

[AS REPORTED FROM THE SOCIAL SERVICES COMMITTEE]

House of Representatives, 7 August 1990.

Words struck out are shown in italics within bold round brackets, or with black rule at beginning and after last line; words inserted are shown in roman underlined with a single rule, or with single rule before first line and after last line.

Right Hon. Helen Clark

SMOKE-FREE ENVIRONMENTS

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No. 20—2

*Price
incl. GST \$6.50*

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A BILL INTITULED

An Act—

- (a) To reduce the exposure of people who do not themselves smoke to any detrimental effect on their health caused by smoking by others; and 5
- (b) To regulate the marketing, advertising, and promotion of tobacco products, whether directly or through the sponsoring of other products, services, or events; and
- (c) To monitor and regulate the presence of harmful constituents in tobacco products and tobacco smoke; and 10
- (d) To establish a Health Sponsorship Council

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 Act 1990. 15

(2) Part I of this Act shall come into force on the expiry of 3 months after the date on which this Act receives the Royal assent.

(3) Part II of this Act shall come into force on the 16th day of December 1990. 20

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

2. Interpretation—In this Act, unless the context otherwise requires,— 25

“Aircraft” has the same meaning as in section 2 of the Civil Aviation Act 1964:

“Area health board” means an area health board established under the Area Health Boards Act 1983:

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5 “Brand name” includes any recognisable variation of a brand name; and includes the use of the manufacturer’s name for advertising or promotional purposes:

New

10 “Company name” includes any corporate name, firm name, or business name, whether or not it is registered or registrable under the Companies Act 1955 or any other enactment:

15 “Council” means the Health Sponsorship Council established by **section 44** of this Act:

New

“Craft” means—
(a) An aircraft;
(b) A ship (as defined in section 2 (1) of the Shipping and Seamen Act 1952):

20 “Director” means the Director appointed under **section 50** of this Act:

“Director-General” means the Director-General of Health:

“Distributor” means a person engaged in the business of selling tobacco products otherwise than at retail only:

25 “Employee” means any person of any age employed under a contract of service by an employer to do any work for hire or reward:

“Employer” means a person who employs any employee:

30 “Hospital” means—
(a) A hospital or an institution, within the meaning of the Hospitals Act 1957, under the control of an area health board; and
(b) A private hospital licensed under Part V of the Hospitals Act 1957:

New

“Internal flight” means a flight—
 (a) Between any 2 or more places in New Zealand;
 or
 (b) That commences from any place in New Zealand and is intended to terminate at that same place: 5

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“Licence” means any on-licence, off-licence, or special licence under the Sale of Liquor Act 1989; and “licensed premises” has a corresponding meaning: 10

New

“Licensed premises” means any premises, or any part of any premises, on which liquor may be sold pursuant to any on-licence, off-licence, or special licence under the Sale of Liquor Act 1989: 15

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“Manufacturer” includes a company that is associated with a manufacturer:

New

“Manufacturer” includes any company with which a manufacturer is associated within the meaning of section 8 of the Income Tax Act 1976: 20

“Minister” means the Minister of Health:

New

“New Zealand resident” means—
 (a) A New Zealand citizen: 25

New

- (b) A permanent resident of New Zealand within the meaning of section 38 of the Electoral Act 1956;
- (c) A company incorporated in New Zealand;

- 5 “Office” means a place in which any person is employed, directly or indirectly, to do any clerical work in connection with any business carried on by the occupier of that place:
- 10 “Organised activity” means any cultural, educational, sporting, or recreational activity or event:
- “Package” means any pack, carton, wrapping, or other container in which tobacco products are customarily sold at retail:
- 15 “Passenger service vehicle” and “small passenger service vehicle” have the same meaning as in section 2 of the Transport Services Licensing Act 1989:
- “Permitted smoking area” means any room or area in a workplace that is designated by an employer in accordance with Part I of this Act as a place where
- 20 persons may smoke:
- “Prison” means any penal institution within the meaning of the Penal Institutions Act 1954:
- “Publish” means—
- 25 (a) Insert in any newspaper or other periodical publication printed, published, or distributed in New Zealand; or
- (b) Send to any person, by post or otherwise; or
- (c) Deliver to any person or leave upon premises in the occupation of any person; or
- 30 (d) Broadcast within the meaning of the Broadcasting Act 1989; or

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- (e) Include in any videotape; or

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- 35 (e) Include in any film or video recording; or
- (f) Include in any disk for use with a computer; or

(g) Disseminate by means of any other electronic medium; or

(h) Distribute by any means; or

(i) Bring to the notice of the public in New Zealand in any other manner: 5

“Restaurant” means any premises where the principal business is the selling of meals or refreshments to the general public for consumption on the premises; and includes any room or area on a ship or train where meals or refreshments are provided for passengers to consume: 10

“Rest home” means a home for aged persons licensed in accordance with regulations made under section 120A of the Health Act 1956:

“Retailer” means a person engaged in any business that includes the sale of tobacco products at retail: 15

New

“Smoking accessory” means any article or substance that is used in conjunction with smoking, including cigarette papers, pipe cleaners, cigarette lighters, lighter fuel, and ashtrays; and includes the packaging, carton, wrapping, or other container in which smoking accessories are customarily sold at retail: 20

“Tobacco product” means any product manufactured from tobacco and intended for use by smoking, inhalation, or mastication; and includes nasal and oral snuff; but does not include any medicine (being a medicine in respect of which there is in force a consent or provisional consent given under section 20 or section 23 of the Medicines Act 1981) that is sold or supplied wholly or principally for use as an aid in giving up smoking: 25 30

“Tobacco product advertisement” means any words, whether written, printed, or spoken, including on film, video, or other medium, broadcast or telecast, and any pictorial representation, design, or device, used to (*explain*) encourage the use or notify the availability or promote the sale of any tobacco product or to promote smoking behaviour; and includes— 35 40

(a) Any trade circular, any label, and any advertisement in any trade journal; and

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- 5 (b) Any depiction in a film, video, telecast, or other visual medium of a tobacco product, or a trade mark or brand name of a tobacco product; and
(c) The use in any advertisement or promotion to the public of a tobacco manufacturer's company name or corporate name where that name or any part of that name is used as a product trade name;—

New

- 10 (b) Any depiction, in a film, video recording, telecast, or other visual medium, of a tobacco product or a tobacco product trade mark, where in return for that depiction any money is paid, or any valuable thing is given, whether to the maker or producer of that film, video recording, telecast, or visual medium
15 or to any other person:
(c) The use in any advertisement or promotion to the public of a tobacco manufacturer's company name where that name or any part of that name is
20 used as, or is included in, a tobacco product trade mark;—

and "advertise" has a corresponding meaning:
"To smoke" means to smoke, hold, or otherwise have
25 control over an ignited tobacco product, weed, or plant; and "smoked" and "smoking" have corresponding meanings:

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30 "Trade mark" includes any trade mark whether or not it is registered or registrable as such under the Trade Marks Act 1953; and also includes any recognisable variation of any trade mark, whether or not that variation includes written words:

New

“Trade mark” includes any trade mark whether or not it is registered or registrable as such under the Trade Marks Act 1953; and also includes—

(a) Any brand name: 5

(b) Any company name, where that name is used for advertising or promotional purposes:

(c) Any name, word, or mark that so resembles any trade mark that it is likely to be taken as, or confused with, that trade mark: 10

“Workplace” means any indoor or enclosed area that is occupied by an employer and that employees usually frequent during the course of their employment; and includes any aircraft, ship, train, cafeteria, corridor, (*elevator*) lift, lobby, stairwell, toilet, and washroom; and also includes any enclosed common areas and employer-provided vehicles normally used by employees; but does not include any place of residence occupied by the employer. 15

3. Act binds the Crown—This Act shall bind the Crown. 20

PART I

SMOKE-FREE INDOOR ENVIRONMENTS

4. Purpose of Part—The purpose of this Part of this Act is to prevent, so far as is reasonably practicable, the detrimental effects of smoking on the health of any person who does not smoke, or who does not wish to smoke, inside any workplace or in certain public enclosed areas. 25

5. Employers to have written policy on smoking—
(1) Every employer shall, within 3 months after the commencement of this Part of this Act, prepare a written policy on smoking for every workplace of that employer. 30

(2) In preparing the written policy, the employer shall consult with the employees affected, or with a representative of the employees nominated by them for the purposes of this Part of this Act. 35

(3) Every written policy prepared for the purposes of subsection (1) of this section shall be based on the principle that employees who do not smoke, or who do not wish to smoke in

their workplace, shall, so far as is reasonably (*practical*) practicable, be protected from tobacco smoke in the workplace.

(4) Every written policy on smoking shall include, at the minimum, the following requirements:

- 5 (a) That smoking shall not be permitted—
- (i) In lifts, or in office areas where more than 1 person works in a common air space; or
 - 10 (ii) In at least half of the total area of any cafeteria or lunchroom at the workplace or, where there is more than 1 session of any tea break or lunch break in the cafeteria or lunchroom and employees can freely choose which session to attend, during the first such session; or
 - 15 (iii) In any part of the workplace to which the public normally have access:
- (b) The procedure for an employee or employees in any workplace that is not an office to request that the employer will not permit smoking within 2 metres of the usual work area of that employee or those
- 20 employees:
- (c) The procedure for making complaints under this Part of this Act.
- (5) The employer shall ensure that the written policy on smoking prepared for the purposes of subsection (1) of this section is reviewed in consultation with the employees or a representative of the employees at intervals of not more than 1 year.
- 25 (6) Nothing in this section shall prevent an employer from agreeing that smoking may be permitted in each enclosed area occupied exclusively by employees each of whom, in writing,—
- 30 (a) Requests that smoking be permitted there; or
- (b) States that he or she does not object to that area being designated as a permitted smoking area.

- 6. Special provisions for certain institutions—**(1) In
- 35 respect of any hospital or rest home, the written policy on smoking required by section 5 of this Act shall also include a requirement that any patient or resident who is so incapacitated as to be unable to move readily or to be moved readily may be permitted to smoke in an area that is not a
- 40 permitted smoking area, but the employer shall take all such steps as may be practicable in such a case to ensure that other persons in the vicinity of the incapacitated person will not be affected adversely by the smoke.

(2) In respect of any prison, the superintendent shall, within 3 months after the commencement of this Part of this Act, prepare a written policy on smoking in respect of the inmates, and the following provisions shall apply:

- (a) The policy shall be drawn up in such a way as to be consistent with the written policy on smoking required by **section 5** of this Act: 5
- (b) The policy shall be based on the principle that inmates who do not smoke, or who do not wish to smoke, in the prison shall, except where it is impracticable, be protected from tobacco smoke in the prison: 10
- (c) Any inmate who requests that he or she be secured in a cell in which smoking will not be permitted while he or she is there shall, unless it is impracticable, be placed in such a cell: 15
- (d) Subject to **paragraphs (a) and (b)** of this subsection, the superintendent may designate any enclosed area used in common by inmates as an area in which smoking is permitted. 15

7. Duties of employer—For every workplace occupied by any employee, the employer shall— 20

- (a) Ensure that there are prominent notices indicating the workplace areas where smoking is not permitted, and identifying and locating any permitted smoking areas; and 25
- (b) Display prominently in the workplace copies of the written policy on smoking for the workplace; and
- (c) Supply on request a copy of the written policy on smoking to any employee, prospective employee, or representative of any employee; and 30
- (d) Implement the written policy on smoking for the workplace. 30

8. Smoking prohibition on aircraft—(1) The operator of an aircraft shall not permit any person to smoke on that aircraft while the aircraft is carrying passengers for hire or reward (*between any 2 or more places in New Zealand*) on any internal flight. 35

(2) No person shall smoke while on any aircraft that is carrying passengers for hire or reward (*between any 2 or more places in New Zealand*) on any internal flight. 40

9. Smoking restricted in passenger service vehicles—

(1) Subject to **subsection (3)** of this section, the operator of a

passenger service vehicle shall not permit any person to smoke in that vehicle while it is carrying passengers.

5 (2) Subject to subsection (3) of this section, no person shall smoke in any passenger service vehicle while it is carrying passengers.

(3) Nothing in this section shall apply to any small passenger service vehicle where the driver and every passenger in the vehicle agree that smoking shall be permitted.

10 **10. Smoking restricted on ships and trains**—(1) The operator of any passenger ship that is registered in New Zealand, or of any passenger train, shall not permit any person to smoke in any enclosed area in the ship or train that is normally used by passengers, except in a permitted smoking area.

15 (2) No person on any passenger ship that is registered in New Zealand, or on any passenger train, shall smoke in any enclosed area on the ship or train that is normally used by passengers, except in a permitted smoking area.

20 (3) Subject to the succeeding provisions of this section, the operator of any passenger ship that is registered in New Zealand, or of any passenger train, may, after consultation with a representative of the employees working on the ship or train, designate not more than one-half of the areas designed for accommodating passengers as permitted smoking areas.

25 (4) No enclosed corridor, gangway, accessway, or thoroughfare that is used by passengers may be included in any permitted smoking area.

30 (5) Where, on any passenger ship that is registered in New Zealand, or on any passenger train, any room or area is available for the consumption of liquor, the operator shall comply with the provisions of section 12 of this Act.

11. Smoking restricted in passenger lounges and waitingrooms—

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35 (1) The owner or occupier of any enclosed travel terminal booking office, passenger queuing area, passenger waitingroom, or passenger lounge shall not permit any person to smoke in any part of that office, area, waiting-room, or lounge, except in a permitted smoking area.

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(2) No person shall smoke in any enclosed travel terminal booking office, passenger queuing area, passenger waiting-room, or passenger lounge, except in a permitted smoking area.

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(1) The owner or occupier of any booking area or passenger queuing area shall not permit any person to smoke in that area if the area is located within an enclosed travel terminal.

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(2) Where any passenger waitingroom or passenger lounge is located within an enclosed travel terminal, the owner or occupier of that waitingroom or lounge shall not permit any person to smoke in any part of that waitingroom or lounge, except in a permitted smoking area.

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(2A) No person shall smoke in any booking area or passenger queuing area that is located within an enclosed travel terminal.

(2B) Where any passenger waitingroom or passenger lounge is located within an enclosed travel terminal, no person shall smoke in that passenger waitingroom or passenger lounge, except in a permitted smoking area.

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(3) The owner or occupier of any passenger lounge or passenger waitingroom may designate not more than half of its area as a permitted smoking area.

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12. Smoking restricted in licensed premises—(1) Where, in any licensed premises, there is only 1 room or enclosed area, other than a restaurant, set aside for the consumption of liquor by patrons, the licensee shall ensure that that room or area has continuous ventilation with outdoor air that will maintain air purity in the premises by dispersing tobacco smoke outside.

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(2) Where, in any licensed premises, there is more than 1 room or enclosed area, other than a restaurant, set aside for the consumption of liquor by patrons, the licensee shall—

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- 5 (a) Designate at least 1 of those rooms or enclosed areas, comprising in floor area at least one-third of the total area of such rooms or enclosed areas, as smoking prohibited areas; and
- (b) Ensure that no person smokes in any such smoking prohibited area.
- (3) No person shall smoke in any smoking prohibited area on any licensed premises.

10 *New*

- 15 **12. Smoking on licensed premises**—(1) Notwithstanding anything in **section 5** of this Act, but subject to **subsection (2)** of this section and to **section 13** of this Act, where, in any licensed premises, any room or enclosed area is set aside primarily for the consumption of liquor by patrons, the licensee may permit smoking in that room or area.
- (2) Where, in any such room or enclosed area, seating is provided for the consumption of meals by patrons, the licensee shall ensure that—
- 20 (a) At least half of that seating is designated for persons who do not wish to smoke, and shall prominently display signs accordingly; and
- (b) Such designated seating, so far as is reasonably practicable, is separate from the seating where
- 25 (c) No person smokes in seating designated for persons who do not wish to smoke.
- (3) No person shall smoke in any licensed premises in seating designated for persons who do not wish to smoke.

- 30 **13. Smoking restricted in any restaurant**—(1) Where, in any restaurant, there is only 1 room or enclosed area set aside for the consumption of food by patrons, the restaurateur shall ensure that—

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- (a) The room or area has continuous and adequate ventilation with outdoor air that will maintain air purity in the premises by dispersing tobacco smoke outside; and 5
- (b) At least half of the seating in that room or area is designated for persons who do not wish to smoke, and shall prominently display signs accordingly; and
- (c) Such designated seating, so far as is reasonably practicable, is separate from the seating where smoking is permitted; and 10
- (d) No person smokes in seating designated for persons who do not wish to smoke.
- (2) Where, in any restaurant, there is more than 1 room or enclosed area set aside for the consumption of food by patrons, the restaurateur shall— 15
- (a) Designate at least 1 such room or area for patrons who do not wish to smoke and prominently display signs accordingly; and
- (b) Ensure that at least (50 percent) half of the seating in that restaurant is designated for persons who do not wish to smoke; and 20
- (c) Ensure that no person smokes in that area so designated.
- (3) No person shall smoke in any restaurant in seating designated for persons who do not wish to smoke. 25

14. Area health boards to enforce this Part—(1) Every area health board shall ensure that sufficient persons are appointed to enforce the provisions of this Part of this Act within its area health district.

(2) Appointed people may be identified by name, or as the incumbent from time to time of one or more nominated positions within the area health board staffing establishment, and, if the board so resolves, may include any person appointed under the Factories and Commercial Premises Act 1981 as an Inspector of Factories, or any person appointed under the Construction Act 1959 as a Construction Safety Inspector, or the incumbent of any nominated position within the staffing establishment of a local authority under the Local Government Act 1974. 30 35

(3) Every person appointed under this section shall be given an instrument of appointment identifying the holder as a 40

person appointed under this section, and may be required to produce it to any person of whom investigation or inquiry is being made under this Part of this Act.

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5 **15. Complaints about employees**—(1) Where any person believes on reasonable grounds that an employee at a workplace has contravened any provision of this Part of this Act, the person may complain to the employer of that workplace, or to the area health board for the district in which
10 the workplace is situated, specifying the particulars of the complaint.

(2) Where an employer receives a complaint under **subsection (1)** of this section, or a complaint is referred to an employer under **section 16 (2) (a)** of this Act, the employer shall, within 20
15 working days after receipt of the complaint, investigate the complaint, and, if it appears that a contravention has occurred, shall try to resolve the complaint, and seek to obtain from the employee an assurance that satisfies the employer that there will be no repetition of the cause of the complaint.

20 (3) The representative of the employees in the workplace shall be entitled to be present at any meeting called by the employer for the purpose of resolving the complaint and avoiding future cause for complaint.

25 (4) Where the employer is unable to resolve the complaint by agreement, the employer shall refer the complaint in writing to the area health board for the district in which the workplace is situated.

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30 **15. Complaints relating to workplace smoking policies**—(1) Where any person believes on reasonable grounds that any person has contravened any provision of this Part of this Act in so far as it relates to any workplace, the person may complain to the employer of that workplace, or to the area health board for the district in which the workplace is
35 situated, specifying the particulars of the complaint.

(2) Where an employer receives a complaint under **subsection (1)** of this section, or a complaint is referred to an employer under **section 16 (2) (a)** of this Act, the employer shall, within 20

New

working days after receipt of the complaint, investigate the complaint, and, if it appears that a contravention has occurred, shall try to resolve the complaint.

(3) Where the contravention is on the part of the employer, the employer shall settle the cause of the complaint, or give an assurance that satisfies the complainant that there will be no repetition of the cause of the complaint. 5

(4) Where the contravention is on the part of an employee, the employer shall seek to obtain from the employee an assurance that satisfies the employer that there will be no repetition of the cause of the complaint. 10

(5) The representative of the employees in the workplace shall be entitled to be present at any meeting called by the employer for the purpose of resolving the complaint and avoiding future cause for complaint. 15

(6) Where the employer is unable to resolve the complaint by agreement, the employer shall refer the complaint in writing to the area health board for the district in which the workplace is situated. 20

16. Complaints to area health board—(1) Any person may make a complaint to an area health board concerning a contravention by any person of any provision of this Part of this Act.

(2) When an area health board receives any complaint alleging contravention of this Part of this Act, the following provisions shall apply: 25

(a) Where—

(i) The contravention allegedly occurred in any workplace; and 30

(ii) The person who is the subject of the complaint is *(an employee of the employer for that workplace)* the employer for that workplace, or an employee of that employer; and

(iii) The complaint was not referred to the board by the employer under *(subsection (4))* subsection (6) of section 15 of this Act,— 35

the complaint shall be forwarded by the area health board to the employer to be dealt with under that section: 40

(b) In all other cases, the matter shall be dealt with as though it were a complaint to which **subsection (3)** of this section applied.

5 (3) On receipt by an area health board of a complaint under this Part of this Act, a person appointed under **section 14** of this Act may make further inquiries by way of investigation in respect of the complaint.

10 (4) The person who investigates the complaint may take no further action if the complaint is trivial, frivolous, vexatious, or not made in good faith, or if, during the investigation, the person receives a satisfactory assurance that there will be no repetition of the cause for the complaint; and in any such case the person who made the complaint shall be advised of the reasons why no further action is being taken.

15 (5) The person investigating the complaint may, on investigation, try to settle the cause of the complaint and obtain a satisfactory assurance against repetition of the cause of the complaint.

20 (6) Where no such settlement and assurance can be obtained, or if the cause of complaint is in breach of a previously given assurance, a complaint may be laid under the Summary Proceedings Act 1957 in respect of the relevant offence.

17. Offences in respect of smoking—(1) Every employer who, without reasonable excuse, fails to prepare a written
25 policy on smoking as required by **section 5(1)** of this Act, or to review that policy as required by **section 5(5)** of this Act, commits an offence and is liable,—

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

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

(2) Every employer who fails, without reasonable excuse, to comply with any of the requirements of **section 7** of this Act commits an offence and is liable,—

35 (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.

(3) The operator of any aircraft who, without reasonable excuse, permits any person to smoke in contravention of **section 8(1)** of this Act commits an offence and is liable,—

40 (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.

(4) The operator of any passenger service vehicle who, without reasonable excuse, permits any person to smoke in

contravention of **section 9 (1)** of this Act 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. 5

(5) The operator of any passenger ship or train who, without reasonable excuse, permits any person to smoke in contravention of **section 10 (1)** of this Act commits an offence and is liable,—

(a) In the case of a body corporate, to a fine not exceeding \$4,000; or 10

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

(6) Every owner or occupier of any enclosed travel terminal booking (*office*) area, passenger queuing area, passenger waiting-room, or passenger lounge who, without reasonable excuse, permits any person to smoke in contravention of **section 11** of this Act commits an offence and is liable,— 15

(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. 20

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(7) Every licensee who fails, without reasonable excuse, to comply with any of the requirements of **subsection (1) or subsection (2) of section 12** of this Act, or who, without reasonable excuse, permits any person to smoke in contravention of **section 12 (2) (b)** of this Act commits an offence and is liable,— 25

(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.

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(7) Every licensee who, without reasonable excuse, fails to comply with any of the requirements of **section 12 (2)** of this Act commits an offence and is liable—

(a) In the case of a body corporate, to a fine not exceeding \$4,000; or 35

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

(8) Every restaurateur who, without reasonable excuse, fails to comply with any of the requirements of **subsection (1)** or

subsection (2) of section 13 of this Act commits an offence and is liable,—

- (a) In the case of a body corporate, to a fine not exceeding \$4,000; or
- 5 (b) In the case of an individual, to a fine not exceeding \$400.
- (9) Every person who smokes in contravention of section 8 (2) of this Act commits an offence and is liable to a fine not exceeding \$400.

10 **18. Prosecution of offences**—(1) No prosecution for an offence against any provision of this Part of this Act shall be commenced except on the information of a person appointed pursuant to section 14 of this Act.

15 (2) Notwithstanding anything in section 14 of the Summary Proceedings Act 1957, any information in respect of any offence against any provision of this Part of this Act may be laid at any time within 1 year after the time when the matter of the information arose.

20 **19. Protection of persons acting under authority of Act**—No person appointed under section 14 of this Act who does any act in pursuance or intended pursuance of any of the functions, duties, or powers conferred by or under this Act shall be under any civil or criminal liability in respect of the act, whether on the grounds of want of jurisdiction, or mistake of law or fact, or on any other ground unless he or she has acted 25 in bad faith or without reasonable care.

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30 **20. Regulations**—The Governor-General may from time to time, by Order in Council, make regulations for all or any of the following purposes:

- 35 (a) Prescribing standards of ventilation in respect of any premises to which this Part of this Act applies and in which smoking is or may be permitted;
- (b) Providing for such other matters as are contemplated by or necessary for giving full effect to the provisions of this Part of this Act or for its due administration.

21. Transitional provisions—(1) Nothing in section 12 (1) of this Act shall apply in respect of any licensed premises built before the 1st day of June 1991, unless substantial alteration of the premises is undertaken after that date.

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(2) Nothing in **section 13 (1) (a)** of this Act shall apply in respect of any restaurant built before the 1st day of June 1991, unless substantial alteration of the restaurant is undertaken after that date.

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22. Saving of powers to make bylaws—Nothing in this Part of this Act shall limit or affect the powers of an area health board under section 64 (1) (a) of the Health Act 1956, or of a local authority under section 684 (8) of the Local Government Act 1974, to make bylaws—

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(a) Providing greater protection from tobacco smoke than is provided by this Part of this Act; or

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(b) Providing for greater standards of ventilation in any building or construction in which smoking may be permitted.

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PART II

TOBACCO PRODUCTS CONTROL

23. Purpose of this Part—The purpose of this Part of this Act is—

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(a) To reduce the social approval of tobacco use, particularly among young people, by imposing controls on the marketing, advertising, or promotion of tobacco products and their association through sponsorship with other products and events; and

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(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.

Promotion and Advertising

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24. Advertising of tobacco products—(1) Subject to the succeeding provisions of this section and to **section 25** of this Act, no person shall publish, or arrange for any other person to publish, any tobacco product advertisement in New Zealand.

(2) Nothing in **subsection (1)** of this section shall apply to any price list given to retailers of tobacco products if the price list

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includes the health messages required by or under this Part of this Act.

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- 5 (3) Nothing in **subsection (1)** of this section shall apply to any advertisement included in any book, magazine, or newspaper published outside New Zealand, or in any radio or television transmission originating outside New Zealand, unless—
- 10 (a) The principal purpose of the book, magazine, newspaper, or transmission is the promotion of the use of tobacco products; or
 - (b) The book, magazine, or newspaper is intended for sale or distribution primarily in New Zealand; or
 - 15 (c) In the case of an advertisement in any radio or television transmission, the advertisement is targeted primarily at a New Zealand audience.

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- 20 (3) Nothing in **subsection (1)** of this section shall apply to any advertisement included in any book, magazine, or newspaper printed outside New Zealand, or in any radio or television transmission originating outside New Zealand, or in any film or video recording made outside New Zealand, unless—
- 25 (a) The principal purpose of the book, magazine, newspaper, transmission, film, or video recording is the promotion of the use of tobacco products; or
 - (b) The book, magazine, newspaper, film, or video recording is intended for sale, distribution, or exhibition primarily in New Zealand; or
 - 30 (c) In the case of an advertisement in any radio or television transmission, the advertisement is targeted primarily at a New Zealand audience.
- (4) Nothing in **subsection (1)** of this section shall apply to the publication by a tobacco products manufacturer of a tobacco product advertisement in a magazine that is intended for distribution only to employees of the manufacturer.

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(5) Nothing in subsection (1) of this section shall apply to the exhibition of any tobacco product advertisement in any museum or art gallery.

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(5) Nothing in subsection (1) of this section shall apply to—

(a) The exhibition, in any museum or art gallery, of any work or artifact:

(b) The dissemination, broadcasting, or exhibition of any film, video recording, or sound recording, where—

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(i) That film, video recording, or sound recording was made before the 16th day of December 1990; and

(ii) The tobacco product advertisement included in that film, video recording, or sound recording is in the form of a reference to, or a depiction of, a tobacco product trade mark that is only an incidental part of that film, video recording, or sound recording.

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25. Exemptions for retailers and vending machines—

(1) Notwithstanding anything in section 24 of this Act, a retailer of tobacco products may do all or any of the following things:

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(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) Display, in accordance with regulations made under this Part of this Act, any sign that indicates that any tobacco product is offered for sale so long as the sign is positioned so as to be viewed primarily from inside the retailer's place of business:

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(c) Display, in accordance with regulations made under this Part of this Act, at the retailer's place of business (not being a temporary or mobile place of business), any advertisement that contains only—

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(i) A tobacco product trade mark or brand name, or the company name of a tobacco products manufacturer; and

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- (ii) Any health message required by or under this Part of this Act:
- 5 (d) 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 is not
- 10 used in association with the brand name of a tobacco product or the company name of a tobacco products manufacturer.
- (2) Any person who operates an automatic vending machine that dispenses any tobacco product may, in accordance with
- 15 regulations made under this Part of this Act, identify or depict that product, and its price, on the exterior of the vending machine.

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- 25. Exemptions for retailers and vending machines—**
- 20 (1) Notwithstanding anything in section 24 of this Act, 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:
- 25 (b) Display, in accordance with regulations made under this Part of this Act, inside the 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, in accordance with regulations made under this Part of this Act, at the retailer's place of business (not being a temporary or mobile place of business), at any time before the **1st day of January 1995**, any sign that indicates that any tobacco product is offered for
- 35 sale, so long as that sign—
- (i) Was erected at that place of business before the **16th day of December 1990**; and

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- (ii) Has not, since that date, been altered in any way (whether by way of repair, or repainting, or otherwise):
- (d) 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. 5
- (2) Any person who offers for sale, by way of an automatic vending machine, any tobacco product may, in accordance with regulations made under this Part of this Act, identify or depict that tobacco product, and its price, on the exterior of the vending machine. 15

26. Use of trade marks, etc., on goods other than tobacco products, or in relation to sponsored events—

- (1) No person shall use, otherwise than in a private capacity, a tobacco product trade mark (or brand name, in any form in which it appears on packages of the product that are sold in New Zealand),— 20
- (a) On any article other than a tobacco product or a package or container in which a tobacco product is sold or shipped; or 25
- (b) For the purpose of advertising or identifying to the public—
- (i) Any article other than a tobacco product; or
- (ii) Any service, activity, or event; or
- (iii) Any scholarship, fellowship, or other educational benefit,— 30
- even though that person would be, but for this Act, entitled to use the trade mark (or brand name in association with that article, service, activity, or event) on that article or for that purpose.

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- (2) Where a trade mark or brand name includes the name of a company, or part of the name of a company, whether or not registered in New Zealand, that is a manufacturer, importer, or

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distributor in New Zealand of any tobacco product, no person shall, otherwise than in a private capacity, use that name for the purpose of advertising or identifying to the public—

- 5 (a) Any article other than a tobacco product; or
 (b) Any service, activity, or event; or
 (c) Any scholarship, fellowship, or other educational benefit,—

10 even though that person would be, apart from this Act, entitled to use that trade mark or brand name.

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(2) Where a trade mark includes the company name, or part of the company name, of a manufacturer, importer, or distributor in New Zealand of any tobacco product, no person shall, otherwise than in a private capacity, use that company name for the purpose of advertising or identifying to the public—

- 15 (a) Any article other than a tobacco product; or
 (b) Any service, activity, or event; or
 20 (c) Any scholarship, fellowship, or other educational benefit,—

even though that person would be, but for this Act, entitled to use that trade mark or company name for that purpose.

25 (3) No person shall distribute, sell, or offer or expose for sale any article, other than a tobacco product or a package or container in which a tobacco product is sold or shipped, that bears a trade mark (*or brand name*) of a tobacco product that is sold in New Zealand (*in the form that it appears on packages of that tobacco product*).

30 (4) Nothing in subsections (1) to (3) of this section shall apply to a trade mark or (*brand*) company name that, during the year ending with the 31st day of March 1990, was applied to tobacco products and other articles sold at retail in New Zealand if the estimated retail value of those other articles sold
 35 during that year exceeded one-quarter of the estimated retail value of those tobacco products sold during that year.

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(5) Nothing in **subsections (1) to (3)** of this section shall apply to the application, by any person other than a manufacturer, an importer, or a distributor of any tobacco products, of a trade mark or brand name to any articles of any kind other than tobacco products if the trade mark or brand name was applied to articles of that kind, for sale in New Zealand, before the **17th day of May 1990**.

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(5) Nothing in **subsections (1) to (3)** of this section shall apply to the use, by any person (other than a manufacturer, an importer, a distributor, or a retailer of any tobacco products, or a person acting on behalf of any such manufacturer, importer, distributor, or retailer), of a trade mark or company name for any purpose (other than for application to, or for use in connection with, tobacco products or smoking accessories) if the trade mark or company name—

(a) Was in use in New Zealand for that purpose before the **17th day of May 1990**; or

(b) Was in use for that purpose at any time before that trade mark or company name was first used, in New Zealand, for application to, or in connection with, any tobacco product or smoking accessory.

27. Organising or promoting activity using trade mark, etc., of tobacco products—No manufacturer, importer, distributor, or retailer of tobacco products shall—

- (a) Organise or promote any organised activity that is to take place, in whole or in part, in New Zealand; or
- (b) Make any financial contribution towards any organised activity that is to take place, or is taking place, or has taken place, in whole or in part, in New Zealand; or
- (c) Make any financial contribution to any person in respect of—
- (i) The organisation or promotion, by that person, of; or
- (ii) The participation, by the person, in—
- any organised activity that is to take place, or is

taking place, or has taken place, in whole or in part,
in New Zealand—

5 where that organised activity involves the use, in the name of
that activity, or on any article other than a tobacco product, of
a tobacco product trade mark (*or brand name*), or of a company
name or any part of a company name included in that tobacco
product trade mark (*or brand name*).

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10 **28. Minister may grant exemptions for sponsored
participants in certain events**—(1) Notwithstanding
anything in section 24 or section 26 or section 27 of this Act, the
Minister may, in accordance with subsections (2) and (3) of this
section, by notice in the *Gazette*, grant an exemption from any
of the provisions of those sections in respect of—

15 (a) Any organised activity in New Zealand, where the
purpose of the exemption is to allow participants in
that activity to be sponsored by one or more
manufacturers, importers, or distributors of any
tobacco product; or

20 (b) Any person who is sponsored by the manufacturer,
importer, or distributor of any tobacco product in
relation to the participation by that person in New
Zealand in any organised activity.

25 (2) In determining whether or not to grant an exemption
under this section in respect of any activity or person, the
Minister shall have regard to the extent to which sponsorship
may be available for participants in that activity or, as the case
may be, to that person from persons other than manufacturers,
importers, or distributors of tobacco products.

30 (3) The Minister shall not grant an exemption under this
section unless the Minister is satisfied that the activity is of
international significance.

(4) The Minister may grant an exemption under this section
either unconditionally or subject to such conditions as the
35 Minister thinks fit.

(5) The Minister may, by further notice in the *Gazette*, amend
or revoke any exemption granted under this section.

*New***28. Exemptions for participants in certain events—**

(1) Nothing in **section 24** or **section 26** or **section 27** of this Act shall apply to the display, on any craft, of any tobacco product trade mark or the company name of any tobacco products manufacturer, where— 5

- (a) That craft is participating in an international race; and
- (b) The tobacco products manufacturer who manufactures that tobacco product, or whose company name is so displayed, is sponsoring, in whole or in part, the participation of that craft in that race; and 10
- (c) Either—
 - (i) New Zealand is a port of call for that race; or
 - (ii) That craft is required to enter New Zealand for reasons of safety or in order to effect repairs. 15

(2) Notwithstanding anything in **section 24** or **section 26** or **section 27** of this Act, the Minister may, by notice in writing, grant an exemption from any of the provisions of those sections in respect of the promotion of any international craft race where New Zealand is a port of call for that race. 20

(3) Notwithstanding anything in **section 24** or **section 26** or **section 27** of this Act, where—

- (a) The Minister is satisfied that any competition is of international significance; and
- (b) Any part of that competition is to take place in New Zealand,— 25

the Minister may, by notice in writing, grant an exemption from any of those sections in respect of any participant in that competition (not being a participant who is a New Zealand resident) for the purpose of allowing that participant to fulfil any obligation imposed on that participant to acknowledge any sponsor (being an obligation incurred before that participant submitted that person's entry for that competition). 30

(4) The Minister may grant an exemption under **subsection (2)** or **subsection (3)** of this section either unconditionally or subject to such conditions as the Minister thinks fit. 35

(5) The Minister may from time to time, by notice in writing to the person to whom any exemption is granted under **subsection (2)** or **subsection (3)** of this section, amend or revoke that exemption. 40

29. Free distribution and rewards prohibited—(1) No manufacturer, distributor, ~~(or importer)~~ importer, or retailer of tobacco products shall—

(a) Distribute any tobacco product; or

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(b) Supply any tobacco product to any person for subsequent distribution,—

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(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,—

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free of charge, or at a reduced charge other than a normal trade discount.

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(2) No person shall 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.

25

30. Tobacco product not to be advertised or labelled as suitable for chewing, etc.—(1) No person shall publish an advertisement for a tobacco product that directly or indirectly states or suggests that the product is suitable for chewing or for any other oral use (other than smoking).

(2) No person shall import for sale, sell, pack, or distribute any tobacco product labelled or otherwise described as suitable for chewing, or for any other oral use (other than smoking).

Sale and Labelling

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31. Prohibition of sales of tobacco products to persons under 16—(1) No person shall sell any tobacco product to a person who has not attained the age of 16 years.

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(2) It shall be 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 16 years.

(3) Except as permitted by regulations made under this Part of this Act, no person shall 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 16 years may lawfully have access. 5

(4) **Subsection (3)** of this section shall not apply to—

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

(b) Any premises in respect of which an on-licence is in force under that Act; or 10

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

(5) 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 16 years is prohibited. 15

32. Limits on harmful constituents—No manufacturer or importer shall offer for sale or export any tobacco product that— 20

(a) Contains or generates in its smoke a harmful constituent specified for the purposes of this Act in regulations made under this Part of this Act; or

(b) Contains 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. 25

33. Labelling and health messages—(1) No manufacturer, importer, distributor, or retailer shall sell or offer for sale a tobacco product unless— 30

(a) The package containing the product displays, in accordance with regulations made under this Part of this Act,—

(i) A message relating to the effects of the use of the product on health; and 35

(ii) A list of the harmful constituents of the product; and

(iii) In the case of a tobacco product intended for smoking, a list of the harmful constituents, and their respective quantities, present in the smoke; and 40

(b) A leaflet containing information relating to the effects of the use of the product on health is placed inside the

package with the product, if and as required by regulations made under this Part of this Act.

5 (2) In subsection (1) of this section the term “harmful constituent” means any substance declared by regulations made under this Part of this Act to be a harmful constituent for the purposes of that subsection.

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10 (3) Every person who offers for sale, by way of an automatic vending machine, any tobacco product shall, in accordance with regulations made under this Act, display on the vending machine such health message as is required by or under this Act.

Testing, Reports, and Returns

15 **34. Annual testing for constituents**—(1) This section applies to each class of tobacco products that may be prescribed for the purposes of this section by regulations made under this Part of this Act.

20 (2) Every manufacturer and every importer of any class of tobacco product to which this section applies shall in each year conduct, in accordance with regulations made under this Part of this Act, a test for the constituents of each brand of that class of product sold by the manufacturer or importer, and the respective quantities of those constituents.

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25 (3) Every manufacturer and every importer of any class of tobacco product to which this section applies shall, no later than the 31st day of January in the next succeeding year, submit to the Director-General, in the prescribed form and manner, a report of the results of the tests conducted for the purposes of subsection (2) of this section.

35. Director-General may require further testing—

35 (1) Subject to subsection (3) of this section, in addition to the annual test required by subsection (2) of section 34 of this Act, the Director-General may, by notice in writing to the manufacturer or importer of any class of tobacco product to which that section applies, require a further test to be carried out for the constituents of any brand of that class of product sold by the

manufacturer or importer and the respective quantities of those constituents.

(2) Any such additional test shall be carried out in a laboratory nominated by the Director-General, but at the expense in all respects of the manufacturer or importer. 5

(3) The Director-General shall not, in any year, require tests under this section in respect of more than 10 percent of the brands of tobacco products sold by any particular manufacturer or importer.

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36. Returns—Every manufacturer and every importer of any class of tobacco product shall, not later than the 31st day of January in each year, file with the Director-General, in the prescribed form and manner, a return showing—

(a) The weight of tobacco and of all additives used in the manufacture of each such product sold by the manufacturer or importer during the previous year; and 15

(b) The quantity of each brand, and of each brand variant, of each such product sold by the manufacturer or importer during the previous year; and 20

(c) The recommended price of each brand, and each brand variant, of each such product sold by the manufacturer or importer during the previous year.

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36. Returns and reports—(1) Every manufacturer and every importer of any class of tobacco product shall, not later than the 31st day of January in each year, file with the Director-General, in the prescribed form and manner,—

(a) A return showing— 30

(i) The weight of tobacco and of all additives used in the manufacture of each such product sold by the manufacturer or importer during the previous year; and

(ii) The quantity of each brand, and of each brand variant, of each such product sold by the manufacturer or importer during the previous year; and 35

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- (iii) The recommended price of each brand, and each brand variant, of each such product sold by the manufacturer or importer during the previous year; and
- (b) A report of the results of all tests that, during the previous year, have been conducted by that manufacturer or importer for the purposes of **section 34** or **section 35** of this Act.
- (2) Where any report is received by the Director-General under **subsection (1) (b)** of this section, the Director-General may publish or make publicly available the report or such parts of the report as he or she thinks fit.

Offences

- 37. Offences in respect of tobacco products**—(1) Every person who, without reasonable excuse, publishes any advertisement for a tobacco product in contravention of **section 24** of this Act commits an offence and is liable,—
- (a) In the case of a manufacturer, an importer, or a distributor, to a fine not exceeding \$50,000; or
- (b) In any other case, to a fine not exceeding \$10,000.
- (2) Every person who, without reasonable excuse, uses any trade mark (*brand name*) or company name in contravention of **subsection (1)** or **subsection (2)** of **section 26** of this Act, or who distributes, sells, or offers or exposes for sale any article in contravention of **subsection (3)** of that section commits an offence and is liable,—
- (a) In the case of a manufacturer, an importer, or a distributor, to a fine not exceeding \$50,000; or
- (b) In any other case, to a fine not exceeding \$10,000.
- (3) Every manufacturer, importer, distributor, or retailer of tobacco products who, in contravention of **section 27** of this Act, organises or promotes any organised activity, or makes any financial contribution towards any organised activity, or makes any financial contribution to any other person in respect of the organisation or promotion, by that other person, or, the participation, by that other person, in, any organised activity, commits an offence and is liable,—
- (a) In the case of a manufacturer, an importer, or a distributor, to a fine not exceeding \$50,000; or
- (b) In any other case, to a fine not exceeding \$10,000.

(4) Every manufacturer, distributor, *(or importer)* importer, or retailer of tobacco products who distributes or supplies any tobacco product in contravention of **section 29 (1)** of this Act commits an offence and is liable to a fine not exceeding \$50,000.

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(5) Every person who offers any gift, cash rebate, or right of participation in contravention of **section 29 (2)** of this Act, or who publishes any advertisement in contravention of **section 30 (1)** of this Act, or who imports, sells, packs, or distributes any tobacco product in contravention of **section 30 (2)** of this Act, commits an offence and is liable,—

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(a) In the case of a manufacturer, an importer, or a distributor, to a fine not exceeding \$10,000; or

(b) In any other case, to a fine not exceeding \$5,000.

(6) Every person who sells any tobacco product in contravention of **section 31 (1)** of this Act, or who permits any tobacco product to be sold in contravention of **section 31 (3)** of this Act, commits an offence and is liable to a fine not exceeding \$2,000.

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(7) Every retailer of tobacco products who fails, without reasonable excuse, to display the notice required by **section 31 (5)** of this Act commits an offence and is liable to a fine not exceeding \$2,000.

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(8) Every manufacturer or importer who offers for sale or export any tobacco product without conducting reasonable tests to establish whether or not it contains or generates in its smoke—

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(a) Any harmful constituent prohibited by regulations made under this Part of this Act for the purposes of **section 32 (a)** of this Act; or

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(b) Any harmful constituent in excess of the level permitted by regulations made under this Part of this Act for the purposes of **section 32 (b)** of this Act,—

commits an offence and is liable to a fine not exceeding \$10,000.

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(9) Every manufacturer, importer, distributor, or retailer of tobacco products who sells or offers for sale any tobacco product knowing that it contravenes **section 33 (1)** of this Act commits an offence and is liable,—

(a) In the case of a manufacturer, an importer, or a distributor, to a fine not exceeding \$10,000; or

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(b) In the case of a retailer, to a fine not exceeding \$4,000.

New

- 5 (9A) Every person who offers for sale, by way of an automatic vending machine, any tobacco product and who, in contravention of **section 33 (3)** of this Act, fails, without reasonable excuse, to display on that vending machine such health message as is required by or under this Act commits an offence and is liable to a fine not exceeding \$4,000.

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- 10 (10) Every manufacturer or importer of tobacco products who fails, without reasonable excuse,—
 (a) To conduct any test required by **section 34 (2)** of this Act; or
 (b) To submit any report required by **section 34 (3)** of this Act;
 or
 15 (c) To co-operate in the conduct of any further test required under **section 35** of this Act; or
 (d) To submit any return required by **section 36** of this Act,—
 commits an offence and is liable to a fine not exceeding \$10,000.

New

- 20 (10) Every manufacturer or importer of tobacco products who fails, without reasonable excuse,—
 (a) To conduct any test required by **section 34 (2)** of this Act; or
 (b) To conduct any further test required under **section 35** of this Act; or
 25 (c) To submit any return required by **section 36 (1) (a)** of this Act; or
 (d) To submit any report required by **section 36 (1) (b)** of this Act,—
 30 commits an offence and is liable to a fine not exceeding \$10,000.

38. Enforcement—(1) It shall be the duty of the Director-General to enforce the provisions of this Part of this Act.

(2) No prosecution for an offence against any provision of this Part of this Act shall be commenced except on the information

of the Director-General or of some other person authorised for that purpose by the Director-General.

(3) Notwithstanding anything in section 14 of the Summary Proceedings Act 1957, any information in respect of any offence against any provision of this Part of this Act may be laid at any time within 1 year after the time when the matter of the information arose. 5

39. Principals and agents—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. 10

Miscellaneous Provisions

40. Regulations—The Governor-General may from time to time, by Order in Council, make regulations for all or any of the following purposes: 15

- (a) Prescribing forms, certificates, leaflets, signs, particulars, and notifications, and the persons by whom and the persons to whom any such forms, certificates, leaflets, signs, particulars, and notifications are to be supplied: 20
- (b) Prescribing records and registers for the purposes of this Part of this Act; prescribing the manner in which and the period during which any such records and registers are to be kept; and prescribing the persons to whom, and the conditions on which, any such records and registers may be available for searching, inspection, and copying: 25
- (c) Prescribing the form and manner in which tobacco products may be identified and depicted on the exterior of vending machines:
- (d) Prescribing the form and manner in which a retailer of tobacco products may advertise tobacco products at that person's place of business: 30
- (e) Prescribing the form, size, and content of information and messages to be displayed with, on, or in packages of, tobacco products or on automatic vending machines that dispense tobacco products; and prescribing the circumstances and manner in which the information and messages are to be so displayed: 35
- (f) Prescribing the class or classes of tobacco products to which **section 34** of this Act is to apply, and regulating the tests that are to be conducted under that section: 40

- (g) Specifying harmful substances and other constituents of tobacco products for the purpose of **section 34** of this Act:
- 5 (h) Prescribing the method of determining the constituents of tobacco products and the smoke produced from their combustion:
- (i) Prescribing the form and manner in which returns and reports are to be filed under **section 36** of this Act:
- 10 (j) Providing for such other matters as are contemplated by or necessary for giving full effect to the provisions of this Part of this Act or its due administration.

41. Transitional provisions—(1) Nothing in **section 26 (3)** of this Act shall apply in respect of the distribution or sale before the 1st day of January 1996 of any article that was—

- 15 (a) Manufactured before the **17th day of May 1990**; or
- (b) Ordered before the **17th day of May 1990** from the manufacturer or distributor otherwise than by the placing of a standing order that required confirmation, or that was subject to cancellation,
- 20 after that date.

(2) Notwithstanding anything in **section 24** or **section 26** or **section 27** of this Act, where it is so required by a contract entered into before the **17th day of May 1990**, the name of any manufacturer or importer of tobacco products or the trade mark (*or brand name*) of any tobacco product may be used until the close of the 30th day of June 1993, otherwise than in association with a tobacco product, in a representation to the public—

- 30 (a) That promotes or is associated with an organised activity; or
- (b) That acknowledges financial or other contributions made by the manufacturer or importer of the tobacco product toward any such activity.
- 35 (3) The first reports required by (**section 34 (3)**) **section 36 (1) (b)** of this Act shall be submitted to the Director-General—
- (a) By the 31st day of January 1991, in the case of cigarettes; or
- (b) By the 31st day of January 1992, in the case of cigarette tobacco; or
- 40 (c) By the date specified by the Director-General by notice in writing to the manufacturer or importer, in the case of any other tobacco product.

42. Amendment, repeals, and revocations—(1) Section 2 (1) of the Toxic Substances Act 1979 is hereby amended by repealing paragraph (c) of the definition of the term “toxic substance,” (as substituted by section 2 of the Toxic Substances Amendment Act 1986). 5

(2) Section 2 (3) of the Toxic Substances Act 1979 is hereby repealed.

(3) Part VIII of the Toxic Substances Act 1979 (comprising sections 72 to 74) is hereby repealed.

(4) Section 2 of the Toxic Substances Amendment Act 1986 is hereby repealed. 10

(5) Part VIA of the Toxic Substances Regulations 1983 (comprising regulations 46A to 46C) (as substituted by regulation 3 of the Toxic Substances Regulations 1983, Amendment No. 2) is hereby revoked. 15

(6) Regulation 3 of the Toxic Substances Regulations 1983, Amendment No. 2 is hereby revoked.

PART III

HEALTH SPONSORSHIP COUNCIL

43. Meaning of “sponsorship”—(1) In this Part of this Act, “sponsorship” means, in broad terms, the provision of assistance by the Council to any person or organisation and, in return, the promotion by that person or organisation of health and healthy lifestyles in a manner agreed by the Council. 20

(2) Without limiting the generality of the term, such assistance by the Council may take the form of— 25

- (a) Money, whether by way of grant or otherwise; or
- (b) Goods and services; or
- (c) Trophies, prizes, awards, and scholarships.

(3) Also, without limiting the generality of the term, such promotion by the person or organisation receiving assistance may take the form of— 30

- (a) Publicising messages relating to health and healthy lifestyles; or
- (b) Publicising messages relating to ill-health and unhealthy lifestyles; or 35
- (c) Promoting the aims and objectives of the Council.

44. Council established—(1) There is hereby established a council, to be known as the Health Sponsorship Council.

(2) The Council shall be a body corporate with perpetual succession and a common seal, and shall be capable of suing and being sued and of doing and suffering all that bodies corporate may do and suffer. 40

45. Principal functions of Council—(1) The principal functions of the Council shall be—

- (a) To promote health and to encourage healthy lifestyles, whether through the provision of sponsorship or otherwise; and
 - (b) To make sponsorship available to any person or organisation in accordance with **section 57** of this Act.
- (2) For the purposes of its principal functions, the Council may provide sponsorship to—
- (a) Any person or organisation involved in sports participation, artistic endeavour, cultural pursuits, or recreational activities; or
 - (b) Any person or organisation involved in arranging any sporting, artistic, or recreational activity; or
 - (c) Any person or organisation in accordance with **section 57** of this Act.

46. Membership of Council—(1) The Council shall have such number of members, being not fewer than 3 nor more than 6, as the Minister may from time to time determine.

- (2) Each member shall be appointed by the Minister.
- (3) One member of the Council shall be appointed as Chairperson of the Council.
- (4) The powers of the Council shall not be affected by any vacancy in its membership.

47. Term of office of members of Council—(1) Subject to the succeeding provisions of this section, every member of the Council shall hold office for such term, not exceeding 3 years, as the Minister shall specify in the instrument of appointment of that member, but may from time to time be reappointed.

- (2) Any member of the Council may resign at any time by notice in writing to the Minister.
- (3) Any member of the Council may be removed from office at any time by the Minister by notice in writing to the member.
- (4) Every member of the Council whose term of office expires shall nevertheless continue in office until that member's successor comes into office.

48. Meetings of Council—(1) The first meeting of the Council shall be held on a day to be fixed by the Minister.

- (2) Subsequent meetings of the Council shall be held at such times and places as the Council or the chairperson from time to time decides.

(3) At all meetings of the Council, the quorum necessary for the transaction of business shall be 3 members.

(4) The Council shall keep, in the custody of the Director, a minute book in which shall be recorded all resolutions and decisions of the Council. 5

(5) The entries in the minute book relating to a meeting of the Council shall be signed by the person who presided at that meeting, one other member, and the Director.

(6) Subject to the provisions of this Part of this Act, the Council may regulate its procedure in such manner as it thinks fit. 10

49. Conflict of interest—(1) If any member has any interest in any contract under consideration by the Council, or is a member of, or is affiliated to, or is otherwise interested in, any organisation with whom the Council is considering entering into any contract, the member shall declare that interest at the first meeting of the Council at which or after which the member first becomes aware of the matter. 15

(2) In such a case, the member shall take no further part in the discussion or deliberations of the Council on that matter and shall, if the person presiding at the time so requests, withdraw from the room while the matter is being discussed or determined. 20

50. Council to appoint Director—(1) The Council shall appoint and employ a suitably qualified person to be the Director of the Council. 25

(2) The Director shall be the principal administrative officer of the Council, and shall be responsible to the Council for—

(a) The performance of other members of the staff of the Council; and 30

(b) The keeping of proper accounts and records; and

(c) The annual preparation of the budget, the strategic plan, and the annual plan required by **section 59** of this Act; and

(d) Such other matters as may be required of the Director from time to time by the Council. 35

51. Other staff—(1) Subject to **subsection (2)** of this section, the Council may from time to time engage such other persons as may be required to enable the Council to carry out its functions under this Act. 40

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5 (2) The number of persons that may be engaged under this section, whether generally or in respect of any specified duties or class of duties, shall from time to time be determined by the Minister.

10 (3) The Council may pay to any such persons such remuneration by way of fees, salary, wages, or allowances, and such travelling allowances and expenses, as may from time to time be fixed, either generally or in respect of any particular person or persons, by the *(Minister)* Council.

52. Council may appoint advisory and technical committees—(1) The Council may from time to time appoint advisory, technical, and other committees to advise it on such matters as it may refer to them.

15 (2) Any person may be appointed to be a member of any such committee even though that person is not a member of the Council.

20 (3) Every such committee shall in all matters be subject to the control of the Council, and shall carry out all directions, general or special, of the Council in relation to the Council or its affairs.

(4) Subject to the provisions of this Act, every committee appointed under this section may regulate its procedure within the limits of the authority conferred on it by the Council.

25 **53. Council may co-opt specialist advice**—(1) The Council, and any advisory, technical, or other committee appointed by the Council, may from time to time invite any person, or any officer employed in a Government department, or a representative of any organisation, who, in its opinion, possesses expert knowledge or is otherwise able to assist it in
30 connection with the exercise of its functions, to attend any of its meetings or to advise it on any matter with which it is concerned.

35 (2) Any person attending a meeting under this section may, if invited, take part in any discussion at the meeting, but shall not have any voting rights.

54. Remuneration and allowances for members of Council and committees—(1) The Council is hereby declared to be a statutory Board within the meaning of the Fees and Travelling Allowances Act 1951.

(2) There shall be paid to the members of the Council, and to every member of any committee appointed by the Council, remuneration by way of fees, salary, or allowances, and travelling allowances and expenses, in accordance with the Fees and Travelling Allowances Act 1951, and the provisions of that Act shall apply as if, in the case of any such committee, that committee were a statutory Board within the meaning of that Act. 5

55. Salaries, etc., to be paid out of funds of Council—
All fees, salaries, allowances, and other expenditure payable or incurred under or in the administration of this Part of this Act shall be payable out of the funds of the Council. 10

56. Powers of Council—(1) Subject to the succeeding provisions of this Part of this Act, the Council shall have all such powers as may be reasonably necessary to enable it to carry out its functions. 15

(2) The Council may from time to time delegate to the Director power to execute contracts on behalf of the Council, either in a particular case or a particular class of case, or within such limits as the Council may specify. 20

57. Council to provide alternative sponsorship—
(1) This section applies to any person (*who*) or organisation that—

- (a) During the year ending with the 17th day of May 1990, received, from any manufacturer, importer, or distributor of any tobacco product, any financial or other assistance in respect of the organisation or promotion of, or participation in, any organised activity; and 25
- (b) When that assistance was provided, had a reasonable expectation of receiving future financial or other assistance from that manufacturer, importer, or distributor, being assistance the provision of which would be an offence against any provision of **Part II** of this Act; and 30
- (c) Is unable to obtain assistance from some other source as an alternative to the future assistance referred to in **paragraph (b)** of this subsection. 35

(2) Every person (*who*) or organisation that applies to the Council for the provision of sponsorship and (*who satisfies the Council that that person is a person to whom*) that satisfies the 40

Council that he or she or it is a person to whom or an organisation to which this section applies,—

- 5 (a) Shall be entitled to have made available to that person or
 organisation, by the Council, not less than the
 amount of sponsorship that the Council is satisfied is
 equivalent to the amount or value of the future
 financial or other assistance referred to in **subsection (1)**
 10 (b) of this section which that person or organisation
 reasonably expected to receive, and which that
 person or organisation is unable to obtain from some
 other source, during the period of 2 years
 immediately following—
- 15 (i) The date on which that person or organisation
 ceases to receive the financial or other assistance
 referred to in **subsection (1) (a)** of this section; or
 (ii) The **30th day of June 1993**,—
 whichever occurs first; and
- 20 (b) Shall, unless the Council considers that there is good
 reason not to do so, be entitled to have made
 available to that person or organisation, by the
 Council, not less than the amount of sponsorship that
 the Council is satisfied is equivalent to the amount or
 value of the future financial or other assistance
 referred to in **subsection (1) (b)** of this section which that
 25 person or organisation reasonably expected to
 receive, and which that person or organisation is
 unable to obtain from some other source, during the
 period of 1 year immediately following the period of
 2 years referred to in **paragraph (a)** of this subsection.

- 30 **58. Minister may give Council directions**—(1) The
 Minister may from time to time give to the Council a written
 direction relating to the performance of the Council's functions
 or the exercise of its powers, either generally or specifically,
 and the Council shall comply with the terms of the direction.
- 35 (2) Every such direction shall be included in the Council's
 annual report for the year in which it is received.

- 40 **59. Council to submit annual budget and plans for
 Minister's approval**—(1) Not later than 1 month before the
 start of each financial year, the Council shall prepare and
 submit to the Minister for the Minister's approval, in respect of
 that year,—

- (a) A budget of planned income and expenditure, including
 balance sheets and a statement of cash flows; and

(b) A strategic plan of the intended health directions and programmes to be publicised through sponsorship over the next 5 years, but subject to annual review; and

(c) An annual plan setting out the specific activities and priorities planned by the Council for the year. 5

(2) The Council shall not commit any of its funds to any form of sponsorship until its first budget and annual plan have been approved by the Minister.

60. Funds of Council—(1) The funds of the Council shall consist of— 10

(a) Money from time to time appropriated by Parliament for the purposes of the Council; and

(b) Any interest earned on any such money pending its application by the Council; and 15

(c) Any proceeds of sale received by the Council on the sale of any of its assets; and

(d) Any donations, grants, or bequests received by the Council for its purposes.

(2) The funds of the Council shall be held in such bank account as the Council may from time to time determine, of which the Council shall give written notice to the Minister and to the Secretary to the Treasury. 20

(3) The Council may keep any of its funds not immediately required for its purposes in an interest-bearing account, but shall not have any other powers of investment. 25

(4) The funds of the Council shall be expended—

(a) In accordance with sponsorship arrangements designed to promote the principal functions of the Council; and

(b) For the purposes specified in **section 55** of this Act. 30

61. Further provisions relating to funds—(1) Any funds received by the Council in one year and not expended by the Council in that year shall, without further appropriation by Parliament, be available to, and may be expended by, the Council, in any subsequent year. 35

(2) Subject to **subsection (3)** of this section, the Council shall not commit itself to expend any money by way of sponsorship unless it has the money in hand at the time.

(3) The Council may in any year commit itself to expend by way of sponsorship in the next succeeding year in aggregate up to 25 percent of the amount of the money appropriated by Parliament for the purposes of the Council for the current year. 40

5 **62. Liability of Council and members**—(1) The liability of the Council shall be limited to the aggregate value of its assets, including all money standing to its credit at a bank, and all money to which it is entitled by way of repayment of any loan.

(2) No member of the Council or of any committee appointed by the Council shall be liable for anything done or omitted to be done by the Council or the committee unless the member has acted in bad faith.

10 **63. Accounts**—(1) The Council shall keep proper books of account, on a normal accrual basis in accordance with accepted accounting principles, in which shall be kept full, true, and complete accounts of the affairs and transactions of the Council.

15 (2) As soon as practical after the end of each financial year the Council shall prepare a proper statement of accounts for that year and a balance sheet as at the end of that year, and shall submit the accounts of the Council to the Audit Office for audit.

20 (3) For the purpose of the audit of the accounts, the funds of the Council shall be deemed to be public money within the meaning of the Public Finance Act 1989; and the Audit Office shall have the same duties and powers in respect of the funds, and of every person dealing with them, as it has in respect of
25 public money and accounts and of persons dealing with them.

64. Annual reports—(1) As soon as practicable after the end of each financial year, the Council shall prepare a report for that year.

(2) The Council shall include in the report—

30 (a) A statement of its activities during the year in performance of its principal functions, a summary of the sponsorship arrangements entered into, and an assessment of their effectiveness; and

35 (b) The manner in which the Council has attempted to achieve, or work towards achieving, the goals set out in its current annual plan and strategic plan; and

(c) The terms of any direction given to the Council during the year by the Minister under **section 58** of this Act; and

40 (d) The manner in which the Council has complied with any such direction (whether given in that year or in any previous year); and

(e) A copy of its audited accounts for the year.

(3) The Minister shall table a copy of the report in the House of Representatives within 16 sitting days after receiving it.

(4) The requirements of this section are in addition to any requirement to report imposed on the Council by any of sections 41 to 43 of the Public Finance Act 1989. 5

65. Ombudsmen Act 1975 amended—Part II of the First Schedule to the Ombudsmen Act 1975 is hereby amended by inserting, in its appropriate alphabetical order, the following item:

“The Health Sponsorship Council.” 10

66. Films Act 1983 amended—Part II of the Schedule to the Films Act 1983 is hereby amended by inserting, in its appropriate alphabetical order, the following item:

“The Health Sponsorship Council.”