable and refillable (as with Option 2), and additionally, to ban all pod or similar vaping component parts that are not designed to be used more than once (ie, to capture pre-filled single-use pods, cartridges, and tanks). This would go further than the other jurisdictions referred to above.
64. The market impact will likely be greater than with Option 2, as it will require removal or redevelopment of products that rely on single-use pods, cartridges, tanks or similar. Option 3 is environmentally more progressive than the Option 2 and costs may potentially be passed on to the customer. However, we can expect industry will innovate, and produce low-cost refillable pod, tank or other reusable devices. Loss leading tactics, for instance, offering discounted prices at the low end of the market may also be used to maintain the youth market.
65. This option could have unintended consequences. Pre-filled single-use containers do not allow people to add other substances to the e-liquid. Research carried out by the EU identified hazards relating to the refill process for tank style products. Because a wide definition would likely favour tank products, this may create additional safety issues to address.²⁶
66. There is also the potential risk that a more comprehensive ban incentivises an illicit market. Whilst not directly comparable, tighter regulation in Australia has seen the rise of a significant illicit market with 87% of Australians who vape reporting sourcing vapes illegally.²⁷

²⁵ Nip J, Zhang J, Edwards R. *Unpublished preliminary analysis*. EASE Project, Wellington, 2024.

²⁶ The Commission has identified four main risks related to the use of refillable e-cigarettes. These risks are: (1) poisoning from ingesting e-liquids containing nicotine (especially for young children), (2) skin reactions related to dermal contact with e-liquids containing nicotine and other skin irritants, (3) risks associated with home blending and (4) risks due to using untested combinations of e-liquid and device or hardware customisation.

²⁷ National Drug Strategy Household Survey 2022–2023 | 29 Feb 2024 [National Drug Strategy Household Survey 2022–2023 \(aihw.gov.au\)](https://www.aihw.gov.au/national-drug-strategy-household-survey-2022-2023)

- 67. Studies indicate part of the appeal of the disposable vape to young people, in addition to low price, is convenience and simplicity of use.²⁸ Requiring that the pod or cartridge is also reusable may create some additional work for vape users, for instance, through needing to refill the pod. This may create a barrier or disincentive to use, particularly for some disabled people. However, the impact would not necessarily be limited to disincentivising youth. Accessibility of use for adults who smoke and wish to vape to quit smoking would also be impacted.
- 68. A wide definition may negatively impact the objective of allowing access to vaping as a cessation tool for adult smokers. Data from the 2022 ITC study of New Zealand adults found 25.7% of adults who smoke, and 14.6% of adults who recently quit smoking, used a disposable vape. However, the numbers rose for the use of a vape with prefilled pods, caps or cartridges that must be replaced when they are empty, with use at 37.6% for adults who smoke, and 29.9% for adults who recently quit smoking.²⁹ Given the observed market shift towards prefilled pod products, the use of these types of vapes by adults may have increased again.

69. s 9(2)(h) [Redacted]

70. s 9(2)(h) [Redacted]

²⁸ Jongenelis MI, 'E-cigarette product preferences of Australian adolescent and adult users: a 2022 study' (2023) BMC Public Health 23:220. Available at: <https://bmcpublikealth.biomedcentral.com/articles/10.1186/s12889-023-15142-8>

²⁹ Nip J, Zhang J, Edwards R. *Unpublished preliminary analysis*. EASE Project, Wellington, 2024.

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

	Option 1 – Status Quo / Counterfactual	Option 2 – Narrowly defined scope – all vapes that are not both rechargeable and refillable are banned	Option 3 - Widely defined scope – all vapes that are not both rechargeable and refillable are banned, as well as all single-use containers
Decreases vaping initiation (and use) among young people	<p>0</p> <p>Limited deterrent effect – the status quo allows disposable vapes to continue to be available and appealing to young people. Although we have seen some market changes from the current regulations in place, the disposable market may increase again.</p>	<p>++</p> <p>Likely to positively impact youth vaping by removing from the market devices the evidence suggests are particularly attractive to youth because of their very low cost and ease of concealment.</p> <p>2023 evidence of high use of the vapes covered by Option 2 (ie, 58.1% of Year 10 students who had ever tried vaping³⁰).</p>	<p>++</p> <p>Likely to positively impact youth vaping by removing from the market devices the evidence suggests are particularly attractive to youth because of their very low cost and ease of concealment, and the current next most affordable product (ie, pod vapes) based on market observations.</p> <p>2023 evidence of high use of the vapes covered by Option 3 (ie, 64.9% of Year 10 students who had ever tried vaping³¹).</p>
Supports ongoing availability and accessibility of vapes to adult smokers to help them to quit smoking	<p>0</p> <p>Unlikely to have much impact on adults who quit.</p>	<p>0</p> <p>Unlikely to have much impact on adults who quit. A quarter of adults smoking use vapes that would be banned under Option 2, but prefilled pod style vapes are relatively similar</p>	<p>-</p> <p>May have some negative impact on adults quitting smoking. Significant proportions of adults who smoke (63.3%) start out using either vapes that would be banned under Option 2, or prefilled pods, which would be banned under Option 3. The remaining refillable style devices are not as straightforward to use which may</p>

³⁰ Based on four options of disposables (58.1%), reusable + pods (6.8%), reusable + tank (10.2%), don't know (25%). The percentage stated is the first figure.

³¹ Based on four options of disposables (58.1%), reusable + pods (6.8%), reusable + tank (10.2%), don't know (25%). The percentage stated is the sum total of disposables (58.1%), reusable + pods (6.8%).

	Option 1 – Status Quo / Counterfactual	Option 2 – Narrowly defined scope – all vapes that are not both rechargeable and refillable are banned	Option 3 - Widely defined scope – all vapes that are not both rechargeable and refillable are banned, as well as all single-use containers
		in ease of use and price, and would remain available to switch to.	pose a barrier to trying vaping as an alternative to smoking, particularly for those adults who have learning disabilities or dexterity issues.
Ease and cost of implementation	0 There will be no additional implementation costs	- Implementation costs for retailers and suppliers will include the disposal of existing stocks of disposable vapes, and there may be some redevelopment costs for industry. s 9(2)(h)	- Implementation costs for retailers and suppliers will include the disposal of existing stocks of disposable vapes (including single use pod and tank products). Will likely require greater redevelopment costs for industry than with Option 2. s 9(2)(h)
Would the policy be clear and workable for New Zealand?	0 Banning disposable vapes has been heavily called for	+ Has been heavily called for but unlikely to address concerns that the ban will be worked around with similarly low-price reusable vapes.	+ May be regarded as more likely to address concerns about workarounds in theory compared to Option 2, but no guarantee it will achieve this in practice.
Overall assessment	0	2+	1+

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

- 71. On balance the Ministry’s preferred option is Option 2 – Narrowly defined scope – all vapes that are not both rechargeable and refillable are banned. This option is a proportionate response to meeting the objectives based on the available evidence and balances the competing objectives of reducing youth vaping and achieving the Smokefree 2025 goal by (amongst other things) allowing access to vaping products for adults as a smoking cessation tool. It is unclear whether the additional trade-offs involved in pursuing a wide definition would sufficiently target youth vaping. Given the observed market shift towards pod-vapes the Ministry anticipates there may be a reported increase in use of pod vapes by young people when the next ASH data is released later this year.³² However, we also know young people are adaptive and have previously had high rates of using tank style devices (ie, 47% in 2021) and may readily shift back to using them. Addiction will add an additional motivator to access whatever kind of device is available.
- 72. We do know young people are particularly price sensitive,³³ so we would expect to see a reduction in youth vaping as the cost of vapes rise. Unfortunately, a wide definition is no guarantee of removing ‘pocket money’ vapes from the market. The most effective policies to control price will be through specific price levers, such as excise duties and/or minimum prices.
- 73. Finally, available evidence indicates that when initially contemplating using vapes to support smoking cessation, ease of use and low price are important factors to encourage adults to trial vaping.

Example 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

³² This is anticipated due to the similar low price point (and associated marketing and flavours) of pod-vapes that likely appeal to young people. We expect new ASH data in November or December 2024.

³³ Jawad, M., Lee, J. T., Glantz, S., & Millett, C. (2018). Price elasticity of demand of non-cigarette tobacco products: A systematic review and meta-analysis. *Tobacco Control*, 27(6), 689–689. <https://doi.org/10.1136/tobaccocontrol-2017-054056>

IARC Working Group on the Effectiveness of Tax and Price Policies for Tobacco Control, & International Agency for Research on Cancer. (2011). Effectiveness of tax and price policies for tobacco control (Ser. IARC Handbooks of Cancer Prevention, v. 14). International Agency for Research on Cancer.

Extending the ban to the supply and distribution of the products in New Zealand and imports

74. Cabinet agreed to ban sale and manufacture of disposable vaping products, and then to additionally extend the ban to include supply and distribution. We also considered whether the ban should extend to imports.
75. Extending the ban to include supply and distribution closes any loophole where the products could potentially be given away for free with other products even if not technically sold. It will ensure disposable vapes are removed from the New Zealand retail market. Import for commercial sale purposes becomes redundant because there is no legal retail market. In theory import for personal supply could occur and this could lead to importing for the purpose of commercial illicit supply, so it may be advisable to also ban imports. However, the New Zealand Customs Service advises it will be operationally difficult to enforce an importation ban at the border.
76. The Ministry's preference is to defer decisions on imports to allow time for assessment of the effectiveness of the sale, manufacture, supply and distribution ban, along with detailed costs of introducing import controls.

What options are being considered? – increasing penalties

Increasing penalties

Option One – Status Quo / Counterfactual

77. This involves no change to the current level of fines and infringements for selling regulated products to minors.

Option Two – Increase penalties as per Cabinet's decision

78. The Cabinet paper "Smokefree 2025 – Crackdown on Youth Vaping," reflects the decisions made by Ministers on 18 March 2024, to amend the Smokefree Act to:
 - a. set the maximum penalty for illegal sales of regulated products to minors at \$100,000 for a body corporate (increased from \$10,000) and \$10,000 for an individual (increased from \$5,000); and
 - b. set related infringement offences at \$1,000 for individuals (increased from \$500) and \$2,000 for a manufacturer, importer, distributor or retailer (increased from \$500).

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

	Option One – <i>Status Quo / Counterfactual</i>	Option Two – Increase penalties as per Cabinet’s decision
Decreases vaping initiation (and use) among young people	0	+ May have some impact on uptake of youth vaping if it reduces access to young people (this could also positively reduce inequities). Some young people are buying directly from retailers, and some are on selling them through social supply
Supports ongoing availability and accessibility of vapes to adult smokers to help them to quit smoking	0	0 Targeted at sales occurring to young people so no impact on adults using vaping products to quit
Ease and cost of implementation	0	+ Straightforward to change via legislation. Highest fines still require taking prosecution, but public interest threshold will be more easily met given the higher penalty
Would the policy be clear and workable for New Zealand?	0	+ Likely to be supported by public as there have been significant calls for higher penalties for underage sales
Overall assessment	0	3+

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

79. The Ministry’s preferred option is the proposal Cabinet has agreed to, which is to significantly increase the maximum fine level for illegal sales to minors and to also increase the related infringement fee. This will signal to retailers that selling these products to minors is a serious offence.
80. Further review of the compliance settings more broadly is underway, including whether additional compliance and enforcement tools are necessary, and will be important to ensure the efficacy of increasing penalties and infringement fees in achieving the policy intent.

Example 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

What are the marginal costs and benefits of the option?

Affected groups (identify)	Comment <i>nature of cost or benefit (eg, ongoing, one-off), evidence and assumption (eg, compliance rates), risks.</i>	Impact <i>\$m present value where appropriate, for monetised impacts; high, medium or low for non-monetised impacts.</i>	Evidence Certainty <i>High, medium, or low, and explain reasoning in comment column.</i>
Additional costs of the preferred options compared to taking no action			
Regulated groups	<p>Manufacturers: Increased one-off cost for manufactures who currently produce disposable vapes to redevelop products to meet the new requirements for vapes to be both refillable and rechargeable.</p> <p>Retailers and distributors/suppliers: Possible loss on stock not sold before requirements take effect, and profit loss due to possible reduced sales (depending on the level of sales of this type of product before the change). Possible costs of purchasing alternative reusable vaping products.</p> <p>All: Ongoing loss of profit from disposable vapes.</p> <p>Depending on stock levels and transition times, some manufacturers, suppliers, and retailers may need to safely dispose of non-compliant stock.</p>	<p>Uncosted</p> <p>Uncosted</p> <p>Uncosted</p> <p>Low</p>	<p>Low - We do not have any information about how much profit comes from disposable vapes for retailers and distributors/suppliers. It would be difficult to estimate accurately given likely commercial sensitivity regarding manufacture of vapes. There may also be variance depending on the size of the business.</p> <p>A transition period of at 6 months will allow businesses time to run-down stocks.</p>
Regulators	<p>Initial implementation effort will be required in setting up IT System changes to support the vaping product notification process (including declaration of compliance with disposable vape ban), and sector guidance development. Increased ongoing cost of enforcement of disposables policy – including training and guidance for smokefree enforcement officers on what constitutes a disposable vape and, as required, assessing whether individual products are compliant.</p> <p>Potential increased cost of taking prosecutions to enforce the ban and of taking more prosecutions in respect of illegal sales. Greater enforcement resource where we see prosecutions increasing. Effects of these changes on the New Zealand vaping market is</p>	Uncosted – (Medium)	<p>Medium – although we do not have a dollar figure, there will be costs associated with enforcement of the ban and work will need to be undertaken to establish the most effective and efficient way to carry this out. There are also costs in taking a prosecution. Higher penalties may lead to more defended hearings for both prosecutions and infringement notices. Or later guilty pleas.</p>

	difficult to predict but a commercial illicit market is a possibility. This may be less likely with the preferred option of a narrowly defined ban that aligns with the direction other countries are taking (including our trading partners).		
Others (eg, wider govt, consumers, stop smoking services that provide vapes etc)	Reduced consumer choice for adults as they would not be able to purchase disposable vapes. Relatedly possible loss of products that consumers have found convenient or enjoyable. The prohibition may increase consumer costs by requiring the purchase of reusable vapes, which may reduce the appeal to use vapes for smoking cessation or potentially increase the financial burden for some consumers who continue to use vapes (which is difficult to quantify using available data). Any decrease in switching to vaping may see an increase in poor health outcomes for those who continue or return to smoking.	Uncosted – Low - observational ly the reusable products available are more expensive than the disposable products	Uncertain - we do not have sufficient detail. We also do not know if and how any additional costs to the vaping industry from the ban will be offset.
Total monetised costs		Uncosted	Low
Non-monetised costs		<i>Medium</i>	<i>Low</i>
Additional benefits of the preferred options compared to taking no action			
Regulated groups	Retailers and distributors/suppliers – Ongoing benefit of sales of alternative (more expensive) reusable products.	Uncosted	Low
Regulators	Over time there should be lower regulation cost due to improved compliance.	Low - uncosted	Low – experience to date is that ongoing compliance and enforcement activity is likely.
Others (eg, wider govt, consumers, etc.)	Increase in cost of vapes, which should reduce appeal to youth and lower youth uptake (thus improving health and wellbeing).	Uncosted - Medium	Medium
	Ongoing environmental benefits – reduced litter, reduced use of precious metals and production of single use plastics.	Uncosted - Medium	Medium
	Ongoing benefit of reduction in fires, such as in waste/recycling trucks.	Uncosted - Medium	Medium

Total monetised benefits		Uncosted	Low
Non-monetised benefits		<i>Medium</i>	<i>Medium</i>

81. Some aspects are very difficult to predict. Changes to regulations for regulated products can have unintended consequences. For example, the banning of flavoured pods in the US resulted in young people switching to disposable vapes,³⁴ but also led to an increase in youth smoking.³⁵
82. Regulation can also lead to increases in an illicit market. An example is tight regulation in Australia (prescription only access), which has led to significant illicit supply (87% of vapers report obtaining vapes without a prescription.)³⁶ While the changes being proposed in New Zealand go nowhere near as far, we have already seen retailers selling products that are no longer legal for discounted prices, as they try to offload old stock after regulations take effect.³⁷ This can have the unintended consequences of making vapes more affordable and thereby accessible.
83. We will need to monitor for both intended and unintended consequences.

Section 3: Delivering an option

How will the new arrangements be implemented?

84. The banning of disposables policy would require amendments to the Smokefree Act, with relevant penalties and infringements introduced. The requirement would come into effect after a 6-month notification period. Enforcement would be carried out by smokefree enforcement officers.
85. As there will be no importation ban, no amendments to Customs legislation are required.
86. The increase in penalties would require amendments to the Smokefree Act.

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

87. Compliance with new requirements will be monitored through continuing regular Smokefree Enforcement Officer compliance visits to retailers, and monitoring of online stores, to ensure that retailers are compliant with age-of-sale and disposable vape restrictions.

³⁴ [FTC Report Highlights Dramatic Surge in Sale of Flavored Disposable E-Cigarettes and Menthol E-Cigarette Cartridges | Federal Trade Commission](#)

³⁵ Cotti, Chad D and Courtemanche, Charles J and Liang, Yang and Maclean, Johanna Catherine and Nesson, Erik T and Sabia, Joseph J, *The Effect of E-Cigarette Flavor Bans on Tobacco Use*, National Bureau of Economic Research, Working Paper, 2024, [The Effect of E-Cigarette Flavor Bans on Tobacco Use | NBER](#)

³⁶ [National Drug Strategy Household Survey 2022–2023: Young people’s use of vapes and e-cigarettes - Australian Institute of Health and Welfare \(aihw.gov.au\)](#)

³⁷ [Vape stores flouting new laws, University of Otago study shows | RNZ News](#)
[Specialist vape store audit reveals poor compliance with new e-cigarette regulations - The New Zealand Medical Journal \(nzmj.org.nz\)](#)

88. Increased penalties should result in:
 - a. the number of prosecutions going up in the short term, as higher penalties should make it easier to pass the public interest threshold
 - b. the percentage of failed Controlled Purchase Operations going down over time as higher penalties will incentivise compliance.
89. Removal of disposable vapes, and reduced access (due to better age-of-sale compliance), should result in youth vaping rates going down. This can be measured via the ASH survey, NZHS survey and ITC youth survey.
90. The intention is that this will occur without impacting smoking cessation rates. This can be measured via the NZHS survey and ITC adult survey.
91. Removal of disposable vapes should result in overall higher prices – the Ministry will monitor the market.
92. Any changes to regulation can incentivise increases in the illicit vape market. Auckland University will help us to establish a baseline for the illicit vape market and then monitor any changes over time.
93. A review of the vaping compliance system is underway. This includes consideration of what further powers smokefree enforcement officers may need for increased enforcement.