

Aide-Mémoire

Talking points for the Cabinet paper 'Options to repeal amendments to the Smokefree Environments and Regulated Products Act 1990 and associated regulations'

Date due to MO:	15 December 2023, 3pm	Action required by:	N/A
Security level:	IN CONFIDENCE	Health Report number:	H2023034208
To:	Hon Casey Costello, Associate Minister of Health		
Consulted:	Health New Zealand: <input type="checkbox"/> Māori Health Authority: <input type="checkbox"/>		

Contact for telephone discussion

Name	Position	Telephone
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Talking points for the Cabinet paper 'Options to repeal amendments to the Smokefree Environments and Regulated Products Act 1990 and associated regulations'

Date due: 15 December 2023, 3pm

To: Hon Casey Costello, Associate Minister of Health

Security level: IN CONFIDENCE **Health Report number:** H2023034208

Details of meeting: 18 December 2023

**Purpose of meeting/
proposal:** Cabinet is scheduled to discuss your paper: 'Options to repeal amendments to the Smokefree Environments and Regulated Products Act 1990 and associated regulations'.



Jane Chambers
Group Manager, Public Health Policy and Regulation
Public Health Agency | Te Pou Hauora Tūmatanui

Talking points on ‘Options to repeal amendments to the Smokefree Environments and Regulated Products Act 1990 and associated regulations’

Proposal

- This paper seeks Cabinet’s agreement to reverse amendments to the Smokefree Environments and Regulated Products Act 1990 (the Smokefree Act), that came into force on 1 January 2023 via the Smokefree Environments and Regulated Products (Smoked Tobacco) Amendment Act 2022 (the Amendment Act) and associated regulations relating to:
 - the reduction in retail outlets able to sell tobacco products
 - denicotinisation, and
 - the smokefree generation ban.

Context

- The Government’s 100-day plan includes a commitment to “repeal amendments to the Smokefree Environments and Regulated Products Act 1990 and regulations” [CAB-23-MIN-0468 refers] with specific actions to:
 - report to Cabinet by 18 December with repeal options
 - introduce and pass a Bill by the end of the 100 days, and
 - direct Health officials to provide advice in January on increasing penalties for illegal sales of vaping products to those under 18, as well as increasing oversight of the sale of vapes.
- This paper fulfils the first of these commitments.

Rationale for change

- The 3 key changes made to the Smokefree Act to the regulation of smoked tobacco essentially put barriers in place to access these products.
- I am particularly concerned at the impact the current settings would have had on retailers and on black market activity.
- I acknowledge that there was strong support from people working in the health sector for these provisions, including from Māori and Pacific health and community organisations.
- We remain committed to the Smokefree 2025 target, and to the supports mentioned above. The difference is not the goal but the means by which we think it can be achieved.
- The role of government, to meet this commitment, will be to continue to provide practical solutions to assist people to stop smoking and deter people from starting.

Financial implications

- Costs associated with refunding individuals and businesses who have paid an application fee to be approved as a smoked tobacco retailer will be quantified.
 - Officials advise me the costs are likely to be approximately \$650,000 (exclusive of GST) for the refund of application fees, with the operational costs to complete this work estimated at \$60,000 (which will be met within existing funding).
- Excise revenue is predicted to continue to gradually decline as smoking rates decrease. In the 2022/23 financial year, \$1,666 million excise was collected, down from \$1,980 million in 2018/19.
 - Initial work from Treasury suggests removing the Smokefree measures may add \$1.5 billion in total to tax revenue in the 4 years ending June 2028, with a corresponding positive effect on the Crown's operating balance.

Elements of the Amendment Act to be retained

- This paper also proposes that changes made by the Smokefree Act should be retained:
 - notification requirements - requiring retailers of vaping, smokeless and herbal smoking products, and distributors of smoked tobacco products to notify the Director-General of Health
 - extension of the definition of notifiable products to include herbal smoking products
 - requiring that a person cannot rely solely on an oral or written statement of the person's age
 - enabling agencies to share data to support compliance activity.
- Retaining these provisions will ensure that compliance activity is robust.

Next steps

- I have also asked that all other coalition agreement commitments relating to tobacco, vaping and other products are considered as part of the January 2024 advice. This includes:
 - amending vaping product requirements
 - taxing smoked tobacco products only
 - reforming regulation of other less harmful nicotine products
 - banning disposable vapes, and
 - increasing penalties for selling vapes to under 18s.
- This will allow the range of issues to be considered together, including working through legal implications.
- Following this advice, I intend to come back to Cabinet seeking agreement to progress any further legislative changes needed to further strengthen the regulation of vaping and other nicotine products to better protect children and young people, as well as supporting people to become smokefree.
- I have not ruled out consideration of further changes to the regulatory regime for smoked tobacco in the future if needed.