

# Departmental Disclosure Statement

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Smoke-free Environments (Prohibiting Smoking in Motor Vehicles Carrying Children) 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 certify that, to the best of its knowledge and understanding, the information provided is complete and accurate at the date of finalisation below.

18 April 2019.

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## **Part One: General Policy Statement**

### **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 wellbeing under the UN 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.

## Part Two: Background Material and Policy Information

### Published reviews or evaluations

<b>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?</b>	<b>YES</b>
<p><i>Inquiry into the tobacco industry in Aotearoa and the consequences of tobacco use for Māori</i>, Report of the Māori Affairs Committee (November 2010). The report can be accessed on the New Zealand Parliament website at the following:  <a href="https://www.parliament.nz/en/pb/sc/reports/document/49DBSCH_SCR4900_1/inquiry-into-the-tobacco-industry-in-aotearoa-and-the-consequences">https://www.parliament.nz/en/pb/sc/reports/document/49DBSCH_SCR4900_1/inquiry-into-the-tobacco-industry-in-aotearoa-and-the-consequences</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 (March 2011). Presented to the House of Representatives in accordance with Standing Order 248 (J.1). The report can be accessed on the New Zealand Parliament website at the following:  <a href="https://www.parliament.nz/resource/0000157432">https://www.parliament.nz/resource/0000157432</a></p>	

### Relevant international treaties

<b>2.2. Does this Bill seek to give effect to New Zealand action in relation to an international treaty?</b>	<b>YES</b>
<p>WHO Framework Convention on Tobacco Control (particularly Article 8, Protection from exposure to tobacco smoke). The Framework Convention can be found at the following:  <a href="https://apps.who.int/iris/bitstream/handle/10665/42811/9241591013.pdf;jsessionid=B9AD727815EA4A662D29243C3E500870?sequence=1">https://apps.who.int/iris/bitstream/handle/10665/42811/9241591013.pdf;jsessionid=B9AD727815EA4A662D29243C3E500870?sequence=1</a></p> <p>Guidelines for implementation of Article 8 of the Framework Convention on Tobacco Control -  <a href="https://www.who.int/fctc/guidelines/adopted/article_8/en/">https://www.who.int/fctc/guidelines/adopted/article_8/en/</a></p>	

<b>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?</b>	<b>YES</b>
<p>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.</p> <p>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 (<i>as reported by the Foreign Affairs, Defence and Trade Committee</i>). The Analysis can be accessed on the New Zealand Parliament website at the following: <a href="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</a></p>	

## 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>
<i>Prohibiting smoking in motor vehicles carrying children under 18 years of age</i> , Ministry of Health (November 2018). The report can be accessed on the Ministry of Health website at the following: <a href="https://www.health.govt.nz/about-ministry/legislation-and-regulation/regulatory-impact-statements/prohibiting-smoking-motor-vehicles-carrying-children-under-18-years-age">https://www.health.govt.nz/about-ministry/legislation-and-regulation/regulatory-impact-statements/prohibiting-smoking-motor-vehicles-carrying-children-under-18-years-age</a>	

<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>NO</b>
The RIS did not meet the threshold for RIA Team Assessment. The Ministry of Health's Papers and Regulatory Committee reviewed the document and considers it meets the Quality Assurance Requirements.	

<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>	
(a) the size of the potential costs and benefits?	<b>YES</b>
(b) the potential for any group of persons to suffer a substantial unavoidable loss of income or wealth?	<b>NO</b>
See the Regulatory Impact Statement section B and section 5.2 (Summary table of costs and benefits of the preferred approach).	

<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>	
(a) the level of effective compliance or non-compliance with applicable obligations or standards?	<b>NO</b>
(b) the nature and level of regulator effort put into encouraging or securing compliance?	<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>
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).

### 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>
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.

### 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>NO</b>

### Offences, penalties and court jurisdictions

<b>3.4. Does this Bill create, amend, or remove:</b>	
<b>(a) offences or penalties (including infringement offences or penalties and civil pecuniary penalty regimes)?</b>	<b>YES</b>
<b>(b) the jurisdiction of a court or tribunal (including rights to judicial review or rights of appeal)?</b>	<b>NO</b>
(a) Provisions 20D and 20F.	

<b>3.4.1. Was the Ministry of Justice consulted about these provisions?</b>	<b>YES</b>
The Ministry of Justice has conducted a review of the Bill.	

### 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>YES</b>
Provision 20E(1) and (2).	
<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

### 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

## 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?	YES
(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

<b>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?</b>	<b>NO</b>

<b>4.8. Does this Bill create or amend any other powers to make delegated legislation?</b>	<b>NO</b>

### 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>