

# Departmental Disclosure Statement

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Smokefree Environments and Regulated Products 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.

February 2024.

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## Part One: General Policy Statement

The Government is committed to the Smokefree 2025 goal of daily smoking rates of less than 5% for all population groups and continues to support initiatives to provide people with practical tools and support to help them quit. These include ensuring the provision of effective services to stop smoking, providing access to alternative products to help smoking cessation, and promoting social marketing campaigns to stop smoking and vaping.

The Government supports a change in approach to the regulation of smoked tobacco and the achievement of the Smokefree 2025 goal. As part of the Government's 100-Day Plan, this Bill removes the changes made in the Smokefree Environments and Regulated Products (Smoked Tobacco) Amendment Act 2022 (the amendment Act) that relate to retail reduction, limiting nicotine levels in smoked tobacco products, and introducing a smokefree generation (the 3 main changes). Those changes were to take effect in 2024, 2025 and 2027.

The Bill amends the Smokefree Environments and Regulated Products Act 1990 and the amendment Act as follows:

- it removes requirements for retailers of smoked tobacco products to apply to, and be approved by, the Director-General of Health before selling smoked tobacco products
- it removes the limit on the number of retailers that can sell smoked tobacco products in New Zealand
- it removes the requirement for smoked tobacco products to be approved by the Director-General of Health before they can be manufactured, imported, or offered for sale or supply, in New Zealand
- it removes the requirement for smoked tobacco products to meet a low nicotine content limit of 0.8 mg/g
- it retains a minimum sales age of 18 years for smoked tobacco products rather than providing for a smokefree generation under which sales to anyone born on or after 1 January 2009 would have been prohibited
- it removes offences related to the matters above
- it removes provisions relating to te Tiriti o Waitangi associated with the matters above.

As a consequence of the amendments listed above, amendments are made to the Smokefree Environments and Regulated Products Regulations 2021 and the amendment Act. Amendments to the Customs and Excise Act 2018 yet to enter into force under the amendment Act are also consequentially repealed. Minor and technical amendments are also made. They include amendments to regulation 84 and Schedule 9 of the Smokefree Environments and Regulated Products Regulations 2021 to insert minor consequential amendments missed in the amendment Act.

Changes made by the amendment Act that are unrelated to the 3 main changes and that will support compliance and enforcement efforts are not affected by this Bill.

## 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>NO</b>

### 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>
New Zealand is party to the <u>World Health Organization (WHO) Framework Convention on Tobacco Control</u> . Policy related to tobacco control in New Zealand is related to the <u>FCTC</u> . The Bill supports the implementation of the <u>World Health Organization (WHO) Framework Convention on Tobacco Control</u> by retaining sections 57F-H to support articles 9 and 10.	

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

### Regulatory impact analysis

<b>2.3. Were any regulatory impact statements provided to inform the policy decisions that led to this Bill?</b>	<b>NO</b>
A regulatory impact statement was not prepared for this Bill as it was a part of the Government's 100-day plan and is therefore exempt.	

### 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>NO</b>
<b>(b) the potential for any group of persons to suffer a substantial unavoidable loss of income or wealth?</b>	<b>NO</b>

<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>NA</b>
<b>(b) the nature and level of regulator effort put into encouraging or securing compliance?</b>	<b>NA</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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The Ministry of Health consulted with the Ministry of Foreign Affairs and Trade to consider the implications of the policies to be given effect by this Bill. World Trade Organisation members, including New Zealand, have the right to implement measures necessary to protect public health.

### 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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The Ministry of Health consulted with Te Arawhiti, Te Aka Whai Ora and Crown Law in the Bill's development regarding Te Tiriti o Waitangi implications. The Bill has the potential to disproportionately impact Māori, given that Māori have the highest daily smoking rate of any ethnic group at 17.1%, compared to 6.8% of the total population.

The Waitangi Tribunal has received an application for an urgent Waitangi Tribunal inquiry into the repeal of the Amendment Act.

### 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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The Ministry of Justice has provided advice to the Attorney-General and this will be published on the Ministry of Justice's website at <https://www.justice.govt.nz/justice-sector-policy/constitutional-issues-and-human-rights/bill-of-rights-compliance-reports/> once the Bill has been introduced.

### Offences, penalties and court jurisdictions

<b>3.4. Does this Bill create, amend, or remove:</b>	
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<b>(a) offences or penalties (including infringement offences or penalties and civil pecuniary penalty regimes)?</b>	<b>YES</b>
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<b>(b) the jurisdiction of a court or tribunal (including rights to judicial review or rights of appeal)?</b>	<b>YES</b>
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The Bill removes any offences and penalties that directly correspond to the obligations and controls being removed regarding the:

- sale, manufacture and import of non-approved smoked tobacco products
- sale of smoked tobacco product by non-approved retailers
- sale, delivery or supply of smoked tobacco products to people under the Smokefree Generation age limit.

<b>3.4.1. Was the Ministry of Justice consulted about these provisions?</b>	<b>YES</b>
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The Ministry of Justice was consulted on the proposed changes.

## 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>

## External consultation

<b>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?</b>	<b>YES</b>
The following agencies were consulted on proposed changes given effect by this Bill: 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, the Treasury and the Department of the Prime Minister and Cabinet.	

## Other testing of proposals

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

## Part Four: Significant Legislative Features

### Compulsory acquisition of private property

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

### Charges in the nature of a tax

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

### Retrospective effect

<b>4.3. Does this Bill affect rights, freedoms, or impose obligations, retrospectively?</b>	<b>NO</b>

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

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

### Civil or criminal immunity

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

### Significant decision-making powers

<b>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?</b>	<b>YES</b>
The Bill will remove the power of the Director-General of Health to approve retail outlets to sell smoked tobacco products and to approve smoked tobacco products intended for sale, manufacture, import or supply in New Zealand. The Bill will also remove related regulation-making powers.	

### 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>YES</b>
The Bill specifically provides for the ability for the Director-General of Health to reimburse any retailers that applied to sell smoked tobacco products before the Government announced the plan to remove this requirement and the scheme's suspension.	