

Smokefree Environments and Regulated Products (Smoked Tobacco) Amendment Bill

Third Reading

Legislative Statement

Overview

The Smokefree Environments and Regulated Products (Smoked Tobacco) Amendment Bill (the Bill) amends the Smokefree Environments and Regulated Products Act 1990, and the Customs and Excise Act 2018 to:

- significantly reduce retail availability by restricting sales of smoked tobacco products to retail outlets approved by the Director-General of Health
- prevent young people, and future generations, from ever taking up smoking by prohibiting the sale of smoked tobacco products to anyone born on or after 1 January 2009 (ie, introducing a Smokefree Generation policy)
- reduce the appeal and addictiveness of smoked tobacco products by setting a limit on the quantity of nicotine and enabling limits or prohibitions to be set on other constituents.

The Bill consequentially amends the Customs and Excise Act 2018 to extend the existing prohibition on the import of smoked tobacco products to include all classes of smoked tobacco products. Importers will need to obtain an import permit to bring smoked tobacco products into the country, and these permits will only be granted if constituent requirements are met.

The Bill is an omnibus Bill introduced in accordance with Standing Order 267(1)(a).

The Health Committee has examined the Bill and recommended that it be passed with amendments. These amendments are consistent with the original policy of the Bill and take the opportunity to make some further improvements to its functionality as well as addressing some minor and technical issues with the Bill. The main amendments recommended by the Health Committee are noted below.

At the Committee of the whole House stage, some further minor and technical amendments were made to the Bill. These involved minor drafting changes to support the clarity of wording used in certain provisions (without changing the substantive effect of those provisions) or to ensure the alignment and workability of commencement and transitional provisions of the three key measures introduced.

Key provisions of the Bill

Significantly reduce retail availability

Overview

New provisions restrict the sale of smoked tobacco products to retailers approved by the Director-General of Health (the Director-General), provide for the application process and criteria to be an approved retailer, and require the Director-General to set a maximum number of approved smoked tobacco retail premises allowed in a certain area.

The intent of these provisions is to significantly limit the number of retailers able to sell smoked tobacco products.

Maximum number of smoked tobacco retail premises

The Director-General must, by written notice, determine the maximum number of retail premises permitted in one or more areas of the country. In making this determination, the Director-General is bound by the following matters:

- the Director-General must consult Māori, and
- the Director-General must take into account
 - the population size in the area and the estimated number of people in the area who smoke; and
 - the geographic nature of the area, including the estimated average travel time required to purchase smoked tobacco products; and
 - the views of those consulted (including but not limited to Māori).

The Health Committee agreed that the Bill set a cap of no more than 600 retail premises for the entire country, creating a clear boundary for the Director-General's determination. Additionally, the Bill is now explicit in providing that the Director-General can amend or replace a notice.

Application process

The Director-General must determine an application process for the approval of smoked tobacco retailers that ensures any maximum number of retail premises declared for any area is not exceeded.

The Health Committee agreed the Bill also set out how applications will be ranked, including the relative weighting of criteria used to assess the applications. Additional assessment criteria may be set out in regulations. The application process itself must be published and will need to include any such additional criteria (per regulations) and a description of the system for ranking applications.

Online sales

The Bill allows a person to apply for approval as a smoked tobacco retailer for a specified retail premise and, if applicable, for approval of a specified Internet site.

The approval of a specified Internet site is only intended for very limited circumstances and the Health Committee agreed some changes to the Bill to reflect this. An Internet site must be operated together with the specified retail premises for which approval was sought and cannot be operated alone. The Director-General must also be satisfied that there was no reasonable access to retail premises in which smoked tobacco products are or will be sold—

- in an identifiable geographic area; or
- by an identifiable part of the population who smoke the products.

The Director-General can decline the part of the application in relation to an Internet site if the Director-General:

- has determined the applicant has failed to meet the minimum requirements for an Internet site (though could still approve the retail premise)
- is not satisfied that an Internet site is required (ie, there is no case for no reasonable access)
- despite identifying a case for no reasonable access, is nevertheless satisfied that to grant approval would be inconsistent with the purpose of significantly reducing the retail availability of smoked tobacco products.

Introducing a Smokefree Generation

New provisions allow for the introduction of a Smokefree Generation policy by prohibiting the sale of smoked tobacco products to anyone born on or after 1 January 2009.

The intent of the Smokefree Generation policy is to prevent young people, and successive generations, from ever taking up smoking.

Reducing the appeal and addictiveness of smoked tobacco products

New provisions require smoked tobacco products to be approved by the Director-General of Health and only smoked tobacco products that meet requirements for constituents shall be able to be manufactured, imported, or offered for sale or supply.

The intent of these provisions is to increase the number of people who successfully stop smoking, and to support tamariki/rangatahi to remain smokefree by making smoked tobacco products less appealing and addictive.

The Health Committee agreed that the Bill specify an absolute maximum level of no more than 0.8mg/g nicotine in an individual smoked tobacco product, and that nicotine must not be present in any other constituent. Additionally, testing of the product is at the expense of the manufacturer or importer and must be done in accordance with the method prescribed in regulations.

On the Health Committee's recommendation, the Bill also clarifies the limited circumstances in which a temporary smoked tobacco product approval could be granted by the Director-General are:

- where the product is going to be used for research and testing only and is not going to be offered for sale or supply in New Zealand, or
- in the case of a product that is niche (ie, not a cigarette), it would otherwise not be available (ie, no similar compliant products can be sourced) and is not of mass appeal (ie, the sale and supply of the specified product will not result in a significant increase in the appeal and addictiveness of smoked tobacco products), and
- in both instances any other criteria in regulations are met.

Notification requirements

The Bill introduced a new requirement for general vape retailers to notify the Director-General of Health that they are selling vape products.

The Health Committee agreed to extend this requirement to all retailers of notifiable products. This will create a definitive list of stores selling vaping products, smokeless tobacco products, herbal smoking products, and any other regulated products declared by regulations to be a notifiable product. This will assist compliance efforts around the sale of notifiable products.

Conclusion

This Bill is intended to achieve the Smokefree 2025 goal and improve health outcomes for all New Zealanders.