

In Confidence

Office of the Associate Minister of Health

Chair, Cabinet Business Committee

Smokefree Environments and Regulated Products (Smoked Tobacco) Amendment Bill: Approval for Introduction

Proposal

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

Policy

- 2 On 6 December 2021, Cabinet [CAB-21-MIN-0503 refers] agreed to amend the Smokefree Environments and Regulated Products Act 1990 (the Smokefree Act), and the Customs and Excise Act 2018 (the Customs and Excise Act) to:
 - 2.1 significantly reduce retail availability by restricting sales of smoked tobacco products to retail outlets approved by the Director-General of Health
 - 2.2 restrict access to and availability of smoked tobacco products by amending the age limits for sale of smoked tobacco products (ie, introducing a Smokefree Generation policy), and
 - 2.3 reduce the appeal and addictiveness of smoked tobacco products by extending the regulatory powers over their composition (eg, reducing nicotine levels).
- 3 The Smokefree Bill will give effect to these decisions.

Treaty of Waitangi provisions

- 4 The Smokefree Bill includes a specific Te Tiriti o Waitangi (te Tiriti) clause that sets out the range of specific provisions that provide for the Crown's intention to give effect to the principles of te Tiriti. These include requirements for:
 - 4.1 the Director-General of Health to consult with the relevant iwi, iwi-Māori partnership boards, the Māori Health Authority and Māori when making decisions around reducing retail availability (that is, the application process to be a smoked tobacco retailer and the number and geographical spread of retail premises), and

- 4.2 the Minister of Health to consider the risks and benefits to Māori before recommending the making of regulations restricting the content of smoked tobacco products to make them less appealing and addictive.
- 5 The proposed clause is intended to give effect to the Crown's obligations under te Tiriti, and in particular the principle of active participation, by ensuring that the new decision-making provisions of the Smokefree Bill are implemented in a way that is effective for Māori, so that critical health disparities are addressed.
- 6 In addition, the Smokefree Bill updates the Smokefree Act's purpose statement to specifically include reducing disparities in smoking rates and smoking related illnesses among New Zealand population groups, and in particular for Māori. This reflects Outcome 1 of the Government's *Smokefree Aotearoa 2025 Action Plan* and acknowledges that achieving equitable health outcomes for Māori is an essential step towards the Crown meeting its te Tiriti obligations.

Consequential amendments to the Customs and Excise Act

- 7 New provisions amend the Customs and Excise Act so that that all imported smoked tobacco products must meet new product requirements set under the Smokefree Act.

Minor and technical amendments

- 8 The Smokefree Bill also makes a number of additional minor and technical changes to better reflect the Government's broader policy intent to significantly and progressively reduce the use and prevalence of smoked tobacco products. These changes do not affect the policy intent of the Smokefree Bill.

Transitional provisions

- 9 Transitional provisions are included in the Smokefree Bill to allow time to draft the regulations required to enable the regulatory scheme to commence and allow businesses to adjust their systems and practice.

Impact analysis

- 10 A regulatory impact statement was prepared to support the changes in the Cabinet paper *Smokefree Aotearoa 2025 Action Plan approval* [CAB-21-MIN-0503 refers].
- 11 The Ministry of Health's Quality Assurance panel considered that the impact statement met the quality assurance criteria.

Compliance

- 12 The Bill is consistent with:
- 12.1 the principles of the Treaty of Waitangi
 - 12.2 the rights and freedoms contained in the New Zealand Bill of Rights Act 1990 and the Human Rights Act 1993
 - 12.3 the disclosure statement requirements (a disclosure statement has been prepared and is attached)
 - 12.4 the principles and guidelines set out in the Privacy Act 2020
 - 12.5 the [Legislation Guidelines](#) (2018 edition), which are maintained by the Legislation Design and Advisory Committee
 - 12.6 relevant international standards and obligations (except to the extent noted immediately below), including the World Health Organization's Framework Convention on Tobacco Control, to which New Zealand is a signatory.

13 s 9(2)(h)



Consultation

- 14 The following agencies have been consulted: The Department of Corrections, the interim Māori Health Authority, the Ministry of Business, Innovation and Employment (Commerce and Consumer Affairs), the Ministry of Education, the Ministry for the Environment, 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, Te Arawhiti, the Crown Law Office, and Te Puni Kōkiri. The Treasury and the Department of the Prime Minister and Cabinet were informed.

Binding on the Crown

- 15 The principal Act binds the Crown.

Creating new agencies or amending law relating to existing agencies.

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

Allocation of decision making powers

- 17 The Bill provides for new regulation-making powers to enable the regulatory regime to come into effect once the Bill is passed.

Associated regulations

- 18 Regulations will be drafted once the Bill is passed.

Other instruments

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

Definition of Minister/department

- 20 The Bill does not contain a definition of Minister or department.

Commencement of legislation

- 21 Provisions prohibiting the sale of smoked tobacco products to anyone born on or after 1 January 2009 commence on 1 January 2027.
- 22 The remainder of the Bill will come into force on the day after the date of Royal assent.

Parliamentary stages

- 23 The Bill has a proposed category three priority on the 2022 Legislation Programme, to be passed if possible in the year.
- 24 I intend to refer the Bill to the Health Committee for consideration.

Proactive Release

- 25 The Ministry of Health intends to proactively release this paper, with relevant redactions, within 30 business days of final decisions being taken by Cabinet.

Recommendations

- 26 The Associate Minister of Health recommends that the Committee:
- 1 note on 6 December 2021, Cabinet agreed to amend the Smokefree Environments and Regulated Products Act 1990 and the Customs and Excise Act 2018 [CAB-21-MIN-0503 refers].
 - 2 note that the Smokefree Environments and Regulated Products (Smoked Tobacco) Amendment Bill holds a category 3 priority on the 2022 Legislation Programme, to be passed if possible in the year.
 - 3 note that the Smokefree Environments and Regulated Products (Smoked Tobacco) Amendment Bill amends the Smokefree Environments and Regulated Products Act 1990 to further restrict access and availability of smoked tobacco products; and reduce their appeal and addictiveness.
 - 4 approve the Smokefree Environments and Regulated Products (Smoked Tobacco) Amendment Bill for introduction, subject to the final approval of the government caucus and sufficient support in the House of Representatives.
 - 5 agree that the Smokefree Environments and Regulated Products (Smoked Tobacco) Amendment Bill be introduced on 23 June 2022.
 - 6 agree that the government propose that the Bill be:
 - 6.1 referred to the Health Committee for consideration
 - 6.2 enacted, if possible, in 2022.

Authorised for lodgement

Hon Dr Ayesha Verrall
Associate Minister of Health