

Aide-Mémoire

Smokefree Environments and Regulated Products Amendment Bill: Talking points for LEG Committee

Date due to MO:	16 February 2024	Action required by:	N/A
Security level:	IN CONFIDENCE	Health Report number:	H2024036073
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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Date due: 16 February 2024

To: Hon Casey Costello, Associate Minister of Health

Security level: IN CONFIDENCE **Health Report number:** H2024036073

Details of meeting: 9.30am, Thursday 22 February 2024

Cabinet Committee: Cabinet Legislation Committee

Purpose of meeting/proposal: You are seeking approval from the Cabinet Legislation Committee for the Smokefree Environments and Regulated Products Amendment Bill (the Bill) to be introduced.

Comment: The Government's 100-Day Plan includes a commitment to repeal amendments to the Smokefree Environments and Regulated Products Act 1990 (the Smokefree Act) and related regulations.

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.

The Bill will give effect to these decisions by amending the Smokefree Act, the Amendment Act, the Smokefree Environments and Regulated Products Regulations 2021, and the Smokefree Environments and Regulated Products Amendment Regulations 2023.

This aide-mémoire discloses all relevant information.



Dr Andrew Old

Deputy Director-General

Public Health Agency | Te Pou Hauora Tūmatanui

Talking points on Smokefree Environments and Regulated Products Amendment Bill

Overview

Meeting the 100-Day Plan commitment

- I seek approval to introduce the Smokefree Environments and Regulated Products Amendment Bill into Parliament.
- In December 2023, Cabinet agreed to make legislative changes to remove the changes provided for in the Smokefree Environments and Regulated Products Amendment Act 2022 that relate to:
 - reducing the number of retail outlets able to sell smoked tobacco products
 - low nicotine smoked tobacco
 - the smokefree generation policy.
- These changes are needed to give effect to the Government's 100-Day Plan which included a commitment to repeal amendments to the Smokefree Act and regulations.
- This Bill gives effect to Cabinet's decisions by amending the Smokefree Act, the 2022 Amendment Act, the Smokefree Environments and Regulated Products Regulations 2021 and the Smokefree Environments and Regulated Products Amendment Regulations 2023.

New direction

- The Cabinet paper also notes my commitment to ensuring that smoking rates continue to come down, and that I have asked officials for advice on what more the Government can do to achieve this.
- I intend to come back to Cabinet in March 2024 signalling a new way forward to Smokefree 2025, including how best to progress coalition agreement commitments. These commitments include:
 - reforming the regulation of vaping, smokeless tobacco, and oral nicotine products
 - increasing penalties for sales to minors
 - banning disposable vaping products
 - taxing smoked tobacco products only.
- I have also asked my officials to provide me with a comprehensive plan, by May 2024, to strengthen our approach to achieving Smokefree 2025 through non-legislative measures. The plan will be evidence-based, focussed on those with greatest need, costed where possible, and include implementation timeframes.

Detail of the Bill

Key provisions that are repealed

- The Bill amends the Smokefree Act and the Amendment Act as follows:
 - it removes the requirements related to the smoked tobacco retail reduction scheme including:
 - any requirement to apply to the Director-General of Health for approval to sell smoked tobacco products
 - the cap on the number of retailers who can sell smoked tobacco
 - the Treaty of Waitangi provisions that related to the smoked tobacco retail scheme
 - it removes the low nicotine content limit and any requirement to apply to the Director-General of Health for smoked tobacco product approval before manufacturing, importing, or offering these products for sale or supply
 - it removes the smokefree generation provisions, instead retaining the current R18 minimum age requirement
 - it removes any offences related to the above.

New Purpose clause

- The Bill replaces the Smokefree Act's purpose statement with the previous purpose statement that was in force before the Amendment Act. Some updates have been made to reflect changes made by the Amendment Act that are unaffected by the Bill and ensure the purpose statement is reflective of the Smokefree Act.

Amended Treaty of Waitangi clause

- The Bill removes the Treaty of Waitangi sections in the Smokefree Act that related to the smoked tobacco retail reduction scheme.
- The requirement for the Minister of Health, before regulating the contents and emissions of smoked tobacco products, to consider the risks and benefits to Māori of regulating a constituent, is retained.

Refunds for retailers

- The Bill authorises the Director-General of Health to refund the fee paid by an applicant to be an approved smoked tobacco retailer.
- The LEG paper confirms Cabinet's intent to ensure applicants can be reimbursed the application fee of \$1,475 (+ GST). At \$1,696.25 per application (GST inclusive), a total of \$759,920 was paid by 448 applicants.
- My officials have confirmed that the Ministry of Health will issue communications to applicants to give effect to the refund process as soon as the Bill comes into force.

Minor and technical change to ensure correct form available for general retailers

- I note that a minor and technical amendment has been made to correct a missed consequential amendment to the regulations from the previous Amendment Act.

- The minor and technical amendment will ensure general retailers only need to disclose limited sales related information (ie details of the product sold and the quantity sold) as compared to Specialist Vape Retailers (SVRs).
- SVRs need to provide additional sales related information such as the total sales revenue of vaping and other products. This is because SVRs must meet certain sales thresholds from selling vaping products.
- A separate form has been added to the regulations for general retailers to ensure there is a suitable form for retailers of regulated products, other than SVRs, to complete.

Conclusion

- This Bill will deliver on the Government's 100-Day Plan commitment.

PROACTIVELY RELEASED