

Section A: Overview and general questions

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A1) What are the key changes to smokefree places in New Zealand?

- From December 2004, all indoor workplaces became 100 percent smokefree. This included:
 - warehouses, offices, factories and shops
 - work cafeterias, dedicated smoking rooms and 'smoko' rooms, corridors, lifts, lobbies, stairwells, toilets and wash rooms or other shared internal areas
 - hospitality venues (including licensed clubs, restaurants, casinos and gaming machine venues)
 - working taxis, trains, aircraft, passenger lounges and indoor parts of ships
 - schools and early childhood centres.
- There are no exceptions for separate smoking areas or ventilated smoking rooms in workplaces or hospitality venues, for workers or patrons.
- The only exception for a separately ventilated smoking room is for live-in patients or residents (not workers or visitors) in certain care facilities.
- The only areas that people are now exposed to second-hand smoke is outdoors, in some work vehicles, private premises or home residences.
- From 1 January 2004, all schools and early childhood centres became 100 percent smokefree, inside and out, 24 hours a day, seven days a week for school premises and grounds.
- The only outdoor area smokers may not smoke is the grounds of school and early childhood centre premises – including sports fields in the weekends (to reduce the visibility and negative influence of smoking in places of learning for young people).
- The law does not prevent employers, business owners and home owners choosing to make the outdoor areas of their premises 100 percent smokefree too (eg, District Health Boards have made hospital grounds smokefree). However, these voluntary smokefree policies will not be enforced by the Ministry of Health.

A2) Where do smokefree provisions apply?

No person may smoke in the following places:

- indoor workplaces
- licensed premises
- school or early childhood centre premises (indoors and outdoors, 24 hours a day, seven days a week).

A3) Who do smokefree provisions apply to?

The 100 percent smokefree environments provisions apply to:

- employers and employees, volunteers, and smoking visitors or customers
- bar owners and hospitality proprietors, hospitality employees (bartenders, waiters, chefs, entertainers, croupiers etc), and smoking patrons
- school and early childhood centre staff, students, parents, visitors and anyone using the buildings or grounds of premises that are used as a school or early childhood centre (24 hours a day, seven days a week).

A4) What situations do the smokefree provisions not apply to?

Areas are not covered by the smokefree provisions, if they fit the following situations:

- any outdoor areas, except school grounds (eg, outdoor decks, verandas and orchards)

- non-employees such as contractors and self-employed workers, if they do not work with other employees/volunteers in an indoor work setting
- private homes or temporary private premises
- smoking rooms for live-in patients or residents
- some work vehicles.

Caution: The Ministry of Health cannot provide legal advice about how the statutory definition of an indoor area that is 'substantially enclosed' (and therefore smokefree) applies to particular situations or premises. Note also that each situation differs, and may be defined in different ways/possibly caught by different aspects or definitions in the smokefree law. Anyone wanting specific legal advice should contact a lawyer or legal expert.

A5) How many people are affected by the smokefree law?

Most people are affected by the smokefree law:

- smokers – there are about 700,000 smokers in New Zealand (25 percent of New Zealand adults smoke)
- non-smokers – three-quarters of New Zealanders do not smoke, but many were exposed to second-hand smoke in indoor workplaces and hospitality venues
- workers – about 54 percent of indoor workplaces were not legally required to be smokefree before the law change, including non-office environments and the hospitality industry (which has about 10,000 workers)
- young people – young people under 18 have reduced role modelling of smoking in their places of learning (schools and early childhood centres), and they face tighter restrictions on their ability to access tobacco or smoking products.

A6) What are the aims of the smokefree law?

The aims are to:

- protect all workers and the public from second-hand smoke
- reduce the harm caused to individuals by their smoking
- further restrict minors' (under 18) access to smoking products and prevent negative influences on young people
- further promote a smokefree (auahi kore) lifestyle as the norm.

A7) What public support is there for the smokefree law?

A 2003 survey found that over 90 percent of New Zealanders, including 83 percent of smokers, supported the aims of the smokefree law (ie, the right of people to have a smokefree working environment). Only 6 percent disagreed.

Three-quarters of New Zealanders do not smoke. There are about 700,000 smokers in New Zealand (25 percent of New Zealand adults) and this law puts their preferences second to the serious public health risks of exposure to second-hand smoke.

A8) What are the benefits of providing 100 percent smokefree indoor workplaces?

The benefits of 100 percent smokefree indoor workplaces include:

- answering public demand and support for smokefree environments. A 2003 survey found that over 90 percent of New Zealanders, including 83 percent of smokers, supported the aims of the smokefree law (ie, the right of people to have a smokefree working environment). Only six percent disagreed
- better business – more non-smokers eating and drinking out, reduced staff sickness and absenteeism, lower maintenance costs, and reduced ACC premiums and risk of workplace litigation
- cleaner air and better health for New Zealanders – smokefree provisions are likely to result in less smoking and fewer smokers, saving healthcare costs, economic costs, and emotional costs of premature death of loved ones
- promotion of a smokefree (auahi kore) lifestyle as the norm.

A9) How are smokers affected by the smokefree law?

The smokefree law balances a smoker's right to smoke a legal (but highly addictive) drug, with the right to health for people who are exposed to the harmful health effects of second-hand smoke.

The smokefree law does not target smokers; it targets the health harms of smoke inhaled by non-smokers around them.

A 2003 survey found that 83 percent of current smokers agreed that people have the right to work in environments free of tobacco smoke.

And most smokers surveyed said it would make no difference to them if pubs, bars and nightclubs go totally smokefree.

Past experience shows that smokefree laws may encourage more smokers to reduce their smoking, or quit altogether. For example, New Zealand's smoking consumption rate dropped by a third between 1990 (when the Smokefree Environments Act was passed), and 1998.

A10) Isn't the law forcing smokers to quit smoking?

No. The Bill is not intended to target smokers, but rather the toxic, cancer-causing smoke that other people around them are exposed to.

While the law restricts where smokers may smoke indoors around other people, or on the premises of schools and early childhood centres, it does not restrict their ability to smoke elsewhere.

The law provides for future regulations to give smokers clearer and more detailed consumer information about the ingredients in cigarettes, and the harmful health effects (graphic illustrations on packages and information leaflets).

The law does not force smokers to quit, but it is hoped that smokefree environments and better consumer information will encourage more smokers to consider quitting smoking. The Smokefree Environments Act 1990 helped to reduce New Zealand's smoking prevalence reducing by one third between 1976 and 2002.

It is hoped that the smokefree law will encourage more smokers to make their homes and cars smokefree, to protect the health of their children and family from second-hand smoke. When California's bars and restaurants went smokefree in 1998, the number of smokers with smokefree homes increased from 22 percent to 50 percent.

Section B: Indoor Workplaces and Transport/Vehicles

B1) What is the definition of an indoor area of a workplace? Where can people smoke?

No person may smoke in the indoor area of a workplace. A 'workplace' is an 'internal area' occupied by an employer, and usually frequented by employees or volunteers during the course of their employment.

An 'internal area' means an area within or on the premises or vehicle that, when all its doors, windows, and other closable openings are closed, is 'completely or substantially enclosed' by:

- a ceiling, roof or similar overhead surface
- walls, sides, screens or other similar surfaces
- those openings.

A workplace includes the following examples:

- office, factory, shop, or warehouse
- work cafeteria, lift, lobby or stairwell, toilet or washroom, or other 'common area'
- taxi, work vehicle, internal area of a ship aircraft or train, indoor passenger lounge or travel terminal/premises
- public institutions, (eg, university, prison, hospital, government buildings)
- workplaces in otherwise 'private' premises (eg, home office, marae-based kohanga reo, bar in a residential massage parlour)
- RSA, sports club, or housie hall with at least one employee

- hospitality venue
- educational institutions for children under 18 (eg, school, early childhood education centre).

People may smoke in areas of a workplace that do not fit the above definition of an indoor area. See question B2 below for some general guidelines.

B2) Which work-related areas or people aren't covered by the smokefree provisions?

The prohibition against smoking in an indoor workplace does not apply, if the following situations exist:

- outdoors – any outdoor areas, except school grounds (eg, outdoor decks, verandahs and orchards)
- non-employees such as contractors and self-employed workers, if they do not work with other employees/volunteers in an indoor work setting
- infrequent work on private homes or temporary private premises
- private home, hotel or motel room, ship cabin, individual prison cell, foster home, community/church hall, marae etc (if not used as a workplace, school/preschool or licensed premises)
- places like a hotel room that are not frequented much by workers (unless management designate rooms smokefree). Home carers, cleaners, repairers or builders who visit someone's private home to do certain work will need to negotiate with the home-occupier about smoking
- smoking room for live-in patients or residents
- the managers of rest homes, hospitals, and residential disability care institutions *may* provide a dedicated smoking room for smoker residents (only) to socialise in
- some work vehicles – if everyone who uses a work vehicle agrees, and if the vehicle is not used by the general public (eg, a private pick-up truck), then they may smoke in the vehicle
- areas not within the definition of being 'substantially enclosed'.

Caution: The Ministry of Health cannot provide legal advice about how the statutory definition of an indoor area that is 'substantially enclosed' (and therefore smokefree) applies to particular situations or premises. Note also that each situation differs, and may be defined in different ways/possibly caught by different aspects or definitions in the smokefree law. Anyone wanting specific legal advice should contact a lawyer or legal expert. There is nothing to stop businesses choosing to designate additional outdoor areas smokefree too.

B3) Does the smoking ban apply to volunteers or independent contractors?

Yes, if they work in an indoor workplace that has at least one employee.

B4) Why now allow separate smoking areas in indoor workplaces?

The Health Select Committee considered that separate smoking areas were not effective in protecting workers from exposure to second-hand smoke. Smoke drifts into non-smoking areas, as a recent Australian study showed, exposing non-smokers to dangerous second-hand smoke.

The Committee considered that if smoking was allowed in some areas that this could place strong pressure on non-smoking employees to defer to smoking colleagues. The Committee preferred to take a consistent approach and make all indoor workplaces smokefree.

B5) Are marae, housie halls, community centres, churches and the like included in the 100 percent smokefree provisions?

The premises of marae, housie halls, community centres, churches and the like are only covered by the smokefree provisions *to the extent that they fall within the smokefree law's protections for:*

- indoor workplaces (eg, paid employees work in an office or public café/restaurant area)
- indoor licensed premises (liquor or gambling licence) or
- schools and early childhood centres (eg, a kohanga reo).

These places are considered to be 'private' cultural spaces to which the general public does not have access. The Health Select Committee endorsed the efforts of many marae to become smokefree. Custodians of these places may choose to implement a 100 percent smokefree policy for the indoor and/or outdoor areas of their premises, as an in-house policy to protect against second-hand smoke.

B6) Do employers or prisons still need to have written policies on smoking? Are smokefree signs and stickers available?

With 100 percent smokefree indoor workplaces, there is no need for the provisions relating to employer 'smoking policies' to continue.

Only prisons will need a written smoking policy, to address the issue of allowing inmates to smoke in individual prison cells.

To assist in communicating the 'smokefree' message in premises and organisations, smokefree stickers, signs and pamphlets can be ordered from your local public health service (eg, local District Health Board). A list of the items available can be viewed at the Ministry of Health's 'Health Education Resources' website, at www.healthed.govt.nz/. There are a number of items available under the search topic of 'smokefree'.

B7) What happens if someone smokes in a workplace? Who is liable?

An employer is liable for a fine of up to \$400 (individual) or \$4000 (body corporate) if they allow someone to smoke on the premises in a smokefree area.

They will not be prosecuted if they have taken all reasonably practicable steps to prevent unlawful smoking (eg, if they display no-smoking signs, do not provide ashtrays, and give an oral warning to the smoker).

B8) What happens if someone smokes in an indoor workplace?

It is up to employers and managers to take 'all reasonably practicable steps' to ensure that no one smokes in the workplace. For the purposes of the Act, a reasonably practicable step is defined as what a reasonable and prudent person would do in similar circumstances. A failure to take such steps is a breach of the law under the Act and may result in a fine of up to \$400 (individual) or \$4000 (body corporate).

Reasonably practicable steps include displaying 'no-smoking at all times' signs, not providing ashtrays and giving oral warnings to those people who smoke.

Fines will not be imposed on individual smokers for smoking in indoor workplaces, however individual smokers will be fined for smoking on an aircraft.

The Ministry is concerned to ensure that the public and all people directly affected by the Act are educated on its provisions, and in particular, their new responsibilities under the Act.

Section C: Hospitality Venues

C1) Which hospitality venues are covered by the 100 percent smoking ban?

No person may smoke in the indoor area of a hospitality venue. A hospitality venue is:

- an indoor workplace
- a restaurant (which includes cafes and other eateries)
- a casino or gaming machine venue
- licensed premises (that serve alcohol under a Sale of Liquor Act licence).

The following are examples of licensed premises (serving alcohol):

- bar, pub, tavern
- not-for-profit sports club
- RSA that serves alcohol
- cigar bar
- housie hall.

See also the changes for cigarette vending machines [E9].

C2) What is the definition of an indoor area of a hospitality venue? Where can people smoke?

An indoor area of a hospitality venue is:

- ‘substantially enclosed’ by walls, sides, screens or similar surfaces (including ones with closable openings such as windows or doors), and an overhead surface (eg, ceiling) and
- frequented by staff (eg, public serving areas and behind bars, in kitchens etc).

Open decks, verandahs, gardens and open-sided gazebos are not considered ‘indoors’, and the smokefree provisions do not apply/proprietors may choose to allow people to smoke in these places.

Other examples depend on the individual circumstances of whether an area is ‘substantially enclosed’ or not (eg, a tent or awning like structure).

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C3) Why include RSAs and private clubs in the smokefree protections?

If a club employs people, serves food, or has a liquor or gambling licence, then the smokefree provisions apply. This creates a level playing field with other businesses with the same licence or employer obligations, and the same potential clientele.

The Health Select Committee recommended the removal of the exceptions that allowed smoking in certain licensed premises, for consistency in protecting all workers from the health harms of second-hand smoke.

It is easier for the public to understand a ‘one rule applies to all’ smokefree provision.

C4) Why not allow exemptions for some premises?

During Parliament’s debate of the Bill in 2003, several MPs proposed to exempt about 200 named premises (mostly bars and taverns) from the smokefree law. The amendments were not accepted by Parliament and are not included in the Smokefree Environments Act 2003.

A level playing field is considered fairer and easier.

The Australian Capital Territory (ACT) announced in November 2003 a phasing out of its exemption rules, finding they did not work and they exposed some workers to unnecessary health risks.

C5) Why not allow premises to use ventilation systems instead of a smokefree ban?

During Parliament’s debate of the Bill in late 2003, new ‘ventilation’ provisions were proposed by the Hon Peter Dunne (United Future), with a ‘minimum air quality standard’ by 2006.

The ‘ventilation’ amendment was not accepted by Parliament and is not included in the Smokefree Environments Act 2003.

C6) Why not allow separate smoking areas in hospitality venues?

The Health Select Committee considered that separate smoking areas were not effective in protecting workers from exposure to second-hand smoke. Smoke drifts into non-smoking areas, as a recent Australian study showed, exposing non-smokers to dangerous second-hand smoke.

The Committee considered that if smoking was allowed in some areas that this could place strong pressure on non-smokers to defer to smokers. The Committee preferred to take a consistent approach and make all indoor hospitality venues smokefree.

C7) Aren’t smokefree provisions bad for hospitality and tourism business?

Overseas and local experience indicates that smokefree provisions will likely have a positive impact on business.

The majority of people who use hospitality venues are non-smokers: three-quarters of potential bar-goers are non-smokers. Overseas experience has repeatedly shown that the public embrace the opportunity to go out more and enjoy smokefree venues.

C8) What is the evidence that smokefree won't harm business?

A review of nearly 100 international studies found that every objective study, including studies in the USA, Canada and Australia, showed a neutral to positive economic impact for businesses from smokefree provisions. Several studies found that smokefree legislation was good for business, because non-smokers (who are in the majority) eat out and drink out more often.

Since New York went smokefree in 2003, there has been a positive impact on business despite negative predictions. The smokefree ban has generated 10,000 new hospitality jobs, an increase in bar, hotel and tourism revenues, and there is overwhelming public support for the ban.

Since California went smokefree in 1998, not only has there been a significant improvement in the health of hospitality workers, but there has also been an increase in overall revenue for California bars and restaurants every year since. Ninety-one percent of bar patrons went to bars as often or more often, and on average stayed longer and enjoyed the experience as much or more.

A 2002 survey in Australia found that smokers who decided not to go somewhere because smoking was prohibited were outnumbered 2:1 by non-smokers who decided not to go somewhere in order to avoid breathing tobacco smoke.

In New Zealand, the indications are similar.

- The Health Sponsorship Council's 'Monitor' survey this year found that over a third of respondents (37 percent) would be *more* likely to go to bars etc if they went smokefree, and almost half (46 percent) said it would make no difference.
- Most smokers (53 percent) said it would make no difference to them if pubs, bars and nightclubs went totally smokefree.
- The Loaded Hog Café at Auckland's Viaduct Basin increased its takings by 15 percent after instigating a smokefree Tuesday night, and attracted more family groups on smokefree Tuesdays.

C9) What other jurisdictions have smokefree protections like New Zealand's?

- Ireland (from 2004)
- Australia – states or territories in Australia have or are going smokefree
- Sweden
- Norway
- USA: at least five states in the USA have gone or are going smokefree: California (since 1998), New York, Connecticut, Delaware, Connecticut, and Massachusetts.
- A further 182 jurisdictions in the USA have smokefree workplaces and dining, and 58 have smokefree bars.
- Canada: Ontario (proposing a province-wide ban 2004), 45 municipalities with smokefree workplaces and dining, and 31 municipalities with smokefree bars including Vancouver City.

C10) What happens if someone smokes in a hospitality venue?

A proprietor is liable for a fine of up to \$400 (individual) or \$4000 (body corporate) if they allow someone to smoke on the premises in a smokefree area.

They will not be prosecuted if they have taken all reasonably practicable steps to prevent unlawful smoking (eg, if they display no-smoking signs, do not provide ashtrays, and give an oral warning to the smoker). It is the failure not to take these steps that will breach the new law rather than the act of smoking itself.

Fines will not be imposed on individual smokers for smoking in other places.

The intention of the smokefree law is not to target smokers, but to encourage public health protections against second-hand smoke with public support and voluntary compliance.

Section D: Schools and Early Childhood Centres

D1) What are the key changes to the smokefree status of places where children learn?

There are two new types of smokefree provisions for places where children learn:

1. Schools and early childhood centres are required to have smokefree buildings and grounds, 24 hours a day, seven days a week.
2. Early childhood centres attached to other premises (such as universities or workplaces) or located in other premises (such as a church hall) are required to be smokefree during the times that children are being taught there.

D2) What are the smokefree provisions for schools and early childhood centres?

While schools and early childhood centres may have been smokefree in some areas (eg, indoors) prior to 2004, from January 2004 a school or early childhood centre was required to be 100 percent smokefree 24 hours a day, seven days a week, indoors and outdoors if it is:

- a school, or
- an early childhood centre
- parts of premises that are used exclusively or primarily as an early childhood centre.

Examples of a school or early childhood centre are:

- a primary, intermediate or secondary school
- a boarding school
- a kura kaupapa or kohanga reo
- a stand-alone kindergarten, play centre or crèche
- a university or work-based crèche facility.

The total smokefree ban includes school grounds during:

- weekend sports games
- fundraising activities
- community day or evening classes
- rented school or early childhood premises for other use by other groups.

D3) What are the smokefree provisions for other places where young children learn?

From January 2004 an indoor or outdoor area of premises is required to be smokefree to the extent that it:

- is used at certain times as an early childhood centre, or
- is situated and ventilated so that smoke from another area of the premises (indoors or outdoors) may drift into the area being used as an early childhood centre.

Examples of premises used in these situations include:

- a crèche facility that is part of a community centre
- a kohanga reo or playgroup meeting on a marae.

D4) Which places of learning for children are not required to be smokefree?

Areas not covered by the smokefree provisions include the following situations:

- casual child-minding services
- private living quarters for on-site staff at boarding schools
- home-visit services
- foster homes
- tertiary institutions.

D5) Does the smokefree ban apply to tertiary institutions?

No, the smokefree ban for indoors and outdoors, 24 hours a day, applies only to schools and early childhood centres (ie, for children under 18).

The premises of tertiary institutions such as universities and polytechnics are covered by the smokefree provisions *to the extent that* they fall within the smokefree law's protections for:

- indoor workplaces (eg, office, lecture theatre or cafeteria)
- indoor licensed premises (eg, on-campus bar) or
- part of the premises that are used as an early childhood centre (eg, an on-campus crèche).

D6) Do schools still need to have written policies on smoking?

No. With 100 percent smokefree provisions, there is no need for provisions relating to school or early childhood centre 'smoking policies' to continue.

D7) How do schools and early childhood centres comply with the smokefree provisions?

School Boards of Trustees or managers of early childhood centres must:

- display smokefree notices at every entry gate to the grounds or buildings entrance on the premises to which the young people or public normally have access
- take all reasonably practicable steps to ensure there is no smoking on the premises.

Guidelines to advise schools and early childhood centres of the details and how to comply with the new smokefree law were provided in early 2004. The Ministry of Health also worked with schools and early childhood centres to assist in completing a successful implementation of the legislation.

Schools and early childhood centres are encouraged to inform staff, students, parents and community users of the premises that the whole campus is smokefree, and seek their co-operation in this change.

D8) What happens if someone smokes on school grounds?

A school Board of Trustees or manager of an early childhood centre is liable for a fine of up to \$400 (individual) or \$4000 (body corporate) if they fail to take all reasonably practicable steps to comply with the Act. For the purposes of the Act, a reasonably practicable step is defined as what a reasonable and prudent person would do in similar circumstances. A failure to take such steps is a breach of the law under the Act.

Reasonably practicable steps include:

- prominently displaying no-smoking signs at every entrance
- informing the families of students of the new requirements
- informing all users of the site of the new requirements
- developing a complaints procedure or action plan to initiate if someone smokes.

The Ministry is concerned to ensure that the public and all people directly affected by the Act are educated on its provisions, and in particular, their new responsibilities under the Act.