

# **SMOKE-FREE ENVIRONMENTS AMENDMENT BILL (NO. 2)**

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AS REPORTED FROM THE SOCIAL SERVICES COMMITTEE

## **COMMENTARY**

### **Recommendation**

The Social Services Committee has examined the Smoke-free Environments Amendment Bill (No. 2) and recommends that it be passed with the amendments shown in the bill.

### **Introduction**

The bill was introduced by Hon Jenny Shipley on 16 October 1995 and referred to the Social Services Committee for consideration. The closing date for submissions was 31 January 1996. We received 320 submissions from health promotion groups, tobacco companies, casinos, and other interested groups and individuals. We heard 61 of these submissions orally in Auckland, Wellington, and Christchurch. Hearings of evidence, consideration, and deliberation took 24 hours and 43 minutes over 19 meetings.

Advice was received from the Ministry of Health (the ministry). We also received a report from the Regulations Review Committee which commented on clause 6 of the bill.

This commentary sets out the details of our consideration of the bill and the major issues we addressed.

### **Background**

The bill amends the Smoke-free Environments Act 1990 (the Act) and seeks to deter young New Zealanders from taking up smoking. While smoking by the New Zealand public as a whole is declining, the percentage of young people taking it up remains constant at around 30 percent. Surveys indicate that many children and adolescents are unaware of, or underestimate, the addictive nature of tobacco.

The bill, as introduced, attempts to prevent the uptake of smoking by under age persons by reducing their access to tobacco products until they are of an age to

make a mature and informed decision about smoking. The bill aims to restrict access by:

- increasing the minimum legal age for sale of tobacco products to individuals from 16 years to 18 years;
- prohibiting the sale of individual cigarettes and limiting the minimum packet size to 10 cigarettes, or an equivalent of loose tobacco; and
- providing for an industry code on tobacco product advertising.

The bill also requires casino operators to designate a minimum of 25 percent of gaming areas within casinos as smoke-free.

## **Issues raised by submissions**

### **Casinos**

Clause 3 of the bill inserts a new section 13A into the principal Act that requires at least 25 percent of the gaming areas within casinos to be designated smoke-free, but allows smoking in the remaining 75 percent.

The establishment of casinos in New Zealand was not anticipated at the time the Smoke-free Environments Act 1990 was drafted. Consequently, while smoking was provided for in taverns and bars, casinos were not covered by the Act. Legal advice received by the Ministry of Health from the Crown Law Office indicates that, under the current provisions in the Act, smoking is not legally permissible in casino gaming areas. Section 5 of the Act presently prohibits smoking in any part of the workplace to which the public normally have access, with specific exemptions (in sections 12 and 13) for licensed premises and restaurants. The Act, therefore, restricts smoking in casinos to rooms or enclosed areas set aside primarily for the consumption of liquor, and to 50 percent of seating in restaurants. Despite this, both Sky City Limited Auckland and Christchurch Casino Limited are currently setting aside 75 percent of their gaming areas for smoking.

The casino operators told us that a prohibition on smoking in gaming areas would have a serious impact on the appeal and ongoing viability of casinos, particularly in respect of international visitors. Research, from both the casino in Christchurch and casinos overseas, suggests a strong link between smoking and gaming. Data gathered at the Christchurch Casino Limited shows that turnover at non-smoking tables is, on average, half that of smoking tables. Sky City Limited informed us that both resident Asians and Asian tourists make up a significant component of both casinos' business, and an increase in the smoke-free percentage was likely to deter a number of Asian customers. Figures indicate that the level of smoking by male adults in South Korea, Thailand, Taiwan, and Japan is twice that of New Zealand.

Both New Zealand casino operators have conducted customer satisfaction surveys about smoke levels, and these indicate general customer satisfaction with air quality. Operators told us that casinos, like any business, must respond to market demand, and if customers demand increased smoke-free areas the casinos will have to respond. Operators expect that, with changing attitudes to smoking, the smoke-free areas in casinos will, over time, increase.

Many submissions from health promotion groups urged that the bill be amended to make casino gaming areas 50 percent smoke-free. The major concern these groups had about smoking in casino gaming areas was the effect on casino employees of exposure to environmental tobacco smoke (ETS). While the public have the choice to visit the casino, employees are a "captive audience" for ETS. Section 5 of the Act currently protects most employees working in areas where the public "normally have access". The Act makes some specific exemptions for

bars (section 12) and restaurants (section 13). Clause 3 of the bill will create another exemption to section 5 of the Act for casinos. Casino operators raised the following mitigating factors in support of an exemption from section 5 for casinos:

- when hiring staff the matter of likely exposure to ETS is discussed with potential workers, and workers are advised that they will be exposed to ETS;
- where possible, staff who do not wish to be exposed to ETS or who request to be moved from a particularly smoky area are accommodated;
- sophisticated ventilation systems have been installed which are significantly better than those placed in many other entertainment venues; and
- dealers working the tables are rotated continually to other positions.

In our opinion, the requirement in the bill, as introduced, that casino operators set aside at least 25 percent of gaming areas as smoke-free is a compromise between providing protection for both the public and casino employees from ETS, and effective casino operation. We do have residual concerns about the protection for staff from ETS. Clause 4 of the bill amends section 17 of the principal Act which sets out certain offences in relation to breaches of the principal Act relating to smoke-free areas. Clause 4 makes it an offence for the holder of a casino operators licence to breach the provisions of new section 13A (2).

We recommend that new section 13A (2) (a) and 13A (4) be amended to make it clear that calculations of smoke-free areas in gaming areas are to be based on floor area. This will clarify that 25 percent of the overall area of the gaming floor must be smoke free, not 25 percent of any individual area or room within the gaming area.

We wish to draw the attention of the House to our belief that the level of ETS protection in casinos and licensed premises should be increased over time. We recommend to the Government that it should review this level with a view to raising it to 50 percent within the next five years.

### **Raising the age at which people may legally be sold tobacco products to 18**

Clause 5 of the bill amends the principal Act by substituting a new subsection 30 (1). This raises the minimum age at which persons may legally be sold tobacco products from 16 years of age to 18 years of age.

It is estimated that 85 percent of smokers start smoking before the age of 19. By raising the minimum age of tobacco purchase to 18, the bill aims to inhibit access, by young persons, to tobacco products until they can make a mature and informed decision about whether to smoke.

Submissions expressed widespread support for this provision. The Tobacco Institute of New Zealand commented that the raised age of sale is consistent with its view that smoking is an adult custom.

### **Retailer defence**

Under section 30 (2) of the Smoke-free Environments Act 1990, a retailer who sells tobacco products to a person under the age of 16 years currently has a defence if the retailer

*believed on reasonable grounds that the person to whom it was sold was of or over the age of 16 years.*

Clause 5 of the bill substitutes a new subsection 30 (2) in the Act that increases the age, in the defence provision, to 18 years. This is in line with the increased minimum age of purchase.

Health promotion groups submitted that the provisions in section 30 (2) make it difficult to charge a retailer with the offence of selling tobacco products to a person under the minimum legal age. Section 30 (2) only requires the retailer to believe on reasonable grounds that the person is older than 17 years, but the Act does not require the retailer to take steps to verify the purchaser's age. Submissions recommended that the retailer defence provision in section 30 (2) be amended to read:

*It shall be a defence for a person charged with an offence of selling tobacco products to an under-aged person to prove that he or she took all reasonable precautions, and exercised all due diligence to avoid the commission of the offence.*

Submissioners believed that this would require retailers to have taken active steps to check for proof of age before they could activate the defence provision.

We recommend that the bill be amended to substitute the reasonable belief defence in section 30 (2) of the Act with a defence of due diligence. To satisfy this defence retailers will need to demonstrate that they had taken concrete steps, such as checking identification, to ensure that the person to whom they sold tobacco was over the legal age before selling them tobacco products.

Where a retailer seeks to use this provision as a defence to a charge based on the acts of the retailer's staff, it will not be sufficient that the retailer has orally instructed staff not to sell to under-aged persons. The retailer must have taken steps to institute substantive, clear policies and procedures that have been adequately communicated to staff.

The ministry told us that, while it has experienced no difficulties in enforcing the ban on the sale of tobacco products to minors because of the existing defence provision, it is not opposed to the amended provision. Since 1990, there have been four successful convictions for the sale of tobacco products to persons under the legal age. The ministry expects the number of successful prosecutions to increase with increased funding for monitoring compliance with the Act.

We believe this new provision will signal to retailers the need to take active steps to prevent the sale of tobacco to young people. We hope that this amendment will encourage retailers to err on the side of caution, and not sell tobacco products to persons unable to verify their age.

#### **Offence for under-aged persons to purchase tobacco products**

Neither the Smoke-free Environments Act 1990 nor the amendment bill currently make it an offence for minors to buy tobacco products.

Some submissions (predominantly from retailer groups, chartered club associations, and the Tobacco Institute) recommended that the Act be amended to make it an offence for a person under the legal age to purchase cigarettes. This would be in addition to the existing offence for retailers to sell tobacco products to under-aged persons. It was submitted that the lack of sanctions against under-aged smokers encourages young people to move from retailer to retailer until they find one willing to sell them tobacco products. The Hospitality Association of New Zealand commented that it would be fair and appropriate to create a penalty for those who, with the intention of purchasing cigarettes, place retailers in the position where they may break the law. In addition, the prospect of prosecution may deter many young people from purchasing tobacco products.

The majority of the committee agrees that this is the case, and recommend the inclusion of a new clause in the bill making it an offence for under-aged persons to purchase tobacco products. The new provision will be parallel to the Sale of Liquor Act 1989 which makes it an offence for minors to purchase liquor.

Submissions from the Smokefree Coalition and many other health promotion organisations suggested that the proposed offence would hinder the effective prosecution of retailers selling tobacco products to under-aged persons. To prove the offence of selling tobacco to a minor, the Crown must call the young person as a witness to testify that she or he purchased the tobacco. The Ministry of Health has recently had difficulty in obtaining willing witnesses for this purpose, and believes that risk of prosecution from self-incrimination will further discourage underage purchasers from testifying against retailers. Conversely, proof of purchase may be difficult to obtain because evidence given by the seller would be self incriminating.

We accept that in some cases prosecutions will be discouraged by the prospect of self-incrimination. We understand, however, that the majority of prosecutions currently arise from the use of under-aged volunteers assisting in gathering evidence. These prosecutions will not be affected by such an amendment. We believe that the creation of an offence is an important signal to young people of the serious dangers involved in smoking. It is our hope that the prospect of prosecution will act as a deterrent to young people purchasing tobacco products.

*Defence to the charge of purchasing tobacco products*

Ministry of Health officials expressed concern that the prosecution of under-aged purchasers could result in the prosecution of child volunteers assisting the ministry in gathering evidence for prosecution. Accordingly, we recommend that the new clause include a defence for young people buying tobacco for the purpose of assisting the Ministry of Health to gather evidence for the prosecution of retailers.

We also recommend that it be a defence to the charge that the tobacco product was purchased by the defendant in his or her capacity as a manufacturer, distributor, importer, or retailer of tobacco products, and for the purposes of the defendant's business.

*Offence may be dealt with as an infringement offence*

Ministry officials advised us that the creation of such an offence could directly impact on the youth justice provisions in the Children, Young Persons, and Their Families Act 1989 (CYPF Act). The CYPF Act requires a number of detailed procedures to be followed when investigating the commission of an offence by a child or young person. These provisions include the requirements that no information for an offence may be laid unless it is believed that public interest requires it, that consultation between the prosecuting agency and the Youth Justice Co-ordinator has taken place, and that the matter has been considered by a family group conference. Officials warned us that the youth justice system currently struggles to meet its case load, and that creating an offence for under-aged purchase of tobacco products would only exacerbate problems. We were also told that the youth justice system would, in all likelihood, view offences under the Smoke-free Environments Act 1990 as less serious than other offences faced by children and young persons. It seems likely that such offences would be given lower priority.

To avoid added burden to the youth justice system, we recommend that this offence be dealt with as an infringement offence. We recommend that, where any person is alleged to have committed such an offence, that person may either be proceeded against summarily, or be served with an infringement notice. We recommend that infringement notices may be issued by the Director-General of Health, any person authorised by the Director-General, or any member of the police. These notices may be issued where an enforcement officer observes a person committing an infringement offence, or has reasonable cause to believe

any person has committed an infringement offence. Where a person is proceeded against summarily they will be liable to a fine not exceeding \$400. Receipt of an infringement notice will require the offender to pay an instant fine of \$40. The penalty levels we have recommended for this offence are equivalent to those for parking infringements. We recommend that failure to pay an infringement notice may result in the offence being proceeded with summarily. As with traffic offences not punishable by imprisonment, the offence will be dealt with in the District Court rather than the Youth Court.

In order to enable enforcement agencies to police this offence, we recommend that the bill be amended to allow enforcement officers, who have reasonable cause to suspect that an offence is being or has been committed, to demand information regarding the suspect's name, address, and age.

#### **Sale of tobacco prohibited to under-aged person bearing notes from home**

Clause 5 of the bill inserts a new section 30 into the principal Act relating to the sale of tobacco products to under-aged persons. Subsection 3 of the new section 30 makes it clear that it is an offence to sell tobacco products to an under-aged person, regardless of the fact that they may be purchasing as an agent.

Section 30 of the Act currently makes it an offence to sell tobacco products to under-aged persons, regardless of the circumstances. Clause 5 clarifies this position in relation to agents.

#### **Location of vending machines**

Section 30 (3) of the principal Act currently makes it an offence to allow the sale of tobacco products via an automatic vending machine from any place to which a person under the age of 16 may legally have access. Currently, the Act does not state that machines cannot be located in areas to which under-aged people may have legal access, only that cigarettes cannot be sold in this manner. Section 30 (4) of the Act creates exceptions to section 30 (3) for premises where a club licence or an on-licence is in force under the Sale of Liquor Act 1989, and canteens, cafeteria, or similar facilities provided by an employer for the provision of refreshments to that person's employees during working hours.

Clause 5 of the bill substitutes section 30 of the Act with a new section 30. New section 30 (4) prohibits the location of vending machines in any area where under-aged persons may legally have access, and prevents tobacco products being sold by way of vending machines to any person under the age of 18 years. These provisions are subject to the existing exemptions for licensed premises, clubs, and staff cafeterias. Most submissions, including those of the Smokefree Coalition and other health promotion organisations, and the Tobacco Institute, supported these further restrictions on the location of vending machines.

The Smokefree Coalition and other health promotion groups urged us to tighten the exemptions for licensed premises, clubs, and staff cafeterias by allowing the placement of vending machines only in those areas of licensed premises where minors do not have legal access. Hutt Valley Health Limited and other health groups suggested that the increased age of purchase, and expanding enforcement efforts will result in vending machines being used by more young people. In November and December of 1995, Hutt Valley Health Limited conducted a tobacco purchase study on tobacco vending machines in the Wellington area. Two teenagers, aged 13 and 14 years, were asked to purchase cigarettes from vending machines on licensed premises. The teenagers visited 50 premises, and in all cases managed to obtain cigarettes. This evidence indicates that vending machines are an easy source of tobacco for under-aged persons.

We recommend an amendment to the bill to prohibit vending machines being located or operated in areas of licensed premises where unsupervised young people may legally have access. This strengthens controls on vending machines covered by the current exemption, now contained in new section 30 (5).

#### *Vending machines in canteens*

While it would be inappropriate for us to amend the bill to prohibit vending machines being located in canteens without the opportunity for the public to comment on the proposal, we wish to signal to the House that this is an issue which should be given further consideration. We believe that location of tobacco vending machines should be restricted to areas where persons under the age of 18 cannot have unsupervised access.

#### *Automatic vending machines*

Officials advised us that the use of the words "automatic vending machines" in the bill may exclude manual vending machines, which require a lever to be pulled to extract the product, from the stricter provisions in the bill. We were told that the industry may use such machines to reduce the effects of the restrictions in relation to automatic vending machines. Accordingly, we recommend that the bill be amended to insert a definition of automatic vending machine into the Act which makes it clear that the Act applies to all vending machines whether or not they require the assistance of the purchaser.

#### **The sale of single cigarettes and small quantities of tobacco**

Clause 5 of the bill inserts a new section 30A into the Act that places restrictions on the sale of certain tobacco products in small quantities. The bill prohibits the sale of single cigarettes. This has considerable support from submissioners and is not opposed by the tobacco industry.

The bill as introduced provided for a minimum pack size of ten cigarettes, and a minimum of ten grams of loose tobacco. While there was considerable support from the Smokefree Coalition and other health promotion groups for the proposal to set a minimum pack size, these organisations urged that the appropriate minimum pack size is 20 cigarettes or the price equivalent of loose tobacco.

Research\* indicates that the price of tobacco products is one of the greatest influences on tobacco consumption among those who are not yet addicted. When tobacco becomes less affordable tobacco consumption has been shown to drop. This is particularly the case for young people who often have limited resources. Larger, more expensive packs have limited desirability for young people for experimentation and continuing use.

The Smokefree Coalition and other health promotion groups submitted that a minimum pack size of ten cigarettes, retailing at around \$2.30 to \$3.00, presented much less of a purchase disincentive than a minimum pack size of 20 cigarettes, retailing at around \$4.50 to \$6.00. The Smokefree Coalition told us that, according to retailers, packets of ten were the preferred pack size for teenagers in 1995. We heard similar evidence from two young women who attend Epsom Girls Grammar School in Auckland.

Philip Morris (Australia) Limited does not currently market packs of less than 20, and is not opposed to the minimum pack size.

The Tobacco Institute of New Zealand argued that a pack size of ten cigarettes suits 42 percent of smokers in relation to their daily consumption, and some smokers control their smoking by buying one pack of ten a day. Further they

\*David Sweanor, Legal Counsel for Non-Smokers' Rights Association of Canada, as reported in *World Smoking and Health: Children and Tobacco*, American Cancer Society, Vol. 17, No. 3, 1992

argue, tobacco is a legal product which smokers aged 18 years or older should not be prevented from buying in the quantity that suits them best.

We recommend that the bill be amended to prohibit the sale of cigarettes in quantities of less than 20, or the sale of less than 30 grams of loose tobacco product. We strongly believe that the public interest in discouraging young people from buying tobacco products outweighs any public need to retain the option of buying tobacco products in smaller quantities.

### **Tobacco advertising at point of sale—code of practice**

Clause 6 of the bill inserts new sections 32A to 32E into the principal Act. The new sections provide for the issue of a code of practice relating to tobacco product advertising.

#### *Current restrictions on advertising at points of sale*

Section 22 of the Smoke-free Environments Act 1990 currently prohibits all tobacco advertising with the exception of the display of price notices (allowed for in section 23 (1) (b)). Section 23 of the Act requires all price notices to be placed inside retail premises, and requires that price notices may only identify specific tobacco products available for purchase and related prices. The maximum size for a price notice is currently set by regulation at 297mm × 630mm which is equivalent to the area of three sheets of A4 paper placed side by side.

The Act currently places no restriction on the number of price notices in any one retail outlet, and retailers may legally cover their shop walls with price notices. While hearing submissions we were shown a number of photographs of dairies with large numbers of price notices pinned to the walls. The Act imposes no requirement for health warnings on price notices.

#### *Codes of practice in the bill*

Clause 6 of the bill inserts new sections 32A to 32E in the Act. These clauses enable the Director-General of Health to issue a code of practice prescribing the manner in which retailers of tobacco products may advertise tobacco products at their place of business and procedures for complaints alleging a breach of the code. The bill requires the Minister to advertise the Director-General's application for approval, consult with affected parties, and to consider any comments made to the Minister regarding the consultation. The bill also allows the Director-General to follow the same process to revoke or amend any code. While clause 6 of the bill, as introduced, recognises codes of practice, no penalties are imposed for any breach of a code.

We believe that, given the tobacco industry's propensity to circumvent the purposes of the Act, it is important that a code is able to be enforced and penalties imposed for breach.

#### *Codes of practice enforceable under the Act*

We recommend that the bill be amended to make a code of practice enforceable under the Act. This involves inserting a new section 32F into the Act conferring regulation making powers which will allow the code to be cited in regulations as an obligation that must be complied with. This will enable the current offence provisions in section 36 (1) of the Act to apply to breaches of the code. Section 36 (1) currently makes it an offence to, without reasonable excuse, publish any advertisement in contravention of the Act. Any manufacturer, importer, or distributor who contravenes section 36(1) is liable to a fine not exceeding \$50,000, and any other person who contravenes the section is liable to fine not exceeding \$10,000.

*Stricter legislative control on tobacco advertising on 11 December 1998*

We believe that the Act does not go far enough to prevent the exposure of young New Zealanders to tobacco advertising. Accordingly, we recommend that the bill be amended to insert provisions in the Act which will:

- sunset, from 11 December 1998, the provisions in the bill enabling the making of advertising codes of practice; and
- from 11 December 1998 replace the agreement on advertising with a legislative provision which limits tobacco advertising to black and white business card size price lists, with a total combined area of one A4 sheet in retail premises.

A minority of the committee believes that this tougher regime should come into force immediately.

*Displays on vending machines*

Section 23 (2) of the Act currently allows displays on automatic vending machines, in accordance with regulations made under the Act, of depictions of the tobacco product and its price. Regulation 5 of the Smoke-free Environments Regulations (No. 2) 1990 restricts each brand identification to 2000 millimetres square or less and requires particular health warnings.

Many health promotion groups submitted that vending machines should contain no pictures, and should only display health warnings and price/availability notices in black and white. We were shown pictures of vending machines which carried attractive pictures unrelated to tobacco products which, in our opinion, amounted to advertising.

We recommend that the bill be amended to ensure that from 11 December 1998, when legislative restrictions (as mentioned previously) on advertising would come into effect, that vending machines be subject to the same legislative controls.

**Liability of employers and principals**

Clause 8 of the bill inserts a new section 38 in the Smoke-free Environments Act 1990. This section establishes the liability of employers or principals for the actions of their employees or agents where they sell tobacco to under-aged persons, or advertise tobacco products in contravention of the Act.

New section 38 (4) will make it a defence in proceedings against an employer that he, she or it took such steps as were reasonably practicable to prevent the employee from contravening the Act. We anticipate that reasonable steps will include staff training.

This clause was supported by most of the submissions we received. We have made no amendment to this clause.

**Regulation of harmful constituents in tobacco products**

The Smokefree Coalition and supporting health promotion groups sought to have us regulate the tar and nicotine content in cigarettes through an amendment to the bill. We were told that this would reduce the addictive and harmful nature of the product. The Smokefree Coalition recommended that the tar content per cigarette be reduced to 15 milligrams immediately, and reduced to 12 milligrams by 1999. The European Community currently restricts the tar yield of cigarettes to a maximum of 15 milligrams per cigarette, and from 31 December 1997 will restrict it to 12 milligrams. We were told that a gradual reduction in tar levels, over three years, would not be noticed by most smokers.

Tar is the solid part of smoke and contains most of the cancer causing substance. We heard that lowering permissible tar levels to 12 milligrams per cigarette would reduce tar intake by 20 percent and could avert two percent of all smoking deaths.

The Tobacco Institute told us that tar levels were gradually coming down, but there has been some fluctuation in recent figures because tar levels varied in the tobacco used.

Officials advised us that there is conflicting evidence on whether reducing tar and nicotine levels in tobacco products is beneficial to the population's health status. Some sources say it is because some people inhale less tar and/or nicotine per cigarette, and other sources indicate that smokers simply compensate by smoking more cigarettes.

We recommend the inclusion of new clause 5A which repeals section 31 and substitute a new section 31. The new section 31 makes it clear that regulations can prohibit harmful constituents in tobacco products and tobacco smoke. We also recommend amendments to section 39 to make it clear that the power to make regulations for harmful constituents, currently contained in the Act, is in relation to the whole of Part II of the Act. The Act currently contains provisions, in sections 31, 32, 33, and 34, that rely on regulations being made to regulate harmful constituents in tobacco products. This amendment will clarify these provisions.

#### *Offence provision*

We were advised that the offence provision in section 36 (8), relating to selling or exporting tobacco products that contain prohibited substances or contain harmful constituents in excess of the prescribed limits, is difficult to enforce. The Act currently does not make it an offence to sell or export tobacco products which contain limited or prohibited constituents. The offence provision in section 36 (8) expressly applies only to a manufacturer or importer who offers for sale or export tobacco products without conducting reasonable tests to establish whether they contain harmful constituents which are prohibited or limited. We were advised that it should be an offence to sell or export tobacco products containing harmful constituents in excess of the level permitted by regulations or prohibited by the regulation. Levels of constituents should be based on independent objective tests, rather than tests carried out by or on behalf of the alleged offender. The Ministry of Health has noticed discrepancies in harmful constituent levels reported by industry and independently commissioned tests. These tests have shown the level of harmful constituents to be much higher than those reported by the industry.

We recommend that the bill be amended to make it an offence for any manufacturer to offer for sale or export any tobacco product which contains or generates in its smoke any harmful constituent in excess of the level permitted by regulations, or prohibited by the regulation. We also recommend that the bill should ensure that testing for levels of harmful constituents is conducted by an independent tester.

#### **Other amendments recommended by submissions**

In our opinion, the Smoke-free Environments Act 1990 is an evolutionary piece of legislation which over time should be amended regularly to keep pace with changing public attitudes to smoking.

We received a number of submissions suggesting further amendments to the bill of a nature not contemplated by the bill as introduced. While we believe that it would be inappropriate for us to include these amendments in the bill, for a variety of reasons discussed later, we wish to comment on a number of these suggestions.

#### **Smoke-free work places**

Section 5 of the principal Act currently requires employers to have a written policy that smoking shall not be permitted in office areas where more than one

person works in a common air space. Some submissions proposed that section 5 be amended to prohibit smoking in all working areas. This would require a one word amendment to section 5 (4) (a) (i) replacing the word "office" with "workplace".

Action on Smoking and Health New Zealand (ASH) argued that the smoke-free rights of office workers should be extended to the approximately 250,000 shop floor workers who currently have no rights to smoke-free working conditions. In 1989 research\* indicated that 81 percent of white-collar workers and 75 percent of blue-collar workers supported a law to provide smoke-free working conditions for non-smokers. The Smokefree Coalition cited figures that indicated that in 1985 passive smoking in the workplace caused between 72 and 259 deaths†.

Such an amendment would not extend to staff serving in restaurants and bars because of exemptions from section 5 contained in sections 12 and 13 of the Act. The Smokefree Coalition suggests that smoke-free conditions should be extended to these employees over the next five to ten years.

While we view such a change favourably, it would be inappropriate for us to recommend such an amendment at this time because groups and individuals potentially affected by such a change have not yet been given the opportunity to comment on such a legislative proposal. As introduced, the bill did not deal with extension of the provisions relating to smoke-free working areas, nor did it envisage such an amendment as likely. We believe that such an amendment would have attracted significant comment from employers and employees alike.

In reaching this conclusion we note that the *Report of the Standing Orders Committee on the Review of Standing Orders* expressed concern about the introduction of major amendments at the committee of the whole House stage without the opportunity for interested groups or individuals to make comment. This concern equally applies to amendments recommended by select committees where interested parties have not been afforded the opportunity to comment.

#### **Maximum pack size**

Several health promotion groups suggested that the bill be amended to set a maximum pack size of 30 cigarettes, and a maximum quantity of 30 grams of loose tobacco. The Smokefree Coalition suggested that the availability of large packets of cigarettes allows smokers to have more cigarettes on hand and may therefore encourage increased smoking. The Smokefree Coalition also argued that large packs can be marketed more cheaply reducing the cost per unit of tobacco, and undermining the health effects of increases in tobacco tax.

We can see no need at this time for such an amendment. Packs of more than 30 cigarettes are not currently marketed in New Zealand. Also, the excise regime for tobacco products is currently based on tobacco weight, so it is not possible to market higher weight product with less tax per unit. Theoretically, the industry could market lower weight cigarettes and render larger packs of cigarettes cheaper, although the weight of tobacco per pack would be the same as smaller packs.

#### **Tobacco packet health warnings**

Some submissions have suggested a number of possible amendments to the Act with respect to the warnings on cigarette packets. Section 32 of the Act provides for labelling and health messages on tobacco products to be made in accordance with regulations made under the Act. The Smokefree Coalition submitted that regulations should be made under the Smoke-free Environments Act 1990 to:

\*Kawachi et al. *Deaths from lung cancer and ischaemic heart disease due to passive smoking in New Zealand* NZ Medical Journal 1989; 102:337-40

†ibid

- Adopt the Australian format for packet warning which require:
  - warnings to be placed on the flip top of the packet;
  - one side of the pack to contain information about the hazardous substances contained in cigarettes, and
  - one third of the back of the pack to explain the flip top warning on the front of the pack.
- Adopt stronger health warnings on packets.
- Adopt some warnings in Maori.
- Ensure the text of all warnings is black on a white background or vice versa.
- Ensure that warnings use lettering of a mainly lower case which is easier to read.
- Delete the words “Ministry of Health” following the warning, which clutter the warning area.

Section 32 of the Act is not amended by the bill as introduced, and once again we believe that it would be inappropriate to include such amendments bearing in mind that not all affected parties have had the opportunity to comment on such a proposal.

We are of the opinion, however, that these suggestions have merit. Officials advised us that the Ministry of Health is currently preparing advice to the Government on this matter. The ministry takes the view that such a strategy, if adopted by the Government, may be accommodated by regulatory changes rather than an amendment to the Act.

We recommend that the bill be amended to replace the purpose clause for Part II of the principal Act, contained in section 21, with a new section 21. One of the purposes of Part II of the Act should be to facilitate the harmonisation of the laws of New Zealand and Australia relating to the labelling of tobacco products.

#### **All buildings in early childhood centres, schools, and tertiary institutions to be smoke-free**

The Wellington division of the Cancer Society of New Zealand asked that the bill be amended to ensure that all buildings and grounds in early childhood centres, schools, and tertiary institutions are smoke-free. We were told that it is important that children are protected from the negative effects of smoking role models in their schools.

While hearing evidence from the Wellington division of the Cancer Society we expressed interest in the level of support amongst educational groups for such an extension to the legislation. The society subsequently commissioned independent research into attitudes amongst education groups in the Wellington area towards extending the smoke-free legislation. The research was carried out during March 1996. Sixteen educational organisations (including childcare, playcentres, pre-school, primary, intermediate, secondary, and tertiary) were represented in the survey. The primary findings were:

- Strong support for smoke-free educational environments up to and including secondary levels; and
- No support at tertiary level for totally smoke-free environments.

We believe that this research highlights changing community attitudes to smoking and the dangers of negative role models to children. The research also indicates a need for careful examination of the issue and possible future legislative reform.

While we appreciate the importance of this issue, we believe that such an amendment should not be initiated until such time as all affected parties have had the opportunity to comment on the proposal.

**More powers for smoke-free officers**

The Smoke-free Environments Act 1990 contains no powers for enforcement officers to enter premises or require the supply of information or documentation. A number of smoke-free officers made submissions requesting that the bill be amended to provide them with these powers.

We are unable to recommend such an amendment to the bill as it is outside the scope of the bill.

**Other matters**

A number of other smoke-free policies and programmes were proposed by the Smokefree Coalition. These include the imposition of a two cent levy per cigarette or gram of tobacco sold to provide health campaigns to discourage smoking. They also proposed raising the price of cigarettes beyond the reach of children, an equal tax per gram of tobacco across all tobacco products and subsidised help from regional health authorities for smokers trying to quit smoking.

None of these proposals are provided for in the Smoke-free Environments Act 1990. The first three proposals dealing with levies and taxes are addressed by other Acts of Parliament, such as the Customs Act 1966, and are therefore clearly outside the scope of the bill before the committee. The proposal that subsidised help be made available for smokers trying to quit smoking could be provided for in the Minister of Health's policy guidelines for regional health authorities.

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## KEY TO SYMBOLS USED IN REPRINTED BILL

### AS REPORTED FROM A SELECT COMMITTEE

*Struck Out (Unanimous)*

Subject to this Act,

Text struck out unanimously

*New (Unanimous)*

Subject to this Act,

Text inserted unanimously

*Struck Out (Majority)*

Subject to this Act,

Text struck out by a majority

*New (Majority)*

Subject to this Act,

Text inserted by a majority

*(Subject to this Act,)*

Words struck out unanimously

*<Subject to this Act,>*

Words struck out by a majority

Subject to this Act,

Words inserted unanimously

<Subject to this Act,>

Words inserted by a majority

Hon. Jenny Shipley

**SMOKE-FREE ENVIRONMENTS AMENDMENT (NO. 2)**

ANALYSIS

Title	
1. Short Title and commencement	32D. Commencement of code
2. Interpretation	32DA. Proof of code
3. Smoking in casinos	32DB. Code deemed to be regulations for purposes of disallowance
3A. Complaints to Director-General	32E. Amendment and revocation of code
4. Offences in respect of smoking	32F. Regulations may require compliance with code
4A. Purpose of this Part	32G. Expiry of sections 32A to 32F
4B. Exemptions for retailers and vending machines	7. Offences in respect of tobacco products
4C. Free distribution and rewards prohibited	7A. New sections inserted
5. New sections substituted	36A. Offence for persons under 18 to purchase tobacco products
30. Sale of tobacco products to persons under 18 prohibited	36B. Offence against section 36A may be dealt with as infringement offence
30AA. Purchase of tobacco products by persons under 18 prohibited	36C. Form of infringement notice
30A. Restrictions on sale of certain tobacco products in small quantities	36D. Payment of infringement fees
5A. Limits on harmful constituents	36E. Power to demand information
6. New heading and sections inserted	8. Liability of employees, employers, agents, and principals
<i>Code of Practice Relating to Tobacco Product Advertising</i>	8A. Regulations
32A. Code of practice relating to tobacco product advertising	9. Transitional provisions
32B. Code to be approved by Minister	10. Consequential amendments to Summary Proceedings Act 1957
32C. Availability of code	11. Amendments to Children, Young Persons, and Their Families Act 1989

A BILL INTITULED

**An Act to amend the Smoke-free Environments Act 1990**

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

- 5 **1. Short Title and commencement**—(1) This Act may be cited as the Smoke-free Environments Amendment Act (No. 2) 1995, and shall be read together with and deemed part of the

Smoke-free Environments Act 1990\* (hereinafter referred to as the principal Act).

(2) Except as provided in (**section 9 (3)**) **section 4B (5)** of this Act, this Act shall come into force on the day after the date on which it receives the Royal assent.

5

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

\*1990, No. 108

Amendments: 1990, No. 131; 1991, No. 35; 1995, No. 2

*New (Unanimous)*

“ ‘Automatic vending machine’ means any self-service machine that,— 10

“(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 15

“(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: 20

“ ‘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** of this Act:

*New (Unanimous)*

25

“ ‘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 (*gambling*) gaming is conducted:

*New (Unanimous)*

- “ ‘Infringement fee’, in relation to an infringement offence, means the amount fixed by **section 36A (2)** of this Act as the infringement fee for the offence:
- 5 “ ‘Infringement offence’ means an offence against **section 36A (1)** of this Act.”.
- (2) Section 2 of the principal Act is hereby amended by inserting in the definition of the term “publish”, after paragraph (h) of that definition, the following paragraph:
- 10 “(ha) Display by way of a sign, notice, poster, or other means; or”.

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

15 “13A. (1) Notwithstanding anything in section 5 of this Act, but subject to **subsection (2)** of this section and to sections 12 and 13 of this Act, the holder of the casino operator’s licence in respect of a casino may permit smoking in the gaming area of that casino.

20 “(2) The holder of the casino operator’s licence shall 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 shall prominently display signs accordingly; and

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

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

30 “**(4)** In calculating, for the purposes of **subsection (2) (a)** of this section, 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 shall be taken into account:

“**(a)** Any lobby or stairwell:

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

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

*New (Unanimous)*

**3A. Complaints to Director-General**—Section 16 (2) (a) (iii) of the principal Act is hereby amended by omitting the word “board”, and substituting the word “Director-General”.

5

**4. Offences in respect of smoking**—Section 17 of the principal Act is hereby 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) of this Act commits an offence and is liable,—

10

“(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.”

15

*New (Unanimous)*

**4A. Purpose of this Part**—The principal Act is hereby amended by repealing section 21, and substituting the following section:

20

“21. The purpose of this Part of this Act 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

25

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

30

“(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

35

“(c) To facilitate the harmonisation of the laws of New Zealand and Australia relating to the labelling of

*New (Unanimous)*

tobacco products (including, without limitation, requirements relating to the display of health messages).”

5

*New (Majority)*

**4B. Exemptions for retailers and vending machines—**

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

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

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

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

20 “(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:

25 “(b) Subject to **subsections (3) and (4)** of this section, 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:

30 “(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 of this Act, 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.

35 “(2) Subject to **subsections (3) and (4)** of this section, any person who offers for sale, by way of an automatic vending machine, any tobacco product may display, on the exterior of the

*New (Majority)*

vending machine, any notice identifying that tobacco product and indicating its price.

“(3) Every notice to which **subsection (1) (b) or subsection (2)** of this section applies must comply with the following requirements: 5

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

“(b) The notice must be white with black lettering:

“(c) No words or material other than the name of a tobacco product and its price may appear on the notice.

“(4) The combined area of all notices to which **subsection (3)** of this section applies and that are displayed— 10

“(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 hereby consequentially amended— 15

(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 8A (2)** of this Act.

(4) The following enactments are hereby consequentially repealed: 20

(a) **Subsection (1)** of this section:

(b) **Sections 6 and 8A (2)** of this Act.

(5) **Subsections (2) to (4)** of this section shall come into force on the 11th day of December 1998. 25

*New (Unanimous)*

**4C. Free distribution and rewards prohibited**—Section 28 of the principal Act is hereby amended by repealing subsection (2), and substituting the following subsections:

“(2) No person shall— 30

“(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 35

“(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—

*New (Unanimous)*

- 5 “(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 the retailer’s place of business.  
“**(3)** Nothing in **subsection (2)** of this section applies in respect of any payment or reward to any person who,—  
10 “(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 of this Act,—  
15 purchases or attempts to purchase any tobacco product.”

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

- 20 “**30. Sale of tobacco products to persons under 18 prohibited**—(1) No person shall sell any tobacco product to a person who has not attained the age of 18 years.

*Struck Out (Unanimous)*

- 25 “(2) It is a defence to a charge under **subsection (1)** of this section to prove that the person who sold the tobacco product believed on reasonable grounds that the person to whom it was sold was of or over the age of 18 years.

*New (Unanimous)*

- 30 “(2) It is a defence to a charge in respect of a contravention of **subsection (1)** of this section 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 (*under*) in respect of a contravention of subsection (1) of this section—

“(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 5

“(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. 10

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

“(a) Locate, or cause or permit to be located, in any place to which a person who has not attained the age of 18 years may lawfully have access, any automatic vending machine that dispenses or is capable of dispensing tobacco products; or 15

“(b) Permit any tobacco product to be sold by way of an automatic vending machine from any place to which a person who has not attained the age of 18 years may lawfully have access. 20

*Struck Out (Unanimous)*

“(5) **Subsection (4)** of this section does not apply to—

“(a) Any premises in respect of which a club licence is in force under the Sale of Liquor Act 1989; or 25

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

“(c) Any canteen, cafeteria, or similar facility provided by an employer for the provision of refreshments to that person’s employees during working hours. 30

“(6) Every person who sells by retail any tobacco product shall display clearly for the public a notice to the effect that the sale of any tobacco product to persons who have not attained the age of 18 years is prohibited. 35

*New (Unanimous)*

“(5) **Subsection (4)** of this section does not apply to—

*New (Unanimous)*

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

5 “(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

10 “(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 shall display clearly for the public a notice to the effect that—

15 “(a) The sale of any tobacco product to persons who have not attained the age of 18 years is prohibited; and

“(b) The purchase, by any person who has not attained the age of 18 years, of any tobacco product is prohibited.

20 “30AA. **Purchase of tobacco products by persons under 18 prohibited**—(1) A person who has not attained the age of 18 years must not purchase any tobacco product.

“(2) It is a defence to a charge in respect of a contravention of subsection (1) of this section if the defendant proves that the tobacco product was purchased by the defendant—

25 “(a) In his or her capacity as a manufacturer, distributor, importer, or retailer of tobacco products; and

“(b) For the purposes of the defendant’s business.

“(3) A person who has not attained the age of 18 years and who,—

30 “(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 of this Act,—

35 purchases or attempts to purchase any tobacco product does not commit an offence against section 36A of this Act in respect of a contravention of subsection (1) of this section; but nothing in this subsection affects the liability of any other person to be convicted of an offence against section 36 (6) of this Act.

Cf. 1927, No. 35, s. 27 (2)

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

“‘Cigarette’ includes the tobacco product commonly known as a cigarillo: 5

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

“‘Loose tobacco’ means—

“(a) Tobacco prepared for smoking in hand-rolled cigarettes: 10

“(b) Pipe tobacco.

“(2) No person shall—

“(a) Sell by retail; or

“(b) Offer for sale by retail—

loose cigarettes in amounts of fewer than **(10) 20** cigarettes. 15

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

“(a) Cigarettes in a package that contains fewer than **(10) 20** cigarettes; or

“(b) Loose tobacco in a package that contains less than **(10) 20** 30 grams of loose tobacco.

“(4) Nothing in **subsection (2) or subsection (3) (a)** of this section applies in respect of cigars (other than cigarillos).”

*New (Unanimous)*

**5A. Limits on harmful constituents—**The principal Act is hereby amended by repealing section 31, and substituting the following section: 25

“31. No manufacturer or importer shall 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 of this Act; or 30

“(b) Contains, or generates in its smoke, harmful constituents in excess of the limits prescribed by regulations made under this Part of this Act, as determined in accordance with any tests so prescribed.” 35

**6. New heading and sections inserted—**The principal Act is hereby amended by inserting, after section 32, the following heading and sections: 40

*“Code of Practice Relating to Tobacco Product Advertising  
Struck Out (Majority)*

5 “32A. **Code of practice relating to tobacco product advertising**—The Director-General may from time to time issue a code of practice prescribing—

“(a) The form and manner in which a retailer of tobacco products may advertise tobacco products at that person’s place of business; and

10 “(b) Procedures for dealing with complaints alleging a breach of the code.

*New (Majority)*

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

15 “(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

20 “32B. **Code to be approved by Minister**—(1) Subject to subsection (5) of this section, a code of practice shall not have any effect until it has been approved by the Minister.

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

25 “(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

*Struck Out (Majority)*

30 “(b) The Minister has consulted such persons as will be affected by the code, or representatives of those persons, and they have had the opportunity to consider its possible effects and to comment on those effects to the Minister; and

## New (Majority)

“(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) of this section 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 shall—

“(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) of this section shall be 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 shall 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) of this Act shall 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

5 “32D. **Commencement of code**—Every code of practice shall come 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)

*New (Majority)*

10 “32DA. **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, shall, in the absence of proof to the contrary, be sufficient  
15 evidence—

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

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

Cf. 1992, No. 122, s. 42

25 “32DB. **Code deemed to be regulations for purposes of disallowance**—A code of practice shall be deemed to be regulations for the purposes of the Regulations (Disallowance) Act 1989, but shall not be regulations for the purposes of the Acts and Regulations Publication Act 1989.

30 “32E. **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 32D~~ sections 32B to 32DB of this Act, with all necessary modifications, apply in respect of any amendment or revocation of a code of practice.

Cf. 1993, No. 28, s. 51

*New (Majority)*

35 “32F. **Regulations may require compliance with code**—(1) Any regulations made under **section 39 (1) (d)** of this

*New (Majority)*

Act 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 shall be 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)

“32G. **Expiry of sections 32A to 32F**—Sections 32A to 32F of this Act shall expire with the close of the 10th day of December 1998, and on the 11th day of December 1998 those sections, and the heading above section 32A of this Act, shall be deemed to have been repealed.”

*Struck Out (Unanimous)*

**7. Offences in respect of tobacco products**—Section 36 of the principal Act is hereby amended by repealing subsections (6) and (7), 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) of this Act; or

“(b) In contravention of section 30 (4) (a) of this Act, locates, or causes or permits to be located, in any place to which a person who has not attained the age of 18 years may lawfully have access, any automatic vending machine that dispenses or is capable of dispensing tobacco products; or

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

“(7) Every retailer of tobacco products who fails, without reasonable excuse, to display the notice required by section 30 (6) of this Act 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,—

*Struck Out (Unanimous)*

- 5
- “(a) Sells or offers for sale any cigarettes in contravention of **section 30A (2)** of this Act; or
  - “(b) Being a manufacturer, importer, distributor, or retailer, sells or offers for sale any cigarettes or tobacco in contravention of **section 30A (3)** of this Act.”

*New (Unanimous)*

10 **7. Offences in respect of tobacco products**—Section 36 of the principal Act is hereby 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,—

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

20 “(b) In contravention of **section 30 (4) (a)** of this Act, locates, or causes or permits to be located, in any place to which a person who has not attained the age of 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)** of this Act.

25 “(7) Every retailer of tobacco products who fails, without reasonable excuse, to display the notice required by **section 30 (6)** of this Act 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,—

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

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

35 “(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—

*New (Unanimous)*

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

5

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

10

*New (Majority)*

**7A. New sections inserted**—The principal Act is hereby amended by inserting, after section 36, the following sections:

**“36A. Offence for persons under 18 to purchase tobacco products**—(1) Every person commits an offence who, not having attained the age of 18 years, purchases any tobacco product in contravention of **section 30AA (1)** of this Act.

15

“(2) Where an offence against this section is dealt with as an infringement offence, the infringement fee for the offence is \$40.

20

“(3) Where a person is found guilty of, or pleads guilty to, an offence against this section, that person is liable to a fine not exceeding \$400.

**“36B. Offence against section 36A may be dealt with as infringement offence**—(1) Where any person is alleged to have committed an infringement offence, that person may either—

25

“(a) Be proceeded against summarily for the offence; or

“(b) Be served with an infringement notice in accordance with this section.

30

“(2) Where the Director-General, or any person authorised for the purpose by the Director-General, or any member of the Police, observes a person committing an infringement offence, or has reasonable cause to believe that any person has committed an infringement offence, an infringement notice in respect of that offence may be issued to the person alleged to have committed the offence.

35

“(3) An infringement notice may be served—

*New (Majority)*

- “a) By delivering it personally to the person who appears to have committed the infringement offence; or
- 5 “b) By sending it by post addressed to the person at the person’s last known place of residence or business.
- “4) For the purposes of the Summary Proceedings Act 1957, an infringement notice sent to a person by post pursuant to subsection 3) (b) of this section shall be deemed to have been served on the person when it was so posted.
- 10 “5) Subject to section 37 (2) of this Act, where an infringement notice has been issued under this section, proceedings in respect of the offence to which the notice relates may be commenced in accordance with section 21 of the Summary Proceedings Act 1957, and in that case the
- 15 provisions of that section of that Act shall, with the necessary modifications, apply.
- “6) Notwithstanding section 321 (1) of the Children, Young Persons, and Their Families Act 1989, section 21 of the Summary Proceedings Act 1957 shall apply to proceedings in a
- 20 Youth Court in respect of an offence to which an infringement notice issued under this section relates.
- “36C. **Form of infringement notice**—Every infringement notice under section 36B of this Act shall contain the following particulars:
- 25 “a) Such details of the alleged infringement offence as are sufficient fairly to inform a person of the time, place, and nature of the alleged offence; and
- “b) The amount of the infringement fee specified in respect of that offence in section 36A (2) of this Act; and
- 30 “c) The address or addresses at which the infringement fee may be paid; and
- “d) The time within which the infringement fee may be paid; and
- “e) A summary of the provisions of section 21 (10) of the
- 35 Summary Proceedings Act 1957; and
- “f) A statement of the right of the person served with the notice to request a hearing; and
- “g) A statement of the consequences if the person served with the notice does not pay the infringement fee
- 40 and does not make a request for a hearing; and
- “h) Such other particulars as are prescribed.

*New (Majority)*

“36D. **Payment of infringement fees**—All infringement fees shall be payable to the Director-General, and all such fees received by the Director-General shall be paid into the Crown Bank Account.

5

“36E. **Power to demand information**—(1) The Director-General, or any person authorised for the purpose by the Director-General, or any member of the Police, who has reasonable cause to suspect that any person has committed or is committing any offence against section 36A of this Act may demand particulars of—

10

“(a) The name and address of that person; and

“(b) The date of birth of that person.

“(2) If the Director-General, or the person so authorised, or the member of the Police, has reasonable ground to suppose that any such particulars are false, he or she may require the person to supply satisfactory evidence of those particulars.

15

“(3) If any person, without reasonable excuse, refuses or fails to supply any particulars or evidence when required to do so under this section, and persists in that refusal or failure after being cautioned by the person so requiring, that person may be arrested, without warrant, by any member of the Police.

20

“(4) Every person commits an offence and is liable to a fine not exceeding \$200 who, having been required by the Director-General, or any person authorised for the purpose by the Director-General, or any member of the Police, to supply any particulars or evidence under this section, without reasonable excuse,—

25

“(a) Refuses or fails to supply the particulars or evidence; or

“(b) Supplies any particulars or evidence knowing that the particulars or evidence are false in a material respect.”

30

Cf. 1989, No. 63, s. 176

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

35

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

40

“(2) Subject to **subsection (4)** of this section, anything done by a person as the employee of another person shall, for the purposes of an offence against **section 36 (6)** of this Act in respect of a contravention of **section 30 (1)** of this Act, be treated as done  
5 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 shall, for the purposes of an offence against **section 36 (6)**  
10 of this Act in respect of a contravention of **section 30 (1)** of this Act, 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.

“(4) In any proceedings against any person for an offence  
15 against **section 36 (6)** of this Act in respect of anything alleged to have been done by an employee of that person in contravention of **section 30 (1)** of this Act, it is a defence for that person to prove that he or she or it took such steps as were  
20 reasonably practicable to prevent the employee from doing that action, or from doing as an employee of that person acts of a class, category, or description that includes that action.”

*New (Unanimous)*

**8A. Regulations**—(1) Section 39 (1) of the principal Act is  
25 hereby amended by repealing paragraph (a), and substituting the following paragraph:

“(a) Prescribing forms, certificates, notices (including  
30 infringement 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 hereby amended by  
35 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 hereby amended by  
40 repealing paragraph (g), and substituting the following paragraphs:

*New (Unanimous)*

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

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

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

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

**9. Transitional provisions**—(1) Nothing in **section 30A (3)** of the principal Act (as inserted by **section 5** of this Act) applies in respect of the sale or offering for sale, before the **1st day of January 1997**, of any packet of cigarettes (as defined in **section 30A (1)** of the principal Act), *or any packet of tobacco,* that is, at the **11th day of October 1995** (*being the date of the introduction of the Smoke-free Environments Amendment Bill (No. 2)*),—

(a) In New Zealand; or

(b) In transit to New Zealand; or

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

*New (Unanimous)*

(1A) Nothing in **section 30A (3)** of the principal Act (as so inserted) applies in respect of the sale or offering for sale, before the **1st day of July 1997**, of any packet of tobacco, where that packet is, at the **1st day of August 1996**,—

(a) In New Zealand; or

(b) In transit to New Zealand; or

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

*Struck Out (Unanimous)*

(2) The document entitled “Code of Practice on Tobacco Product Notices at Points of Sale”, dated the 4th day of October 1995, and published in the *Gazette* on the 6th day of

*Struck Out (Unanimous)*

October 1995, is deemed to be a code of practice issued under the principal Act, and to be in force under the principal Act, and may be amended and revoked accordingly.

5 (3) **Subsection (2)** of this section shall come into force on the 6th day of July 1996.

*New (Unanimous)*

**10. Consequential amendments to Summary Proceedings Act 1957**—(1) Section 2 (1) of the Summary Proceedings Act 1957 is hereby amended by inserting in the definition of the term “infringement notice” (as substituted by section 79 of the Dog Control Act 1996), after paragraph (c) of that definition, the following paragraph:

15 “(ca) **Section 36a** of the Smoke-free Environments Act 1990; or”.

(2) Section 20A of the Summary Proceedings Act 1957 (as inserted by section 7 (1) of the Summary Proceedings Amendment Act 1973) is hereby amended by repealing subsection (13) (as substituted by section 449 of the Children, Young Persons, and Their Families Act 1989), and substituting the following subsection:

25 “(13) This section shall not apply where the defendant, or, where 2 or more persons are jointly charged, at least one of the defendants, is under the age of 17 years, unless the charge is for—

“(a) A traffic offence (as defined in section 2 (1) of the Children, Young Persons, and Their Families Act 1989) which is not punishable by imprisonment; or

“(b) A smoke-free infringement offence (as so defined).”

30 (3) Section 88 of the Summary Proceedings Act 1957 (as substituted by section 14 of the Summary Proceedings Amendment Act 1987) is hereby amended by repealing paragraph (a) of subsection (3AA) (as inserted by section 47 (2) of the Children, Young Persons, and Their Families Amendment Act 1994), and substituting the following paragraph:

35 “(a) The fine was imposed in respect of—

*New (Unanimous)*

“(i) A traffic offence (as defined in section 2 (1) of the Children, Young Persons, and Their Families Act 1989) not punishable by imprisonment; or  
 “(ii) A smoke-free infringement offence (as so defined); and” 5

**11. Amendments to Children, Young Persons, and Their Families Act 1989**—(1) Section 2 (1) of the Children, Young Persons, and Their Families Act 1989 is hereby amended by inserting, in its appropriate alphabetical order, the following definition: 10

“‘Smoke-free infringement offence’ means an offence against section 36A (1) of the Smoke-free Environments Act 1990:”

(2) Section 246 of the Children, Young Persons, and Their Families Act 1989 is hereby amended by inserting, after the expression “traffic offence not punishable by imprisonment”, the words “or a smoke-free infringement offence”. 15

(3) Section 272 (3) of the Children, Young Persons, and Their Families Act 1989 is hereby amended by inserting, after paragraph (b), the following paragraph: 20

“(ba) A smoke-free infringement offence; or”

(4) Section 272 (5) of the Children, Young Persons, and Their Families Act 1989 is hereby amended by omitting the words “subsection (3) (c) of this section, where a young person is charged with a traffic offence not punishable by imprisonment”, and substituting the words “**subsection (3) (ba)** or subsection (3) (c) of this section, where a young person is charged with a traffic offence not punishable by imprisonment or a smoke-free infringement offence”. 25 30