



Cabinet

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.

Report of the Cabinet Legislation Committee: Period Ended 23 February 2024

On 26 February 2024, Cabinet made the following decisions on the work of the Cabinet Legislation Committee for the period ended 23 February 2024:

Out of scope

LEG-24-MIN-0011 **Smokefree Environments and Regulated Products Amendment Bill** CONFIRMED
Portfolio: Associate Health (Hon Casey Costello)

Out of scope

Diana Hawker
for Secretary of the Cabinet



Cabinet Legislation Committee

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Smokefree Environments and Regulated Products Amendment Bill

Portfolio Associate Health (Hon Casey Costello)

On 22 February 2024, the Cabinet Legislation Committee:

- 1 **noted** that in December 2023, Cabinet agreed to amend the Smokefree Environments and Regulated Products Act 1990, the Smokefree Environments and Regulated Products (Smoked Tobacco) Amendment Act 2022 and related regulations to remove the changes provided for in the Smokefree Environments and Regulated Products (Smoked Tobacco) Amendment Act 2022 [CAB-23-MIN-0500];
- 2 **noted** that the Smokefree Environments and Regulated Products Amendment Bill (the Bill) seeks a category 2 priority (must be passed in 2024) on the 2024 Legislation Programme, and that Cabinet has previously noted that the Bill should be passed by 8 March 2024 [CAB-23-MIN-0500];
- 3 **noted** that the Bill removes the changes provided for in the Smokefree Environments and Regulated Products (Smoked Tobacco) Amendment Act 2022 that relate to reducing the number of retailers that can sell smoked tobacco, limiting nicotine levels in smoked tobacco products, and introducing a Smokefree Generation policy;
- 4 **agreed** to amend the Smokefree Environments and Regulated Products Act 1990 to enable reimbursement of applicants who have applied to be an approved smoked tobacco retailer and paid the \$1,475 (+ GST) application fee;
- 5 **approved** the Smokefree Environments and Regulated Products Amendment Bill [PCO 26014/2.9] for introduction, subject to the final approval of the government caucuses and sufficient support in the House of Representatives;
- 6 **agreed** that the Bill be introduced on 27 February 2024;
- 7 **agreed** that the Government propose that the Bill be:
 - 7.1 passed under urgency;
 - 7.2 enacted by 8 March 2024.

Rebecca Davies
Committee Secretary

Attendance: see over

Present:

Rt Hon Winston Peters
Hon Chris Bishop (Chair)
Hon Dr Shane Reti
Hon Simeon Brown
Hon Louise Upston
Hon Tama Potaka
Hon Casey Costello
Hon Andrew Bayly
Scott Simpson, MP
Todd Stevenson, MP
Jamie Arbuckle, MP

Officials present from:

Officials Committee for LEG
Office of the Prime Minister
Office of the Leader of the House
Office of the Minister of Revenue

In Confidence

Office of the Associate Minister of Health

Chair, Cabinet Legislation Committee

Smokefree Environments and Regulated Products Amendment Bill

Proposal

- 1 This paper proposes that the Smokefree Environments and Regulated Products Amendment Bill (the Amendment Bill) be approved for introduction to the House of Representatives.

Policy

- 2 On 18 December 2023, Cabinet [CAB-23-MIN-0500 refers] 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:
 - 2.1 reducing the number of retailers that can sell smoked tobacco
 - 2.2 limiting nicotine levels in smoked tobacco products
 - 2.3 introducing a Smokefree Generation policy.
- 3 Cabinet also agreed to:
 - 3.1 retain some changes made by the Amendment Act that are largely unrelated to these three main changes, to better support compliance and enforcement efforts
 - 3.2 amend the Smokefree Environments and Regulated Products Act 1990 to enable the reimbursement of applicants who applied to be an approved smoked tobacco retailer and paid the application fee
 - 3.3 consequential amendments to give effect to the above.
- 4 I note that the application fee paid was \$1,475 (+ GST) and that this was recorded in the previous Cabinet minute as GST inclusive. The Amendment Bill has been drafted to enable a refund of up to \$1,696.25 to be made – this reflects the Government's intent for the application fee of \$1,475 (+ GST) to be repaid.
- 5 The Amendment Bill will give effect to these decisions by amending the Act, the Amendment Act, the Smokefree Environments and Regulated Products

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Regulations 2021, and the Smokefree Environments and Regulated Products Amendment Regulations 2023.

- 6 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 be passed and come into force before 1 July 2024 to prevent these changes from taking effect.
- 7 I am committed to ensuring that smoking rates continue to come down and 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 strategic way forward to Smokefree 2025 and to seek decisions on progressing the 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 and taxing smoked tobacco products only.

Impact analysis

- 8 A regulatory impact statement was not prepared for the Smokefree Bill as it was a part of the Government's 100-day plan and is therefore exempt.

Compliance

- 9 The Bill is consistent with:
- 9.1 the rights and freedoms contained in the New Zealand Bill of Rights Act 1990 and the Human Rights Act 1993
 - 9.2 the principles and guidelines set out in the Privacy Act 2020
 - 9.3 the relevant international standards and obligations
 - 9.4 the Legislation Guidelines (2021 edition), which are maintained by the Legislation Design and Advisory Committee.
- 10 The disclosure statement has been prepared and is attached to this paper.

Te Tiriti o Waitangi

- 11 These proposals have the potential to impact Māori, due to their higher smoking rate. Daily smoking rates for the total population in 2022-23 were 6.8% and were 17.1% for Māori.
- 12 The Government is committed to achieving the smokefree 2025 goal, and to ensuring that tobacco control initiatives focus on those who need them most, including Māori. This includes support for effective stop smoking services and products and stop smoking and vaping social marketing campaigns.

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- 13 Further work will be undertaken to ensure that any future tobacco control initiatives are designed and implemented in ways that are effective for Māori so that smoking rates can continue to come down.
- 14 I am aware that the Waitangi Tribunal has received statements of claim and/or amended statements of claim and an application for an urgent hearing in relation to repeal of amendments to the Smokefree Environments and Regulated Products Act 1990 and related regulations.

Consultation

- 15 The following agencies have been consulted: the Ministry of Business, Innovation and Employment, the Ministry of Education, the Ministry for Ethnic Communities, the Ministry of Foreign Affairs and Trade, the Ministry of Justice, the Ministry for Pacific Peoples, the Ministry for Social Development, the New Zealand Customs Service, New Zealand Police, Oranga Tamariki–Ministry for Children, Whaikaha – Ministry of Disabled People, Te Arawhiti, the Crown Law Office, Te Puni Kōkiri, Treasury and the Department of the Prime Minister and Cabinet.
- 16 No public consultation or consultation with private sector organisations has occurred.
- 17 The government caucus has been consulted.

Binding on the Crown

- 18 The principal Act binds the Crown and the Amendment Bill does not change this.

Creating new agencies or amending law relating to existing agencies

- 19 The Amendment Bill does not create a new agency or amend law relating to existing agencies.

Allocation of decision-making powers

- 20 The Amendment Bill will not allocate decision making powers between the executive, tribunals, and courts.

Associated regulations

- 21 Regulations are not required for the legislation to take effect.

Other instruments

- 22 The Amendment Bill does not include any provision empowering the making of other instruments.

Definition of Minister/department

- 23 The Amendment Bill does not include a definition of Minister or department.

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Commencement of legislation

24 The Amendment Bill will come into force the day after Royal assent.

25 s 9(2)(h)

Parliamentary stages

26 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.

27 The Amendment Bill has a proposed category 2 on the 2024 Legislation Programme, that is it must be passed by the end of 2024.

Proactive Release

28 I intend to proactively release this paper, with relevant redactions, within 30 business days of final decisions being taken by Cabinet.

Recommendations

I recommend that the Cabinet Legislation Committee:

- 1 note that on 18 December 2023, Cabinet [CAB-23-MIN-0500 refers] agreed to amend the Smokefree Environments and Regulated Products Act 1990, the Smokefree Environments and Regulated Products (Smoked Tobacco) Amendment Act 2022 and related regulations to remove the changes provided for in the Smokefree Environments and Regulated Products (Smoked Tobacco) Amendment Act 2022;
- 2 note that the Smokefree Environments and Regulated Products Amendment Bill has been proposed to hold a category 2 priority on the 2024 Legislation Programme and that Cabinet [CAB-23-MIN-0500 refers] noted that the Bill should be passed by 8 March 2024;
- 3 note that the Smokefree Environments and Regulated Products Amendment Bill will remove the changes provided for in the Smokefree Environments and Regulated Products (Smoked Tobacco) Amendment Act 2022 that relate to reducing the number of retailers that can sell smoked tobacco, limiting nicotine levels in smoked tobacco products, and introducing a Smokefree Generation policy;
- 4 confirm the agreement to amend the Smokefree Environments and Regulated Products Act 1990 to enable reimbursement of applicants who have applied to be an approved smoked tobacco retailer and paid the \$1,475 (+ GST) application fee;

C O N F I D E N T I A L

- 5 approve the Smokefree Environments and Regulated Products 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 Smokefree Environments and Regulated Products Amendment Bill be introduced on 27 February 2024;
- 7 agree that the Government propose that the Bill be:
 - 7.1 passed under urgency, and
 - 7.2 enacted by 8 March 2024.

Authorised for lodgement

Hon Casey Costello

Associate Minister of Health

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