



ANALYSIS

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1997, No. 32

An Act to amend the Smoke-free Environments Act 1990

[28 July 1997]

BE IT ENACTED by the Parliament of New Zealand as follows:

1. Short Title and commencement—(1) This Act may be cited as the Smoke-free Environments Amendment Act 1997, and is part of the Smoke-free Environments Act 1990 (“the principal Act”).

(2) Except as provided in section 7 (5), this Act comes into force on the day after the date on which it receives the Royal assent.

2. Interpretation—(1) Section 2 of the principal Act is amended by inserting, in their appropriate alphabetical order, the following definitions:

“‘Automatic vending machine’ means any self-service machine that,—

“(a) On the insertion of a coin or token or by any other means, dispenses by way of sale tobacco products, whether automatically or with the assistance of the purchaser; and

“(b) Does not require replenishment between each sale:

“‘Casino’ means a casino in respect of which a casino premises licence is in force under the Casino Control Act 1990:

“‘Casino operator’s licence’ means a casino operator’s licence granted under the Casino Control Act 1990:

“‘Code of practice’ or ‘code’ means a code of practice issued under section 32A:

“‘Gaming’ has the same meaning as in section 2 (2) of the Casino Control Act 1990:

“‘Gaming area’, in relation to a casino, means the area of the casino in which gaming is conducted.”

(2) Section 2 of the principal Act is amended by inserting in the definition of the term “publish”, after paragraph (h) of that definition, the following paragraph:

“(ha) Display by way of a sign, notice, poster, or other means; or”.

3. Smoking in casinos—The principal Act is amended by inserting, after section 13, the following section:

“13A. (1) Notwithstanding anything in section 5, but subject to subsection (2) and to sections 12 and 13, the holder of the casino operator’s licence in respect of a casino may permit smoking in the gaming area of that casino.

“(2) The holder of the casino operator’s licence must ensure that—

“(a) At least 25 percent of the total floor area of the gaming area of the casino is designated for persons who do not wish to smoke, and must prominently display signs accordingly; and

“(b) No person smokes in that area so designated.

“(3) No person may smoke in any part of a gaming area of a casino that is designated for persons who do not wish to smoke.

“(4) In calculating, for the purposes of subsection (2) (a), the total floor area of the gaming area of a casino, and the percentage of the floor area of the gaming area of a casino that is designated for persons who do not wish to smoke, none of the following areas may be taken into account:

“(a) Any lobby or stairwell:

“(b) Any area in any licensed premises that is designated, pursuant to section 12, as seating for persons who do not wish to smoke:

“(c) Any area in any restaurant that is designated, pursuant to section 13, as seating for persons who do not wish to smoke.”

4. Complaints to Director-General—Section 16 (2) (a) (iii) of the principal Act is amended by omitting the word “board”, and substituting the word “Director-General”.

5. Offences in respect of smoking—Section 17 of the principal Act is amended by inserting, after subsection (8), the following subsection:

“(8A) Every holder of a casino operator’s licence who, without reasonable excuse, fails to comply with any of the requirements of section 13A (2) commits an offence and is liable,—

“(a) In the case of a body corporate, to a fine not exceeding \$4,000; or

“(b) In the case of an individual, to a fine not exceeding \$400.”

6. Purpose of this Part—The principal Act is amended by repealing section 21, and substituting the following section:

“21. The purpose of this Part is—

“(a) To reduce the social approval of tobacco use, particularly among young people, by—

“(i) Imposing controls on the marketing, advertising, or promotion of tobacco products and their association through sponsorship with other products and events; and

“(ii) Requiring health messages and other information to be displayed on, or included with, packages containing tobacco products, and on automatic vending machines; and

“(b) To reduce some of the harmful effects of tobacco products on the health of users by monitoring and

- regulating the presence of harmful substances in the products and in tobacco smoke; and
- “(c) To facilitate the harmonisation of the laws of New Zealand and Australia relating to the labelling of tobacco products (including, without limitation, requirements relating to the display of health messages).”

7. Exemptions for retailers and vending machines—

(1) Section 23 (1) of the principal Act is amended by repealing paragraphs (b) and (c), and substituting the following paragraph:

“(b) Advertise, in accordance with regulations made under this Part, inside that retailer’s place of business, that tobacco products are available for purchase in that place and indicate their price:”

(2) The principal Act is amended by repealing section 23 (as amended by subsection (1)), and substituting the following section:

“23. (1) Notwithstanding anything in section 22, a retailer of tobacco products may do all or any of the following things:

“(a) Expose any tobacco product for sale inside the retailer’s place of business so long as no such product is visible from outside that place:

“(b) Subject to subsections (3) and (4), display, inside that retailer’s place of business, any notice identifying the tobacco products that are available for purchase in that place and indicating their price:

“(c) Display the retailer’s name or trade name on the exterior of the retailer’s place of business, in accordance with regulations made under this Part, even though the name contains any word or expression signifying that any tobacco product is available in that place for purchase, so long as the name does not include the trade mark of a tobacco product or the company name of a tobacco products manufacturer.

“(2) Subject to subsections (3) and (4), any person who offers for sale, by way of an automatic vending machine, any tobacco product may display, on the exterior of the vending machine, any notice identifying that tobacco product and indicating its price.

“(3) Every notice to which subsection (1) (b) or subsection (2) applies must comply with the following requirements:

“(a) The notice must be no larger than 90mm by 55mm:

“(b) The background of the notice must be white, and all words, figures, or other material appearing on the notice must be black:

“(c) No material other than the following may appear on the notice:

“(i) The name of the tobacco product (which may consist of or include a brand or brand variant):

“(ii) Any logo, design, or similar device that is usually associated with that tobacco product:

“(iii) A depiction of the package in which the tobacco product is customarily sold:

“(iv) The quantity in which the tobacco product is sold (whether by weight or number):

“(v) The price of the tobacco product.

“(4) The combined area of all notices to which subsection (3) applies and that are displayed—

“(a) Inside a retailer’s place of business; or

“(b) On the exterior of an automatic vending machine—
must not exceed, in total, 21cm by 29.7cm.”

(3) The principal Act is consequentially amended—

(a) By repealing the definition of the term “code of practice” in section 2 (as inserted by section 2 (1) of this Act):

(b) By repealing section 39 (1) (d) (as substituted by section 14 (2) of this Act).

(4) The following enactments are consequentially repealed:

(a) Subsection (1) of this section:

(b) Sections 11 and 14 (2) of this Act.

(5) Subsections (2) to (4) of this section come into force on 11 December 1998.

8. Free distribution and rewards prohibited—The principal Act is amended by repealing section 28, and substituting the following section:

“28. (1) No manufacturer, distributor, importer, or retailer of tobacco products may,—

“(a) Distribute any tobacco product; or

“(b) Supply any tobacco product to any person for subsequent distribution; or

“(c) In the case of a retailer, supply any tobacco product to any person for the purpose of that retailer’s business—

free of charge, or at a reduced charge.

“(2) No person may—

“(a) Offer any gift or cash rebate, or the right to participate in any contest, lottery, or game, to the purchaser of

a tobacco product in consideration for the purchase of that product, or to any person in consideration for the provision of evidence of such a purchase; or

“(b) Offer, to any retailer, any gift or cash rebate, or the right to participate in any contest, lottery, or game, as an inducement or reward in relation to—

“(i) The purchase or sale of tobacco products by that retailer; or

“(ii) The advertising of tobacco products inside that retailer’s place of business; or

“(iii) The location of tobacco products in a particular part of that retailer’s place of business.

“(3) Nothing in subsection (1) or subsection (2) prohibits the giving of any normal trade discount or normal trade rebate.

“(4) Nothing in subsection (2) applies in respect of any payment or reward to any person who,—

“(a) With the authority of the Director-General or of some other person authorised for that purpose by the Director-General; and

“(b) For the purpose of monitoring compliance with the provisions of this Part,—

purchases or attempts to purchase any tobacco product.”

9. New sections substituted—The principal Act is amended by repealing section 30, and substituting the following sections:

“30. Sale of tobacco products to persons under 18 prohibited—(1) No person may sell any tobacco product to a person who is younger than 18 years.

“(2) It is a defence to a charge in respect of a contravention of subsection (1) if the defendant proves that the offence was committed without the defendant’s knowledge and that the defendant took reasonable precautions and exercised due diligence to prevent the commission of the offence.

“(3) It is no defence to a charge in respect of a contravention of subsection (1)—

“(a) That the person to whom the tobacco product was sold was purchasing it for or on behalf of, or as agent for, a person to whom tobacco products may legally be sold; or

“(b) That the person who sold the tobacco product believed on reasonable grounds that the person to whom it was sold was purchasing it for or on behalf of, or as

agent for, a person to whom tobacco products may legally be sold.

“(4) Except as permitted by regulations made under this Part, no person may—

“(a) Locate, or cause or permit to be located, in any place to which a person who is younger than 18 years may lawfully have access, any automatic vending machine that dispenses or is capable of dispensing tobacco products; or

“(b) Permit any tobacco product to be sold by way of an automatic vending machine from any place to which a person who is younger than 18 years may lawfully have access.

“(5) Subsection (4) does not apply to—

“(a) Any restricted area or supervised area (as those terms are defined in the Sale of Liquor Act 1989) on—

“(i) Any premises in respect of which a club licence is in force under that Act; or

“(ii) Any premises in respect of which an on-licence is in force under that Act; or

“(b) Any canteen, cafeteria, or similar facility provided by an employer for the provision of refreshments to that person’s employees during working hours.

“(6) Every person who sells by retail any tobacco product must display clearly for the public a notice to the effect that the sale of any tobacco product to persons who are younger than 18 is prohibited.

“30A. Restrictions on sale of certain tobacco products in small quantities—(1) In this section and section 36 (7A), unless the context otherwise requires,—

“‘Cigarette’ includes the tobacco product commonly known as a cigarillo:

“‘Loose cigarettes’ means cigarettes that are not contained in a package:

“‘Loose tobacco’ means—

“(a) Tobacco prepared for smoking in hand-rolled cigarettes:

“(b) Pipe tobacco.

“(2) No person may—

“(a) Sell by retail; or

“(b) Offer for sale by retail—

loose cigarettes in amounts of fewer than 20 cigarettes.

“(3) No manufacturer, importer, distributor, or retailer may sell or offer for sale—

- “(a) Cigarettes in a package that contains fewer than 20 cigarettes; or
- “(b) Loose tobacco in a package that contains less than 30 grams of loose tobacco.
- “(4) Nothing in subsection (2) or subsection (3) (a) applies in respect of cigars (other than cigarillos).”

10. Limits on harmful constituents—The principal Act is amended by repealing section 31, and substituting the following section:

“31. No manufacturer or importer may offer for sale or export any tobacco product that—

- “(a) Contains, or generates in its smoke, a harmful constituent prohibited by regulations made under this Part; or
- “(b) Contains, or generates in its smoke, harmful constituents in excess of the limits prescribed by regulations made under this Part, as determined in accordance with any tests so prescribed.”

11. New heading and sections inserted—The principal Act is amended by inserting, after section 32, the following heading and sections:

“Code of Practice Relating to Tobacco Product Advertising

“32A. Code of practice relating to tobacco product advertising—The Director-General may from time to time issue a code of practice—

- “(a) Relating to the advertising of tobacco products inside a retailer’s place of business; and
- “(b) Prescribing procedures for dealing with complaints alleging a breach of the code.

Cf. 1992, No. 122, s. 36

“32B. Code to be approved by Minister—(1) Subject to subsection (5), a code of practice has no effect until it has been approved by the Minister.

“(2) The Minister must not approve any code unless—

- “(a) Not less than 1 month has elapsed since the publication in the *Gazette* of a notice of the intention of the Director-General to apply for approval; and
- “(b) The Minister has consulted with—

“(i) Such persons as will, in the Minister’s opinion, be affected by the proposed code, or representatives of those persons; and

“(ii) Such other persons (including providers of health services, and health consumer groups) as the Minister considers have an interest in the proposed code, or representatives of those persons,—
and has given such persons or their representatives a reasonable opportunity to consider the possible effects of the proposed code and to make comments on those effects to the Minister; and

“(c) The Minister has considered any comments made to the Minister concerning those effects.

“(3) The Minister may approve a code of practice without complying with the requirements of paragraphs (a) and (b) of subsection (2) if the Minister is satisfied that sufficient consultation has already taken place in respect of the matters in the code.

“(4) When the Minister approves a code of practice, the Minister must—

“(a) Publish in the *Gazette*—

“(i) A notice of the approval; and

“(ii) A copy of the code; and

“(b) Show the date of the approval on the code.

“(5) The fact that the Minister has published in the *Gazette* a notice under subsection (4) (a) is conclusive proof that the requirements of this section have been complied with in respect of the approval specified in the notice.

Cf. 1992, No. 122, s. 38

“32C. **Availability of code**—(1) The Director-General must ensure that copies of any code of practice that is for the time being in force are available—

“(a) For inspection by members of the public free of charge; and

“(b) For purchase by members of the public at a reasonable price.

“(2) The notice of approval published in the *Gazette* pursuant to section 32B (4) (a) must show, in relation to the code to which it relates, a place at which copies of the code are available for inspection free of charge and for purchase.

Cf. 1992, No. 122, s. 39

“32D. **Commencement of code**—Every code of practice comes into force on the 28th day after the date of its notification in the *Gazette* or on such later day as may be specified in the code.

Cf. 1993, No. 28, s. 49 (2)

“32E. **Proof of code**—Without affecting any other method of proof, the production in any proceedings of a copy of any code of practice, purporting to have been issued by the Director-General and to have been approved by the Minister, is, in the absence of proof to the contrary, sufficient evidence—

“(a) That it has been issued under the authority of section 32A; and

“(b) That it has been approved by the Minister, on the date shown on it as the date of approval, under section 32B.

Cf. 1992, No. 122, s. 42

“32F. **Code deemed to be regulations for purposes of disallowance**—A code of practice is deemed to be regulations for the purposes of the Regulations (Disallowance) Act 1989, but is not regulations for the purposes of the Acts and Regulations Publication Act 1989.

“32G. **Amendment and revocation of code**—(1) The Director-General may from time to time issue an amendment or revocation of a code of practice.

“(2) The provisions of sections 32B to 32F, with all necessary modifications, apply in respect of any amendment or revocation of a code of practice.

Cf. 1993, No. 28, s. 51

“32H. **Regulations may require compliance with code**—(1) Any regulations made under section 39 (1) (d) may require compliance with the whole or any part of any code of practice.

“(2) In any such regulations, any code of practice may, without prejudice to any other method of citation, be cited by the title or reference given to it by the Director-General and by its date of approval; and such citation is deemed to include and refer to the latest code of practice or amendment in force when the regulations were made.

Cf. 1992, No. 122, ss. 41, 169 (2) (a)

“32I. **Expiry of sections 32A to 32H**—Sections 32A to 32H expire with the close of 10 December 1998, and on 11 December 1998 those sections, and the heading above section 32A, are deemed to have been repealed.”

12. Offences in respect of tobacco products—Section 36 of the principal Act is amended by repealing subsections (6) to (8), and substituting the following subsections:

“(6) Every person commits an offence and is liable to a fine not exceeding \$2,000 who,—

“(a) Sells any tobacco product in contravention of section 30 (1); or

“(b) In contravention of section 30 (4) (a), locates, or causes or permits to be located, in any place to which a person who is younger than 18 years may lawfully have access, any automatic vending machine that dispenses or is capable of dispensing tobacco products; or

“(c) Permits any tobacco product to be sold in contravention of section 30 (4) (b).

“(7) Every retailer of tobacco products who fails, without reasonable excuse, to display the notice required by section 30 (6) commits an offence and is liable to a fine not exceeding \$2,000.

“(7A) Every person commits an offence and is liable to a fine not exceeding \$2,000 who,—

“(a) Sells or offers for sale any cigarettes in contravention of section 30A (2); or

“(b) Being a manufacturer, importer, distributor, or retailer, sells or offers for sale any cigarettes or tobacco in contravention of section 30A (3).

“(8) Every person commits an offence and is liable to a fine not exceeding \$10,000 who, being a manufacturer or importer, offers for sale or export any tobacco product that—

“(a) Contains, or generates in its smoke, any harmful constituent prohibited by regulations made under this Part for the purposes of section 31 (a); or

“(b) Contains, or generates in its smoke, any harmful constituent in excess of the level permitted by regulations made under this Part for the purposes of section 31 (b), as determined in accordance with any tests so prescribed.”

13. Liability of employees, employers, agents, and principals—The principal Act is amended by repealing section 38, and substituting the following section:

“38. (1) For the purposes of this Part, every person is deemed to publish a tobacco product advertisement, whether he or she does so on his or her own account or as the agent or employee of any other person.

“(2) Anything done by a person as the employee of another person is, for the purposes of an offence against section 36 (6)

in respect of a contravention of section 30 (1), to be treated as done by that other person as well as by the first-mentioned person, whether or not it was done with that other person's knowledge or approval.

“(3) Anything done by a person as the agent of another person is, for the purposes of an offence against section 36 (6) in respect of a contravention of section 30 (1), to be treated as done by that other person as well as by the first-mentioned person, unless it is done without that other person's express or implied authority, precedent or subsequent.”

14. Regulations—(1) Section 39 (1) of the principal Act is amended by repealing paragraph (a), and substituting the following paragraph:

“(a) Prescribing forms, certificates, notices, leaflets, signs, particulars, and notifications, and the persons by whom and the persons to whom any such forms, certificates, notices, leaflets, signs, particulars, and notifications are to be supplied:”.

(2) Section 39 (1) of the principal Act is amended by repealing paragraph (d), and substituting the following paragraph:

“(d) Restricting, regulating, and prescribing conditions in respect of the advertising of tobacco products inside a retailer's place of business:”.

(3) Section 39 (1) of the principal Act is amended by repealing paragraph (g), and substituting the following paragraphs:

“(g) Specifying harmful constituents of tobacco products for the purposes of this Part:

“(ga) Prohibiting harmful constituents of tobacco products for the purposes of section 31 (a):”.

(4) Section 39 (2) of the principal Act (as added by section 2 of the Smoke-free Environments Amendment Act 1990) is repealed.

(5) The Smoke-free Environments Amendment Act 1990 is consequentially repealed.

15. Transitional provision—(1) This section applies to—

- (a) Packages of cigarettes (as defined in section 30A (1) of the principal Act); and
 - (b) Packages of tobacco—
- that are, at the date on which this section comes into force,—
- (c) In New Zealand; or
 - (d) In transit to New Zealand; or

(e) The subject of an irrevocable purchasing order by a person in New Zealand.

(2) Nothing in section 30A (3) of the principal Act (as inserted by section 9 of this Act) applies in respect of the sale or offering for sale, before 1 February 1998, of any package of cigarettes, or any package of tobacco, to which this section applies.

This Act is administered in the Ministry of Health.
