

**The Retail Crime
Emergency and what's
needed to resolve it**

**Memorandum to the
Hon Chris Hipkins
Minister of Police**

19 October 2022



DAIRY

AND BUSINESS OWNERS GROUP

ABOUT US

The Dairy and Business Owners' Group is currently incorporating and emerged from, and partners with, the Crime Prevention Group. It was the 2021 Smokefree Aotearoa 2025 consultation process that provided the spark for formation. We represent superettes, corner shops, convenience stores, owner-operated service stations as well as liquor, hospitality and other small owner-operated businesses. Nielson (2021) revealed that the convenience sector alone generated \$3.1 billion in sales for 17.34% market share of the entire grocery retail market. We are the third player in the grocery sector. New Zealand's estimated 4,000 dairies and 900 independent service stations provide people and families with what they need when they need it. We represent and positively advocate for owner-operated businesses that are at the heart of communities from our biggest cities to the rural heartland.

OVERVIEW

- We're concerned about the lack of Ministerial responses and appreciate him meeting. Kiri Allan agreed to meet but we've been waiting months for a date. We've never had a reply from the Prime Minister or Dr Verrall or Michael Wood.
- Our objective is to ensure the public, retailers and parliament all benefit:
 1. **It starts from admitting we have we have a crime emergency** and that most crime is not reported because there's a fundamental loss of faith in the system.
 2. **Enlarging the Crime Fund to \$30m, targeting 10,000 retailers.** Using a "High-Trust model" not bureaucracy to speed security delivery (**dairies are the government's unofficial tobacco tax-collector for over a \$1bn in tax and GST**).
 3. **Get smokers into vaping to remove a big driver for ramraids.** We need the Mr Hipkins help to reform the law as we can't actively market the three vape and smokeless tobacco flavours we sell, to 451,000 smokers, even when they ask for a pack of cigarettes.
 4. **We need to adopt the "broken windows" approach where no crime is minor** by better using council paid staff (like turning Auckland Transport's 400 traffic wardens and Transport Officers into UK-Style Police Community Support). This is true community street policing; especially in the CBD's.
 5. **Deploy Artificial Intelligence based street lighting and CCTV in partnership with councils** to close blind spots and to direct camera operators to where issues are to track them.

6. **We need Police and MSD aligned to deal with feral families who don't care where their children are, or what they get up to.** The role of the state is to intervene in the interests of the child not allowing dysfunction to continue.
7. **We need beggars and the homeless off the streets and put into specialist centres, modelled on refugee resettlement, that'll fix addiction, numeracy and literacy etc.** Unbelievably a member saw a person begging among cars in central Auckland including a Police car that just ignored them.
8. **The law of self defence needs to be modelled on that of Australia. It must allow retailers and anyone to defend themselves, their family, their customers and their own property.**

DETAILED INFORMATION:

1. We are in a crime emergency:

- a. Most retail crimes aren't reported. We legally cannot restrain people and Police don't see it as important compared to so-called 'serious crimes.' A recent Huntly ramraid saw the shop owner waiting for hours for Police.
- b. Here is older data that begs the question why is it not updated. In *The Size of Crime in Australia* (1987), they found that out of 1000 alleged offences/crimes there:
 1. 400 are reported to the Police (40%)
 2. 43 are convicted (4.3% found guilty of the charge)
 3. Just 1 person was imprisoned!
- c. *The New Zealand National Survey of Crime Victims* (2001) in fact found that offences reported to and recorded by police represented 32% of total victimisations.
- d. *The fall in youth crime is illusionary as there is a loss of faith in the system that sees underreporting and businesses are scared of losing cover. There is, right now, a \$10,000 cap on claims.*

2. So, we need to enlarge the Crime Fund to \$30m, targeting 10,000 retailers, moving away from cumbersome Police invitation and procurement, to a "High-Trust model" to speed delivery up:

- a. The current fund is too small, too Auckland focussed and too slow to deploy with 7 granted since the Hon Poto Williams announced it.
- b. We are focussed on the dairy sector that numbers around 4,000 but there are petrol stations, liquor stores and other retailers being targeted nationwide. We believe it should assist 10,000 retailers needing \$30 million.
- c. Right now, you have the be ramraided or robbed to be invited to apply with Police procuring equipment as if it is a fleet of Police cars. Seven businesses but \$172,000 spent. That's a lot of administration cost for very little delivery, so:

1. Adopt a high-trust model with a maximum grant of \$3,000 per business tagged to a requirement to provide invoices, photos and with random auditing of applicants
2. This will see businesses do more with less as they add to the grant to improve security and it will be a lot quicker too
3. We can assist in its administration as an organisation for a lot less.
- d. Allow businesses to clean-up our CBDs that will speed bollard delivery. That's by empowering store owners to take leases over the pavement in front of their stores to the road edge at a peppercorn but with public access easements. This would allow beggars, vagrants and troublemakers to be trespassed from outside of shops.
- e. *This is all needed because we are months away from smoked tobacco licensing and less than two years from "Clayton's tobacco." This will see a massive spike as we are treated like an ATM by robbers and organised crime.*

3. We need to reduce a major crime driver that is smoked tobacco but it needs dairies to be given the freedom to actively market the three regulated vapes/smokeless tobacco flavours we're allowed to sell to smokers, whenever cigarettes are asked for:

- a. Delay the introduction of tobacco licensing that slashes outlets by 95% to **1 January 2025** not in a few months' time (*from 1 January 2023*)!
- b. The government could use this two-year time window to properly evaluate and test low nicotine tobacco, a key plank of reforms, in the real world not just the academic world
- c. Key for us is allowing dairies to notify, promote and actively market the three regulated vape and smokeless tobacco flavours we can sell, to smokers, whenever they ask for cigarettes. We need to get smokers off dangerous smoking and onto far safer vapes and smokeless tobacco that removes a big driver for crime.
- d. *Can you please ensure our submission to the Health Select Committee is read and actioned by senior cabinet minister as it will lessen the crime wave that will hit over 2023-2024 (see from page 8).*

4. We need to adopt the "broken windows" approach where no crime is minor by better using council paid staff (like turning Auckland Transport's 400 traffic wardens and Transport Officers into UK-Style Police Community Support). This is true community street policing; especially in the CBD's:

- a. The broken windows model focuses on the importance of anti-social disorder that generates and sustains more serious crime. Disorder is not directly linked to serious crime but so-called minor crimes like vandalism, graffiti and theft that increases fear and withdrawal of residents, which then allows more serious crime to move in. Society is self-policing but it needs faith the system is there to back you up and that's ebbing away.
- b. We are seeing this in the CBD's where pedestrianisation is gutting retail leading to empty shops. Auckland Council doubled down by going harder that has led to more empty shops. Vacancies are a record high. The

removal of through traffic reduces vitality and extra eyes becoming a magnet for disorder that spirals downwards.

- c. The Police can play a key role in disrupting this process. If they focus in on disorder and less serious crime in neighbourhoods. This needs visibility and a commitment to sweat the small stuff that promotes higher levels of informal social control, allowing people to take back control of their neighbourhoods.
- d. To this end Auckland had 884 sworn officers in 2021, but according to the AT website, there are just under 400 traffic wardens and AT transport officers. Having seen the transport officers in action (or inaction), we need to rethink community policing resources by focussing council and government resources and putting stations back in towns and centres.
- e. We advocate for UK-style Police Community Support Officers that could in New Zealand come by way of Police "Authorised Officers." This puts uniforms on the beat with superior powers than guards, wardens or monitors.
- f. *Putting this all together means a focus on sweating the small stuff. There are no minor crimes. This is raising the bar of community expectation and not seeing it deteriorate backed by UK-style Police Community Support Officers on the beat backed by sworn Police officers.*

5. Deploy Artificial Intelligence based street lighting and CCTV in partnership with councils to close blind spots and to direct camera operators to where issues are to track them:

- a. Reimagining public safety as a proactive effort creates stronger communities but this requires new technologies and processes that Supported by fast accurate data analysis, powered by AI solutions helps public safety and the efficiency of a community policing model.
- b. AI-technology includes movement detection for people or vehicles, object abandonment in public spaces from cars to fly tipping. It includes object missing detection when things are either damaged, moved or taken.
- c. AI cameras and lighting allow for area protection with loitering and sound detection like engines revving, broken glass, slang and shouting/fighting.
- d. Facial recognition helps detect those trespassed from an area or for patterns associated with crime and disorder. This includes video smart search including what they look like or were wearing including colour of clothing and even gender. Also, what colour vehicle they were in with license plate tracking detecting stolen cars before they are used as weapons. This also closes up the time gap between calling 111 and a Police response by tracking a suspect from camera to camera.
- e. *Ultimately this allows decision support so the right personnel can be in the right place at the right time. This is about using technology to deter but to detect anti-social behaviour.*

6. We need Police and MSD aligned to deal with feral families who don't care where their children are, or what they get up to. The role of the state is to intervene in the interests of the child not allowing dysfunction to continue:

- a. We have a rights-obsessed culture where families, no matter how dysfunctional, are being left to their own devices. In the current year to September there has been 391 ram-raids this year or 1.6 every day.
- b. There are no consequences as the Police pursuits policy leads to escape and they know it. It is slap with a wet bus ticket. Catch and release policing. Ramraiding is a sign that families have issues so where is the joined-up work between MSD-Police-Justice. This needs active intervention as it's likely the kids committing crime are not in school.
- c. Children must be removed from dysfunction and given the stability, help and education they need to break free. If this needs the development of new specialist youth correctional facilities to get them back on the straight and narrow, with support and education then so be it.
- d. *This is a role for the state to work with the voluntary sector on the difficult. We need the break this destructive paradigm where offenders have no fear and even less respect for law, order and private property.*

7. We need beggars and the homeless off the streets and put into specialist centres, modelled on what we do to resettle refugees:

- a. Where is MSD? They work in the CBD and their numbers have soared since 2017 but they have perfected the gallic shrug to begging/drunk-drug behaviour and homelessness.
- b. This is not the Kiwi way and officialdom does not seem to care and that comes back to "broken pains," tearaway kids and begging. A member in late September saw a beggar amongst busy traffic going from car to car and one was a Police Car who did nothing. They were not just a danger to themselves they are a danger to traffic. It speaks volumes when Police just drive on by and I have been provided the registration plate of this car.
- c. The refugee resettlement centre is a model for what we ought to be doing with 501s and those who are homeless and who beg when they are beneficiaries. Sometimes they are five abreast outside the Countdown in Victoria Street. That's why we need sticks and carrots:
 1. *A carrot in the form of purpose-built centres to get these people off the street so that their complex needs can be resolved (health, addiction, numeracy, literacy and job assistance etc).*
 2. *A stick by making "aggressive begging" an offence reinforced by allowing businesses to trespass people who beg outside their shops.*

8. The law of self defence must be amended and modelled on that of Australia. This would allow retailers and anyone to defend themselves, their family, their customers and their own property:

- a. The current law is inadequate as it does not allow the defence of property and has more holes in it than Swiss Cheese:

Everyone is justified in using, in the defence of himself or herself or another, *such force as, in the circumstances as he or she believes them to be, it is reasonable to use.*

- b. We want to see the law amended and modelled on Australian Federal Law. This for the first time would allow people to protect and defend their own property noting there is a limit in Australia on the use of force that's clearer than ours:

10.4 Self-defence (Commonwealth Criminal Code):

1. A person is not criminally responsible for an offence if he or she carries out the conduct constituting the offence in self- defence.
2. A person carries out conduct in self-defence if and only if he or she believes the conduct is necessary:
 - a. to defend himself or herself or another person; or
 - b. to prevent or terminate the unlawful imprisonment of himself or herself or another person; or
 - c. to protect property from unlawful appropriation, destruction, damage or interference; or
 - d. to prevent criminal trespass to any land or premises; or
 - e. to remove from any land or premises a person who is committing criminal trespass; and the conduct is a reasonable response in the circumstances as he or she perceives them.
3. This section does not apply if the person uses force that involves the intentional infliction of death or really serious injury:
 - a. to protect property; or
 - b. to prevent criminal trespass; or
 - c. to remove a person who is committing criminal trespass.
4. This section does not apply if:
 - a. the person is responding to lawful conduct; and
 - b. he or she knew that the conduct was lawful.

However, conduct is not lawful merely because the person carrying it out is not criminally responsible for it.

- c. The Australian approach is what we need in New Zealand along with a need to put property rights into the *New Zealand Bill of Rights*. Property Rights are in article 17 of the Universal Declaration of Human Rights, proclaimed in 1948 – this says provides that everyone has the right to own property alone, as well as in association with others and prohibits “the arbitrary deprivation of property.” We adopted most of the Universal Declaration of Human Rights *except for* property rights and along with self-defence this needs to be inserted in our Bill of Rights to restore faith that private property is respected.

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Smokefree Environments and Regulated Products (Smoked Tobacco) Amendment Bill Submission 2022

DETAILED BILL RECOMMENDATIONS

- 1. Give retailers much needed transition time by setting objective criteria for the 'Commencement' at Section 2.** We recommend this is daily smoking prevalence in December 2024, that is measured by the Ministry of Health's "New Zealand Health Survey." If daily smoking prevalence by then is above the smokefree target of 5%, then compulsory smoked tobacco licensing and low nicotine tobacco sections commence from 1 January 2025. If not, smokefree has been achieved but this 5% trigger remains as a backstop safeguard. We're deeply worried about crime and the blackmarket that would come off what is a \$2 billion market. Bill Perry, Deputy Director of Customs, told a Select Committee on 23 June the blackmarket was 10-20% of the legal one. This costs taxpayers \$180-\$360 million *a year* in lost excise and GST, whereas our proposals could achieve 5% smoking rates by December 2024:

At Section 2, insert new subsection (2) with the existing subsection 2, renumbered as subsection (3), to read:

2 Commencement

- (1) **Sections 18, 19(1) and (3), 20 to 24, 39(1) and (2), and 48** come into force on 1 January 2027.
 - (2) **Sections 20G to 20O and 57H** come into force on 1 January following publication of the 2023/24 New Zealand Health Survey, or any subsequent New Zealand Health Survey, should daily smoking prevalence exceed five-percent.
 - (3) The rest of this Act comes into force on the day after the date on which it receives the Royal assent.
- 2. Prevent new smoked products exploiting the loophole of "Herbal Smoking Products."** These are sold in branded packaging, can be of any flavour and do not carry a health warning, yet, are just as dangerous as cigarettes! If 'nicotinised' they would be a new smoked product that could be legally sold in any outlet so long as its notified. That's a hole and we point this out to avoid an 'urgent amendment' that would be rushed through. Simply move "Herbal smoking products" from "notifiable product" into the interpretation of "smoked tobacco products" so like is grouped with like:

- i. At "notifiable product means—delete "(c) ~~a herbal smoking product~~" and change current (d) to (c); and
 - ii. At "smoked tobacco product" insert "and any other product, including a herbal smoking product," after "product" and before "that" to read:

smoked tobacco product means a tobacco product and any other product, including a herbal smoking product, that is intended to be used in a way that involves ignition or the combustion process.

Part 1B

Regulation of entry into smoked tobacco and vaping products markets

Subpart 1—Approval as smoked tobacco retailer

3. **If it's needed by 2025, this proposal removes smoked tobacco products from supermarket sale as the duopoly has 80% market share. With \$18 billion+ in sales they are where most New Zealanders do the main "household shop." Allowing supermarkets to sell smoked tobacco products contradicts recent Commerce Act amendments we presented on. Getting smoked tobacco out of supermarkets limits the risk of poor choices at the checkout, limits duopoly power and delivers a big reduction in the availability of smoked tobacco products. This is done by inserting this into Section 13 at 20G (Approval as smoked tobacco retailer), using the recent Commerce Act definition:**

At Section 20G, insert new subsection (2) with the existing subsection 2 renumbered as new subsection (3) and at new subsection (3), insert the words "or (2)" after "(1)" and before "commits" to read:

- 20G Sale of smoked tobacco products other than by approved smoked tobacco retailer prohibited**
- (1) A person must not sell or offer for sale at retail a smoked tobacco product unless the person is an approved smoked tobacco retailer.
 - (2) **A person must not be an approved smoked tobacco retailer if a designated grocery retailer subject to the Commerce (Grocery Sector Covenants) Amendment Act 2022.**
 - (3) A person who, without reasonable excuse, contravenes subsection (1) or (2) commits an offence and is liable on conviction to a fine not exceeding \$400,000.

Subpart 3—Notification obligations

Align the fine for General Vape Retailers with other sections of the Act

4. **The Bill proposes a fine of \$5,000 at 20R for 'failing to notify' that's completely disproportionate. Not just in the Bill but the Act for more serious matters. We recommend the fine be reduced to \$2,000 so it aligns with other fines, such as underage sales, which 94% of sellers don't do! This easily is done by reducing the sum on 20R to \$2,000:**

20R Obligation of general vape retailer in respect of vaping products
At subsection (3) amend "\$5,000" to read "\$2,000" to read:

- 20R Obligation of general vape retailer in respect of vaping products**
- (3) A general vape retailer who, without reasonable excuse, fails to notify the Director-General that they are selling a vaping product commits an offence and is liable to a fine not exceeding \$2,000.

New sections to actively use general retailers to convert smokers

- 5. Allow general retailers to provide smokers with written information about vaping products “in accordance with regulations.”** This is a massive opportunity when customers ask for smoked tobacco. It allows thousands of general retailers to give smokers written information about vaping when they come into buy cigarettes. **This is done by inserting new 20T into Section 13 of the Bill that amends Section 24(k) of the Act at Part 2:**

20T Section 24 amended (Specified publications exempt from advertising prohibition)

At clause 24(k) insert “and smokers” after retailers and before “about”; insert “and benefits” after the word “use” and before “of”; and insert “less harmful than smoked tobacco products” after “products” to read:

24 Specified publications exempt from advertising prohibition

(k) information provided by manufacturers and importers, in accordance with any regulations, to retailers **and smokers** about the use **and benefits** of vaping products and smokeless tobacco products **less harmful than smoked tobacco products**:

- 6. Then enable general retailers to speak to smokers about buying notifiable products instead of smoked tobacco.** Despite being the people who many smokers buy their cigarettes from, the current law stops us from *marketing* vaping to them! We don’t more need flavours. We just want this marketing prohibition lifted whenever they ask for smoked tobacco. This activates up to 6,000 outlets and may get us to Smokefree Aotearoa 2025. **This is done by inserting new 20U into Section 13 of the Bill that amends Section 27(3)(b) of the Act at Part 2:**

20U Section 27(3)(b) amended (Prohibited oral communications)

At 27(3)(b) insert “and promoting” after “encouraging” and before “smokers”; insert “notifiable” after “a” and before “product”; and insert “when a smoked tobacco product is requested” after “smoking” to read:

27 Prohibited oral communications

- (3) Subsection (1) does not apply to—
 - (b) communications encouraging **and promoting** smokers to switch to a **notifiable** product that is less harmful than smoking **when a smoked tobacco product is requested**:

Part 3A
Requirements for smoked tobacco products

7. **Reflecting our proposed New Zealand Health Survey-based commencement at Section 2, new Section 57H is amended to reflect this:**

57H Limits on nicotine to be prescribed for smoked tobacco products
The Minister must, within 21 months of the commencement **date specified in section 2 (2)** of the **Smokefree Environments and Regulated Products (Smoked Tobacco) Amendment Act 2022**, recommend that regulations be made prescribing the limits for the quantity of nicotine in any smoked tobacco product, and a method of determining whether those limits have been exceeded.

Exempt General Vape Retailers from fees charged to ‘notify’

8. **As our sector faces the risk of losing smoked tobacco, which accounts for half of our revenue, we ask the Committee to remove impediments from the ‘notified products’ we’re allowed to sell, including, excusing us from paying a ‘fee’ just to tell the VRA we sell vaping products. We have no issue with the added bureaucracy of ‘notifying’ but we also point to 94% compliance. What chaffs is double dipping as the manufacturers pay a fee for notifying while we get stung for a fee just to tell the VRA we sell them:**

43 Section 85 amended (Regulations imposing fees)
Delete subclause (iv) and renumber subclause (v) as (iv); subclause (vi) as (v); and subclause (vii) as (vi) to read:

(iv) ~~by a general vape retailer in respect of vaping products notified under section 20R~~

Part 2
Amendments to other enactments

Subpart 1—Amendments to Customs and Excise Act 2018

9. **We have found another loophole, this time, in the smokefree generations policy. While the commercial purchase of smoked tobacco products is to be ended for some, this does not apply to “home grown” tobacco. It is inconsistent to ban store sales but allow grow it your own as the blackmarketers will love this. This is fixed by inserting new Section 55A into the Bill to amend Section 67 of the Customs and Excise Act 2018:**

55A Section 67 amended (Exemptions in relation to Customs-controlled areas)
At subclause 4(a)(i) insert the words “and born prior to 1 January 2009” after the word “over” and before “; and” to read:

67 Exemptions in relation to Customs-controlled areas
(4) Section 56(1)(a) does not apply to—

- (a) the manufacture of tobacco by an individual in the individual’s private dwelling if—
 - (i) the individual is 18 years or over and born prior to 1 January 2009; and

Subpart 2—Amendments to Smokefree Environments and Regulated Products
Regulations 2021

10. Amend Regulation 62 (Manufactured cigarettes to be tested)

At Regulation 62, delete (2) that is not needed, if herbal smoking products are treated as smoked tobacco products (as they combust and produce cancer causing chemicals like cigarettes):

~~(2) — Manufactured cigarettes that are a herbal smoking product are specified as a notifiable product to which section 69A of the Act applies.~~

11. Align the regulations with legislative changes we have proposed that allow retailers to give written materials to smokers about the benefits of vaping. This is done by inserting a new Section 66 that amends Regulation 74:

66 Regulation 74 amended (Information that manufacturer or importer may provide to retailers for smokers about vaping products)

In the title of Regulation 74, replace “vaping” after “about” and before “products” with “notifiable;” and insert “for smokers and vapers” after “retailers” and before “about”. Within Regulation 74, replace “vaping” after “of” and before “product” with “notifiable;” insert the words “for them and smokers” after “information” and before “about—;” insert “; and” after (c); and insert new clause (d) “the features, benefits and cost-savings of a product less harmful than smoked tobacco products” to read:

74 Information that manufacturer or importer may provide to retailers for smokers and vapers about notifiable products

A manufacturer or an importer of notifiable products may, for the purpose of the exemption in section 24(k) of the Act, provide retailers with information for them and smokers about—

- (a) the correct use, handling, storage, refilling, recharging, or disposal of the product; and
- (b) the consequences of incorrect use of the product; and
- (c) handling precautions to take before and during use of the product; and
- (d) the features, benefits, and cost-savings of a product less harmful than smoked tobacco products.

SUPPORTING INFORMATION BEHIND OUR SUBMISSION

12. Dairies and outlets are made to operate on a 'Low Trust' model but are 94% compliant sellers (2019-2021):

- I. We want Committee Members to look at these numbers and then ask yourself this. Will a 90-95% reduction in legal outlets in favour of far fewer 'licensed' outlets improve or worsen current compliance? We also had to OIA for this information as it was in no consultation or regulatory impact assessment.

Appendix 2: Information regarding number of visits undertaken by enforcement officers and offences recorded under the Smokefree Environments and Regulated Products Act 1990

Date	Visits undertaken by enforcement officers for educational purposes	Covert visits undertaken by or under the direction of enforcement officers (i.e., Controlled Purchase Operations)	Number of offences for smoking and vaping recorded under the Act as a result of these Controlled Purchase Operations visits
Jan – June 2019	857	1,086	77 (93% compliance)
July – Dec 2019	1,036	739	27 (96% compliance)
Jan – June 2020	256	130	10 (92% compliance)
July – Dec 2020	398	255	5 (98% compliance)
Jan – June 2021	573	323	18 (94% compliance)
July – Dec 2021 (incomplete)	241	163	13 (92% compliance)
Total	3,361	2,696	150 (94% compliance)

Notes:

- The period covered by this response is 1 January 2019 to 30 June 2021. The final figures for 1 July to 5 December 2021 are not yet available.
 - For the July – Dec 2021 period, the Ministry has not yet received figures from the Nelson Marlborough, Northland, or Taranaki public health units. However, it is expected that there was very little or no work carried out during this reporting period.
- The Ministry does not hold information by type of outlet visited.
- The above information relates only to:
 - Visits undertaken by officers for educational purposes, and
 - Covert visits undertaken for the purpose of Controlled Purchase Operations
- Some of the visits undertaken by officers for educational purposes may have been carried out by non-enforcement officers. The purpose of these visits is to educate the retailer as to their various obligations under the Act.
- Compliance activity has been significantly impacted in the past two years due to the public health units' involvement in the COVID-19 response.

Source: Ministry of Health OIA: H202117137 (22 March 2022)

- II. Is the Committee Aware of any other industry that has such high compliance? This is a vital discussion point because the government owes it to us and to the public, to explain how and why fewer licensed outlets will improve on 94% compliance.

13. Yet Specialist Vape Retailers are licensed on a High Trust model:

- I. We know from a Vaping Regulatory Authority (VRA) that in the seven months, from August 2021 to March 2022, that 324 SVRs were approved:

Applications Approved

As at 30 March 2022, 324 'specialist vape retailer' applications have been approved. The following table breaks this down by month and year:

Month and Year	Number of 'specialist vape retailer' applications approved
August 2021	19
September 2021	40
October 2021	107
November 2021	90
December 2021	25
January 2022	15
February 2022	16
March 2022	12

II. We also know no applicant has been inspected. Not a single one. There is no ground truthing that an applicant complies with what's in the law and while the new changes will improve things, they Are just words unless enforced. The VRA is made to do its job and monitor/enforce compliance then we will continue to see programmes like *Fair Go* and news coverage that risk undermining the most disruptive technology smoking has ever faced.

III. Dairies who have invested in self-contained premises, or sublet to others who have, are law-abiding. Yet they see others operating "holes in the wall" being approved as SVRs because it is a rubber stamp. They rightfully ask, "how," and the public ask "how?" We need the cowboys taken out as they risk people who do follow the law but that needs enforcement not passing the buck.

IV. **The Authority, wrongfully, does not see a role for itself in compliance and enforcement. We believe the Committee needs to change that:**

u. How many SVRs have been physically visited and/or inspected by the VRA by month in each of 2020/21 and 2021/22 year to date AND which SVRs were they (including names and addresses)?

As of the date of this request, no approved 'specialist vape retailers' have been physically visited and/or inspected by the VRA. Note that the VRA does not manage the Smokefree Enforcement Officers that are employed by the Public Health Units

V. **The VRA has also received \$2.578 million in revenue in the last two years and has spent this on:**

- (a) Contractors (46%) - \$1.18 million
- (b) ICT (41%) - \$1,056 million
- (c) Ministry 'Overhead' Costs (10%) - \$264,000
- (d) Personnel (3%) - \$80,000.

VI. We ask the Committee to put this expenditure under a magnifying glass as we struggle to see where over \$1 million has gone on IT. The SVR register is to be honest, simplistic but we see a culture of consultants and not nearly enough on its function as a regulatory authority i.e., it's in its name.

VII. **The VRA should employ its own officers or contract compliance agents from others:**

	2020/21 Actual \$m (GST Exclusive)	2021/22 Forecast to year end \$m (GST Exclusive)
Crown revenue ^{Note 1}	0	0
Third party revenue (fees)	0	1.564
Expenditure		
Personnel ^{Note 2}	0	0.080
Contractors	0.756	0.424
Computer services and software	0.397	0.657
Corporate overheads ^{Note 3}	0	0.264
Expenditure Total	1.153	1.425

Note 1: The VRA receives no revenue from Crown funding – activities are 100 per cent funded through third party revenue (fees).

Note 2: Personnel costs include permanent and temporary staff costs

Note 3: Corporate overheads include rental and operating lease costs and website development and maintenance

Sources: Vaping Regulatory Authority OIA: H202204837 (8 June 2022)

14. The “school vaping epidemic” is not supported by evidence

I. To verify claims of a vaping epidemic, which is being actively used to call for restrictions on our ability to sell legal products, under the OIA, we contacted 17 secondary schools and can report our findings from 12 schools* to date with 21,406 pupils among them. Overall:

- vaping is far less of an issue relative to the volume of media coverage;
- while incomplete, 2022 has seen an improvement in vaping discipline;
- smoking is all but extinct, however, detailed data from one school showed four cannabis/drug discipline issues with two for smoking (2020-2022).

II. Vaping discipline (there were no suspensions/expulsions-exclusions):

- 2020: 109 Stand-Downs (0.51% from 12 schools*)
- 2021: 153 Stand-Downs (0.71% from 12 schools*)
- 2022: 53 Stand-Downs (0.25% from 12 schools*) *in the year to date (YTD)*.

III. Discipline outcomes not related to vaping^:

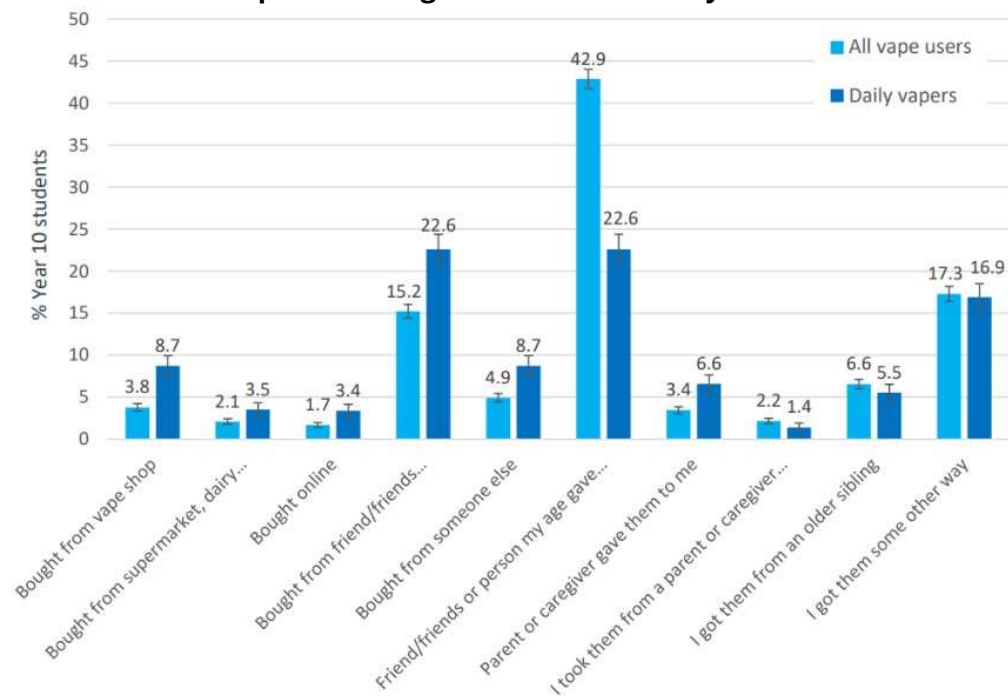
- 2020: 303 Stand-Downs (1.42%) + 52 Serious (0.22% from 12 schools*)
- 2021: 339 Stand-Downs (1.58% + 77 Serious (0.36% from 12 schools*)
- 2022: 154 Stand-Downs (0.72%) + 32 Serious (0.15% from 12 schools*) *YTD*.

IV. Confiscations of vaping devices:

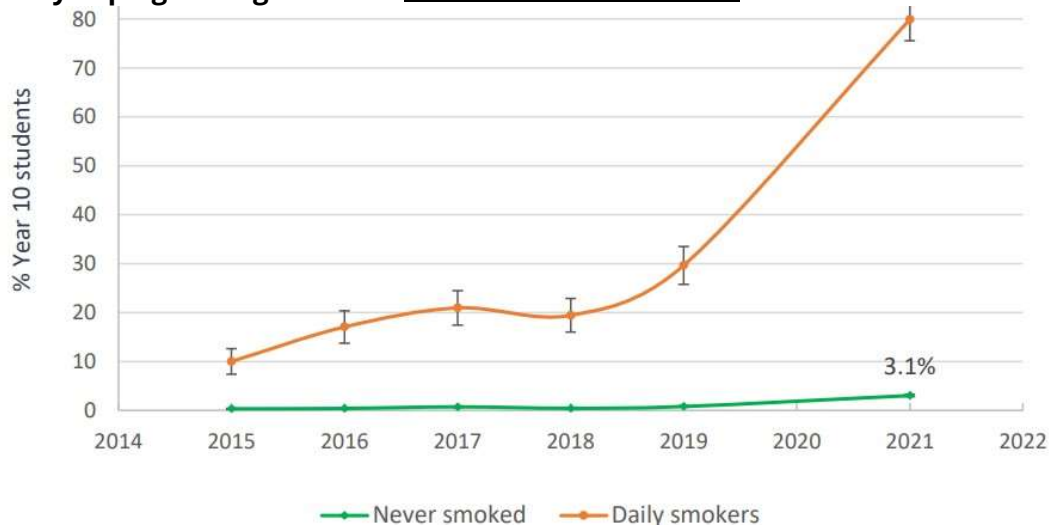
Just three of 12 schools recorded vaping device confiscations (Macleans and Hamilton Girls* with New Plymouth Girls from 2022. Napier Boys provided an estimate, this is included for completeness:

- 2020 (three schools): 29 devices confiscated (0.54% of 5,381 students)
- 2021 (three schools): 35 devices confiscated (0.65% of 5,381 students)
- 2022 (four schools): 23 devices (0.34% of 6,712 students) *year to date*.

V. 97.9% of Youth Vapers do not get them from a dairy:



VI. Daily vaping among students who have never smoked is low at 3%:



ASH Year 10 Snapshot Survey 2021: Youth vaping in Aotearoa New Zealand, page 8.

- VII. Several schools* we asked like Auckland Grammar, which has called for severe sale restrictions, do not record how many devices are confiscated, or flavours (for a pattern) or even brands (who may have sold it). Given a fraction of a percent of Grammar's pupils have been stood down for vaping, such information wouldn't be time consuming to collect. Although, it may undermine the "epidemic" scaremongering language. In June 2020 an OIA told us that the Cancer Society's Candace Bagnall wrote to principals this: *"I've copied this email in to [name removed] our comms person ... if there is decent pick-up and, who knows, you could become an instant media star ..."* Is this the right motivation?
- VIII. We don't for a moment pretend underage vaping doesn't happen, but as the above graphs show, friends and family are the largest sources for youth vapers and just 3% have never tried smoking. Children also try riskier activities like drinking, unprotected sex, and dangerous substances. The NZ Health Survey shows the fastest growing smoking category is cannabis. Some 22,000 15-17 year olds smoked cannabis in 2020/21 but that got zero attention as did the fact 4.5% of Kiwis smoke cannabis "weekly or more" – 187,000 people.
- IX. This is why we urge the Committee to use evidence based policy making. The evidence we have here says New Zealand's regulatory approach is far superior than the wild west over in Australia where nicotine vape sales are illegal and out of control.

^ This underreports discipline not related to vaping as Cashmere HS is yet to provide annualised data.

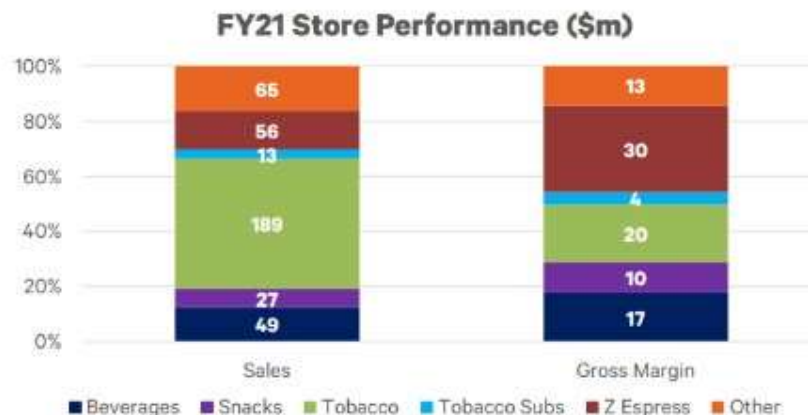
* Hamilton Girls HS is to 31 March 2022. The other schools are to 31 May 2022 or later being Rangitoto College; Auckland Grammar School; Macleans College; Ōtūmoetai College (Tauranga); Napier Boys High School; New Plymouth Girls High School; Palmerston North Boys High School; Tawa College (Wellington); Nelson College; Cashmere High School (Christchurch); and Kings High School (Dunedin (to 17 August 2022)).

15. We desperately need a fraction of the \$1.8 billion we'll collect for the government in excise and GST this year, put into our security:

- I. At our oral presentation we will reveal just how accessible blackmarket tobacco really is and the outlet we will feature is the tip of an iceberg, operating right under the nose of the media, the Ministry of Health and even Customs.
- II. We are also in a crime emergency and fear dairyowners, our families, staff and customers will be seriously hurt when criminals declare open season on us ahead of licensing. The Ministry does not understand that a lot of transactions are cash but there are few and fewer banks that will encourage armed hold-ups especially in rural remote locations. We want this Committee to support our demand for a \$14 million fund because the changes unless amended will be like a criminal duck hunting season on dairies. What we need are fog canon, bollards, screens but also street lighting, CCTV and to get kids who have zero respect for law and order into specialist rehabilitation.

16. A transition period is needed because many stores are now blighted by this policy if an owner wishes, or needs to, sell:

- I. The moment the Bill was announced last year the ability to sell a dairy or outlet became harder. We know aggressive lobbyists and academics who have undertaken farcical surveys don't believe us when we say tobacco *currently* makes up half of our sales. So, would you believe Z Energy? **This is from its 2021 Investor Day presentation:**



- II. Andy Baird, Z Energy's GM of Retail said in the 2021 investor transcript about Smokefree Aotearoa 2025 that also noted the importance of vaping as a successor product too:
"Nevertheless, that has implications for us, but it has bigger implications for the dairy sector because, in many cases, over 50% to 60% of their sales are tobacco. And one of the reasons that they have actually continued to sort of thrive a little bit over the last, call it, 5 years or so has been the introduction of vaping, which has also been a sort of a category that they've been able to grab on to and do quite well.. "
- III. Before Z was acquired by Ampol this year, in 2021, tobacco made up 47% of its non-fuel stores sales and contributed 21% to non-fuel store gross margin. This was for a *listed company too we stress*. It underscores the absolute need for a transition period on those who don't have a large extra line of business:



- IV. This helps to explain why this Bill makes thousands of businesses unsellable due to the uncertainty over licensing and the economic impact on stores that end up being unlicensed. This is no idle speculation it is economic fact. It is like trying to sell a leaky home in the middle of litigation. Someone will buy it but at a knockdown price only.
- V. Our group is working with wholesalers on competitive grocery offerings, however, this takes time. It is why we need a real transition period that is not 18-months from now. What's more with vaping eroding smoking there's a chance New Zealand might get to Smokefree especially if general retailers are allowed to actively market vapes to smokers.

17. Previous 'modelling' for smoking policy outcomes has not matched reality with the rhetoric except for vaping:

- I. We've read the policies behind plain packaging and tax increases and now know why we have a divide between the haves and have nots. If any policy was intended to keep the poor, poor, it was the tobacco tax hikes that has led to crime and the gangs moving into organised sales. These policies are creating "ciggie houses" and from a Customs OIA, they busted the first illegal cigarette manufacturing operation that had a side line in cannabis.

- II. We urge the committee to be especially vigilant of expert claims now before you. If you substitute low nicotine tobacco or licensing for “plain packaging” or “tobacco tax increases,” the wording that surrounds these will sound like you’ve read it somewhere before. Especially from experts who claim to be retail or marketing experts who haven’t worked a day with real customers.

18. Little of the Excise and GST on Excise is being spent on helping smokers to quit:

- I. Government is addicted to tax but does very little to assist smokers to quit. Under the OIA (Pharmac and HPA 30 June 2022) we know that, at most, 0.52% of the tobacco excise and GST on excise, is being spent on quit medicines and Quit advertising campaigns.
- II. In 2021/22 the total for both came to just \$11.27m or an intervention equivalent to the cost of one pack of cigarettes over a whole year. There is a lot on the internet calling into question the effectiveness of Nicotine Replacement Therapy (NRT) versus vaping to quit smoking. We found some examples locally on the Ministry of Health website where vaping is being used but its scant. NRT of course is the product of ‘Big Pharma’ but this shows just how little is being spent to get smokers to quit.

Table: Annual spend on nicotine replacement therapy (NRT) from 2016 to 2021

Calendar year	Community	Agreed expenses	Hospital	Total
2016	\$4,155,064.40	\$2,144,399.47	\$127,343.22	\$6,426,807.09
2017	\$3,712,872.55	\$1,056,642.21	\$122,103.21	\$4,891,617.96
2018	\$6,182,075.71	\$1,765,740.78	\$216,129.22	\$8,163,945.71
2019	\$6,935,519.53	\$1,990,337.50	\$198,099.71	\$9,123,956.74
2020	\$7,648,799.74	\$1,809,203.43	\$224,786.39	\$9,682,789.56
2021	\$7,893,288.83	\$1,682,978.13	\$230,899.07	\$9,807,166.04

Please note:

- Community spend is the gross cost (excl. GST) of NRT products purchased under the Community Schedule.
- Agreed Expenses are expenses directly incurred by Pharmac on behalf of DHBs.
- Hospital costs are based on purchase data provided by DHB hospitals. Pharmac makes no representation as to the accuracy of the figures provided.

- III. Then there are the public media campaigns. Since 2016/17, annual spending has been as high at \$1.99m (2020/21) but as low as \$418,000 (2019/20). Again, these are key planks to quitting but the investment relative to government income seems small.

19. Finally, please heed the real lessons of South Africa which tried to ban smoking and vaping during Covid-19 and created a public health, crime and financial disaster:

- I. Why hasn't the Committee been briefed on the South African experience? We asked the Ministry of Health, in an OIA, if they had analysed what happened there. Their sole answer pointed us back to our submission made last year where we said the Ministry needed to look at South Africa! It is unbelievable the Ministry has not studied or analysed *actual* bans on the sale of smoked tobacco products and whether they succeeded or failed. Is it because they failed that they did not want reality to collide with academic theory?

- II. A new study on South Africa in *Drug and Alcohol Dependence* (1 March 2022) says:
*"Existing tobacco-control policies risk further stigmatizing already marginalized groups, rather than addressing socio-structural factors associated with tobacco use ...A topical example in South Africa is the temporary ban on cigarette sales introduced in March 2020 in response to the COVID-19 pandemic, which, according to nationally representative data from the National Income Dynamics Study – Coronavirus Rapid Mobile Survey, **resulted in only 7-15.3% of smokers quitting and a relapse rate of up to 49% after the sales ban was lifted, but did risk increasing socio-economic vulnerability in at-risk smoking households due to the 200% illegal trade cigarette price increase** (Filbey et al., 2021, Van Walbeek et al., 2021)."*

Bold is our emphasis and note the 200% price increase. This could be our future if a slash and burn of outlets with low nicotine tobacco is adopted without first using vaping to knock smoking rates down to 5%.

- III. Here is critical information. On 14 June 2022, the South African Supreme Court of Appeal dismissed an appeal by the South African Government that the cigarette ban was unlawful. This case is available online: *Minister of Cooperative Governance and Traditional Affairs and Another v British American Tobacco South Africa (Pty) Ltd and Others* (309/21) [2022] ZASCA 89; [2022] 3 All SA 332 (SCA) (14 June 2022). How the Ministry and the Attorney-General missed this is baffling in the extreme.

- IV. As reported by *Business Insider* (15 June 2022), the Supreme Court of Appeal found the cigarette ban was a "direct limitation of the rights to dignity, and the right to bodily and psychological integrity." The Court also dismissed the Government citing a World Health Organisation brief on Covid-19 that recommended smokers stop smoking, saying the document did not recommend banning cigarettes.

- V. The responsible Minister, Hon Dlamini Zuma, never seemed not to understand that the health impact of smoking comes from long-term use that is not fully reversed by a temporary halt in smoking. The Court's strongest language was reserved for the Minister's argument that up to 15% of smokers had quit during the ban because they could not afford the more expensive black market cigarettes that everyone else had turned. The Court said it was constitutionally perverse to claim the ban was effective because most smokers would have contravened the law with a small minority being unable to afford the higher price of illicit cigarettes. This relied on unlawful conduct (the sale of illegal cigarettes at a premium) to achieve the intended outcome (a reduction in smoking). This perversity is amplified because the state could have achieved the same outcome by increasing excise duty on cigarettes to equalise them with illegal cigarettes sold unlawfully during the lockdown.
- VI. **South Africa, as the Court noted, was also in the minority in banning cigarettes with India and Botswana, why has the NZ Ministry of Health never outlined this you or the public? This is our concern. You should be concerned too as we have real world examples to learn from.**

ENDS.