

Aide-Mémoire

Additional supporting material for passage of the Smokefree Environments and Regulated Products Amendment Bill

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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

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Date due: 27 February 2024

To: Hon Casey Costello, Associate Minister of Health

Security level: IN CONFIDENCE **Health Report number:** H2024036743

Details: Passage of the Smokefree Environments and Regulated Products Amendment Bill through the House

Purpose: The Smokefree Environments and Regulated Products Amendment Bill (the Bill) is passing under urgency. You will move that the Bill be now read a second time, followed by the Committee of the whole House stage.

Comment The Bill was introduced on 27 February and we understand that it will be read a first time on either 27 or 28 February 2024. Following this, the second reading will occur. A draft speech outline is attached as **Appendix 1**.

After the second reading, the Committee of the whole House debate addresses whether a Bill's provisions properly incorporate the principles and objects that were agreed to at the second reading and is an opportunity to consider and make amendments.

The Bill is typically considered Part-by-Part. It may be considered clause-by-clause, or in any other way the House or Business Committee decides (for example, one question or thematically). We have prepared a clause-by-clause summary of the Bill to support you at this stage (attached as **Appendix 2**). Officials will also be available to attend.

We have previously provided you with the following [H2024036337 refers]:

- Legislative statement
- First reading speech (draft)
- Final departmental disclosure statement
- Press release (draft)
- Key messages and Q&As.

We also recently provided your office with:

- Information on stop smoking services and health promotion activities [H2024036635 refers]
- Background information to support first reading speech for the introduction of the Smokefree Environments and Regulated Products Amendment Bill [H2024036252 refers].

This aide-mémoire discloses all relevant information.

p.p



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PROACTIVELY RELEASED

Appendix 1: Draft outline for second reading speech for Smokefree Environments and Regulated Products Amendment Bill

Move the Bill for second reading:

I move, that the Smokefree Environments and Regulated Products Amendment Bill be now read a second time.

- I would like to thank members for their first reading speeches. [option to potentially acknowledge differences of opinion].
- The Bill delivers on this Government's 100-Day Plan commitment to repeal amendments to the Smokefree Environments and Regulated Products Act 1990 and regulations.
- This Government remains committed to achieving a smokefree New Zealand, but we support a different approach to how that goal is achieved.
- [Potential to discuss future direction more – as mentioned in my first reading speech the Government is looking to quickly progress commitments made in the Coalition Agreements ...]
- The Government is also... [opportunity to signal new direction].

Conclusion

- I commend this Bill to the House.

Appendix 2: Clause-by-clause – Committee stage

- This analysis provides a brief description of every clause in the Smokefree Environments and Regulated Products Amendment Bill (the Bill). It will assist you with taking the Bill through the Committee of the whole House stage.
- The Bill contains two Parts, which means that it will be debated part-by-part in accordance with standing order 311, unless the Committee of the whole House or the Business Committee determines otherwise.

[Nb Minister could seek leave for the provisions to be taken as one debate. But part by part is standard]

- *Clause 1* is the Title clause. The Act's title is the Smokefree Environments and Regulated Products Amendment Act 2024.
- *Clause 2* is the commencement clause. The Bill comes into force on the day after Royal assent.
- *Clause 3* provides that the principal Act amended is the Smokefree Environments and Regulated Products Act 1990.

PART 1 – Overview

- Part 1 contains the Amendments to the Smokefree Environments and Regulated Products Act 1990 (the Principal Act). Part 1 amendments are contained in clauses 4 to 24 inclusive. The clauses give effect to the policy decisions to remove the provisions in the Principal Act that provide, primarily, for the regulation of smoked tobacco to reduce retail availability and limit the level of nicotine in these products.

PART 1 - Clause-by-clause summary

- *Clause 4* amends section 2 to repeal definitions of terms used in provisions that are repealed by this Bill.
- *Clause 5* replaces section 3A (purposes of this Act) with the section 3A(1) that was in force prior to the commencement of the Smokefree Environments and Regulated Products (Smoked Tobacco) Amendment Act 2022. New section 3A is updated to reflect changes made by that Act that are unaffected by this Bill.
- The previous purpose statement reflected the previous government's policies regarding the regulation of smoked tobacco. This included a purpose that was intended to reflect the equity focus of those policies. Because these policies have been removed from the Act, the purpose statement was revised to reflect the substance of what remains in the Act. For this reason, the new purpose statement largely reflects the purpose statement that was in the Act before the previous amendments.

- *Clause 6* amends section 3AA (guide to this Act) to reflect the changes made by this Bill (ie, there is no requirement to enter the smoked tobacco retail market).
- *Clause 7* amends section 3AB, which deals with the effect of the Principal Act in relation to te Tiriti o Waitangi (the Treaty of Waitangi).
- The Treaty of Waitangi provisions that have been removed all related to the smoked tobacco retail regime which the Bill repeals. This means these sections need to be removed from the Act.
- Given the disproportionate impact smoking has on Māori, the final subsection has been retained. This means that the Minister of Health, before preparing regulations relating to requirements for smoked tobacco products, must consider the risks and benefits to Māori of regulating a constituent (including to both users and non-users of smoked tobacco products).
- *Clause 9* repeals subpart 1 of Part 1B, which provides for the approval of smoked tobacco retailers, and *clause 8* consequentially amends the heading to Part 1B.
- *Clause 10* repeals the cross-heading above section 57A.
- *Clause 11* repeals sections 57B to 57E, which provide for the approval of smoked tobacco products.
- *Clause 12* repeals section 57I, which provides for limits on nicotine for smoked tobacco products.
- New Zealand is party to the World Health Organization Framework Convention on Tobacco Control (FCTC)¹. 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
 - the 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.
- 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 (this aligns with the requirements under the Customs and Excise Act 2018). These remaining sections in the Principal Act were in existence before the changes made by the Amendment Act regarding nicotine content.
- *Clause 13* amends section 81, which provides for the making of regulations, to reflect the changes made by this Bill.

¹ 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.

- *Clause 14* repeals section 82A, which provides for the making of regulations relating to the approval of smoked tobacco retailers.
- *Clause 15* amends section 82B, which provides for the making of regulations relating to requirements for smoked tobacco products.
- *Clause 16* repeals section 85(1)(a)(vi) and (vii), which provides for the making of regulations requiring payment of fees in relation to the approval of a smoked tobacco retailer or smoked tobacco product.
- *Clause 17* replaces section 86(1) to remove the power to impose a levy on a retailer, distributor, importer, or manufacturer of a smoked tobacco product and makes a consequential amendment to section 86(2)(b).
- *Clause 18* amends section 90A to reflect the changes made by this Bill. Section 90A deals with the liability of an employer for the actions of an employee in relation to certain offences under the Principal Act (nb essentially removing references to sections that are repealed).
- *Clause 19* amends section 90B to reflect the changes made by this Bill. Section 90B deals with the burden of proof for establishing the defence of reasonable excuse in relation to certain offences under the Principal Act (nb essentially removing references to sections that are repealed).
- *Clause 20* repeals section 100(2A) which provides for reporting requirements for distributors of smoked tobacco products. This provision is not required as distributors of smoked tobacco products must notify the Director-General of Health of the smoked tobacco products they are distributing under section 20S.
- *Clauses 21 and 22* amend sections 102 and 103, which deal with appeals against decisions to cancel or suspend approvals or notifications, to remove references to the approval of a smoked tobacco product.
- *Clause 23* repeals section 105, which requires the Ministry of Health to review certain provisions of the Principal Act – namely the provisions that related to the regulation of smoked tobacco products with regard to reduced retail availability, nicotine limits and the change to the legal age for product sales.
- *Clause 24* amends Schedule 1 to remove transitional provisions relating to approved smoked tobacco retailers and approved smoked tobacco products.

Part 2 - Overview

- Part 2 contains the Amendments to the:
 - Smokefree Environments and Regulated Products (Smoked Tobacco) Amendment Act 2022,
 - Smokefree Environments and Regulated Products Regulations 2021, and
 - Smokefree Environments and Regulated Products Amendment Regulations 2023.
- Part 2 amendments are contained in clauses 25 to 44 inclusive. The clauses give effect to the policy decisions to remove the provisions in the Amendment Act that provide, amongst other things, for the sale and delivery of regulated products to people born on or after 1 January 2009 and for changes that would have occurred to the Customs and Excise Act 2018 to give effect to the low nicotine requirements.
- Amendments to the regulations are primarily consequential in nature, or minor and technical. The main provision of note is the new schedule in the regulations to allow refunds to be made to applicants who paid the fee to become an approved smoked tobacco retailer.

Part 2 – Clause-by-clause summary

Subpart 1—Amendments to Smokefree Environments and Regulated Products (Smoked Tobacco) Amendment Act 2022

- *Clause 25* provides that subpart 1 amends the Smokefree Environments and Regulated Products (Smoked Tobacco) Amendment Act 2022.
- *Clause 26* repeals section 2(1) to (3), which relate to commencement of provisions not yet in force and that are repealed by this Bill, and makes a consequential amendment to section 2(4).
- *Clause 27* repeals section 20, which amends the heading of subpart 7 in Part 2.
- *Clause 28* amends section 21 to repeal the provisions that replace “regulated product” with “notifiable product” in section 40 of the Principal Act. The amendment to section 21 is required in consequence of the repeal in clause 29 of the prohibition on sale, delivery, and supply of smoked tobacco products to persons born on or after 1 January 2009 (the smokefree generation).
- *Clause 29* repeals sections 22 to 26, which relate to the prohibition on sale, delivery, and supply of smoked tobacco products to the smokefree generation.
- *Clause 30* amends section 41, which amends section 81 of the Principal Act. Section 81 provides for the making of regulations. The amendment to section 41 is required in

consequence of the repeal of the prohibition on sale, delivery, and supply of smoked tobacco products to the smokefree generation (see clause 29).

- *Clause 31* repeals section 52, which amends section 94 of the Principal Act. The repeal of section 52 is required in consequence of the repeal of the prohibition on sale, delivery, and supply of smoked tobacco products to the smokefree generation (see clause 29).
- *Clause 32* repeals subpart 1 of Part 2, which amends the Customs and Excise Act 2018. The repeal of subpart 1 is required in consequence of the repeal of the requirement for approval of smoked tobacco products (see clause 11).
- *Clause 33* repeals sections 61 to 63, which amend regulations 56 to 58 of the Smokefree Environments and Regulated Products Regulations 2021. The repeal of sections 61 to 63 is required in consequence of the repeal of the prohibition on sale, delivery, and supply of smoked tobacco products to the smokefree generation (see clause 29).

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

- *Clause 34* provides that subpart 2 amends the Smokefree Environments and Regulated Products Regulations 2021.
- *Clause 35* revokes subparts 2A, 2B, and 2C of Part 3. Subpart 2A sets out limits on constituents of smoked tobacco products. Subpart 2B sets out product safety requirements for smoked tobacco products. Subpart 2C sets out information that the manufacturer or importer must provide with an application for approval for sale, import, or manufacture of a smoked tobacco product.
- *Clause 36* revokes subpart 4 of Part 3, which sets out analytical testing methods to determine nicotine levels in smoked tobacco products.
- *Clause 37* revokes Part 6A, which sets out requirements for approval as a smoked tobacco retailer.
- *Clause 38* amends regulation 84 in consequence of the amendment to section 100(2) of the Principal Act made by the Smokefree Environments and Regulated Products (Smoked Tobacco) Amendment Act 2022, and to make minor changes to the regulation.
- *Clause 39* amends Schedule 1 by revoking clause 7 and inserting the transitional provisions set out in Schedule 1 of this Bill. The transitional provisions authorise the Director-General of Health to refund fees paid by an applicant to be an approved smoked tobacco retailer.
- *Clause 40* amends Schedule 8 by revoking the items that set fees for an applicant to be an approved smoked tobacco retailer, an applicant for approval of a smoked tobacco product, and an applicant for temporary approval of a smoked tobacco product that cannot meet product requirements.

- *Clause 41* amends Schedule 9 by inserting the new form 5 set out in Schedule 2 of this Bill. The amendment is in consequence of the amendment to section 100(2) of the Principal Act made by the Smokefree Environments and Regulated Products (Smoked Tobacco) Amendment Act 2022.

Subpart 3—Amendments to Smokefree Environments and Regulated Products Amendment Regulations 2023

- *Clause 42* provides that subpart 3 amends the Smokefree Environments and Regulated Products Amendment Regulations 2023.
- *Clause 43* revokes regulation 2(2), which relates to the commencement of regulation 7.
- *Clause 44* revokes regulation 7, which revokes regulation 63 of the Smokefree Environments and Regulated Products Regulations 2021. Regulation 63 sets out standard methods for conducting tests of manufactured cigarettes.

Schedule 1 – New Part 3 inserted into Schedule 1

- Allows for refund of the fee paid by an applicant to be an approved smoked tobacco retailer.

Schedule 2 – New form 5 inserted into Schedule 9

- Provides a new form for general retailers of regulated products as there was only one form for Specialist Vape Retailers that was not suitable for use by general retailers. This corrects a missed consequential change from when the Amendment Act and related regulations were passed.