



1 April 2020

Ms Louisa Wall, MP
Chairperson
Health Select Committee
Freepost Parliament
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Parliament Buildings
WELLINGTON 6160

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Dear Ms Wall

Attached are the comments that the New Zealand Food & Grocery Council wishes to present on the *Smokefree Environments and Regulated Products (Vaping) Amendment Bill 2019*.

This may be published in full with my signature redacted.

Yours sincerely

Katherine Rich
Chief Executive



*Smokefree Environments and Regulated
Products (Vaping) Amendment Bill 2019*

**Submission by the New Zealand Food & Grocery
Council**

1 April 2020

NEW ZEALAND FOOD & GROCERY COUNCIL

1. The New Zealand Food & Grocery Council (“NZFGC”) welcomes the opportunity to comment on the *Smokefree Environments and Regulated Products (Vaping) Amendment Bill 2019* (the Vaping Bill).
2. NZFGC represents the major manufacturers and suppliers of food, beverage and grocery products in New Zealand. This sector generates over \$40 billion in the New Zealand domestic retail food, beverage and grocery products market, and over \$34 billion in export revenue from exports to 195 countries – representing 65% of total good and services exports. Food and beverage manufacturing is the largest manufacturing sector in New Zealand, representing 45% of total manufacturing income. Our members directly or indirectly employ more than 493,000 people – one in five of the workforce.

BACKGROUND

3. The aims of the Vaping Bill are to:
 - regulate vaping and vaping products under the *Smoke-free Environments Act 1990* (the Smoke-free Act)
 - broaden the scope for which products are regulated under the Smoke-free Act
 - provide flexibility for future products that may need to be regulated.
4. The Vaping Bill intends the aims will be achieved by:
 - introducing the concept of “regulated products” to allow for a broader range of tobacco, herbal smoking, and vaping products to be regulated under the Smoke-free Act to provide for new products that may need to be regulated in future
 - banning sales of vaping and smokeless tobacco products to people under 18 years
 - extending current restrictions on advertising, promotion, sale, and distribution of tobacco products to all regulated products including vaping products and smokeless tobacco
 - making a distinction between specialist vape retailers and generic retailers, outlining different regulations for each type of retailer
 - prohibiting vaping and heated tobacco products in legislated smoke-free areas
 - enabling standardised packaging requirements to be set for all regulated products, allowing for tailored requirements for different product types acknowledging different risk profiles
 - allowing the Ministry of Health to issue warnings and suspend potentially dangerous products.

OVERARCHING COMMENTS

5. NZFGC is supportive of many of the provisions contained in the Vaping Bill for example those restricting sales to persons under the age of 18 years, adding vaping to the prohibition that currently exists for advertising and sponsorship of tobacco and the use of smokeless tobacco products and the prohibition that currently exists for smoking tobacco in certain places and measures for specialist vape retailers.
6. There are three areas we do not support or believe alternatives could be instituted:
 - annual testing of constituents, where it can be shown constituents have not changed;
 - the blanket prohibition on the use of colourings at the level of the amended Act. We consider that this should be in regulation as is proposed for other product safety measures; and
 - a prohibition on the flavoured vape products that could be sold by a generic retailer. There is no justifiable rationale for limiting flavours to those that have historically been associated with tobacco products.

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7. NZFGC also supports permitting retailers in general stores to continue to encourage customers enquiring for tobacco to consider the less harmful vaping option instead (thus supporting Smokefree 2025) and providing basic usage instructions (these might be provided by manufacturers for distribution with purchase).

DETAILED COMMENTS

Sale to minors and other sale restrictions

8. NZFGC notes that the Vaping Bill clarifies the uncertainty around what cannot be sold to persons under the age of 18 years. We consider that aligning the use and sale of vaping products with the restrictions around the sale of tobacco products to be a consistent approach and one that we support.
9. We note restrictions are placed on incentives to purchase (eg discounts, rewards and loyalty programmes) but that some specialist vape retailers are exempt from these restrictions.
10. We support provisions that permit all retailers to display vape related products in-store contrary to tobacco which must be out of the public's sight.

Advertising and sponsorship

11. NZFGC supports adding vaping and smokeless tobacco products to the prohibition that currently exists for advertising and sponsorship of tobacco. We consider the alignment to be consistent and clear for consumers.
12. We also support the exemptions related to the display of and provision of information about vaping products in any retail store or internet site and the visibility of such products from outside businesses.

Smoke-free areas

13. NZFGC supports adding vaping and the use of smokeless tobacco products to the prohibition that currently exists for smoking tobacco in certain places. The places include indoor workplaces (except for approved vaping facilities), early childhood centres, schools, passenger service vehicles, aircraft, licensed premises, restaurants, casinos and certain gaming machine venues.

Labelling/packaging

14. NZFGC notes that packaging and labelling requirements vaping products and smokeless tobacco products will be set in regulations which in turn will be subject to consultation.
15. The Vaping Bill requires annual testing for constituents of 'prescribed regulated products' by both manufacturers and importers. This appears to be excessive if:
- constituents do not change over the period accompanied by statutory declarations to this effect
 - the testing specifications and results from the overseas manufacturer, as verified by the relevant overseas government agency, is supplied to the importer.
16. In such circumstances, exemption from annual testing could be provided for a set period, say 3 years, before testing was again required.
17. Alternatively, 3 annual tests that verify no change in constituents could result in an exemption from testing for the following year or 2 years so long as no change in constituents was declared in constituents in that period.

Product safety

18. NZFGC notes that product safety measures are to be set mostly in regulations. We note the Vaping Bill, however, prohibits the use of colouring substances in vaping liquids as data does not support their safe use. NZFGC does not support this prohibition. We do not support at the level of the Vaping Bill and we do not support a blanket prohibition that could be changed by regulation. This relies on those relying on the Act to be familiar with the making of amendments, a complexity that can be easily removed.
19. Providing for the prohibition on using colours in regulations, as is the intention with other product safety measures, provides that as research and development changes over time the prohibition position could change over time and the regulations updated. There are 27 colours permitted for addition to foods¹ in New Zealand and each has been subject to risk assessment over time. As the vaping industry develops, it is possible that a number of these food colourings, deemed safe for consumption, may be tested for safety for ingestion through inhalation of vapour aerosol.

Product Notification

20. NZFGC notes that manufacturers and importers are to be required to notify products to the Ministry of Health before they can be marketed or sold in New Zealand. In terms of implementation, our preference is that the notification system is designed to facilitate self-notification by manufacturers and importers to avoid high administrative overhead costs. This would mean the Ministry's involvement would be limited to notification system design and maintenance and therefore a minimal notification fee.

Flavours

21. NZFGC does not agree that only tobacco, mint and menthol flavoured vaping liquid may be sold by generic retailers. There appears to be no basis for reserving other flavoured vaping liquids for specialist vape retailers simply because tobacco products are limited to tobacco, mint and menthol flavours. In fact, the Explanatory Note to the Vaping Bill states that "they [flavours] also seem to be an important factor in supporting smokers to switch"²
22. Limiting sales by generic retailers would be like limiting generic retailers to selling wholemeal and white flour breads and reserving all other breads to bakeries. Just as bakeries do, specialist vape retailers will have the opportunity to sell other specialist vape related products as well as a range of other activities that are not related to general retailers.

Retailer registration and access by minors

23. NZFGC supports the existing position of the Bill that there are no registration requirements for generic retailers of vaping products
24. The Bill proposes that specialist vape retailers be registered and that several requirements attach to such registration:
- the premises are fixed, permanent structures
 - 85% of total sales are to be from vaping products
 - be restricted to persons 18 and older
 - all practicable steps are taken to prevent under-18s from entering
 - sales are reported annually to the Ministry of Health.
25. NZFGC supports all these measures for specialist vape retailers noting that "all practicable steps" to prevent under-18s from entering might include signage but that all other steps

¹ Schedule 16 *Australia New Zealand Food Standards Code*

² Explanatory Note to *Smoke-free Environments and Regulated Products (Vaping) Amendment Bill 2019*

would be taken on the premises to ascertain the customer's age. We note it is a defence in any proceedings for an offence against allowing minors to enter if the customer presented an 'evidence of age' document³. This parallels the provisions in section 245 of *Sale and Supply of Alcohol Act 2012*.

Special arrangements for specialist vape retailers

26. While specialist vape retailers have constraints placed on them, they also have special allowances including:

- Customers being permitted to vape in-store in order to sample products before purchase
- Giving advice and recommendations about products (as can health workers)
- Giving incentives to customers
- No restrictions on flavours
- Using the words 'vape' or 'vaping' in their trading name.

27. NZFGC notes that generic retailers are limited to identifying products and their price to customers while specialist vape retailers can provide advice recommendations and demonstrations of vaping products to customers. NZFGC supports the distinction – providing that retailers in general stores can continue to encourage customers enquiring for tobacco to consider the less harmful vaping option instead (thus supporting Smokefree 2025) and provide basic usage instructions.

Trading names

28. NZFGC notes that generic retailers are prohibited from using 'vape' or 'vaping' in trading names and these are reserved for specialist vape retailers. NZFGC supports the distinction as justified on the basis of the additional requirements attached to registration of specialist vape retailers.

³ Section 30(2A) *Smoke-free Environments Act 1990*