

Submission

By

**THE
NEW ZEALAND
INITIATIVE**

To the Ministry of Health

on the public discussion document

Proposals for a Smokefree Aotearoa 2025 Action Plan

26 May 2021

Prepared by:
Dr Eric Crampton
Chief Economist
The New Zealand Initiative
PO Box 10147
Wellington 6143
eric.crampton@nzinitiative.org.nz

0. INTRODUCTION AND SUMMARY

- 0.1 This submission on the public discussion document *Proposals for a Smokefree Aotearoa 2025 Action Plan* is made by The New Zealand Initiative, a think tank supported primarily by chief executives of major New Zealand businesses. The purpose of the organisation is to undertake research to contribute to the development of sound public policies in New Zealand to help create a competitive, open and dynamic economy and a free, prosperous, fair, and cohesive society.
- 0.2 The Initiative is funded by the subscription fees of its members. The Initiative's membership spans the breadth of the New Zealand economy, from telecommunications and banking to construction, retail, and tertiary education. It also includes two tobacco companies. Our work remains independent; the breadth and diversity of our membership ensures we are not reliant on any one company or sector's continued membership. Our members in the tobacco industry have not been provided an opportunity to provide feedback on this submission.
- 0.3 The Initiative has, over the past several years, undertaken research into tobacco harm reduction policies because of our concern for the inequities caused by the existing tobacco control regime. That research includes *Smoke and Vapour: The changing world of tobacco harm reduction* (2018) and *The Health of the State* (2016). We have maintained a watching brief in this policy area and regularly provide public commentary on policy developments. We also submitted on the Smokefree Environments and Regulated Products (Vaping) Amendment Bill in April 2020, and on vaping regulations in March 2021.
- 0.4 The Discussion Document proposes a series of novel interventions aimed at reducing smoking rates to levels viewed as consistent with SmokeFree 2025. The interventions are considerably more vigorous, and intrusive, than those that have been part of tobacco policy to date.
- 0.5 We believe that few will choose smoked tobacco over reduced harm alternatives as those alternatives become more broadly available. We view the proposed regulatory frameworks around vaping as being the biggest risk to that outcome: the proposed regulations make it harder for smokers to access flavoured vapes, make it harder to get the nicotine concentrations that heavier smokers will find necessary to quit, and make it impossible for some community vape services to continue their work because of occupational licensing restrictions.
- 0.6 We also note that the public policy case for increasingly restrictive measures targeting access to cigarettes is also more fraught when reduced harm alternatives are broadly available. There are debatable, but straightforward, arguments from behavioural economics that can justify strict measures as benefitting even smokers themselves, where no reduced harm alternatives are available. That case is more difficult for the small minority of people who might continue to choose cigarettes despite other safer nicotine delivery mechanisms being widely available. It warrants a reframing of SmokeFree 2025.
- 0.7 Finally, we worry that the proposed measures could easily lead to unintended adverse consequences if legislated. If the government is determined to go ahead with this set of regulatory measures, we urge strong monitoring and review.

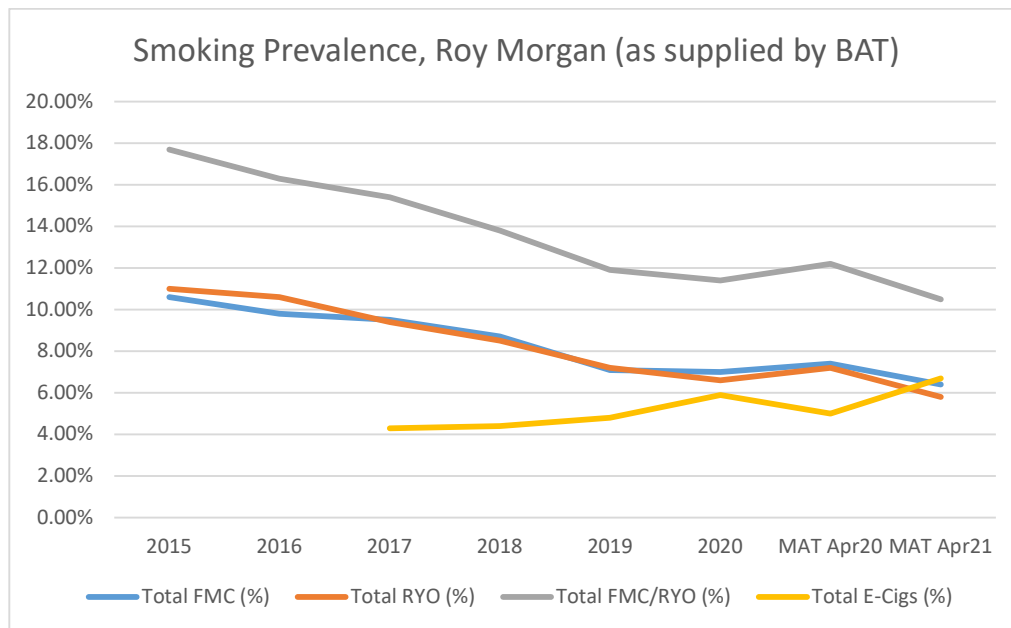
1. SMOKEFREE 2025, REDUCED HARM, AND POLICY RATIONALE

- 1.1 When the Smokefree 2025 target was set in 2011, reduced harm alternatives were not broadly available. Snus showed great promise in Scandinavia but was here asserted to be prohibited under the SmokeFree Environment's Act prohibition on the sale of chewed tobacco, or tobacco used through methods comparable to chewing. Vaping was becoming more prominent in the United States but was here only beginning to be recognised as an aid in smoking cessation.
- 1.2 When people are addicted to nicotine and the only alternative to smoked tobacco are patches and gums that many smokers found distasteful or ineffective, making smoking increasingly less attractive was the only viable policy for reducing smoking rates.
- 1.3 In the absence of palatable reduced-harm ways of accessing nicotine, restrictions could be justified as making even smokers themselves better off under behavioural economics assumptions around the nature of addiction and externalities. Those justifications are debatable – externalities remain a contestable issue. But the case was defensible. Hefty informational campaigns about the harms of smoking would encourage some to quit, and more to avoid taking up smoking in the first place. But addiction makes quitting costly, and the health costs of smoked tobacco to the smoker are substantial. So more coercive measures, like prohibitions on use in a wider set of spaces and hefty increases in tobacco excise, could be justified on behavioural economics grounds.
- 1.4 It was in that context that SmokeFree 2025 was set. Getting smoking rates down to less than 5%, through restrictive measures affecting smokers, could plausibly make smokers themselves better off if internality arguments held.
- 1.5 Since 2011, access to reduced harm alternatives has expanded considerably. But the path was and is fraught. For too long, the government actively discouraged uptake of less harmful alternatives to smoked tobacco. Legalisation of vaping was forced by a court decision that heated tobacco products were not covered by prohibitions on chewed tobacco. Unless amended, the Ministry's proposed regulation of vaping, including restrictions on availability and restrictions on flavourings, will hinder further switching from smoked tobacco. And rather than liberalise access to snus, which has proven effective in reducing smoking in northern Europe, the updated Act explicitly bans it.
- 1.6 Ensuring that smokers who wish to quit have ready access to less harmful alternatives, including not only patches and nicotine gums but also vaping products, heated tobacco products, and snus, is an enabling intervention.
- 1.7 New Zealand still has progress to make in encouraging switching to reduced harm alternatives, including vaping. There remain many smokers who could shift to vaping, or heated tobacco. The Ministry of Health and the Health Promotion Agency began informational campaigns like the Vaping Facts website in 2019 and the Vape To Quit Strong campaign.
- 1.8 These campaigns must overcome strong disinformation about vaping risks. In 2019, illicit THC vaping cartridges containing Vitamin E led to severe lung disease in the United States. Media, including in New Zealand, frequently reported these cases as being due to vaping more generally, or provided headlines that failed to distinguish illicit THC vaping from nicotine vaping.
- 1.9 Media scare campaigns around vaping did real harm. In the UK, the proportion of 11- to 18-year-olds who thought that vaping was less harmful than cigarettes declined from 68% in 2014

to 52% in 2019 – even though all of the scare stories were out of the United States.¹ While we have not seen comparable data in New Zealand, we would expect that these scare stories had similar effects on views about the relative safety of vaping.

- 1.10 The combination of media scare campaigns against vaping and slow legalisation of reduced-harm alternatives will have reduced switching, slowing progress toward SmokeFree 2025.
- 1.11 While declines in smoking rates thus far are not consistent with overall smoking rates of 5% by 2025, according to New Zealand Health Survey data, there has been strong progress. In 2006/07, 18.3% were daily smokers, and 10.7% of daily smokers were heavy smokers. In 2019/20, 11.6% were daily smokers and 6.2% of daily smokers were heavy smokers. The prevalence of heavy smoking has consequently dropped from 1.96% to 0.72%. And daily smoking rates have dropped by almost 40%.
- 1.12 Progress toward SmokeFree 2025 may be stronger than indicated by the Health Survey data. We have not consulted with our tobacco industry members on the content of our submission. But British American Tobacco informed us of a survey they commissioned on smoking prevalence from Roy Morgan. We requested a copy of the survey results, which they provided.
 - 1.12.1 We cannot vouch for the results, as we take them as presented to us. We expect they are correct, but it should be verified. We present the main results below. We would urge the Ministry, and the Committee, to seek the results directly from Roy Morgan to verify them, or to confirm against the next iteration of the New Zealand Health Survey. If the results presented are accurate, smoking rates have fallen considerably.
 - 1.12.2 As of April 2021, smoking rates had declined to 10.5%, and e-cigarette use rates had increased to 6.7%. This is lower than the daily smoking rates reported in the 2019/20 Health Survey. Continued decline may be expected as availability of and familiarity with reduced-harm alternatives improves.

¹ See Kelland, Kate. 2020. “‘False fears’ about vaping stopping smokers using e-cigs – UK report”. Reuters, 4 March. The story cites survey work commissioned by Public Health England. Available at <https://www.reuters.com/article/health-ecigarettes-britain/false-fears-about-vaping-stopping-smokers-using-e-cigs-uk-report-idUSL8N2AW74B>



- 1.13 We note that tobacco excise returns are consistent with strong recent decline in smoking rates. In FY2020, the government collected \$485m in excise on domestic tobacco production and \$1,683m in excise-equivalent duties for a total of \$2,168m. Revenues for FY2021 were forecast at \$2,180m at Budget 2020. Forecast tobacco excise and duties for FY2021, as of the 2021 Budget Economic and Fiscal Update, have revised substantially. They are now forecast to total \$1,468m. Tobacco excise revenues are forecast to have dropped by close to a *third* in the past year.² It seems unlikely that tourist consumption accounted for a third of tobacco excise revenues prior to the border closing. Tobacco excise returns suggest something substantial has happened in smoking over the past year.
- 1.14 Estimates from Health Survey data from 2019/20, and from Blakely et al 2018, may consequently understate the decline in tobacco consumption. Blakely et al forecasted greater declines in Māori smoking prevalence than had been realised by the 2019/20 Health Survey, but this may have been offset by the substantial drop in tobacco sales in FY2021. Overall daily smoking rates of 11.6% in 2019/20 could potentially be rates of 7.8% today, if rates have dropped in ways consistent with the decline in tobacco excise revenue. In that case, SmokeFree 2025 is already well within reach.
- 1.15 If tobacco excise returns are one third less than had been forecast a year ago, further study is warranted. Did the decline represent less smoking by smokers, or quitting? How much of it represented reduced sales to tourists when the borders were closed? We expect that sales to tourists would be a minor factor, as tourists could be expected to bring duty-free supplies with them. Of the decline in tobacco sales, what proportion was reduced sales to Māori and how much was reduced sales to non-Māori? Until updated Health Survey data is available, it is

² See Notes to the Forecast Financial Statements, B.3, Budget Economic and Fiscal Update 2021, p. 103. Note 1: Sovereign Revenue (Accrual). Treasury projects essentially flat tobacco excise returns over the forecast period after this drop, but their forecasting models are very crude. They particularly do not account for vaping uptake.

difficult to tell. But it is *unsafe* to rely on two-year-old smoking prevalence data when tobacco excise returns suggest a one-third drop in tobacco sales in the past year.

- 1.16 By 2025, every smoker should be aware of reduced harm alternatives. The Ministry of Health and Health Promotion Agency have launched laudable initiatives encouraging switching. Community outreach programmes led by ex-smokers may also continue to assist, if those programmes are not hindered by proposed regulations restricting such work. If reduced harm alternatives are not accessible to all smokers and potential smokers at that point, it will be consequence of policy failures in setting the regulatory framework for those alternatives.
- 1.17 Broader availability of reduced harm alternatives to smoked tobacco should lead to a reconsideration of how we think about the SmokeFree 2025 target.
- 1.18 When viable alternatives to smoked tobacco are available, making smoking less attractive, whether by reducing a cigarette's nicotine content, removing its filter, or making it more difficult for smokers to find the product, is not the only route to reducing the harms associated with smoking. Encouraging smokers to find the reduced harm alternative that works best for them becomes possible. And there is progress yet to make in familiarising smokers with less harmful alternatives.
- 1.19 If no alternative to smoking exists for those addicted to nicotine, a plausible but debatable case can be made that most smokers are benefitted by restricting their access to tobacco. When smokers are well informed about alternatives, and about the health harms of smoking, and they nevertheless choose to smoke rather than a reduced harm alternative, that case is more fraught. Addiction alone cannot make the case: less harmful ways of using nicotine are available. We then have a confronting public policy problem, which is in essence a value judgement. Can an individual be allowed to choose to do something, knowing that it is harmful? Nicotine addiction alone cannot justify restrictions if less harmful ways of accessing nicotine are rejected by the smoker.
- 1.20 This leads us to a divergence of approaches to thinking about the SmokeFree target. If the target is taken as a goal that must be achieved, regardless of cost and regardless of the views of current smokers, then even very costly and punitive approaches can be justified in achieving it. In that case, strong monitoring against unintended adverse consequences can be warranted.
- 1.21 If the target of smoking prevalence of less than 5% instead is viewed as an outcome that is likely to obtain when smokers have a wide variety of reduced-harm alternatives to smoked tobacco, then hastening the availability of reduced-harm alternatives and countering disinformation about those alternatives becomes more important. And the government's slow movement toward accepting reduced harm alternatives should be taken into account. The government's position, until very recently, was that these alternatives were illegal.
- 1.22 If we are not on track to hit 5% prevalence by 2025, it will be reached soon after. This is important context when thinking about additional measures that have their own risks and costs. Forecasts from Blakely et al 2018 should be revised to account for the substantial drop in tobacco excise returns over the past year. It is impossible to tell from the excise data whether the drop is due to more people quitting entirely, or existing smokers smoking less. But excise returns are 32.6% lower than was forecast at Budget 2020. If smoking rates are consequently one third lower than otherwise expected, progress toward SmokeFree 2025 is stronger than had been expected, and the justification for more restrictive policies is weaker.

2. SMOKEFREE 2025: POLICY RISKS

- 2.1 The Action Plan recommends licensing all tobacco and vaping retailers, with a view to reducing tobacco availability by reducing outlet density, and by restricting sales to R18 venues and/or pharmacies. It recommends implementing tobacco prohibition, one year at a time, by increasing the minimum age for tobacco supply by one year every year until New Zealand achieves full prohibition of tobacco. It suggests reducing nicotine in smoked tobacco products to very low levels, prohibiting filters in smoked tobacco products, and prohibiting innovations that increase the appeal and addictiveness of smoked tobacco products. While increased excise is not supported, minimum prices for tobacco products are recommended. And it recommends stronger efforts in supporting stop smoking services and enhanced efforts not just to support young people in staying smokefree, but also vape-free.
- 2.2 Restrictive policies are more difficult to justify when smoking is more likely to be an exercised choice, rather than a habit compelled by addiction. If someone chooses to smoke, despite wide availability of reduced-harm alternatives and ample information about the harms of smoking, it is harder to make the case that the smoker can be made better off by further restrictions on tobacco. Similarly, if tobacco consumption has dropped by a third over the past year, it is harder to make the case that restrictive policies are needed in pursuit of SmokeFree 2025 – at least without revised forecasts taking into account more recent data.
- 2.3 Normally, we can draw from a strong international literature to see how policies have turned out in other places. Most of the proposals here are novel.
- 2.4 Continued and enhanced support for smokers in shifting to reduced harm alternatives is warranted. The government needs to ensure, though, that the regulatory environment is not unduly restrictive to uptake of those alternatives. Making it difficult for smokers to find the flavours that support their shift to less-harmful alternatives, while running extensive support programmes to encourage such shifts, and banning some stop-smoking providers from continuing their work, is akin to standing on the accelerator while the handbrake is on.
 - 2.4.1 The Action Plan asks what measures would be consistent with Māori governance of tobacco control. We have no views on this matter, but suggest that occupational licencing provisions that forbid Māori support services from continuing operation if staff have not completed Ministry-endorsed training seems the exact opposite of what the government here wishes.
- 2.5 The Action Plan also asks what priorities should be for research, evaluation, monitoring and reporting.
 - 2.5.1 We suggest strong monitoring of the consequences of vaping regulations that risk making it harder for smokers to shift to vaping. Restrictions on access to flavourings and restrictions on nicotine concentration are particularly likely to do harm; the consequences of these regulations need to be monitored so that the rules can be revised if they do harm.
 - 2.5.2 We also urge monitoring of whether proposed occupational licencing provisions substantially affect services helping smokers to shift to vaping, particularly Māori providers, and whether those restrictions hinder progress towards SmokeFree 2025. Remaining proposed measures are more difficult to support.
- 2.6 Many of the proposed measures risk strengthening illicit tobacco markets, as noted in the Action Plan. Making it more difficult for smokers to find legal tobacco retailers may encourage shifting to reduced-harm alternatives, but it may also encourage smokers to shift to illicit

providers. And, as smoking rates continue to decline, tobacco availability will decline as fewer outlets find tobacco to be worth stocking.

- 2.7 Legal restrictions on the number of outlets allowed to sell tobacco will predictably confer rents on those outlets with an increasingly scarce and increasingly valuable licence to sell tobacco. While this will increase the cost of tobacco to smokers, it would be odd to pursue that end through licensing rather than excise. A recent metastudy³ found that while there is some support for an association between outlet density and youth smoking, “current literature does not provide consistent evidence for a positive association between outlet density and smoking among youth.” The policy may not be as effective as the Ministry wishes. If the Ministry does pursue this policy, however, staggering the implementation of any reduction in outlet density would facilitate better evaluation of effects than has thus far been possible in the literature.
- 2.8 R18 venue restrictions seem motivated only by an urge to further restrict the number of outlets selling tobacco. Regulations already mean that youths cannot see any tobacco that is on sale at existing outlets, so it is difficult to see what additional purpose is served by R18 venue restrictions. It seems a way of banning dairies from selling tobacco, without formally banning dairies from selling tobacco. We also expect that if the policy results in alcohol vendors taking up tobacco sales, the Ministry’s alcohol control team may have a view on the potential consequences.
- 2.9 Enhanced monitoring of illicit tobacco sales becomes strongly warranted under proposals that would encourage illicit sales. If tobacco excise returns drop by more than would be justified by reported declines in smoking rates, shifts to illicit markets might be indicated. Currently, one tobacco company pays for site surveys estimating illicit tobacco prevalence by the proportion of illicit packages found in trash and litter. If that data cannot be relied upon because it is tobacco-sponsored,⁴ we urge that the Ministry evaluate the underlying method to ensure it is reliable and take up the data collection itself.
- 2.10 Proposals to implement prohibition incrementally, year by year, in the first instance risks encouraging younger people to seek supply from older cohorts, and later encourages other illicit supply. It is also a substantial restriction on individual liberty that risks further substantial restrictions on individual liberty in other consumption areas to come. Youth smoking rates have declined substantially. One could, on that basis, argue that few youth would be adversely affected – since few now make the choice to smoke cigarettes. But one could just as similarly argue that the prohibition is not needed, on the same basis. Very small numbers of youths taking up smoking does not justify prohibition extending to an increasingly large cohort.
- 2.11 Prohibition on filters will make the smoking experience less pleasant for many smokers, which could reduce smoking rates and have health benefits through that mechanism. It will also

³ Paulien A W Nuyts, MSc, Lisa E M Davies, MSc, Anton E Kunst, PhD, Mirte A G Kuipers, PhD, The Association Between Tobacco Outlet Density and Smoking Among Young People: A Systematic Methodological Review, *Nicotine & Tobacco Research*, Volume 23, Issue 2, February 2021, Pages 239–248, <https://doi.org/10.1093/ntr/ntz153>

⁴ PMI’s programme was sceptically assessed by Gallagher, Allen, Karen Evans-Reeves et al, 2019. “Tobacco industry data on illicit tobacco trade: a systematic review of existing assessments.” *Tobacco Control* 28: 334-5. They argued that the industry measures overstated illicit trade, because of assessments that leaned toward viewing packs as illicit. If any bias in the assessments are constant over time, then the time trends identified in the data would be reliable even if the assessments lean toward finding illicit packaging. But if the Ministry does not trust the provided data, the Ministry could implement its own version of the survey. It would wish to do so well in advance of setting new rules, so that a baseline for comparison could be established.

make those smokers worse off through a worsened experience, if they continue to smoke. It may also encourage smokers to import filters and shift to roll-your-own products.

- 2.11.1 We also note that figures from Keep New Zealand Beautiful on littering rates are extrapolations from potentially unrepresentative sites. For example, their suggestion that New Zealand has 10 billion littered cigarette butts, given tobacco excise returns at the time were consistent with consumption of about two billion cigarettes per year, were rather implausible.⁵
- 2.12 Minimum cigarette prices make little sense in the context of high excise rates. Unless anyone is selling cigarettes as a loss-leader, the minimum price of legal cigarettes is excise plus the manufacturing and distribution cost of the cheapest cigarettes on the market for the cheapest online retailer. The Ministry has provided no evidence of the use of cigarettes as loss-leader.
 - 2.12.1 If no licensing regime or restriction on outlet density is in place, minimum pricing rules would encourage vendors to compete for smokers as clients – if the minimum price is above the price of supply to those vendors. The government will have a more difficult time in policing retailers against such activities. Currently, competition among vendors prevents retailers from extracting rents from smoking customers. High minimum prices would enforce high margins on low-cost tobacco. This would encourage retailers to encourage customers towards those higher margin products, and away from more expensive ones, and to encourage sales of those products more generally.⁶
 - 2.12.2 If a licensing regime restricting competition among retail outlets is in place, a minimum pricing regime would confer higher rents on licenced retailers. Why the government would wish to do this is puzzling. Whatever would be achieved in discouraging sales by pushing up prices would be better achieved by excise increases. It would have the same regressive effect, but would at least generate revenue for the Crown.⁷
 - 2.12.3 Both excise increases and minimum prices higher than current retail prices of the lowest priced product would encourage shifts into the illicit market.
 - 2.12.4 If minimum pricing is put in place, the Ministry will need to strengthen any existing measures aimed at preventing retailers from promoting cigarette sales.
- 2.13 Restrictions on nicotine content seem highly likely to result in adverse unintended consequences.
 - 2.13.1 Smith et al (2018)⁸ suggest that nicotine content restrictions at moderate nicotine levels are likely to encourage greater amounts of smoking, but restrictions to very low levels are likely to encourage smokers to shift to other ways of getting nicotine. They also warn that smokers

⁵ See discussion in Crampton, Eric. 2019. "Rubbish numbers distort our perspective". Dominion Post. 21 September. Available at <https://www.stuff.co.nz/business/opinion-analysis/115943031/rubbish-numbers-distort-our-perspective> . See also further discussion at

<https://offsettingbehaviour.blogspot.com/2019/09/rubbish-statistics.html>

⁶ See discussion, in an alcohol minimum pricing context, here.

<https://offsettingbehaviour.blogspot.com/2012/07/markets-hate-profits.html>

⁷ See discussion, in an alcohol minimum pricing context, here.

<https://offsettingbehaviour.blogspot.com/2010/08/minimum-alcohol-pricing-and-economic.html>

⁸ Smith, Tracy T et al. "Whether to push or pull? Nicotine reduction and non-combusted alternatives - Two strategies for reducing smoking and improving public health." Preventive medicine vol. 117 (2018): 8-14. doi:10.1016/j.ypmed.2018.03.021

“could try to add nicotine to their cigarettes, possibly by adding e-liquids or other nicotine-containing fluids.” They also warn some smokers may see lower-nicotine cigarettes as less harmful, so strengthened information campaigns will be necessary.

- 2.13.2 The Ministry may wish to test whether there are any health risks of smoking e-liquids dried onto loose tobacco or other synthetic materials. The Ministry will be aware of cases where prisoners responded to a smoking ban by trying to smoke their nicotine patches,⁹ or nicotine-infused tea leaves.¹⁰
- 2.13.3 If illicit markets become the only place where full-strength tobacco is available, the Ministry should expect greater shifts to illicit markets, greater need for monitoring of illicit markets, and greater enforcement action needed.
- 2.14 Finally, we urge that measures encouraging vape-free youth do not inadvertently encourage youth smoking. We note that restrictions on vape flavourings in California resulted in higher youth smoking rates.¹¹ We also note that minimum legal sale age laws on e-cigarettes in the United States increased youth smoking participation by about one percentage point.¹² Smoking and vaping are substitutes for one another. Discouraging youth vaping, if they otherwise would be smoking, can be risky.

⁹ Johnston, Kirsty and Clio Francis. 2011. “Inmates smoke nicotine patches”. *Stuff*. 30 June. Available at <http://www.stuff.co.nz/national/politics/5209835/Inmates-smoke-nicotine-patches>

¹⁰ University of Queensland Centre for Health Services Research. 2018. “Prisoners smoke nicotine-infused tea leaves.” 16 August. Available at <https://chsr.centre.uq.edu.au/article/2018/08/prisoners-smoke-nicotine-infused-tea-leaves>

¹¹ Friedman AS. A Difference-in-Differences Analysis of Youth Smoking and a Ban on Sales of Flavored Tobacco Products in San Francisco, California. *JAMA Pediatr*. Published online May 24, 2021. doi:10.1001/jamapediatrics.2021.0922

¹² Dave, Dhaval et al. 2019. “The effects of e-cigarette minimum legal sale age laws on youth substance use”. *Health Economics* 28(3): 419-36.