



Cabinet Legislation Committee

Minute of Decision

This document contains information for the New Zealand Cabinet. It must be treated in confidence and handled in accordance with any security classification, or other endorsement. The information can only be released, including under the Official Information Act 1982, by persons with the appropriate authority.

Smoke-free Environments (Prohibiting Smoking in Motor Vehicles Carrying Children) Amendment Bill: Approval for Introduction

Portfolio Associate Health (Hon Jenny Salesa)

On 28 May 2019, the Cabinet Legislation Committee:

- 1 **referred** the submission *Smoke-free Environments (Prohibiting Smoking in Motor Vehicles Carrying Children) Amendment Bill: Approval for Introduction* under LEG-19-SUB-0072 to Cabinet on 4 June 2019;
- 2 **invited** the Associate Minister of Health (Hon Jenny Salesa), the Minister of Justice and the Minister of Police to consider further requirements in clauses 20E 1(d) and 2(d) of the Bill relating to proof of age of people in a car who are not smoking.

Vivien Meek
Committee Secretary

Present:

Rt Hon Winston Peters
Hon Chris Hipkins (Chair)
Hon Andrew Little
Hon Stuart Nash
Hon Iain Lees-Galloway
Hon Jenny Salesa
Hon Tracey Martin (part item)
Hon Eugenie Sage (part item)
Hon Ruth Dyson (Senior Government Whip)

Officials present from:

Office of the Prime Minister
Officials Committee for LEG
Ministry of Health officials
Police officials

Hard-copy distribution:

Associate Minister of Health



Cabinet

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Smoke-free Environments (Prohibiting Smoking in Motor Vehicles Carrying Children) Amendment Bill: Approval for Introduction

Portfolio Associate Health (Hon Jenny Salesa)

On 10 June 2019, following reference from the Cabinet Legislation Committee (LEG), Cabinet:

- 1 **noted** that the Smoke-free Environments (Prohibiting Smoking in Motor Vehicles Carrying Children) Amendment Bill (the Bill) holds a category 2 priority on the 2019 Legislation Programme (must be passed this year);
- 2 **noted** that the Bill will prohibit smoking in mobile or stationary motor vehicles carrying passengers under the age of 18 when on a road [SWC-19-MIN-0194];
- 3 **agreed** to retain the provision in the Bill (as submitted to LEG on 28 May 2019) that allows a Police Constable to require information from a person who appears to be under the age of 18;
- 4 **approved** the Smoke-free Environments (Prohibiting Smoking in Motor Vehicles Carrying Children) Amendment Bill [PCO 21815] for introduction, subject to:
 - 4.1 amendment of the Bill to include the provision referred to in paragraph 3 above;
 - 4.2 final approval of the government caucuses and sufficient support in the House of Representatives;
- 5 **agreed** that the Bill be introduced in the week of 10 June 2019;
- 6 **agreed** that the government propose that the Bill be:
 - 6.1 referred to the Health Committee for consideration;
 - 6.2 enacted as soon as practicable.

Michael Webster
Secretary of the Cabinet

Hard-copy distribution:

Prime Minister
Deputy Prime Minister
Associate Minister of Health (Hon Jenny Salesa)

In Confidence

Office of the Associate Minister for Health

Chair, Cabinet

Smoke-free Environments (Prohibiting Smoking in Motor Vehicles Carrying Children) Amendment Bill: Approval for Introduction

Proposal

1. I propose that Cabinet approve the Smoke-free Environments (Prohibiting Smoking in Motor Vehicles Carrying Children) Amendment Bill ('the Bill') for introduction.

Policy

1. On 17 December 2018, Cabinet agreed to prohibit smoking in mobile or stationary motor vehicles carrying occupants under the age of 18 when on a road [CAB-18-MIN-0641 refers].
2. Younger children are at particular risk from second-hand smoke, with Māori children and those living in the most deprived areas more likely to be exposed to second-hand smoke in vehicles. While rates of children and young people's exposure to second-hand smoke have been decreasing, the rate of decrease may be slowing. Public education campaigns have been useful but law change is needed to significantly improve rates.
3. This Bill is necessary to amend the Smoke-free Environments Act 1990 to give effect to this prohibition. Earlier Parliamentary consideration of prohibiting smoking in motor vehicles carrying children has taken place. In 2015 the Health Select Committee recommended a prohibition but the recommendation was not accepted by the previous Government.
4. Enforcement of this Bill would be the responsibility of the New Zealand Police.
5. Following a discussion at the Cabinet Legislation Committee on 28 May 2019, I have decided to remove from the Bill the provision that allowed a Police constable to require information from a person who appears to be under the age of 18, specifically their full name, full address, date of birth, occupation and telephone number.
6. In order to determine that an offence has been committed, Police will rely on a presumption whereby if they believe on reasonable grounds that a child in the vehicle is under 18, and no one in the vehicle (including the child) provides information that satisfies the constable of the child's age, it may be presumed by the constable that the child is under 18.
7. Police will still have the power to require a person under the age of 18 to provide their full name, full address, date of birth, occupation and telephone number if the child is the smoker and an offence has been committed. This power is equivalent to similar provisions in the Land Transport Act 1998, and is necessary to allow an infringement notice to be issued.

Impact analysis

8. A regulatory impact statement was prepared for the Cabinet Social Wellbeing Committee meeting of 12 December 2018 [SWC-18-MIN-0194 refers].

Compliance

9. This bill complies with:
 - 9.1. the principles of the Treaty of Waitangi;
 - 9.2. the rights and freedoms contained in the New Zealand Bill of Rights Act 1990 and the Human Rights Act;
 - 9.3. the disclosure statement requirements (a disclosure statement has been prepared and is attached to the paper);
 - 9.4. the principles and guidelines set out in the Privacy Act 1993;
 - 9.5. relevant international standards and obligations;
 - 9.6. the *Legislation Guidelines (2018 edition)*.

Consultation

10. The Ministry of Justice, New Zealand Police and the Department of Prime Minister and Cabinet have been consulted.
11. The Ministers of Justice, Police, Education, Environment, Conservation, Workplace Relations, Agriculture and Internal Affairs have been consulted, as have New Zealand First and the Green Party.

Binding on the Crown

12. The Bill (when enacted) will bind the Crown.

Creating new agencies or amending law relating to existing agencies

13. The Bill will not create new agencies or amend law relating to existing agencies.

Allocation of decision making powers

14. Not applicable.

Associated regulations

15. Not applicable.

Other instruments

16. Not applicable.

Definition of Minister/department

17. Not applicable.

Commencement of legislation

18. This Bill will come into force 18 months after the date on which it receives Royal assent.

Parliamentary stages

19. The Bill will be introduced this week and holds a category 2 priority, to be passed in 2019.

20. It is proposed that the Bill be referred to the Health Committee.

Proactive Release

21. Once Cabinet decisions have been made, I intend to proactively release this Cabinet paper on the Ministry of Health's website.

Recommendations

The Associate Minister of Health recommends that the Committee:

1. note that the Smoke-free Environments (Prohibiting Smoking in Motor Vehicles Carrying Children) Amendment Bill holds a category 2 priority on the 2019 Legislation Programme (must be passed this year);
2. note that the Bill will prohibit smoking in mobile or stationary motor vehicles carrying occupants under the age of 18 when on a road;
3. agree that Police cannot require people who appear to be under the age of 18 to provide information, for example their full name and date of birth, for the purpose of determining whether an offence has been committed, except when the person who appears to be under 18 years old is the smoker;
4. agree that if a Police constable believes on reasonable grounds that a child in the vehicle is under the age of 18, and no one in the vehicle (including the child) provides information that can satisfy the constable as to the child's age, it may be presumed by the constable that the child is under 18;
5. approve the Smoke-free Environments (Prohibiting Smoking in Motor Vehicles Carrying Children) Amendment Bill for introduction, subject to the final approval of the government caucus and sufficient support in the House of Representatives;
6. agree that the Bill be introduced this week;
7. agree that the Government propose that the Bill be:
 - 7.1. referred to the Health Committee for consideration;
 - 7.2. enacted as soon as practicable.

Authorised for lodgement

Hon Jenny Salesa
Associate Minister of Health

IN CONFIDENCE

Smoke-free Environments (Prohibiting Smoking in Motor Vehicles Carrying Children) Amendment Bill

Government Bill

Explanatory note

General policy statement

This Bill amends the Smoke-free Environments Act 1990 to prohibit smoking in motor vehicles carrying children and young people under 18 years of age. The purpose is to protect them from the harm associated with second-hand smoke.

The Bill supports New Zealand's responsibilities to protect children's health and well-being under the United Nations Convention on the Rights of the Child.

Younger children are at particular risk from second-hand smoke. There is strong evidence that exposure to second-hand smoke can put them at increased risk of serious medical conditions. Māori children and those living in the most deprived areas are more likely to be exposed to second-hand smoke in vehicles. While rates of children and young people's exposure to second-hand smoke have been decreasing, the rate of decrease may be slowing. Public education social marketing campaigns have been useful but this amendment is needed to significantly decrease rates further.

Departmental disclosure statement

The Ministry of Health is required to prepare a disclosure statement to assist with the scrutiny of this Bill. The disclosure statement provides access to information about the policy development of the Bill and identifies any significant or unusual legislative features of the Bill.

A copy of the statement can be found at [PPU to insert URL and link] (if it has been provided for publication).

Regulatory impact assessment

The Ministry of Health produced a regulatory impact assessment on 17 December 2018 to help inform the main policy decisions taken by the Government relating to the contents of this Bill.

A copy of this regulatory impact assessment can be found at—

- <https://www.health.govt.nz/about-ministry/legislation-and-regulation/regulatory-impact-statements/prohibiting-smoking-motor-vehicles-carrying-children-under-18-years-age>
- <http://www.treasury.govt.nz/publications/informationreleases/ria>

Clause by clause analysis

Clause 1 is the Title clause.

Clause 2 is the commencement clause and provides that the Bill comes into force 18 months after receiving the Royal assent.

Clause 3 provides that the Bill amends the Smoke-free Environments Act 1990 (the **principal Act**).

Part 1

Amendments to principal Act

Clause 4 amends section 2, which relates to interpretation, by replacing the definition of enforcement officer so that it includes constables as enforcement officers for the purposes of *new Part 1A*, as inserted by *clause 9* of the Bill.

Clause 5 amends section 3A, which relates to the purposes of the principal Act, so that the particular purpose of *new Part 1A*, set out in *new section 20B*, is not limited or affected by the general purposes referred to in section 3A(1).

Clause 6 amends section 5, which relates to prohibiting smoking in workplaces, so that the exception that would allow smoking in a work vehicle is overridden by *new section 20D*, which prohibits smoking in motor vehicles carrying child occupants.

Clause 7 amends section 5A, which relates to employers permitting smoking in a work vehicle with the consent of its users, so that it is subject to the prohibition in *new section 20D* on smoking in motor vehicles carrying child occupants.

Clause 8 amends section 9, which relates to restrictions on smoking in passenger service vehicles, so that the section cannot be used to permit smoking in motor vehicles carrying child occupants as prohibited by *new section 20D*.

Clause 9 inserts *new Part 1A*, which is to make motor vehicles smoke-free when they are carrying child occupants. *New Part 1A* consists of *new sections 20B to 20F*.

New section 20B sets out the purpose of *new Part 1A*.

New section 20C provides definitions of terms used in *new Part 1A*.

New section 20D sets out the prohibition on smoking in motor vehicles carrying child occupants.

New section 20E provides for the powers of a constable in relation to the prohibition.

New section 20F relates to the offences that a person may commit in relation to the exercise of a constable's powers under *new section 20E*.

Clause 10 amends section 38B, which relates to the commission of infringement offences, to update the section regarding the way proceedings in relation to infringement offences are dealt with.

Part 2

Amendment to Summary Proceedings Act 1957

Clause 11 amends the Summary Proceedings Act 1957. Section 2, which relates to interpretation, is amended by including in the definition of infringement notices those that are issued under *new section 20D*, as well as section 38C, of the Smoke-free Environments Act 1990.

Hon Jenny Salea

Smoke-free Environments (Prohibiting Smoking in Motor Vehicles Carrying Children) Amendment Bill

Government Bill

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Part 2**Amendment to Summary Proceedings Act 1957**

- 11 Summary Proceedings Act 1957 amended 5

The Parliament of New Zealand enacts as follows:

1 Title

This Act is the Smoke-free Environments (Prohibiting Smoking in Motor Vehicles Carrying Children) Amendment Act **2019**.

2 Commencement

This Act comes into force on the day that is 18 months after the date on which it receives the Royal assent.

3 Principal Act

This Act amends the Smoke-free Environments Act 1990 (the **principal Act**).

Part 1**Amendments to principal Act****4 Section 2 amended (Interpretation)**

In section 2(1), replace the definition of **enforcement officer** with:

enforcement officer means—

- (a) a person for the time being appointed under section 14 to enforce Parts 1 and 2, or provisions of Parts 1 and 2; or
- (b) for the purposes of **Part 1A**, a constable

5 Section 3A amended (Purposes of this Act)

In section 3A(2), replace “4 and 21, of Parts 1 and 2” with “4, **20B**, and 21, of Parts 1, **1A**, and 2”.

6 Section 5 amended (Smoking in workplaces prohibited)

After section 5(2), insert:

- (3) Nothing in this section permits smoking in a vehicle carrying child occupants (*see* **section 20D**).

7 Section 5A amended (Employer may permit smoking in vehicle with consent of users)

In section 5A, insert as subsection (2):

- (2) Nothing in this section permits smoking in a vehicle carrying child occupants (*see* **section 20D**).

8 Section 9 amended (Smoking restricted in passenger service vehicles)

After section 9(4), insert:

- (5) Nothing in this section permits smoking in a vehicle carrying child occupants (*see section 20D*).

9 New Part 1A inserted

After section 20A, insert:

Part 1A

Smoke-free motor vehicles carrying child occupants

20B Purpose of this Part

The purpose of this Part is to limit children's exposure to second-hand smoke by prohibiting smoking when they are in motor vehicles.

20C Interpretation for this Part

In this Part, unless the context otherwise requires,—

child occupant means a person under the age of 18 years who is in a motor vehicle

motor vehicle has the meaning given to it in section 2(1) of the Land Transport Act 1998

road has the meaning given to it in section 2(1) of the Land Transport Act 1998.

20D Smoking prohibited in motor vehicle carrying child occupant

- (1) A person must not smoke in a motor vehicle, whether moving or stationary, that is on a road and has a child occupant.
- (2) However, a person may smoke in a motor vehicle if—
- (a) the person is the only occupant of the motor vehicle who is under the age of 18 years; or
- (b) the motor vehicle is stationary on a road and in use as a dwelling.
- (3) A person who contravenes **subsection (1)** commits an infringement offence and is liable to—
- (a) an infringement fee of \$50; or
- (b) a fine imposed by a court not exceeding \$100.
- (4) Sections 38B to 39 apply to the infringement offence in **subsection (3)** as if—
- (a) the infringement offence were an infringement offence defined in section 38A; and

- (b) the infringement fee in **subsection (3)(a)** were an infringement fee specified in section 38A for the infringement offence (although the fee is a set fee and not a maximum fee as contemplated by section 38A); and
 - (c) a constable were the enforcement officer referred to in those sections.
- (5) A constable may presume that a person is a child occupant if—
- (a) the constable believes on reasonable grounds that the person is a child occupant; and
 - (b) neither the person nor any other occupant of the motor vehicle provides information that satisfies the constable that the person is not a child occupant.

20E Constable's powers

- (1) A constable who sees a person smoking in a motor vehicle that is on a road and that appears to have a child occupant may do 1 or more of the following, if the constable is in uniform, or wearing a distinctive cap, hat, or helmet, with a badge of authority affixed to it:
- (a) signal or request the driver of the motor vehicle to stop the vehicle as soon as practicable;
 - (b) require the driver to remain stopped for as long as is reasonably necessary for the constable to make the inquiries and complete the exercise of powers under this section;
 - (c) require the person who is smoking to stop smoking in the motor vehicle;
 - (d) require the person who is smoking to provide the person's—
 - (i) full name; and
 - (ii) full address; and
 - (iii) date of birth; and
 - (iv) occupation; and
 - (v) telephone number.
- (2) A constable who sees a person smoking in a motor vehicle that is on a road and that appears to have a child occupant may do 1 or more of the following, if the constable is in another vehicle following the motor vehicle:
- (a) by displaying flashing blue, or blue and red, lights or sounding a siren, require the driver of the other vehicle to stop;
 - (b) require the driver to remain stopped for as long as is reasonably necessary for the constable to make the inquiries and complete the exercise of powers under this section;
 - (c) require the person who is smoking to stop smoking in the motor vehicle;
 - (d) require the person who is smoking to provide the person's—
 - (i) full name; and

- (ii) full address; and
 - (iii) date of birth; and
 - (iv) occupation; and
 - (v) telephone number.
- (3) Despite **subsection (1)**, a constable must not take either of the actions referred to in **subsection (1)(c) or (d)** if the motor vehicle is stationary on the road and is in use as a dwelling.

Offences

20F Offences in respect of constables

A person commits an offence, and is liable on conviction to a fine not exceeding \$1,000, if the person—

- (a) intentionally obstructs, hinders, or resists a constable exercising or attempting to exercise powers under **section 20E**; or
- (b) intentionally fails to comply with a requirement under **section 20E**; or
- (c) when required under **section 20E(1)(d) or (2)(d)** to give information, gives information the person knows to be false or misleading.

10 Section 38B amended (Commission of infringement offences)

In section 38B, insert as subsections (2) and (3):

- (2) Proceedings commenced in the way described in **subsection (1)(a)** do not require the leave of a District Court Judge or Registrar under section 21(1)(a) of the Summary Proceedings Act 1957.
- (3) *See* section 21 of the Summary Proceedings Act 1957 for the procedure that applies if an infringement notice is issued.

Part 2

Amendment to Summary Proceedings Act 1957

11 Summary Proceedings Act 1957 amended

- (1) This section amends the Summary Proceedings Act 1957.
- (2) In section 2(1), definition of **infringement notice**, after paragraph (je), insert:
 - (jf) **section 20D** or 38C of the Smoke-free Environments Act 1990; or

