



Smoke-free Environments (Prohibiting Smoking in Motor Vehicles Carrying Children) Amendment Bill

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Report of the Health Committee

December 2019

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Louisa Wall
Chairperson

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Recommendation

The Health Committee has examined the Smoke-free Environments (Prohibiting Smoking in Motor Vehicles Carrying Children) Amendment Bill and recommends that the bill be passed without amendment.

The bill as introduced

This bill seeks to amend the Smoke-free Environments Act 1990 to prohibit smoking in motor vehicles carrying anyone under 18 years old. The purpose of this is to protect children from the harm associated with second-hand smoke.

If enacted the bill would, after 18 months, create a new infringement offence and associated fine. It would also give police constables the power to stop vehicles in which there appeared to be a smoking person and a child, and to require any suspected smoker or child to provide their personal details.

Children's and young people's views were central to our consideration

We received 147 written, and 19 oral submissions on this bill. A number of children and young people were among the submitters.

The following submissions were made by, or incorporated the views of, children and young people: Cancer Society Northland, Wellington Community Justice, Holistic Action Sustainable Health Through All Generations, Hapai Te Hauora Maori Public Health, EMPOWER Tāngata Trust, the Office of the Children's Commissioner, Meremere Holiday Programme, Invercargill City Youth Council, and students of Wainuiomata Intermediate School.

We also received individual written submissions from a number of young people. We are pleased to have young people involved in the process of considering legislation specifically designed to protect them.

Most submitters, and all of the young people we heard from, spoke in favour of the bill, although many thought that it should cover vaping in cars as well. We are particularly grateful to these young people for submitting their points of view to us. Many submitters also made other recommendations for amendments to improve the bill.

We were unable to recommend the amendments suggested because of the relatively narrow focus of this bill, which is specifically targeted at protecting young people from second-hand smoke in cars. We acknowledge the good suggestions made by submitters, including young

people, and we wish to explain why some key recommendations were not incorporated into the bill.

Including vaping on the same basis as smoking

Many submitters were concerned about the proliferation of vaping, and expressed their concerns that the effects of vaping and second-hand vapour on children are mostly unknown. They recommended extending the prohibition on smoking in cars with children to cover vaping as well.

We have declined to do so, on advice from the Ministry of Health. We were advised that a Government bill will be introduced shortly to incorporate vaping into the Smoke-free Environments Act on the same basis as smoking. This would ensure that vaping was prohibited in all legislated smoke-free areas, including cars. The ministry also advised us that drafting an effective definition of vaping in time for it to be included in this bill would have slowed this bill's development and introduction.

The comments from young people in particular helped us understand how smoking in cars and vaping affect young people. We encourage these young people to submit on the upcoming vaping bill. Their voices should be heard on legislation that is designed specifically to protect them.

Some of us are concerned that this vaping bill has not yet come before the House or the committee. We recommend that the Government proceed with the bill as soon as possible, to ensure that young people in particular are protected from the risks of vaping.

Removing the exemption for smoking in a stationary vehicle being used as a dwelling

Under section 20D(2)(b) of the bill as introduced it is permissible to smoke in a vehicle with children present, as long as that vehicle is stationary and being used as a dwelling. Several submitters and some committee members disagreed with this exemption, on the basis that children are at risk of harm from second-hand smoke in vehicles regardless of the use to which that vehicle is being put. Other submitters noted that people who are forced to live in cars are already living in hardship, and they should not be further penalised with a fine.

We note that the Smoke-free Environments Act already makes a distinction between what is permissible in dwellings and what is permissible everywhere else. We do not wish to infringe on people's right to smoke in their own homes. Based on officials' advice, Labour and New Zealand First members have decided not to recommend this exemption be removed. However, Labour and New Zealand First members believe that temporary accommodation in vehicles is a symptom of the historic underinvestment in state and affordable housing, and the committee is in no way supportive of people having to live in cars.

National members do not believe that stationary vehicles should be considered dwellings, and are disappointed that the clause exempting cars used as dwellings has not been recommended for deletion. National members will propose an amendment to the bill in the Committee of the whole House to that effect.

Despite this difference of view, we agree that smoking in a car while children are present is inadvisable in all circumstances. We strongly recommend that people in a stationary car with children get out of the vehicle before smoking, regardless of how the car is being used.

Reducing or removing the 18 month lead-in period

As introduced, the bill would not come into effect until 18 months after it received Royal assent. This is because the Ministry of Health wants to have enough time to provide more public education about second-hand smoke, and the dangers it presents to children. It also wants to give people time to change their lifestyles to avoid being penalised in future.

Most submitters supported the ministry's intention to focus on education and harm reduction. However, many felt that an 18 month lead-in time was too long, and not in proportion to the time that would be needed to educate the public. Some of us agreed with these sentiments.

We have not recommended any change to the commencement timing proposed in the bill. This was based in part on our support for the work the ministry is planning, and also on advice from the Police that they would need at least 12 months, and possibly longer, to incorporate this new offence into their system upgrades and training programme.

We considered splitting the commencement date so that the offence would come into force when the bill was first assented, while the punitive provisions would only apply after 18 months. Some of us felt that this would create a sufficient and immediate moral deterrent, while giving the Police time to update their systems, and the ministry time to carry out its education work. However, we received advice from the Ministry of Justice and the Parliamentary Counsel Office that this would conflict with fundamental legal principles, and could undermine attempts by the Police to enforce the offence.

Submitters are under no obligation to declare any interests

While hearing submissions on this bill, we received evidence from an organisation that researches the effects of smoking on indigenous populations, but which appears to be funded, through a secondary organisation, by the tobacco industry. This possible conflict of interest was only brought to our attention when it was pointed out by a later submitter.

We note that there is no requirement for submitters to disclose any interests they may have in a particular issue. We accept that, in fact, the submissions process is overtly designed to allow people to advocate for their own interests and opinions. We also note that it would be very difficult to attempt to create a regime in which submitters would have to declare all of their interests.

Regardless, we wish to draw to the attention of the House the possibility of similar conflicts in future submissions. We also intend to write directly to the Standing Orders Committee, to ask it to give this matter some consideration.

Appendix

Committee procedure

The Smoke-free Environments (Prohibiting Smoking in Motor Vehicles Carrying Children) Bill was referred to the committee on 25 June 2019. The closing date for submissions was 8 August 2019. We received and considered 147 submissions from interested groups and individuals. We heard oral evidence from 19 submitters.

We received advice from the Ministry of Health and the New Zealand Police.

Committee members

Louisa Wall (Chairperson)
Hon Maggie Barry
Dr Liz Craig
Matt Doocey
Hon Ruth Dyson
Jenny Marcroft
Dr Shane Reti
Hon Michael Woodhouse

Advice and evidence received

The documents that we received as advice and evidence are available on the Parliament website, www.parliament.nz.