

Submission to the Health Committee on the Smokefree Environments and Regulated Products Amendment Bill (No 2)

Introducing Mana Mokopuna – Children and Young People's Commission

Mana Mokopuna – Children and Young People's Commission is the independent Crown entity with the statutory responsibility to advocate for the rights, interests, participation and wellbeing of all children and young people (mokopuna) under 18 years old in Aotearoa New Zealand, including young persons aged over 18 but under 25 years old years if they are, or have been, in care or custody.

We independently advocate for and with mokopuna within the context of their families, whānau, hapū, iwi and communities, based on evidence, data and research, including direct mokopuna experiences and views.

Our work is grounded in the United Nations Convention on the Rights of the Child (the Children's Convention), Te Tiriti o Waitangi and other international human rights instruments. We are a National Preventative Mechanism under the Optional Protocol to the Convention Against Torture, meaning we monitor places where mokopuna are deprived of their liberty, including in the care and protection, youth justice, youth mental health and intellectual disability spaces.

We have a statutory mandate to promote the Children's Convention and monitor the Government's implementation of its duties under the Convention, and to work in ways that uphold the rights of mokopuna Māori including under Te Tiriti o Waitangi. We place a focus on advocating for and with mokopuna who are experiencing disadvantage, and we recognise and celebrate the diversity of mokopuna in all its forms.

Our moemoeā (vision) is *Kia kuru pounamu te rongo* – All mokopuna live their best lives, which we see as a collective vision and challenge for Aotearoa New Zealand.

We support this Bill as the legislation should better support mokopuna rights and well-being

1. Mana Mokopuna – Children and Young People's Commission welcomes the opportunity to provide this submission on the Smokefree Environments and Regulated Products Amendment Bill (No 2) that aims to address youth vaping.¹
2. Our position on this kaupapa is that all mokopuna should be able to live smoke-free and nicotine-free lives. This is consistent with their right to the highest attainable standard of health. We support the Bill given the range of measures it introduces which should further restrict mokopuna from accessing vaping products, including disposable vapes (which the Bill prohibits the manufacture, sale, supply and distribution of).



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¹ [Minister's press release on Amendment Bill #2](https://www.beehive.govt.nz/release/new-bill-crack-down-youth-vaping) <https://www.beehive.govt.nz/release/new-bill-crack-down-youth-vaping>

3. Upfront, it is important to recognise the complex nature of youth vaping. These complexities are well-outlined through the *Protect your breath* campaign and work, which we encourage the Health Committee to read: [The Challenge \(protectyourbreath.co.nz\)](https://protectyourbreath.co.nz). This campaign and work is informed by the findings of the Hā Collective Vaping Survey.² We agree with *Protect your breath* that for mokopuna who want to quit vaping, approaches to address this must be grounded in and understand mokopuna realities and motivations in relation to vaping, so that they resonate with mokopuna effectively.³
4. We note that the Hā Collective Vaping Survey also found that “Young people who are already vaping are protective of those who are important to them, and many said they didn’t want their peers, younger siblings, or cousins to start vaping”, and that “rangatahi who vape are more likely to be concerned about their friends’ health than their own.”⁴
5. All children have rights under the UN Convention on the Rights of the Child (Children’s Convention), to which New Zealand is a States Party. Mokopuna Māori have particular rights under Te Tiriti o Waitangi. The Crown is required to progressively implement the Children’s Convention and give effect to Te Tiriti o Waitangi. Both these treaties form an important basis to uphold and progress the rights of mokopuna. These rights include not to be exploited, to be safe, to have the best health possible, and to be protected.
6. For mokopuna Māori, the Children’s Convention can be read through the lens of Te Tiriti to ensure Māori retain tino rangatiratanga over their taonga, including whānau, mokopuna and their mana or inherent rights.
7. We note that “evidence suggests that developing adolescent brains may be more susceptible to addiction than adult brains, and exposure to addictive substances in this key developmental period is therefore riskier”.⁵ Protecting mokopuna from toxic products is their right under the Children’s Convention. Article 3 states that in all actions concerning children, (including by legislative bodies) the best interests of the child shall be a primary consideration.⁶ A primary consideration has been interpreted by the UN Committee on the Rights of the Child to mean that “decision-makers will have to analyse and weigh the rights of all those concerned, bearing in mind that the right of the child to have his or her best interests taken as a primary consideration means that the child’s interests have high priority and not just one of several considerations. Therefore, a larger weight must be attached to what serves the child best”.⁷
8. Article 24 of the Children’s Convention establishes the duty on States Parties to recognise the right of the child to the enjoyment of the highest attainable standard of health.⁸ Article 33 refers to States taking all appropriate measures, including legislative, administrative, social and educational measures, to protect children from the (illicit) use of drugs.⁹ Banning sales of vapes to under 18 year olds is consistent with these rights, and further administrative and legislative protections are needed because children are still accessing vapes.

² See the Summary Report from the survey at: [637167fb352e284f853d4bd4.HAC003_Survey_FullReport_v23f_visual.pdf \(webflow.com\)](https://637167fb352e284f853d4bd4.HAC003_Survey_FullReport_v23f_visual.pdf)

³ See: [The Challenge \(protectyourbreath.co.nz\)](https://protectyourbreath.co.nz)

⁴ See: [Insights \(protectyourbreath.co.nz\)](https://protectyourbreath.co.nz)

⁵ Ball, J., Christie, G., Hoek, J. & Waa, A., (2024), Youth vaping addiction: How it happens and why it matters, [Youth vaping addiction: How it happens and why it matters | PHCC](https://www.phcc.org.nz/youth-vaping-addiction-how-it-happens-and-why-it-matters)

⁶ [Children’s Convention, Article 3](https://www.unhcr.org/refugees/article/3)

⁷ [General comment No. 14 \(2013\) on the right of the child to have their best interests taken as a primary consideration](https://www.unhcr.org/refugees/article/14), at paragraph 39

⁸ [Children’s Convention, Article 24](https://www.unhcr.org/refugees/article/24)

⁹ [Children’s Convention, Article 33](https://www.unhcr.org/refugees/article/33)

9. Vaping among mokopuna aged 15 to 17 in Aotearoa New Zealand has continued to rise; most recently the New Zealand Health Survey reported 20% of this age group vaped at least monthly, and 15.4% vaped daily.^{10,11} We note that there are a range of reasons why mokopuna vape, and for some mokopuna, it is likely a way for them to deal with challenges in their lives (for example, anxiety, coping with stress, not feeling a sense of belonging, etc).^{12,13} In the Aotearoa New Zealand context, this has been well-explored and highlighted through the *Protect your breath* campaign and work. Insights from rangatahi in relation to vaping in Aotearoa New Zealand show that vaping serves as a coping mechanism for some rangatahi, and that “many young people are using vaping as a mental health regulator, or a means by which ‘to get through the day’”, and that for some rangatahi, vaping seems like a preferable, less-harmful option to other coping mechanisms.¹⁴
10. Youth vaping prevalence in Aotearoa New Zealand remains very high relative to other countries, and large inequities exist between Māori and non-Māori.^{15,16} We are also concerned with the high level of vaping among Pacific mokopuna, especially due to higher numbers of vape retailers in areas with higher Māori and Pacific populations.¹⁷
11. There is also survey evidence that suggests younger secondary school students have higher rates of vaping.¹⁸ Significantly, mokopuna themselves want the government to do more to protect them from the availability and appeal of vaping.¹⁹
12. Mokopuna have been active in advocating for stronger restrictions to prevent mokopuna from vaping, and have identified the wide-availability of vapes in the community, as well as peer pressure as factors in the rapid rise of youth vaping.²⁰
13. It has long been known that nicotine has teratogenic effects harming the unborn child.²¹ Young people who start vaping when they never even smoked is creating a new wave of at-risk offspring because of the addictiveness of nicotine and the difficulty stopping (any form of nicotine) when pregnant.²²
14. Given the original premise of vapes as a smoking cessation tool, the widespread availability of the products is at odds with the policy goal. The measures proposed in this Bill are intended to help reduce the risk of mokopuna under 18 picking up vaping. We support this aim of the Bill, given its alignment with the right of the child to health and for mokopuna to live healthy, drug and addiction-free lives.

¹⁰ Ministry of Health. (2023). Annual Update of Key Results 2022/23: New Zealand Health Survey. Published December 2023: <https://www.health.govt.nz/publication/annual-update-key-results-2022-23-new-zealand-health-survey>

¹¹ Edwards, R., Nip, J., Hoek, J., & Waa, A. (2023). Vaping prevalence and trends: key findings in the 2022/23 NZ Health Survey. Public Health Expert Briefing. <https://www.phcc.org.nz/briefing/vaping-prevalence-and-trends-key-findings-202223-nz-health-survey>

¹² Some of these factors are discussed in the youth vaping context here: [Helping young people to quit vaping - Alcohol and Drug Foundation \(adf.org.au\)](https://www.adf.org.au/helping-young-people-to-quit-vaping)

¹³ [Pacific Peoples Nicotine Free Futures Matada.pdf \(hpa.org.nz\)](https://www.hpa.org.nz/assets/Pacific-Peoples-Nicotine-Free-Futures-Matada.pdf)

¹⁴ See: [nsights \(protectyourbreath.co.nz\)](https://www.protectyourbreath.co.nz/insights)

¹⁵ Edwards, R., et al, *ibid*.

¹⁶ Hoek, J., Ball, J., & Gendall, P. (2024). Smoking and vaping among 14 to 15 year olds: Government action urgently needed. Public Health Expert Briefing. <https://www.phcc.org.nz/briefing/smoking-and-vaping-among-14-15-year-olds-government-action-urgently-needed>

¹⁷ Specialist vape store audit reveals poor compliance with new e-cigarette regulations. Jude Ball, Lesieli Katoa, Janet Hoek. New Zealand Medical Journal (June, 2024) [Specialist vape store audit reveals poor compliance with new e-cigarette regulations - PubMed \(nih.gov\)](https://pubmed.ncbi.nlm.nih.gov/46812345/)

¹⁸ <https://www.asthmafoundation.org.nz/assets/images/A-2021-report-into-youth-vaping.pdf> at figure 1

¹⁹ <https://www.asthmafoundation.org.nz/news-events/2024/youth-want-tighter-vaping-controls>

²⁰ See, for example, the multi-year advocacy by the The Hashtags from Wainuiomata: <https://www.newshub.co.nz/home/new-zealand/2023/05/wainuiomata-rangatahi-group-the-hashtags-want-politicians-to-crack-down-on-youth-vaping.html>

²¹ S. Sailer et al, Impact of Nicotine Replacement and Electronic Nicotine Delivery Systems on Fetal Brain Development. *Int. J. Environ. Res. Public Health* 2019, 16(24), 5113. <https://www.mdpi.com/1660-4601/16/24/5113/htm>

²² [Vaping: The new wave of nicotine addiction \(ccjm.org\)](https://www.ccmj.org/vaping)

We advocate for the Bill to go further

15. To fully protect mokopuna from the risks of vaping and nicotine addiction, and in particular thinking about mokopuna who have not yet started vaping, we advocate for this Bill to go further. We suggest that the Government should restrict mokopuna vape accessibility to a greater degree, by creating a bespoke 18+ only type of outlet that can sell vapes (another option would be using pharmacies with prescriptions only). This would make it much harder for mokopuna who have not yet started vaping to access vapes.
16. In addition to creating a bespoke 18+ only vape outlet, it is extremely important that further protections are rigorously implemented, and existing regulations are enforced. For example, IDs should be checked prior to entry and at time of purchase. A recent study and audit found that R18 signage was suboptimal in most locations and only one store asked for ID on entry to the R18 premises.²³ Although regulations were tightened in December 2023, it is evident that these have not been stringently applied.²⁴
17. We emphasise that both in relation to our further suggestion outlined at paragraph 12 above, and in relation to the measures already outlined in the Bill, that planned approaches that support mokopuna to withdraw from vaping are necessary, to give effect to the Bill in a manner consistent with children's rights.
18. Practically, what this means is that it will be necessary for effective measures to be put in place to ensure that mokopuna who are addicted to vaping are able to be supported as they shift off vapes, for withdrawal to be well-managed, and for mokopuna to have responsive health (physical and mental health) professional support available to them. Schools and community groups and spaces where mokopuna are will also need to play an instrumental role in supporting mokopuna as they quit vaping, and will need to be equipped to support this taking a children's rights, health-based approach.
19. Ensuring mokopuna are well-supported in the process of quitting vaping would align with the principle of acting in mokopuna best interests, and upholding their right to health. This is also consistent with taking a health-based approach, which treats addiction as a health issue, recognising that "once addiction is established, users cannot easily change their behaviour. Therefore, responding with punishment is inappropriate as it is unjust."²⁵
20. We amplify the insights of rangatahi who have shared their views and experiences of vaping. Rangatahi shared that they are distrustful of 'quit vape' campaigns, but that they want to make informed decisions, supported by judgement-free information and conversations that support their self-determination and decision-making.²⁶ We further amplify expert calls in this field for child and youth focused quit vaping services. As Dr Jude Ball, Dr Grant Christie, Dr Janet Hoek, Professor Richard Edwards and Associate Professor Andrew Waa stated, "Support services are urgently needed to help children and adolescents cut down or quit vaping. These must be tailored to relevant age-groups (including primary-school aged children) and to the cultural needs and preferences of young people who vape."²⁷

²³ Specialist vape store audit reveals poor compliance with new e-cigarette regulations. Jude Ball, Lesieli Katoa, Janet Hoek. New Zealand Medical Journal (June, 2024) [Specialist vape store audit reveals poor compliance with new e-cigarette regulations - PubMed \(nih.gov\)](#)

²⁴ Ibid

²⁵ Ball, J., Christie, G., Hoek, J. & Waa, A., (2024), Youth vaping addiction: How it happens and why it matters, [Youth vaping addiction: How it happens and why it matters | PHCC](#)

²⁶ See: [Insights \(protectyourbreath.co.nz\)](#)

²⁷ Ball, J., Christie, G., Hoek, J. & Waa, A., (2024), Youth vaping addiction: How it happens and why it matters, [Youth vaping addiction: How it happens and why it matters | PHCC](#)

21. In a video sharing the voices of Pacific youth presented by Tangata Atumotu Trust, they shared that in relation to smoking and vaping, if they were the Minister of Health, they would ban smoking and vaping, raise the prices to make vaping more expensive and enforce harder restrictions.²⁸
22. Overall in relation to this Bill, we advise the Health Committee to undertake a children's rights impact assessment process to inform its final decision-making. This will make clear what and how children's rights are being supported, and the steps needed to respect, protect and fulfil children's rights.
23. Mana Mokopuna is available and willing to provide advice and support to agencies and select committees to implement the child impact assessment process, in accordance with government guidelines provided by the Ministry of Social Development.²⁹

Recommendations

24. **We recommend** the Bill be passed given it has provisions that enhance protections of mokopuna, and their rights and best interests need to be a primary consideration in decisions about this Bill.
25. **We recommend** the Government goes further to tighten access to vapes as well as cigarettes through as many levers as possible, so that a new generation of mokopuna can live smoke- and nicotine-free lives. Including by going further with this Bill to create a bespoke 18+ only type of outlet that can sell vapes.
26. **We recommend** that planned approaches that support mokopuna to withdraw from vaping, grounded in the realities of mokopuna lives, are required, and that these need to include joined-up and adequately resourced approaches from health professionals, schools and other important people in the lives and communities of mokopuna.
27. **We recommend** the Health Select Committee undertakes a children's rights impact assessment process to inform its final decision-making on this Bill.

²⁸ TANGATA ATUMOTU TRUST - [A Smokefree Aotearoa - The voices of Pacific youth in Ōtautahi \(youtube.com\)](#)

²⁹ Child impact assessment tool; MSD. [Child Impact Assessment Tool - Ministry of Social Development \(msd.govt.nz\)](#)