

In Confidence

Office of the Associate Minister of Health

Chair, Cabinet Legislation Committee

Smoke-free Environments Regulations 2017

Proposal

1. This paper reports back on the regulations required for bringing the Smoke-free Environments (Tobacco Standardised Packaging) Amendment Act (the Act) into force.

Policy

2. In November 2016, Cabinet agreed to the recommendations for finalising regulations for standardising tobacco packaging and products following public consultation. Cabinet directed officials to prepare the regulations and report to the Legislation Committee with the finalised regulations and next steps [SOC-16-MIN-0171 refers].
3. The principal objectives of the Act are to reduce the appeal of tobacco products and smoking, particularly for young people; to reduce the wider social acceptance and approval of smoking and tobacco products; to increase the noticeability and effectiveness of mandated health warning messages and images; and to reduce the likelihood of consumers acquiring false perceptions of the harms caused by tobacco products.
4. New Zealand has required graphic images with associated health warning messages to be displayed on tobacco products since 2008. A new set of 14 health warning messages and graphic images have been prepared and incorporated into the Smoke-free Environments Regulations 2017. The requirement in the current regulations for the health warning messages and images to be rotated is continued, but the rotation period will now be 16 months (which includes a four month change-over period where either set can be used) instead of 10 months. This will ensure that there is continuous coverage of health warning messages and images.
5. The attached Smoke-free Environments Regulations 2017 will replace the Smoke-free Environments Regulations 2007. In addition to the new health warnings and images, the new regulations contain requirements for the purpose of standardising tobacco products and packages.

6.

[Redacted]

[Redacted]

*

*Redacted under (section 9(2)(h) of the Official Information Act, 1982.

8. Since the November 2016 Cabinet paper, MFAT has been informed that the decision in the World Trade Organization (WTO) dispute settlement proceedings against Australia has been delayed. The decision is now expected to be publically released in late 2017 or early 2018. [REDACTED]
9. There have been media reports that the WTO panel has found in Australia's favour. These reports have been based on leaked information and cannot be confirmed until the final report is released by the WTO.
10. By default, the Act comes into force on 14 March 2018 and these regulations provide the detail of the standardised packaging regime and will come into force on this same date. This would provide over nine months lead-in time once the detail of the Smoke-free Environments Regulations 2017 is released.
11. In addition, the Act allows an extra six weeks for old stock to be distributed down the supply chain, and a further six weeks for retailers to sell through old stock (note manufacture and importation of non-compliant product must cease when the Act comes into force).

Compliance

12. The regulations comply 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 principles and guidelines set out in the Privacy Act 1993
 - 12.4. relevant international standards and obligations
 - 12.5. the LAC Guidelines on the Process and Content of Legislation (2014 edition), which are maintained by the Legislation Design and Advisory Committee.

Regulations Review Committee

13. There are no anticipated grounds for the Regulations Review Committee to draw the disallowable instrument or regulations to the attention of the House of Representatives under Standing Order 319.

Certification by Parliamentary Counsel

14. The regulations are certified by the Parliamentary Counsel Office as being in order for submission to Cabinet. The Parliamentary Counsel Office is undertaking final quality assurance processes which may result in minor changes to the regulations prior to them being submitted to Cabinet.

Regulatory Impact Analysis

15. The regulatory impact requirements relating to standardised packaging were satisfied before Cabinet made its decision to proceed with legislation [CAB Min (13) 4/6 refers]. A Regulatory Impact Statement (RIS) was submitted when Cabinet agreed in principle to proceed [SOC Min (12) 5/4 refers] and an updated RIS was submitted to support the final decision, following consultation [CAB Min (13) 4/6 refers]. Both documents have been published.

Publicity

16. I intend to release a media statement following Cabinet's approval of the Smoke-free Environments Regulations 2017. As with previous Cabinet papers on standardised packaging, I propose that this Cabinet paper and minuted decisions be published on the Ministry of Health (the Ministry) website at an appropriate time, subject to any material being withheld as necessary.
17. The Ministry will provide information for the general public on its website to coincide with any public announcements. This information will include the graphic images and associated health warning messages, implementation timeframes and a brief overview of the evidence on effectiveness of standardised packaging.
18. An implementation guidance package will be forwarded to all industry groups with a presence in the New Zealand market as soon as practicable following Cabinet's approval of Smoke-free Environments Regulations 2017. The package will include the graphic images and associated health warning messages, packaging dimensions and other requirements that need to be used by industry to produce the standardised packages for tobacco products.

Consultation

19. MFAT has been consulted and the Department of the Prime Minister and Cabinet, Customs and the Treasury have all been informed.

Recommendations

I recommend that the LEG Cabinet Committee:

1. note that in November 2016, SOC agreed to the recommendations for finalising regulations for standardising tobacco packaging and products following public consultation. Cabinet directed officials to prepare the regulations and report to the Legislation Committee with the finalised regulations and next steps [SOC-16-MIN-0171 refers]
2. note that the Smoke-free Environments Regulations 2017 will give effect to the decision referred to in paragraph 1 above
3. agree that the Parliamentary Counsel Office may make minor changes arising from their quality assurance processes prior to final submission of the regulation to Cabinet
4. authorise the submission to the Executive Council of the Smoke-free Environments Regulations 2017
5. note that the Smoke-free Environments Regulations 2017 come into force on 14 March 2018
6. agree that this Cabinet paper and minuted decision be published on the Ministry of Health website at an appropriate time, subject to any material being withheld as necessary.

Authorised for lodgement

Hon Nicky Wagner
Associate Minister of Health