

# Departmental Disclosure Statement

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Customs and Excise (Tobacco Products-Budget Measures) Amendment Bill
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The departmental disclosure statement for a government Bill seeks to bring together in one place a range of information to support and enhance the Parliamentary and public scrutiny of that Bill.

It identifies:

- the general policy intent of the Bill and other background policy material;
- some of the key quality assurance products and processes used to develop and test the content of the Bill;
- the presence of certain significant powers or features in the Bill that might be of particular Parliamentary or public interest and warrant an explanation.

This disclosure statement was prepared by the Ministry of Health.

The Ministry of Health certifies that, to the best of its knowledge and understanding, the information provided is complete and accurate at the date of finalisation below.

23 May 2016

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## Part One: General Policy Statement

This Bill amends the Customs and Excise Act 1996 to make 4 cumulative 10% increases to the duties on all tobacco products:

- the first on 1 January 2017 to those duties in force at the close of 31 December 2016:
- the second on 1 January 2018 to those duties in force at the close of 31 December 2017:
- the third on 1 January 2019 to those duties in force at the close of 31 December 2018:
- the fourth on 1 January 2020 to those duties in force at the close of 31 December 2019.

Those increases will be made in combination with annual Consumers Price Index (**CPI**) indexation of the duties or, if no CPI-indexation occurs on 1 January in all or any of 2017 to 2020, independently.

The amendments are intended to increase the price of tobacco to discourage tobacco consumption, which will improve the health of New Zealanders.

The Bill also amends or affects exclusions of tobacco product price increases (including those resulting from increases in duties) from required CPI-indexation of, or related to, social assistance. The Bill continues these exclusions for the indexation required for the years 2018 to 2021 inclusive. These exclusions are in the Children, Young Persons, and Their Families Act 1989, Education Act 1989, Income Tax Act 2007, New Zealand Superannuation and Retirement Income Act 2001, Social Security Act 1964, and Veterans' Support Act 2014.

Continuing these exclusions ensures that recipients of social assistance are not reimbursed for the increases in tobacco duties. Any reimbursement for those increases would contradict the reason for making them, which is to discourage smoking.

## Part Two: Background Material and Policy Information

### Published reviews or evaluations

2.1. Are there any publicly available inquiry, review or evaluation reports that have informed, or are relevant to, the policy to be given effect by this Bill?	YES
<p><i>Inquiry into the tobacco industry in Aotearoa and the consequences of tobacco use for Māori</i>, Report of the Māori Affairs Committee, New Zealand House of Representatives (I.10A), November 2010  <a href="http://www.parliament.nz/resource/0000131388">http://www.parliament.nz/resource/0000131388</a></p> <p><i>Government Response to the Report of the Māori Affairs Committee on its Inquiry into the tobacco industry in Aotearoa and the consequences of tobacco use for Māori (Final Response)</i>, New Zealand Government, Presented to the House of Representatives in accordance with Standing Order 248 (J.1), March 2011  <a href="http://www.parliament.nz/resource/0000157432">http://www.parliament.nz/resource/0000157432</a></p> <p>Report of the Finance and Expenditure Committee on the Customs and Excise (Tobacco Products – Budget Measures) Amendment Bill (2012)  <a href="http://www.parliament.nz/resource/en-nz/50DBSCH_SCR5613_1/d278f1c98a28b92756aeb10bc2b91209881ab3b4">http://www.parliament.nz/resource/en-nz/50DBSCH_SCR5613_1/d278f1c98a28b92756aeb10bc2b91209881ab3b4</a></p>	

### Relevant international treaties

2.2. Does this Bill seek to give effect to New Zealand action in relation to an international treaty?	YES
<p>WHO Framework Convention on Tobacco Control (particularly Article 6, Price and tax measures to reduce the demand for tobacco).  <a href="http://www.who.int/fctc/text_download/en/index.html">http://www.who.int/fctc/text_download/en/index.html</a></p> <p>Guidelines for implementation of Article 6 of the FCTC  <a href="http://www.who.int/fctc/guidelines/adopted/Guidelines_article_6.pdf">http://www.who.int/fctc/guidelines/adopted/Guidelines_article_6.pdf</a></p>	
2.2.1. If so, was a National Interest Analysis report prepared to inform a Parliamentary examination of the proposed New Zealand action in relation to the treaty?	YES

The National Interest Analysis for the WHO Framework Convention on Tobacco Control, was prepared by Ministry of Health and presented to the NZ House of Representatives in accordance with Standing Orders 384 and 385, 7 October 2003

[http://www.parliament.nz/en-nz/pb/presented/papers/47DBHOH\\_PAP9613\\_1/new-zealand-treaty-series-who-framework-convention-on](http://www.parliament.nz/en-nz/pb/presented/papers/47DBHOH_PAP9613_1/new-zealand-treaty-series-who-framework-convention-on)

The National Interest Analysis was subsequently published as an Appendix to the International treaty examination of the World Health Organization Framework Convention on Tobacco Control (11 December 2003) (as reported by the Foreign Affairs, Defence and Trade Committee)

[http://www.parliament.nz/en-nz/pb/sc/documents/reports/47DBSCH\\_SCR2638\\_1/international-treaty-examination-of-the-world-health-organization](http://www.parliament.nz/en-nz/pb/sc/documents/reports/47DBSCH_SCR2638_1/international-treaty-examination-of-the-world-health-organization)

<http://www.parliament.nz/resource/0000001917>

## Regulatory impact analysis

<b>2.3. Were any regulatory impact statements provided to inform the policy decisions that led to this Bill?</b>	<b>YES</b>
<p>The Regulatory Impact Statement: Increases in Tobacco Excise (RIS) was prepared by The Treasury. The RIS is be published on the Treasury website.</p> <p><a href="http://www.treasury.govt.nz/publications/informationreleases/ris">http://www.treasury.govt.nz/publications/informationreleases/ris</a></p>	

<b>2.3.1. If so, did the RIA Team in the Treasury provide an independent opinion on the quality of any of these regulatory impact statements?</b>	<b>YES</b>
<p>The RIA Team said it “considers that the information and analysis summarised in the RIS meets the quality assurance criteria. The RIS would benefit from empirical evidence on the impact of past excise changes to New Zealand smoker’s behaviour as opposed to relying on overseas studies.”</p>	

<b>2.3.2. Are there aspects of the policy to be given effect by this Bill that were not addressed by, or that now vary materially from, the policy options analysed in these regulatory impact statements?</b>	<b>NO</b>

## Extent of impact analysis available

<b>2.4. Has further impact analysis become available for any aspects of the policy to be given effect by this Bill?</b>	<b>NO</b>

<b>2.5. For the policy to be given effect by this Bill, is there analysis available on:</b>	
<b>(a) the size of the potential costs and benefits?</b>	<b>YES</b>
<b>(b) the potential for any group of persons to suffer a substantial unavoidable loss of income or wealth?</b>	<b>YES</b>
See the Regulatory Impact Statement: Increases in Tobacco Excise (refer Box 2.3)	

<b>2.6. For the policy to be given effect by this Bill, are the potential costs or benefits likely to be impacted by:</b>	
<b>(a) the level of effective compliance or non-compliance with applicable obligations or standards?</b>	<b>NO</b>
<b>(b) the nature and level of regulator effort put into encouraging or securing compliance?</b>	<b>NO</b>

## Part Three: Testing of Legislative Content

### Consistency with New Zealand's international obligations

<b>3.1. What steps have been taken to determine whether the policy to be given effect by this Bill is consistent with New Zealand's international obligations?</b>
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Officials considered the legislation in relation to New Zealand's international obligations. The purposes of the legislation are consistent with New Zealand's obligations under the WHO Framework Convention on Tobacco Control (see Box 2.2 above).
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### Consistency with the government's Treaty of Waitangi obligations

<b>3.2. What steps have been taken to determine whether the policy to be given effect by this Bill is consistent with the principles of the Treaty of Waitangi?</b>
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Officials considered the possibility of Treaty of Waitangi implications as a normal part of the process to develop the policy and proposals contained in the Bill. None were identified.
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### Consistency with the New Zealand Bill of Rights Act 1990

<b>3.3. Has advice been provided to the Attorney-General on whether any provisions of this Bill appear to limit any of the rights and freedoms affirmed in the New Zealand Bill of Rights Act 1990?</b>	<b>YES</b>
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Advice provided to the Attorney-General by the Ministry of Justice, or a Bill of Rights Act 1990 section 7 report of the Attorney-General, is usually expected to be available on the Ministry of Justice's website upon introduction of a Bill. Such advice, or reports, will be accessible on the Ministry's website at:
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<a href="http://www.justice.govt.nz/policy/constitutional-law-and-human-rights/human-rights/bill-of-rights">http://www.justice.govt.nz/policy/constitutional-law-and-human-rights/human-rights/bill-of-rights</a>
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### Offences, penalties and court jurisdictions

<b>3.4. Does this Bill create, amend, or remove:</b>	
(a) offences or penalties (including infringement offences or penalties and civil pecuniary penalty regimes)?	<b>NO</b>
(b) the jurisdiction of a court or tribunal (including rights to judicial review or rights of appeal)?	<b>NO</b>

### Privacy issues

<b>3.5. Does this Bill create, amend or remove any provisions relating to the collection, storage, access to, correction of, use or disclosure of personal information?</b>	<b>NO</b>

<b>3.5.1. Was the Privacy Commissioner consulted about these provisions?</b>	<b>NO</b>
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### External consultation

3.6. Has there been any external consultation on the policy to be given effect by this Bill, or on a draft of this Bill?	NO
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### Other testing of proposals

3.7. Have the policy details to be given effect by this Bill been otherwise tested or assessed in any way to ensure the Bill's provisions are workable and complete?	NO
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## Part Four: Significant Legislative Features

### Compulsory acquisition of private property

4.1. Does this Bill contain any provisions that could result in the compulsory acquisition of private property?	NO

### Charges in the nature of a tax

4.2. Does this Bill create or amend a power to impose a fee, levy or charge in the nature of a tax?	NO

### Retrospective effect

4.3. Does this Bill affect rights, freedoms, or impose obligations, retrospectively?	NO

### Strict liability or reversal of the usual burden of proof for offences

4.4. Does this Bill:	
(a) create or amend a strict or absolute liability offence?	NO
(b) reverse or modify the usual burden of proof for an offence or a civil pecuniary penalty proceeding?	NO

### Civil or criminal immunity

4.5. Does this Bill create or amend a civil or criminal immunity for any person?	NO

### Significant decision-making powers

4.6. Does this Bill create or amend a decision-making power to make a determination about a person's rights, obligations, or interests protected or recognised by law, and that could have a significant impact on those rights, obligations, or interests?	NO

### Powers to make delegated legislation

4.7. Does this Bill create or amend a power to make delegated legislation that could amend an Act, define the meaning of a term in an Act, or grant an exemption from an Act or delegated legislation?	NO

<b>4.8. Does this Bill create or amend any other powers to make delegated legislation?</b>	<b>YES</b>
New section 79(3B) of the Customs and Excise Act 1996 modifies the power to make Orders under s 79(1) of that Act.	

#### **Any other unusual provisions or features**

<b>4.9. Does this Bill contain any provisions (other than those noted above) that are unusual or call for special comment?</b>	<b>NO</b>