

Vaping and smokeless tobacco

Ministry of Health position statement – Vaping products

In 2011, the Government set a goal for Smokefree 2025 ([/our-work/preventative-health-wellness/tobacco-control/smokefree-aotearoa-2025](#)). The goal aims to reduce smoking prevalence to minimal levels.

The Ministry of Health believes vaping products have the potential to make a contribution to the Smokefree 2025 ([/our-work/preventative-health-wellness/tobacco-control/smokefree-aotearoa-2025](#)) goal and could disrupt the significant inequities that are present.

The potential of vaping products to help improve public health depends on the extent to which they can act as a route out of smoking for New Zealand's 550,000 daily smokers, without providing a route into smoking for children and non-smokers.

The Ministry of Health encourages smokers who want to use vaping products to quit smoking to seek the support of local stop smoking services. Local stop smoking services provide smokers with the best chance of quitting successfully and should support smokers who want to quit with the help of vaping products.

Expert opinion is that vaping products are significantly less harmful than smoking tobacco but not completely harmless. A range of toxicants have been found in vapour including some cancer causing agents but, in general, at levels much lower than found in cigarette smoke or at levels that are unlikely to cause harm. Smokers switching to vaping products are highly likely to reduce their health risks and for those around them.

When used as intended, vaping products pose no risk of nicotine poisoning to users, but e-liquids should be in child resistant packaging. Vaping products release negligible levels of nicotine and other toxicants into ambient air with no identified health risks to bystanders.

Currently there are no mandatory product safety requirements specifically for vaping products in New Zealand, however generic product safety standards apply.

The Ministry of Health will continue to monitor the uptake of vaping products, their health impact at individual and population levels, including long term effects and their effectiveness for smoking cessation as products, evidence and technologies develop.

The Ministry of Health will also continue to meet its obligations under Article 5.3 of the WHO Framework Convention on Tobacco Control to protect public health policy from commercial and other vested interests of the tobacco industry.

Key Messages

- The best thing smokers can do for their health is to quit smoking for good
- Vaping products are intended for smokers only
- The Ministry believes vaping products could disrupt inequities and contribute to Smokefree 2025
- The evidence on vaping products indicates they carry much less risk than smoking cigarettes but are not risk free
- The Cochrane Review found that vaping products can help people to quit smoking, but acknowledges that the evidence is weak due to little data
- Smokers who have tried other methods of quitting without success could be encouraged to try vaping products to stop smoking. Stop smoking services should support smokers using vaping products to quit
- There is no international evidence that vaping products are undermining the long-term decline in cigarette smoking among adults and youth, and may in fact be contributing to it
- Despite some experimentation with vaping products among never smokers, vaping products are attracting very few people who have never smoked into regular vaping product use

- When used as intended, vaping products pose no risk of nicotine poisoning to users, but e-liquids should be in child resistant packaging
- The Ministry of Health is identifying safety standards for vaping products in New Zealand. In the meantime, vapers should buy their products from a reputable source like specialist retailers.

Use of vaping products for stopping smoking

There is a good rationale for people to use vaping products to help them stop smoking as vaping products can provide nicotine, which is what people desire from smoking.

Research into the effectiveness of vaping products in smoking cessation is growing, but the findings from these studies are somewhat mixed and the quality of the evidence is low overall. This is an active area of research and more findings will become available over the next few years.

At this stage, the Ministry of Health does not have enough evidence to recommend vaping products confidently as a smoking-cessation tool. Smokers should use approved smoking-cessation medicines, such as NRT, to support them to stop smoking and seek behavioural support from stop-smoking services.

People who choose to use vaping products (to vape), should aim to stop smoking completely to reduce the harm from smoking. Ideally, they should eventually stop vaping as well.

- [Electronic Cigarettes: Information for health care workers \(pdf, 80 KB\)](/system/files/documents/pages/electronic-cigarettes-information-health-care-workers-oct16v2.pdf)
- [E-cigarettes – information for stop smoking services \(pdf, 458 KB\)](/system/files/documents/pages/vaping-information-for-stop-smoking-services-june-2018.pdf)

Legislation covering vaping products

The Medicines Act 1981 and the Smoke-free Environments Act 1990 (SFEA) regulate

the sale, advertising and use of vaping products, including nicotine liquids.

Nicotine is a scheduled substance under the Medicines Act. It is illegal to sell a vaping product (with or without nicotine) while making a therapeutic claim (e.g. claims to help smokers quit), unless the product has been approved for that purpose by Medsafe.

Vaping products are tobacco products, regulated under the SFEA, if they are manufactured from tobacco.

In *Philip Morris v Ministry of Health* [2018] NZDC 4478, the District Court found that all tobacco products (except types that are chewed or otherwise absorbed through the oral mucosa e.g. snus) may be lawfully imported, sold and distributed under the SFEA. The Crown has not appealed the decision.

An implication of the Court's decision is that the same SFEA regulatory controls apply to smoked tobacco, heated tobacco and vaping products that are manufactured from tobacco. This includes the ban on sales to minors and restrictions on advertising.

In addition, products that look like a tobacco product or smoking pipe and can be used to simulate smoking (toy tobacco products) cannot be sold to a person under 18 years, even if they do not contain nicotine.

The ban on smoking in indoor workplaces, early childhood centres and schools only applies to smoking. It does not apply to vaping or products that are not smoked, such as heated tobacco products. Individual employers and business owners decide whether or not to include vaping in their smokefree policies.

The Ministry of Health is considering how best to apply risk-proportionate regulation across all tobacco products including smoked tobacco, smokeless tobacco and vaping products.

Until the SFEA is amended, retailers should continue to trade responsibly and, in particular, not to advertise or sell vaping products to children and young people under 18 years of age.

Requirements for importers and retailers of vaping products

Seek independent legal advice from your legal advisor for your specific circumstances.

Vaping products are regulated primarily under the Medicines Act 1981 and the Smoke-free Environments Act 1990. Both Acts are available on the [legislation.govt.nz](http://www.legislation.govt.nz) website:

- [Medicines Act](http://www.legislation.govt.nz/act/public/1981/0118/latest/DLM53790.html) (<http://www.legislation.govt.nz/act/public/1981/0118/latest/DLM53790.html>)
- [Smoke-free Environments Act](http://www.legislation.govt.nz/act/public/1990/0108/latest/DLM223191.html) (<http://www.legislation.govt.nz/act/public/1990/0108/latest/DLM223191.html>).

Other legislation may also apply to the advertising, selling and distribution of vaping products depending on the circumstances. This includes the Consumer Guarantees Act 1993, the Hazardous Substances and New Organisms Act 1996, and the Customs and Excise Act 1996.

If you have any doubts about your legal obligations as an importer or a retailer of vaping products, you should seek independent legal advice.

It is the responsibility of manufacturers, importers and retailers to ensure compliance with all legislative requirements.

Regulatory impact statements, consultations and cabinet papers

- Cabinet paper: [Supporting smokers to switch to significantly less harmful alternatives](#) (pdf, 417 KB) (</system/files/documents/pages/supporting-smokers-switch-to-significantly-less-harmful-alternatives-21nov2018-redacted.pdf>)
- Regulatory impact statement: [Supporting smokers to switch to significantly less harmful alternatives](#) (</about-ministry/legislation-and-regulation/regulatory-impact-statements/supporting-smokers-switch-significantly-less-harmful-alternatives>)

- Consultation on Electronic Cigarettes: Analysis of submissions ([/publication/consultation-electronic-cigarettes-analysis-submissions](#))

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