

Health Report

Smokefree Environments and Regulated Products Amendment Bill: approval for introduction

Date due to MO: 7 February 2024 **Action required by:** 9 February 2024

Security level: IN CONFIDENCE **Health Report number:** H2024035267

To: Hon Casey Costello, Associate Minister of Health

Consulted: Health New Zealand: Māori Health Authority:

Contact for telephone discussion

Name	Position	Telephone
Dr Andrew Old	Deputy Director-General, Public Health Agency Te Pou Hauora Tūmatanui	s 9(2)(a)
Emma Hindson	Manager, Ope Ōpiki, Public Health Policy and Regulation, Public Health Agency Te Pou Hauora Tūmatanui	s 9(2)(a)

Minister's office to complete:

- | | | |
|---|------------------------------------|--|
| <input type="checkbox"/> Approved | <input type="checkbox"/> Decline | <input type="checkbox"/> Noted |
| <input type="checkbox"/> Needs change | <input type="checkbox"/> Seen | <input type="checkbox"/> Overtaken by events |
| <input type="checkbox"/> See Minister's Notes | <input type="checkbox"/> Withdrawn | |

Comment:

Smokefree Environments and Regulated Products Amendment Bill: approval for introduction

Security level: IN CONFIDENCE **Date:** 7 February 2024

To: Hon Casey Costello, Associate Minister of Health

Purpose of report

1. This report provides you with a Cabinet Legislation Committee (LEG) paper seeking Cabinet approval to introduce the Smokefree Environments and Regulated Products Amendment Bill (the Amendment Bill) into Parliament, to commence Ministerial consultation prior to lodging.
2. This report discloses all relevant information and implications.

Summary

3. The Government's 100-Day Plan includes a commitment to repeal amendments to the Smokefree Environments and Regulated Products Act 1990 (the Act) and related regulations.
4. Cabinet met on 18 December 2023 [CAB-23-MIN-0500 refers] and agreed to amend the Act and related regulations to remove the changes provided for in the Smokefree Environments and Regulated Products (Smoked Tobacco) Amendment Act 2022 (the Amendment Act) relating to:
 - the reduction in retail outlets able to sell smoked tobacco products
 - low nicotine smoked tobacco
 - the smokefree generation policy.
5. The Parliamentary Counsel Office has now drafted the Amendment Bill, and this is attached to the draft LEG paper as **Appendix one**. The Amendment Bill gives effect to Cabinet's decisions.
6. This report provides some additional information on aspects of the Amendment Bill that were raised during the drafting process and departmental feedback. This may be useful to support your conversations with colleagues during Ministerial consultation.
7. We also provide an update on the Wai 3315 Request for an urgent hearing by the Waitangi Tribunal in relation to the proposed amendments.
8. Finally, we provide advice on how the Amendment Bill can best address a minor problem that has been identified with the information general retailers are required to complete

to meet annual reporting requirements under the Act. We seek your agreement to this approach.

9. We note that your Office will need to confirm a date for introduction of the Amendment Bill with the Leader of the House. This will need to occur promptly to meet the 8 March 2024 deadline Cabinet has noted for the Amendment Bill to be passed [CAB-23-MIN-0500 refers].
10. You will be supported at the LEG meeting by Manatū Hauora | Ministry of Health officials. Talking points to support Cabinet discussions and first reading speech notes will be provided separately.

Recommendations

We recommend you:

- a) **Agree** to consult with your Ministerial colleagues. **Yes/No**
- b) **Note** that your Office will need to confirm a date for introduction of the Amendment Bill with the Leader of the House. **Noted**
- c) **Agree** to our proposal to address the problem identified regarding annual (sales related information) returns for retailers of regulated products. **Yes/No**
- d) **Agree** to lodge the LEG paper with Cabinet office the week prior to LEG. **Yes/No**



Dr Diana Sarfati
Director-General of Health
Te Tumu Whakarae mō te Hauora
Date: 02 February 2024

Hon Casey Costello
Associate Minister of Health
Date:

Smokefree Environments and Regulated Products Amendment Bill: approval for introduction

Background

1. On 18 December 2023, Cabinet agreed to amend the Smokefree Environments and Regulated Products Act 1990 (the Act) and related regulations to remove the changes provided for in the Smokefree Environments and Regulated Products (Smoked Tobacco) Amendment Act 2022 (the Amendment Act) that relate to:
 - reducing the number of retailers that can sell smoked tobacco
 - limiting nicotine levels in smoked tobacco products
 - introducing a smokefree generation policy.
2. Cabinet also agreed to:
 - retain some changes made by the Amendment Act that are largely unrelated to these 3 main changes to better support compliance and enforcement efforts
 - amend the Smokefree Environments and Regulated Products Act 1990 (the Act) to enable the reimbursement of applicants who applied to be an approved smoked tobacco retailer and paid the \$1,475 (including GST) application fee
 - consequential amendments to give effect to the above.
3. The Amendment Bill will give effect to these decisions by amending the Act, the Amendment Act, the Smokefree Environments and Regulated Products Regulations 2021, and the Smokefree Environments and Regulated Products Amendment Regulations 2023.

Timeframes for the Amendment Bill

4. On 18 December 2023, Cabinet [CAB-23-MIN-0500 refers] noted that the Amendment Bill should be passed by 8 March 2024. This corresponds to the Government's 100-day plan.
5. As the law currently stands, changes introduced by the Amendment Act will come into effect respectively from 1 July 2024 (retail reduction), 1 April 2025 (low nicotine) and 1 January 2027 (smokefree generation). A bill is required to prevent these changes from taking effect.
6. **s 9(2)(h)**
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

Additional notes on the Amendment Bill

7. We provide additional notes on how the Amendment Bill is drafted below. This may be helpful to support any conversations about the Amendment Bill with your colleagues during Ministerial consultation.

Purposes of the Smokefree Environments and Regulated Products Act 1990

8. Purpose clauses can perform a range of functions, including guiding interpretation of the legislation. Given the substantive changes the Amendment Bill will make to the Act, it has been necessary to redraft the Purposes of the Act to reflect this.
9. As drafted, the Amendment Bill replaces the overarching purpose clause of the Act. The clauses that have been drafted remove the purposes that reflected the previous government's policies regarding retail reduction, low nicotine, and the smokefree generation as well as the purpose that reflected the equity focus of these three policies, particularly for Māori¹.
10. The Ministry has worked with the Parliamentary Counsel Office to ensure the amended Purpose of the Act section reflects the substantive provisions that will remain in the Act. The revised purpose statement is therefore modelled on the purpose statement that existed before the Amendment Act changes were made. It includes, amongst other things, preventing the normalisation of vaping and supporting smokers to switch to regulated products that are significantly less harmful than smoking.
11. An additional purpose of reducing the appeal of regulated products to children and young people has been added for completeness and is based on wording that formed the purposes of specific sections of the Act at that time. The purpose of providing for the regulation of notifiable products in a way that seeks to minimise harm, especially harm to young people and children has been retained.

Framework Convention on Tobacco Control (FCTC) obligations

12. New Zealand is party to the World Health Organization Framework Convention on Tobacco Control (FCTC). The FCTC emphasises the importance of strategies to reduce both demand and supply of tobacco and provides a framework for tobacco control measures to be implemented at the national, regional, and international levels.
13. Under articles 9 and 10 of the FCTC, parties are required to adopt legislation where possible for the:
 - testing and measuring of the contents and emissions of tobacco products
 - regulation of these contents and emissions
 - requiring manufacturers and importers of tobacco products to disclose to governmental authorities information about the contents and emissions of tobacco products.

¹ Section 3A(1)(a)(i) currently provides: The purposes of this Act are to provide for the regulation of smoked tobacco products to reduce disparities in rates and related illnesses between New Zealand population groups and in particular, between Māori and other groups.

14. To continue to meet these requirements, sections 57F-H of Part 3A of the Act have been retained, along with 57A which effectively exempts small scale homegrown tobacco for personal use (which aligns with the requirements under the Customs and Excise Act 2018). We draw this to your attention as the remainder of Part 3A, which provides the requirement that smoked tobacco products must be approved to sell them in New Zealand and must meet a nicotine content limit of 0.8 mg/g, have been removed by the Amendment Bill. The remaining clauses are aligned with the requirements that existed in the Act prior to the Amendment Act.

Te Tiriti o Waitangi

15. The Amendment Act introduced a Te Tiriti o Waitangi (the Treaty of Waitangi) section 3AB to provide for the Crown's intention to give effect to the principles of the Treaty of Waitangi. The Amendment Bill removes almost all of this section as the provisions providing for the Crown's intention to give effect to the Treaty of Waitangi specifically related to the smoked tobacco retail reduction scheme that is being removed.
16. Subsection 3AB(d) has been retained as this provision links to the FCTC obligation discussed above to provide for the regulation of the contents and emissions of tobacco products. The retained subsection requires the Minister of Health, before preparing regulations relating to requirements for smoked tobacco products, to consider the risks and benefits to Māori of regulating a constituent (including both users and non-users of smoked tobacco products).
17. Given the disproportionate impact smoking has on Māori, we recommend continuing to require the Minister to have specific consideration of Māori perspectives, and the impact those decisions will have on different Māori groups. In practice, this will require the Ministry to consult with Māori before advising the Minister to recommend making any regulations.

Wai 3315 Request for an urgent hearing by Waitangi Tribunal

18. The LEG paper also notes that the Waitangi Tribunal (the Tribunal) has received statements of claim and/or amended statements of claim in relation to the proposed repeal of amendments to the Act and related regulations. s 9(2)(h)
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
19. These statements have been referred to the Health Services and Outcomes Kaupapa Inquiry panel and we expect a direction to be issued by the Presiding Office on whether the grounds have been met for urgency this week.
20. As soon as directions are issued, officials will provide a briefing that outlines the statement of claim, any actions that need to be taken, as well as the jurisdiction and processes of the Tribunal set out the Treaty of Waitangi Act 1975.
21. To date, we understand the Government is committed to continuing existing funding that is in place for provision of effective stop smoking services, and stop smoking and vaping social marketing campaigns.

Annual return requirements

22. The Ministry has identified a problem with the requirements for annual returns relating to sales information. The requirements that have recently come into effect unintentionally require general retailers of regulated products to complete the same form that Specialist Vape Retailers (SVRs) are required to complete. This includes providing their total store sales of products not regulated by the Act, which for SVRs is necessary due to these stores needing to meet certain sales thresholds for vaping products. For all other stores this detail is not appropriate or required.
23. The Amendment Bill remedies this issue by limiting the reporting requirements for general retailers.
24. General retailers will only need to provide limited identifying information relating to the business (such as the business name and NZ Business Number) and information relating to the types of products sold and the volumes of each type. The retail price is not required.
25. Consequential changes have been made to the Regulations to implement this, as well as taking the opportunity to tidy the regulation making powers. This gives effect to the original policy intentions of the annual reporting provisions which was to collect limited sales related information.
26. We note that some retailers may express concern that providing these details may increase their risk of attracting criminal activity. On balance, we do not consider that publication of the name of the business, and the products sold will create any additional risk over and above the existing risk of stocking these regulated products.
27. We seek your agreement to this approach.

Departmental input and feedback

28. Departmental agencies were provided with a copy of the draft LEG paper and Amendment Bill for feedback and where possible the LEG paper was updated.
29. Feedback received from departmental agencies included:
 - a. requests for additional detail on the support the Government will provide for Māori to reach the Smokefree 2025 goal and protect and restore Māori hauora/health
 - b. requests for further detail of the specific measures through which the Smokefree 2025 goal will be achieved.
30. A lack of clear rationale for the changes to the Act was also raised as well as noting a lack of consultation and engagement, particularly with Māori, on the changes enacted through the proposed Amendment Bill.
31. New Zealand Police noted the removal of the retail premises security requirements under the Regulations and suggested there could be benefit in the future consideration of security requirements for tobacco retailers.

Equity

- 32. Despite smoking rates having reduced for all groups of New Zealanders, daily smoking rates for Māori, low-income earners, adults with disabilities, and people experiencing mental health and addiction issues remain higher than others.
- 33. These proposals have the potential to disproportionately impact Māori, given that Māori have the highest daily smoking rate of any ethnic group at 17.1%, compared to 6.8% of the total population.
- 34. The Government remains committed to achieving the Smokefree 2025 goal with a focus on providing people with practical tools and supports to help them to quit.

Timeframes

- 35. Cabinet noted that the Amendment Bill be passed by 8 March. This corresponds with the Government’s 100-Day plan.
- 36. The process and timeframe, to get to Cabinet and have the Amendment Bill passed before 8 March 2024 are tentatively as follows (noting this would require a decision for the Amendment Bill to be heard in all stages under urgency):

Key milestones	Indicative timeframes (subject to your confirmation)
Ministerial consultation begins	9 February
Minister’s Office provide feedback to Ministry	By 14 February (noting this is less than the 10-day requirement)
Lodge papers	15 February (tbc)
LEG Committee consideration	22 February 2024 (tbc)
Cabinet approval	26 February 2024 (tbc)
Bill introduced*	tbc
Bill passed	8 March 2024

- 37. We will work with your Office to meet any deadlines once these are confirmed.

Next steps

- 38. Following Ministerial consultation and your feedback, the Ministry will update the LEG paper and Amendment Bill as needed prior to lodging.
- 39. We will keep you updated regarding the Waitangi Tribunal hearing request.

ENDS.

Minister's Notes

PROACTIVELY RELEASED

Appendix 1: attachments

- Draft LEG paper: Smokefree Environments and Regulated Products Amendment Bill
 - Draft Bill: Smokefree Environments and Regulated Products Amendment Bill
 - Departmental Disclosure Statement: Smokefree Environments and Regulated Products Amendment Bill

PROACTIVELY RELEASED