

5 May 2022

Hon David Parker, Attorney-General

Consistency with the New Zealand Bill of Rights Act 1990: Customs and Excise (Tobacco Products) Amendment Bill

1. We have considered whether the Customs and Excise (Tobacco Products) Amendment Bill (the Bill) is consistent with the rights and freedoms affirmed in the New Zealand Bill of Rights Act 1990 (the Bill of Rights Act).
2. We have not received a final version of the Bill. This advice has been prepared in relation to the latest version of the Bill (PCO 24499/3.1). We will provide you with further advice if the final version includes amendments that affect the conclusions in this advice.
3. The Bill amends the Customs and Excise Act 2018 (the principal Act) and the Excise and Excise-equivalent Duties Table. The purpose of the Bill is to ensure that the correct excise and excise-equivalent duty can be applied to certain water-pipe tobacco goods and to reduce tax evasion on water-pipe tobacco.
4. The Bill achieves this through imposing import controls. Water-pipe tobacco is made a prohibited import by including it within the definition of “tobacco products” in s 95A of the principal Act. This brings water-pipe tobacco within the scope of the permitting regime in schedule 3A of the principal Act. “Tobacco products” require a permit to import prior to importation. Any importation without a permit, or that is not in compliance with the conditions of the permit, would be subject to forfeiture. By including water-pipe tobacco within scope of s 95A of the principal Act, water-pipe tobacco will also be subject to the simplified seizure process in ss 185A and 185B of the principal Act.
5. The Bill also changes the statistical unit for calculating duty and creates a new excise and excise-equivalent duty rate for water-pipe tobacco. These changes are necessary as Customs suspects some importers are drastically under-declaring the tobacco content of the product. As a result, they are evading much of the duty they should be paying which undermines the health strategy of using tobacco taxation to reduce consumption and puts honest importers at a competitive disadvantage relative to dishonest importers.
6. We have concluded that the Bill appears to be consistent with the rights and freedoms affirmed in the Bill of Rights Act.



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