

Smoke-free Environments (Enhanced Protection) Amendment Bill

Member's Bill

As reported from the Health Committee

Commentary

Recommendation

The Health Committee has examined the Smoke-free Environments (Enhanced Protection) Amendment Bill and recommends, by majority, that it be passed with the amendments shown.

Introduction

This commentary focuses on the major issues we examined and discusses the amendments we recommend to the Smoke-free Environments (Enhanced Protection) Amendment Bill (the bill). We also recommend some technical amendments not covered by this commentary. Our recommended amendments incorporate those parts of Supplementary Order Paper 148 (the SOP) that we consider should proceed.

Background

The purpose of the bill and the SOP is to extend the protections for workers, volunteers and the public in the Smoke-free Environments Act 1990 particularly against exposure to second-hand smoke, to reduce the harm cause to individuals by their smoking, to further restrict minors' access to smoking products and the visual influence of smoking in front of minors, and to provide limited enforcement powers.

The Smoke-free Environments Act 1990 and subsequent amendments, and the Smoke-free Environments Regulations 1999:

- restrict smoking in workplaces
- require all workplaces to have a policy on smoking and to review that policy annually
- restrict or ban smoking in restaurants, bars, casinos, public transport and certain other public places
- regulate the marketing, advertising, and promotion of tobacco products and the sponsorship by tobacco companies of products, services and events
- ban the sale of tobacco products to people under the age of 18 years
- provide for the control, and disclosure, of the contents of tobacco products.

Submissions

We received 397 submissions on this bill and the SOP from interested groups and individuals, representing different views on the extent to which smoking, and the sale of smoking products, should be controlled. Many submissions were generally supportive of the bill, but sought changes to some aspects. Others considered the measures contained in the bill were unnecessary, or overly restrictive.

We carefully considered all the evidence and suggestions we received, and have recommended many changes to the bill as a consequence of that consideration. It is not possible to detail in this commentary our consideration of each issue raised.

Effects of second-hand smoke

Second-hand smoke is a combination of exhaled smoke from active smokers and the smoke coming from smouldering tobacco between puffs. Second-hand smoke contains the same toxic compounds as mainstream tobacco smoke, although in different relative amounts.

In the *World Health Report 2002*, the World Health Organisation noted that exposure to second-hand smoke is associated with lower respiratory tract infections, sudden infant death syndrome, asthma, ischaemic heart disease, otitis media (ear infection), lung cancer and nasal-sinus cancer.

Recent research has estimated that 388 deaths are caused by exposure to second-hand smoke in New Zealand each year. Of these 388 deaths, 243 were attributed to heart disease, 88 to strokes, 50 to sudden infant death syndrome and seven to lung cancer.¹ Research has also indicated that second-hand smoke results in a further 3700 hospital admissions and 27,000 GP consultations annually.² In 1997, health economist Brian Easton estimated the total cost of tobacco smoking to New Zealand society in 1990 at \$22.5 billion a year.

Three quarters of New Zealanders do not smoke, but many are being exposed to the risks of second-hand smoke. Our approach to the consideration of this legislation has been to uphold the right of people to work in smoke-free environments and to ensure that public health is being protected.

The Smoke-free Environments Act has provided protections against second-hand smoke for many workers. This bill represents an incremental change to the existing provisions, by extending those protections to the remaining vulnerable groups, particularly hospitality workers.

Smoke-free workplaces and public areas

We recommend making all indoor workplaces completely smoke-free, with some limited exceptions, which we discuss below. In considering this recommendation, we had to balance our concern for the right of workers, volunteers and the public to be protected from second-hand smoke against allowing employers the freedom to permit smoking on their premises. Most of us agreed that second-hand smoke was a significant health risk for workers, and therefore considered workplaces must be made smoke-free.

Currently smoking is permitted in some parts of workplaces, such as individual offices and part of some common areas. The SOP proposes further restricting the areas where smoking can be allowed, but still allowing some exceptions, such as in separately-ventilated refreshment areas or in a designated 'smoking area'. We are not recommending that the exceptions proposed in the SOP be adopted.

¹ Woodward A, Laugesen M *Deaths in New Zealand attributable to second hand cigarette smoke* Report to the Ministry of Health, September 2000.

² Woodward A, Laugesen M *Morbidity attributable to second-hand smoke in New Zealand* Report to the Ministry of Health, 2001.

The SOP proposes continuing to allow smoking in some areas if all agree. We agree with some submitters that this could place strong pressure on non-smoking employees to defer to smoking colleagues. We prefer to take a consistent approach and make all indoor workplaces smoke-free.

Definition of workplace

We recommend a new definition of 'workplace', based on internal areas that are usually frequented by employees or volunteers, and includes places such as lifts, toilets, ships, trains, and operating taxis. The new definition will ensure that volunteer workers are afforded the same protections as paid employees.

We recommend that taxis be specifically included as a workplace. A prohibition on smoking in taxis would apply at all times the vehicle was being used as a taxi, including when travelling between hirings.

We recommend excluding some particular places from the definition of 'workplace', and therefore from the general restrictions on smoking in workplaces. These include:

- motel and hotel rooms, passenger accommodation on ships and trains, and individual staff accommodation on ships and trains
- prison cells
- an employer's home.

These exclusions are all based on the principle that the excluded area is a person's home, either temporarily or permanently. We are aware that employees do enter these areas from time to time in the course of their work. With temporary accommodation such as hotel rooms, we consider it unlikely that the majority of employees will be in a room at the same time as the occupier. While it is undesirable that such employees should be exposed to smoke, we consider the lack of direct exposure will provide a greater measure of protection than in other cases. We encourage the practice of many hotels offering non-smoking rooms.

We recommend requiring all prisons to have a written policy regarding inmates smoking in prison cells. These policies must be based on the principle that inmates and employees should be protected from second-hand smoke. Prisoners may be allowed to smoke in their own cells, as long as non-smokers are not required to share a cell with them (as far as is reasonably practicable). We were advised that

current practice is generally to allow smoking in cells and outdoor areas only. We note that staff usually enter cells only to carry out searches or attend incidents.

Areas where smoking permitted

We recommend allowing for dedicated smoking rooms for patients in hospitals, residential care homes and rest homes, to provide for patients who are so incapacitated that they are unable to go outside to smoke. No person other than a patient or resident will be able to smoke in such rooms, including employees and visitors.

We also recommend allowing an exception to the workplace prohibition in relation to certain work vehicles. An employer will be able to permit smoking in vehicles that are not normally accessible to the public, and whose users have requested that smoking be permitted (or have agreed to other employees smoking in them).

Passenger vehicles and lounges

We recommend repealing the current provisions that allow for the designation of internal smoking areas on ships and trains, so that they are subject to the same general provisions as other workplaces. An exception is provided for accommodation areas. We note that the outdoor areas of ships are not covered by these provisions.

We also recommend explicitly prohibiting smoking in passenger waiting rooms and lounges.

Workplace smoking policies

Having made all indoor workplaces smoke-free, there is no longer need for provisions relating to workplace policies on smoking. However, we recommend retaining the provisions for a complaints process regarding smoking in the workplace. People will be able to complain to an employer, or to the Director-General of Health, about smoking in a workplace or affected public area. Prisons will still be required to have policies regarding smoking in cells (see above), which must include a complaints process.

Other venues not workplaces

We considered carefully whether to include places such as marae and church halls in the areas where smoking is not permitted. However, we considered such places are not necessarily workplaces. We

note that if they are being used as a workplace, or as a venue with a liquor license, then the smoke-free requirements will apply.

We endorse the efforts of many marae to become smoke-free. We are concerned about the high incidence of smoking among Maori, and welcome such steps to encourage a reduction in smoking.

Hospitality venues

We recommend the removal of the exceptions that allowed smoking in certain indoor areas of licensed premises (bars and pubs), cafés and restaurants, and casinos (hospitality venues). This will make all indoor areas of hospitality venues smoke-free. People will still be able to smoke in open areas such as beer gardens or decks. However, we recommend allowing hospitality venue operators to prohibit smoking in these open areas of their premises, if they so wish.

For consistency, we recommend that these provisions also apply to gaming machine venues, and to clubs that are licensed to serve alcohol.

We recommend a 12-month lead-in time before the commencement of these provisions. This will allow time for public awareness to grow, and for hospitality operators to develop open areas as part of their premises, if they wish.

Separately-ventilated smoking rooms considered

The SOP proposed banning all smoking in hospitality venues, except if separately-ventilated smoking rooms were provided.

We heard conflicting evidence about the effectiveness of ventilation systems to maintain separately-ventilated smoking rooms. Some submitters argued that these systems could adequately remove second-hand smoke from the air. Others argued that the systems only removed some of the contaminants in the air, did not remove carcinogens from the air, and would not provide sufficient protection for employees. A majority of submissions considered the option of separately-ventilated areas was impractical.

Another issue is the cost of running a ventilation system. To move second-hand smoke from a room quickly, ventilation systems would have to operate at a high airflow rate (which could also cause discomfort to customers). Replacement air would need to be heated or cooled. The energy and maintenance costs of running such high-powered ventilation systems would be high. We were told that the

experience in the Australian Capital Territory had been that many proprietors left their ventilation systems switched off, as they found the running costs too high.

Some of us considered separately-ventilated smoking areas would provide sufficient safeguards for employees. However, others of us consider separately-ventilated areas are impractical. We consider such systems would not provide sufficient protection for employees, and would impose substantial running costs on premises.

Smoking completely prohibited at schools and early childhood centres

We recommend prohibiting smoking at schools, early childhood centres, and premises that are attended by young people. The restriction would apply both indoors and outdoors, and at all times for school premises and grounds.

We consider that the purpose of the legislation includes preventing young people from being influenced by seeing other people smoke in their place of learning. We also wish to further prevent the detrimental effect of second-hand smoking on the health of young people.

The current legislation does not cover schools, except for 'workplace' areas such as staff rooms and offices.

We also considered extending a similar restriction to tertiary institutions, as requested by some submitters. However, we consider the restrictions that apply to indoor workplaces will be adequate for tertiary institutions. Those attending tertiary institutions are generally 18 or older. Also, university teachers are not role models in the same way that teachers of children and young people are.

Non-tobacco products

We recommend widening the definition of 'to smoke' to ensure non-tobacco products such as herbal smoking products are covered. We also recommend the introduction of a number of measures to ensure the same restrictions apply to herbal smoking products as apply to tobacco products, such as the prohibitions or limits on harmful constituents.

We recommend banning the sale of herbal smoking products to those under 18, to be consistent with the ban on sale of tobacco products. This would not affect the Misuse of Drugs Act 1975

prohibitions in relation to the use, possession, sale and so on of cannabis, or any other herbal smoking product listed in a schedule to that Act.

We were made aware of non-tobacco products such as chewing/snuff products, drinks and sweets that also contain nicotine. We recommend specifically banning the importation, advertising, labelling, distribution or sale of these products. This does not affect therapeutic products used as quitting aids, as these are regulated under the Medicines Act 1981.

Sale and supply of products

Restrictions on display of tobacco products

We recommend restricting the retail display of tobacco products to 100 packages and 40 cartons at each point of sale, except in tobacconists' shops. Currently, the Act allows the display of tobacco products inside a retail outlet if the product is not visible from outside that place. It does not specify the form of display units or the number of products permitted to be displayed for sale. Some of us consider this is a compliance cost with no benefit.

We heard some arguments that the number of packages should be greater, to provide for a greater range of products to be displayed. We note that the bill originally proposed banning completely the display of tobacco products. We consider the restriction proposed is an acceptable compromise. We note the restriction was negotiated between the Ministry of Health and the retail industry.

We suggest defining a tobacconist's shop as a place that is a specialist retail seller of tobacco products, with at least 60 percent of its gross revenue earned from the sale of tobacco products. We consider this definition will capture genuine tobacconist businesses better than the definition proposed in the SOP would.

We also recommend that display signage of 'Smoking Kills' signs at points of sale be required. Previously these could be required by regulations.

Children's products

We recommend prohibiting any display of tobacco products within one metre of any product marketed primarily for children exposed for sale, or as far away as is reasonably practicable. We consider placing both tobacco and children's products as impulse purchase

items near points of sale creates an impression for children that tobacco products are also 'treat' products. We note that placing children's products such as confectionery and soft drinks near points of sale as an impulse item creates health issues of its own.

Some submitters were concerned that allowing the sale of joke and confectionery cigarettes added to the social acceptability of smoking. We considered prohibiting sale of these items, as has happened in a number of Australian jurisdictions. However, we have not recommended any prohibition, although some of us consider one should be put in place.

Access to tobacco or herbal products by under 18-year-olds

We recommend prohibiting the supply of tobacco products to people under 18. Currently it is an offence to sell tobacco to people under 18, but the legislation is silent about supplying tobacco products to a minor. This ban would apply only in public places.

The SOP proposed an exception to the offence for a parent, guardian or spouse of the under 18-year-old. We have not picked up those exceptions, as we do not consider those persons should be encouraging young people to smoke, but should rather be acting to protect their health. We consider that what occurs in a private home is outside the scope of this legislation.

It is a defence to a charge of selling a tobacco product to a minor if the person charged proves that the contravention occurred without his or her knowledge and that he or she took reasonable precautions and exercised due diligence to prevent the sale of tobacco product to that person.

We recommend clarifying the defence, so that if the person charged can prove that the sale took place after he or she had seen an evidence-of-age document indicating the buyer was 18 or over, that this amounts to reasonable precautions and the exercise of due diligence. The evidence-of-age document would have the same meaning as is defined in the Sale of Liquor Act 1989. We consider this will provide an incentive for retailers to request such forms of identification before selling to persons whose age is not certain.

We note that some retailers suggested that all purchasers should be required to confirm that they are over 18, but we are concerned that such a requirement could be contrary to the New Zealand Bill of Rights Act 1990.

Court orders for repeat offenders

We recommend the addition of a provision enabling the courts to issue an order prohibiting offenders who have repeatedly sold tobacco products to minors from selling tobacco products for a period of up to three months. This relates to two convictions within a two-year period. We suggest there be a three-month lead-in to the commencement of this provision, to allow time to train enforcement officers and for retailers to change their practices.

Restrictions on the location and use of automatic vending machines

Automatic tobacco vending machines are currently restricted to places that people under 18 years of age do not have legal access to. However, we were told that young people readily access products from automatic vending machines in certain premises. The SOP proposed banning the machines altogether. We consider this is not necessary, providing further protections are put in place to ensure minors cannot use these machines. We recommend requiring the machines to be activated directly by the staff of the premises. This could be by way of a remote-control device. We consider this will prevent the use of the machines by under 18-year-olds, as the person activating the machines is required to ensure he is making a legal sale.

The provision relating to automatic vending machines is also extended to include herbal smoking products.

Better consumer information in health warnings and product contents

One focus of the changes we recommend is to ensure consumers receive accurate information about the substances they are consuming, and the likely impact of those substances on their health. We recommend extending the current regulation-making powers in relation to labelling and health messages to include herbal smoking products. We also recommend extending the existing restrictions on the sale of tobacco products, to require the use of pictorial health warnings, and leaflets covering not just health effects but also the constituents (including additives) in tobacco and its smoke, if required by regulations.

We also recommend strengthening the requirements around the testing of, and reporting on, smoking products. Currently tobacco manufacturers and importers are required to test their products each year, and file an annual return detailing the weight of tobacco and all additives used in the manufacture of products, the quantity of each brand sold that year, and the recommended price of each brand. We recommend requiring returns to be specific to individual products, or by class of products. We recommend adding a requirement that the Director-General of Health must publish all these returns on a website, and that she may make the returns available any other way she sees fit. We also recommend the annual testing requirements include herbal smoking products.

Co-packaging of tobacco products with other products

We are concerned about the incidence of tobacco products being packaged with other products as an inducement to purchase, particularly if they are aimed at young people. We recommend prohibiting this practice, and the practice of supplying another product free, or at a reduced price, with a purchase of tobacco products, as we consider this constitutes an effective discount on the price of a tobacco product.

Enforcement provisions

We recommend the inclusion of a new section 14, to provide greater clarity about who is appropriate to appoint as an officer to enforce this Act. The Ministry of Health told us that it does not expect this to result in more enforcement officers, and that the funding to train enforcement officers is already provided for in Vote Health.

We recommend giving enforcement officers some limited powers to aid them in their duties. These officers currently have no powers. The powers include powers to inspect premises and to seek identifying information from any person (who appears to be at least 17 years old) who is reasonably believed to have recently sold a smoking product to a minor. Enforcement officers will not be able to enter private dwellinghouses, except with the consent of the occupier, or if they have a power of entry under other legislation.

Offence provisions

The Act currently provides for fines of up to \$400 for an individual, and up to \$4000 for a body corporate, for employer or operator breaches of the requirements to prepare a written policy on smoking and other workplace requirements. While these provisions are being repealed, similar offences we are recommending would carry the same penalty level.

These new offences are for a school or early childhood centre manager who fails to take all reasonably practicable steps to ensure that no person smokes within the relevant premises at any time, a hospitality venue operator who fails to ensure no person smokes in an internal area of the premises, and an employer who fails to ensure no person smokes in a workplace, except for the legislated exceptions.

Some of us were concerned that employers could be prosecuted if their employees ignored the smoking restrictions. However, we note that if employers have taken all reasonable steps, they would not have committed an offence.

Individual smokers may be issued with infringement notices

Currently, the only offence for an individual other than an employer or operator relates to smoking on an aircraft. We recommend making it an offence for individuals to unlawfully smoke in an indoor workplace, enclosed travel premises, operating taxi or a hospitality venue. We also recommend the introduction of an infringement fee procedure for enforcement officers to use against individuals who commit such an offence. The level of the infringement fee would be set by regulation, and could be up to \$400. We note that such fees are generally set at a level much lower than the maximum provided for in legislation.

We note this type of offence regime is currently used under the Sale of Liquor Act 1989. An infringement offence regime is appropriate for lower levels of offending, enabling an instant 'on the spot' enforcement response.

We consider the infringement offence system will encourage smokers' awareness and accountability for the impact of their actions on others, and create an incentive for individuals to comply with smoke-free workplaces and other public areas.

Commencement

We suggest that the provisions take effect on the following commencement dates:

- enforcement officers and powers, and repeat offender provisions, three months after the bill receives the Royal assent
- school-related restrictions and offences on 1 January 2004 (to fit with the beginning of the school year)
- new indoor workplace provisions, including hospitality venues, operating taxis, ships and trains, and related offences, restrictions on automatic vending machines, compliant retail product display restrictions, labelling and health message restrictions, and reduced charge/co-packaging bans 12 months after the bill receives the Royal assent
- returns and reports from manufacturers from 1 February 2004, and testing harmful constituents provisions from 1 February 2005.

All other provisions, such as the 'purpose' provision, come into effect immediately after the bill receives the Royal assent.

1999/193 Petition of Penny Webster and 12,680 others

The committee was referred the above petition, which requests that the House rejects proposals to force bars and cafés to enclose smokers in separate rooms. We note that we are not recommending such a course of action.

New Zealand National minority view

National has regarded smoking legislation as a conscience issue in the past. The National party reserves the right to have a conscience vote on this bill.

ACT New Zealand minority view

In essence, the Smoke-free Bill aims to ban smoking in all indoor places accessible to the public. It covers premises already covered by workplace legislation but goes further - it does not allow for separate smoking and non-smoking areas in cafés, bars and restaurants.

ACT New Zealand opposes this bill for the following reasons:

1. The changes breach private property rights. Owners of premises will no longer have the right to allow smoking in their public premises, even if every person using the premises smokes, or agrees that smoking should be allowed.
2. We are concerned that responsible employers who have created non-smoking policies and procedures may be fined if smoking occurs in their workplace.
3. We believe scientific evidence is inconclusive regarding the effects of 'second-hand' smoking, and we are concerned the legislation is based on this evidence.
4. We note it will be illegal to smoke in public places even where they have ventilation systems to extract smoke. The evidence as to the effectiveness of ventilation systems has been incorrectly discounted. Allowing such systems would have provided a way to respect freedom and property rights.
5. Organisations and institutions (such as tertiary education institutions and RSAs) should have the right to choose for themselves whether their buildings and grounds should be smoke-free.
6. We found evidence from the Prison Service very strong. Smoking in prisons should be at the discretion of the prison authorities.

ACT New Zealand believes that if a person chooses to smoke despite the risk this poses to their health, they must accept responsibility for the consequences. Legislation banning smoking in public places will have small-to-negligible effect on the incidence of smoking-related diseases, but will have a large negative effect on property rights.

Appendix

Committee process

The Smoke-free Environments (Enhanced Protection) Amendment Bill was referred to the previous Health Committee on 10 May 2000. That committee, chaired by Judy Keall, called for public submissions on the bill, and on Supplementary Order Paper 148, with a closing date of 23 November 2001. The bill and supplementary order paper were carried over to this Parliament on 11 June 2002 at the stage it was at on the dissolution of the last Parliament. Three

hundred and ninety-seven submissions were received and considered from interested groups and individuals. Many supplementary submissions were also received, along with 7656 form submissions. The previous committee heard 84 submissions, and we heard evidence from a further 28 submitters. Hearing evidence took 25 hours and 27 minutes. A further 12 hours and 56 minutes was spent in consideration.

Both committees received advice from the Ministry of Health.

Committee membership

Steve Chadwick (Chairperson)

Judith Collins

Ann Hartley

Dave Hereora

Sue Kedgley

Nanaia Mahuta

Pita Paraone

Heather Roy

Dr Lynda Scott

Judy Turner

Dianne Yates

On 2 October 2002 the House gave leave that, for the purposes of hearing evidence on the Smoke-free Environments (Enhanced Protection) Amendment Bill, Sue Kedgley be chairperson of the committee and Steve Chadwick participate as a full member of the committee.

Steve Chadwick

Smoke-free Environments (*Enhanced Protection*) Amendment Bill

Member's Bill

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((Enhanced Protection)) Amendment**

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The Parliament of New Zealand enacts as follows:

1 Title

(1) This Act is the Smoke-free Environments ((Enhanced Protection)) Amendment Act **1999**.

(2) In this Act, the Smoke-free Environments Act 1990¹ is called “the principal Act”. 5

¹ 1990 No 108

New (unanimous)

**Part 1
Preliminary**

1A Commencement

(1) **Sections 6C, 9A, 10(4), and 12** come into force on the day 3 months after the date on which this Act receives the Royal assent. 10

(2) **Section 6** comes into force on 1 January 2004.

(3) **Sections 2(2), 4, 6A, 6B, 6D, 7, 8, 8A, 8B(1), 8C, 9C, 10(3), 10(5), 10(6), and 11** come into force on the day 12 months after the date on which this Act receives the Royal assent. 15

(4) **Section 9D** comes into force on 1 February 2004.

(5) **Section 9B** comes into force on 1 February 2005.

(6) The rest of this Act comes into force on the day after the date on which it receives the Royal assent.

Struck out (unanimous)

2 Interpretation

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

common air space means any indoor or enclosed area where the air is or may be shared, and includes any room that 2 or more people share or any room into or through which air is circulated by way of mechanical ventilation systems 5

designated smoking area means—

(a) a room that an employer designates in a workplace for smoking— 10

(i) that no worker is required to frequent during the usual course of his or her employment; and

(ii) that is not immediately adjacent to an area in which people work; and

(iii) that is separately and mechanically ventilated to the exterior of the building; and 15

(iv) from which there will not be contamination of common air space as a result of such smoking;

(b) an area designated by an employer outside a workplace **educational institution** means any facility for the education of children other than an institution as defined in section 159 of the Education Act 1989(which definition relates to tertiary institutions); and includes any child-care facility or early childhood centre. 20

(2) The definition of **workplace** in section 2 of the principal Act is amended by inserting, after the word “include”, the words “any educational institution or”. 25

3 Purpose of this Part

Section 4 of the principal Act is amended by omitting the words “inside any workplace or in certain public enclosed areas”, and substituting the words “at any workplace or in certain public areas”. 30

New (unanimous)

2 Interpretation

- (1) Section 2 of the principal Act is amended by repealing the definitions of **distributor, employer, gaming, gaming area, hospital, package, permitted smoking area, prison, retailer, to smoke, and workplace**, and inserting, in their appropriate alphabetical order, the following definitions: 5
- “**additive**,—
- “(a) in relation to a tobacco product, means a substance forming part of the product that is not cured tobacco leaf; and includes— 10
- “(i) a substance forming part of the product that has been derived or refined from tobacco leaf (whether cured or not); and
- “(ii) any wrapping forming part of the product that is not itself cured tobacco leaf; and 15
- “(b) in relation to a herbal smoking product, means a substance forming part of the product that is not dried, or dried and cured, vegetable matter; and includes—
- “(i) a substance forming part of the product that has been derived or refined from vegetable matter; 20
- and
- “(ii) any wrapping forming part of the product that is not itself dried, or dried and cured, vegetable matter
- “**class 4 gambling venue licence** means a class 4 venue licence within the meaning of **section 4(1) of the Gambling Act 2003** 25
- “**coastal cargo** has the meaning given to it by section 198(6) of the Maritime Transport Act 1994
- “**dedicated smoking room** means an internal area in a hospital care institution, a residential disability care institution, or a rest home that is used solely to enable patients or residents who smoke to smoke, or to socialise with each other in a place where smoking is permitted 30
- “**distributor** means a person engaged in the business of selling tobacco products, or (as the case may be) herbal smoking products, otherwise than at retail only 35

New (unanimous)

“**early childhood centre** has the meaning given to it by section 308(1) of the Education Act 1989

“**employer**—

“(a) means a person who employs one or more employees; and

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“(b) includes a person who arranges for volunteers to undertake work

“**enforcement officer** means a person for the time being appointed under **section 14** to enforce Parts I and II, or provisions of Parts I and II

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“**foreign ship** means a ship that is not a New Zealand ship

“**herbal smoking product** means a product that—

“(a) is or contains vegetable matter; and

“(b) is intended to be smoked; but

“(c) contains no tobacco

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“**hospital care institution** has the meaning given to that term by section 58(4) of the Health and Disability Services (Safety) Act 2001

“**internal area**, in relation to any premises or vehicle, means an area within or on the premises or vehicle that, when all its doors, windows, and other closeable openings are closed, is completely or substantially enclosed by—

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“(a) a ceiling, roof, or similar overhead surface; and

“(b) walls, sides, screens, or other similar surfaces; and

“(c) those openings

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“**managers**, in relation to a school, or premises to which **section 7A(4)** applies, means all the people who control and manage the school or premises, whether or not they have a proprietary interest in the school or premises

“**New Zealand continental waters** has the meaning given to it by section 222(1) of the Maritime Transport Act 1994

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“**New Zealand ship** has the meaning given to it by section 2(1) of the Ship Registration Act 1992

“**of the same kind** means not differing in a manner stated in **subsection (2)**

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New (unanimous)

“**open area**, in relation to any premises, means a part of the premises that is not an internal area

“**operating taxi** means a taxi at a time when—

“(a) it is carrying a passenger; or

“(b) its driver is—

“(i) travelling to begin plying for hire; or

“(ii) plying for hire; or

“(iii) travelling to pick up a passenger; or

“(iv) returning from carrying a passenger (otherwise than at the end of a shift); or

“(v) resting, eating, or drinking before beginning or resuming plying for hire

“**package** means a pack, carton, wrapping, or other container in which tobacco products, or (as the case may be) herbal smoking products, are customarily sold at retail

“**prescribed petroleum operations** means petroleum operations prescribed for the purposes of the Health and Safety in Employment Act 1992 by regulations made under that Act

“**prison**—

“(a) means a penal institution within the meaning of the Penal Institutions Act 1954; and

“(b) includes a facility attached to a prison

“**registered school** has the meaning given to it by section 2(1) of the Education Act 1989

“**residential disability care institution** has the meaning given to that term by section 58(4) of the Health and Disability Services (Safety) Act 2001

“**retailer** means a person engaged in any business that includes the sale of tobacco products, or (as the case may be) herbal smoking products, at retail

“**school premises** means premises that are—

“(a) a registered school; or

“(b) facilities, grounds, structures, or other premises, controlled and managed by the managers of a registered school, and used principally for—

“(i) the enjoyment, recreation, or relaxation of the young people attending the school; or

New (unanimous)

“(ii) cultural or sporting activities (or both) involving, or undertaken for the benefit of, the young people attending the school

“**ship** has the meaning given to it by section 2(1) of the Ship Registration Act 1992 5

“**ship on demise charter to a New Zealand-based operator** has the meaning given to it by section 4 of the Ship Registration Act 1992

“**to smoke**,—

“(a) means to smoke, hold, or otherwise have control over an ignited tobacco product, weed, or plant; and 10

“(b) includes to smoke, hold, or otherwise have control over an ignited product or thing whose customary use is or includes the inhalation from it of the smoke produced from its combustion or the combustion of any part of it; but 15

“(c) does not include to hold or have control over an ignited product or thing customarily used as incense

“**taxi** means a small passenger service vehicle for which a passenger service licence (within the meaning of section 2(1) of the Transport Services Licensing Act 1989) is held 20

“**variant** means sold in tobacco packages, or (as the case may be) packages of a herbal smoking product, that are not of the same kind

“**volunteer** means a person of any age who— 25

“(a) performs for an employer, otherwise than for hire or reward, any work arranged by or on behalf of the employer; or

“(b) performs for the master of a ship, otherwise than for hire or reward, any work arranged by or on behalf of the owner or master of the ship 30

“**workplace**, in relation to an employer,—

“(a) means an area that is— 35
“(i) an internal area, within or on a building or structure occupied by the employer, usually frequented by employees or volunteers during the course of their employment; or

New (unanimous)

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|--|----|
| “(ii) an internal area, within or on a ship (being a ship to which section 10 applies), an aircraft, or a train, owned, leased, or otherwise operated by the employer, usually frequented by employees or volunteers during the course of their employ- | 5 |
| ment; and | |
| “(b) includes a cafeteria, corridor, lift, lobby, stairwell, toilet, washroom, or other common internal area attached to, forming part of, or used in conjunction with a work- | 10 |
| place within the meaning of paragraph (a) ; and | |
| “(c) includes an internal area within or on a vehicle that— | |
| “(i) is not an aircraft, a ship, or a train; but | |
| “(ii) is provided by the employer and normally used | |
| by employees or volunteers; and | |
| “(d) includes an operating taxi; but | 15 |
| “(e) does not include— | |
| “(i) a motel, or a bedroom or suite in a hotel; or | |
| “(ii) a cabin or suite, for the time being assigned to a | |
| passenger or passengers, on a ship; or | |
| “(iii) a sleeping compartment, for the time being | 20 |
| assigned to a passenger or passengers, on a train; | |
| or | |
| “(iv) a cabin, for the time being assigned to only one | |
| employee or volunteer, or to the master or owner, | |
| on a ship; or | 25 |
| “(v) a sleeping compartment, for the time being | |
| assigned to only one employee or volunteer, on a | |
| train; or | |
| “(vi) a prison cell; or | |
| “(vii) a dwellinghouse occupied by the employer.” | 30 |
| (2) Section 2 of the principal Act is amended by repealing the | |
| definition of licensed premises , and substituting the follow- | |
| ing definition: | |
| “ licensed premises means any premises, or any part of any | |
| premises, on which liquor may be sold pursuant to a licence | 35 |
| under the Sale of Liquor Act 1989”. | |
| (3) Section 2 of the principal Act is amended by adding, as | |
| subsections (2) and (3) , the following subsections: | |

New (unanimous)

- “(2) For the purposes of the definition of **of the same kind** in **subsection (1)**,—
- “(a) tobacco packages, tobacco cartons, or packages of a herbal smoking product differ if they bear different brand names: 5
 - “(b) tobacco packages, tobacco cartons, or packages of a herbal smoking product differ if they bear the same brand name, but the products they contain differ in 1 or more of the following ways:
 - “(i) containing or not containing menthol: 10
 - “(ii) being otherwise differently flavoured:
 - “(iii) producing different quantities of tar:
 - “(iv) allegedly differing in ‘mildness’:
 - “(v) having or not having filter tips or cork tips:
 - “(vi) containing different numbers of pieces: 15
 - “(vii) containing pieces of different length or mass:
 - “(c) tobacco cartons differ if they are sold under the same brand name, but they contain different numbers of tobacco packages.
- “(3) For the purposes of **paragraph (e)(vii)** of the definition of **work-place** in **subsection (1)**, no part of a ship is capable of being a dwellinghouse occupied by an employer.” 20

Part 2

Amendments to Part II of principal Act

- 3 New section 4 substituted** 25
- The principal Act is amended by repealing section 4 and the heading before it, and substituting the following heading and section:
- “Part 1**
- “Smoke-free workplaces and public areas** 30
- “4 Purposes of this Part**
- The purposes of this Part are—
- “(a) to prevent the detrimental effect of other people’s smoking on the health of people in workplaces, or in certain public enclosed areas, who do not smoke or do not wish to smoke there; and 35

New (unanimous)

“(b) to prevent young people who are being taught or cared for in registered schools or early childhood centres from being influenced by seeing other people smoke there; and

“(c) to prevent the detrimental effect of other people’s smoking on the health of young people who are being taught or cared for in registered schools or early childhood centres.” 5

Struck out (unanimous)**4 Employers to have written policy on smoking**

(1) Section 5(4) of the principal Act is amended by repealing paragraphs (a) and (b), and substituting the following paragraph: 10

“(a) subject to **subsection (5A)**, that smoking must not be permitted in any workplace where 2 or more persons work in a common air space:” 15

(2) Section 5 of the principal Act is amended by inserting, after subsection (5), the following subsection:

“(5A) Subsection (4) (a) does not apply to smoking in—

“(a) a designated smoking area; or

“(b) a cafeteria or tearoom in a workplace that has— 20

“(i) 2 such rooms, in which case 1 of the rooms may be used as a designated smoking area; or

“(ii) more than 2 such rooms, in which case a maximum of 50 percent of the rooms may be used as designated smoking areas:” 25

“Provided that, in either case, workers would not be required to have meals in the room or rooms so designated and all non-smokers in the workplace have space to take meals in the non-smoking room or rooms in the event that they choose to do so.” 30

(3) Section 5 of the principal Act is amended by repealing subsection (6), and substituting the following subsection:

Struck out (unanimous)

- (6) Nothing in this section prevents an employer from agreeing that smoking may be permitted in an enclosed area in circumstances in which each employee in the common air space who may be affected by such smoking, in writing,—
- (a) requests that smoking be permitted there; or 5
 - (b) states that he or she does not object to that area being a designated smoking area.
- 5 Duties of employer**
- (1) Section 7(a) of the principal Act is amended by inserting, after the words “permitted smoking areas”, the words “or designated smoking areas”. 10
- (2) Section 7 of the principal Act is amended by inserting, after paragraph (c), the following paragraph:
- “(ca) supply for viewing by a person appointed under section 14, upon request made at any reasonable time by that person, a copy of the written policy on smoking; and”. 15
- (3) Section 7(d) of the principal Act is amended by inserting, after the words “Implement”, the words “and comply with”.

New (unanimous)

- 4 New sections 5 to 6A substituted**
- The principal Act is amended by repealing sections 5 to 7, and substituting the following sections: 20
- “5 Smoking in workplaces prohibited**
- “(1) An employer must take all reasonably practicable steps to ensure that no person smokes at any time in a workplace that is not— 25
- “(a) a vehicle in which smoking is permitted under **section 5A**; or
 - “(b) a dedicated smoking room in which smoking is permitted under **section 6**.
- “(2) No employee or volunteer may smoke at any time in a workplace that is not a vehicle in which smoking is permitted under **section 5A**. 30

New (unanimous)

- “5A Employer may permit smoking in vehicle with consent of users**
- An employer may permit smoking in a vehicle provided by the employer and normally used by employees or volunteers if— 5
- “(a) the public does not normally have access to any part of it; and
 - “(b) all the employees and volunteers who use it regularly or from time to time have jointly or individually given the employer written notice— 10
 - “(i) asking the employer to permit smoking in it; or
 - “(ii) stating that they do not object to other employees and volunteers smoking in it; and
 - “(c) since last giving the employer notice to that effect, none of the employees and volunteers who use it regularly or from time to time has given the employer written notice that he or she— 15
 - “(i) no longer wishes the employer to permit smoking in it; or
 - “(ii) now objects to other employees and volunteers smoking in it. 20
- “6 Dedicated smoking rooms in hospital care institutions, residential disability care institutions, and rest homes**
- “(1) An employer may permit smoking by patients or residents of a workplace that is, or is part of, a hospital care institution, a residential disability care institution, or a rest home if— 25**
- “(a) the smoking takes place only in one or more dedicated smoking rooms; and
 - “(b) each dedicated smoking room is equipped with or connected to a mechanical ventilation system to which **subsection (2)** applies; and 30
 - “(c) the employer has taken all reasonably practicable steps to minimise the escape of smoke from the dedicated smoking rooms into any part of the workplace that is not a dedicated smoking room; and 35

New (unanimous)

- “(d) for each dedicated smoking room, there is available for patients or residents who wish to socialise in a smoke-free atmosphere an adequate equivalent room.
- “(2) This subsection applies to a mechanical ventilation system with which a dedicated smoking room in a workplace is equipped if, and only if,— 5
- “(a) the system is so designed, installed, and operating that it takes air from the room to a place outside the workplace where any smoke the air may contain will not enter any part of the workplace, either— 10
- “(i) directly; or
- “(ii) through one or more other dedicated smoking rooms; and
- “(b) no part of the workplace that is not a dedicated smoking room is equipped with or connected to the system. 15
- “(3) **Subsection (1)**—
- “(a) does not authorise an employer to permit a person who is not a patient or resident of the institution or home concerned to smoke in a dedicated smoking room; and
- “(b) does not authorise a person who is not a patient or resident of the institution or home concerned to smoke in a dedicated smoking room. 20
- “6A **Smoking in prison cells**
- “(1) The superintendent of a prison must ensure that there is a written policy on smoking in the prison’s cells, prepared for the protection of the health of employees and inmates. 25
- “(2) The policy—
- “(a) must be based on the principles that—
- “(i) as far as is reasonably practicable, an employee or inmate who does not smoke, or does not wish to smoke in the prison, must be protected from smoke arising from smoking in the prison’s cells: 30
- “(ii) unless it is not reasonably practicable to do otherwise, an inmate who does not wish to smoke in his or her cell must not be required to share it with an inmate who does wish to smoke in it; and 35

New (unanimous)

- “(b) must state the procedure for making complaints under this Part.
- “(3) The superintendent—
- “(a) must ensure that the policy complies with **subsection (2)**; and
- “(b) must take all reasonably practicable steps to ensure that the policy is complied with.”

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Struck out (unanimous)**6 New section 7A inserted**

The principal Act is amended by inserting, after section 7, the following section:

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7A Smoking prohibition at educational institutions

- “(1) No person is permitted to smoke at any time on the premises (including the grounds) of an educational institution.
- “(2) Every educational institution must display a prominent notice indicating that smoking is not permitted on the premises of the institution.”

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7 Offences in respect of smoking

- (1) Section 17 of the principal Act is amended by inserting, after subsection (2), the following subsection:

“(2A) Every person in control of an educational institution who, without reasonable excuse, permits any person to smoke in contravention of **section 7A(1)** or fails to comply with the requirement of **section 7A(2)** commits an offence and is liable,—

20

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

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

- (2) Section 17(9) of the principal Act is amended by inserting, after the words “contravention of”, the words “**section 7A(1)** or”.

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New (unanimous)

6 New section 7A inserted

The principal Act is amended by inserting, before section 8, the following section:

“7A Smoking prohibited at schools and early childhood centres

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“(1) The managers of school premises or premises to which subsection (4) applies must take all reasonably practicable steps to ensure that—

“(a) no person smokes in any part of the premises (whether an internal area or an open area) at any time on any day; and

10

“(b) a notice stating that smoking within the premises is forbidden at all times is prominently displayed at or immediately inside—

“(i) every entrance to the premises; and

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“(ii) every outer entrance to every building or enclosed area forming part of the premises.

“(2) Subsection (1)(b)(ii) does not apply to—

“(a) a building or enclosed area not usually or from time to time used by young people attending the school or centre concerned or members of the public; or

20

“(b) an outer entrance used by young people attending the school or centre concerned or members of the public only temporarily or in emergencies.

“(3) The occupier of premises that are neither school premises nor premises to which subsection (4) applies must take all reasonably practicable steps to ensure that no person smokes within any area of the premises (whether an internal area or an open area) that—

25

“(a) is being used as an early childhood centre; or

30

“(b) is so situated and ventilated that smoke from people smoking in it is likely to enter another area of the premises that is being used as an early childhood centre.

“(4) This subsection applies to premises—

“(a) that are used exclusively or primarily as an early childhood centre; or

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“(b) that are facilities, grounds, structures, or other premises, controlled and managed by the managers of premises

New (unanimous)

- that are used exclusively or primarily as an early childhood centre, and used exclusively or primarily for—
- “(i) the enjoyment, recreation, or relaxation of the children attending the centre; or
 - “(ii) cultural or sporting activities (or both) involving, or undertaken for the benefit of, the children attending the centre.” 5
- 6A Smoking restricted in passenger service vehicles**
- (1) Section 9 of the principal Act is amended by inserting, after subsection (1), the following subsections: 10
- “(1A) The operator of an operating taxi must not permit any person to smoke in it.
- “(1B) No person may smoke in an operating taxi, whether or not it is carrying passengers.”
- (2) Section 9(3) of the principal Act is amended by inserting, after the words “service vehicle”, the words “(other than an operating taxi)”. 15
- 6B New sections 10 to 13B substituted**
- The principal Act is amended by repealing sections 10 to 13A, and substituting the following sections: 20
- “10 Application of Act to ships**
- This Act applies to a ship if, and only if, it is—
- “(a) a New Zealand ship that is within New Zealand; or
 - “(b) a foreign ship that—
 - “(i) is a ship on demise charter to a New Zealand-based operator; and
 - “(ii) is carrying coastal cargo within New Zealand; or
 - “(c) a foreign ship that is carrying out prescribed petroleum operations in New Zealand continental waters. 25
- “11 Smoking prohibited in certain travel premises 30**
- “(1) This section applies to any area that—
- “(a) is located within an enclosed travel terminal; and
 - “(b) is a booking area, passenger queuing area, passenger waitingroom, or passenger lounge.

New (unanimous)

- “(2) The owner or occupier of an area to which this section applies must not permit any person to smoke in it.
- “(3) No person may smoke in an area to which this section applies.
- “12 **Smoking on licensed premises**
- “(1) The licensee of any licensed premises must take all reasonably practicable steps to ensure that no person smokes at any time in a part of the premises that is not an open area. 5
- “(2) **Subsection (1)** does not prevent the licensee of any licensed premises from prohibiting smoking in a part of the premises that is an open area. 10
- “(3) No person may smoke at any time in a part of any licensed premises that is not an open area.
- “13 **Smoking in restaurants**
- “(1) The operator of a restaurant must take all reasonably practicable steps to ensure that no person smokes at any time in any part of the restaurant that is not an open area. 15
- “(2) **Subsection (1)** does not prevent the operator of a restaurant from prohibiting smoking in a part of the restaurant that is an open area.
- “(3) No person may smoke at any time in any part of a restaurant that is not an open area. 20
- “13A **Smoking in casinos**
- “(1) The holder of the casino operator’s licence in respect of a casino must take all reasonably practicable steps to ensure that no person smokes at any time in any part of the casino that is not an open area. 25
- “(2) **Subsection (1)** does not prevent the holder of the casino operator’s licence in respect of a casino from prohibiting smoking in a part of the casino that is an open area.
- “(3) No person may smoke at any time in any part of a casino that is not an open area. 30

New (unanimous)

- 13B Smoking in certain gaming machine venues**
- “(1) The holder of a class 4 gambling venue licence in respect of a place must take all reasonably practicable steps to ensure that no person smokes at any time in any part of the place that is not an open area. 5
- “(2) **Subsection (1)** does not prevent the holder of a class 4 gambling venue licence in respect of a place from prohibiting smoking in a part of the place that is an open area.
- “(3) No person may smoke at any time in any part of a place in respect of which a class 4 gambling venue licence is held that is not an open area.” 10
- 6C New section 14 substituted**
- The principal Act is amended by repealing section 14, and substituting the following section:
- 14 Enforcement officers** 15
- “(1) The Director-General must appoint to enforce this Part and Part II people who are—
- “(a) employees of the Ministry of Health, a local authority under the Local Government Act 1974, or a District Health Board under the New Zealand Public Health and Disability Act 2000; or 20
- “(b) employees or officers of some other person or body; or
- “(c) officers designated under section 7A of the Health Act 1956; or
- “(d) inspectors appointed under the Health and Safety in Employment Act 1992. 25
- “(2) A person may be appointed by name, or as the holder for the time being of a particular position.
- “(3) The Director-General must not appoint a person under **subsection (1)(b)** unless satisfied— 30
- “(a) in the case of a named person, that he or she is suitably qualified and trained:
- “(b) in the case of the holder for the time being of a particular position, that holders of the position are likely to be suitably qualified and trained. 35

New (unanimous)

- “(4) Every enforcement officer must have an instrument of appointment identifying the holder as an enforcement officer appointed under this section.
- “(5) The Director-General may do any or all of the following:
- “(a) appoint people to enforce only some of the provisions of this Part and Part II: 5
 - “(b) appoint people to exercise only some of the powers given to enforcement officers by **Part 2A (enforcement powers)**:
 - “(c) appoint people subject to limitations or restrictions on their exercise of enforcement powers. 10
- “(6) An enforcement officer’s instrument of appointment must state—
- “(a) that he or she is appointed to enforce—
 - “(i) all the provisions of this Part and Part II; or 15
 - “(ii) only stated provisions of this Part and Part II; or
 - “(iii) all the provisions of this Part and Part II other than certain stated provisions; and
 - “(b) that he or she is appointed to exercise—
 - “(i) all enforcement powers; or 20
 - “(ii) only stated enforcement powers; or
 - “(iii) all enforcement powers other than certain stated powers; and
 - “(c) all limitations and restrictions on his or her exercise of enforcement powers imposed under **subsection (5)(c)**.” 25

6D Complaints relating to workplace smoking policies

- (1) Section 15 of the principal Act is amended by omitting from the heading the word “**policies**”.
- (2) Section 15(4) of the principal Act is amended by inserting, after the word “employee” in both places where it occurs, the words “or volunteer”. 30
- (3) Section 15 of the principal Act is amended by repealing subsection (6), and substituting the following subsection:

New (unanimous)

“(6) If within 40 working days after receiving the complaint the employer is unable to investigate it and resolve it by agreement, the employer must refer it, in writing, to the Director-General.”

6E Complaints to Director-General 5

Section 16(2)(a)(ii) of the principal Act is amended by inserting, after the word “employee”, the words “or volunteer”.

7 New sections 17 to 17D substituted 10

The principal Act is amended by repealing section 17, and substituting the following sections:

“17 Offences in respect of smoking

“(1) An employer who fails to comply with **section 5(1)** commits an offence.

“(2A) The managers of any premises who fail to comply with **section 7A(1)** commit an offence. 15

“(2B) The occupier of any premises who fails to comply with **section 7A(3)** commits an offence.

“(3) The operator of an aircraft who, without reasonable excuse, permits a person to smoke in contravention of section 8(1) commits an offence. 20

“(4) The operator of a passenger service vehicle who, without reasonable excuse, permits a person to smoke in contravention of subsection (1) or **subsection (1A)** of section 9 commits an offence. 25

“(6) The owner or occupier of an area to which **section 11** applies who, without reasonable excuse, permits any person to smoke in the area commits an offence.

“(7) A licensee who fails to comply with **section 12(1)** commits an offence. 30

“(8) The operator of a restaurant who fails to comply with **section 13(1)** commits an offence.

New (unanimous)

- “(8A) The holder of a casino operator’s licence who fails to comply with **section 13A(1)** commits an offence.
- “(8B) The holder of a class 4 gambling venue licence who fails to comply with **section 13B(1)** commits an offence.
- “(8C) An employer who, without reasonable excuse, fails to comply with **section 15(6)** commits an offence. 5
- “(9) A person who smokes in contravention of section 8(2) commits an offence.
- “(10) A person who smokes in contravention of **section 5(2), section 9(1B), section 11(3), section 12(3), section 13(3), section 13A(3), or section 13B(3)** commits an offence. 10
- 17A Penalties**
- “(1) The managers of any premises who commit an offence against **section 17(2A)** are liable—
- “(a) in the case of managers who are a body corporate, to a fine not exceeding \$4,000; and 15
- “(b) in the case of managers who are not a body corporate, to a fine not exceeding \$400 each.
- “(2) A person who commits an offence against a provision of **section 17** other than **subsection (2A), subsection (8C), subsection (9), or subsection (10)** is liable— 20
- “(a) in the case of a person who is a body corporate, to a fine not exceeding \$4,000; and
- “(b) in the case of a person who is not a body corporate, to a fine not exceeding \$400. 25
- “(3) An employer who commits an offence against **section 17(8C)** is liable—
- “(a) in the case of an employer who is a body corporate, to a fine not exceeding \$1,000; and
- “(b) in the case of an employer who is not a body corporate, to a fine not exceeding \$100. 30
- “(4) A person who commits an offence against **section 17(9)** is liable to a fine not exceeding \$400.
- “(5) Subject to **section 17B**, a person who commits an offence against **section 17(10)** is liable to a fine not exceeding \$400. 35

New (unanimous)

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| “17B Prosecutions of certain individual smokers to be commenced by infringement notice only | |
| “(1) A person alleged to have committed an offence against section 17(10) may be served with an infringement notice as provided in section 17C . | 5 |
| “(2) A prosecution for an offence against section 17(10) cannot be commenced by information or indictment; and section 107 of the Crimes Act 1961 does not apply to such an offence. | |
| “17C Infringement notices | |
| “(1) An enforcement officer who has reasonable cause to believe that a person has committed an offence against section 17(10) may issue an infringement notice to the person. | 10 |
| “(2) The infringement notice may be served— | |
| “(a) by delivering it personally to the person; or | |
| “(b) by sending it by post addressed to the person at his or her last known place of residence or business. | 15 |
| “(3) If the infringement notice is sent by post addressed to the person at his or her last known place of residence or business, it is for the purposes of the Summary Proceedings Act 1957 to be treated as having been served on the person when it was posted. | 20 |
| “(4) The infringement notice must be in the prescribed form, and must contain the following particulars: | |
| “(a) details of the alleged offence sufficient to inform the person fairly of its time, place, and nature; and | 25 |
| “(b) the amount of the infringement fee for the offence (being an amount, not exceeding \$400, prescribed by regulation for the purposes of section 17B); and | |
| “(c) the address or addresses at which the infringement fee may be paid; and | 30 |
| “(d) the time within which the infringement fee may be paid; and | |
| “(e) a summary of section 21(10) of the Summary Proceedings Act 1957; and | |
| “(f) a statement that the person has a right to ask for a hearing; and | 35 |

New (unanimous)

“(g) a statement of the consequences if the person does not pay the fee and does not ask for a hearing; and	
“(h) any other particulars prescribed by regulations made under subsection (6) .	
“(5) Proceedings in respect of the alleged offence may be commenced in accordance with section 21 of the Summary Proceedings Act 1957; and in that case the section (except subsection (1)(a)) applies with any necessary modifications.	5
“(6) The Governor-General may, by Order in Council, make regulations for all or any of the following purposes:	10
“(a) prescribing the form of infringement notices under this section:	
“(b) prescribing any particulars to be contained in infringement notices under this section in addition to those stated in paragraphs (a) to (g) of subsection (4) :	15
“(c) prescribing for the purposes of section 17B the amount of the infringement fee payable in respect of an offence against section 17(10) :	
“(d) providing for any matters contemplated by this section, necessary for its proper administration, or necessary for giving it full effect.	20
“17D Infringement fees	
“(1) All infringement fees are payable to the Director-General.	
“(2) The Director-General must pay into the Crown Bank Account all infringement fees received.”	25
7A New section 20A inserted	
The principal Act is amended by inserting, after section 20, the following section:	
“20A Health and Safety in Employment Act 1992 not affected	
Nothing in this Part, and no steps taken in compliance or purported compliance with this Part, limits or affects—	30
“(a) the Health and Safety in Employment Act 1992; or	
“(b) the obligations of any person under that Act.”	

New (unanimous)

Part 3
Other amendments

7B Heading to Part II amended

The heading to Part II of the principal Act is amended by omitting the words “Tobacco Products Control”, and substituting the words “**Control of smoking products**”. 5

Struck out (unanimous)

8 Exemptions for retailers and vending machines

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

- “(a) expose any tobacco product for sale inside the retailer’s place of business so long as no such product is visible— 10
 “(i) from outside that place; or
 “(ii) at any check-out counter or other point of sale inside that place.”.

9 New section 30AA inserted 15

The principal Act is amended by inserting, after section 30, the following section:

“30AA Prohibition on sales by repeat offenders

- “(1) This section applies to a person who— 20
 “(a) is convicted of an offence under section 30(1); and
 “(b) within 2 years after conviction for the offence, is convicted of a further offence under that subsection.
- “(2) A court may, at the time that it is sentencing a person to whom **subsection (1)** applies for the further offence, make an order— 25
 “(a) prohibiting the person from selling all tobacco products or such tobacco products as the court specifies; or
 “(b) imposing conditions or restrictions on the sale of tobacco products by the person.
- “(3) An order under **subsection (2)** applies, with respect to a retailer who sells tobacco products from more than one outlet, only in relation to the outlet or outlets at which the offences occurred.”. 30

Struck out (unanimous)

10 Offences in respect of tobacco products

Section 36 of the principal Act is amended by inserting, after subsection (7), the following subsection:

“(7AA) Every person commits an offence and is liable to a fine not exceeding **\$10,000** who fails to comply with a prohibition order under **section 30AA(2)(a)** or an order imposing conditions or restrictions on the sale of tobacco products under **section 30AA(2)(b)**.”

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New (unanimous)

8 Exemptions for retailers and vending machines

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

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“(a) expose a tobacco product for sale inside the retailer’s place of business if its exposure complies with **section 23A**.”

8A New section 23A inserted

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The principal Act is amended by inserting, after section 23, the following section:

“23A Compliant product display

“(1) The exposure of tobacco products for sale inside a retailer’s place of business complies with this section if, and only if,—

20

“(a) no tobacco product exposed for sale is visible from outside the place; and

“(b) unless the place of business is a tobacconist’s shop, not more than 100 tobacco packages are exposed for sale at any point of sale; and

25

“(c) unless the place of business is a tobacconist’s shop, not more than 40 tobacco cartons are exposed for sale at any point of sale; and

“(d) not more than 2 tobacco packages of the same kind are exposed for sale at any point of sale; and

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“(e) not more than 2 tobacco cartons of the same kind are exposed for sale at any point of sale; and

“(f) either—

New (unanimous)

- | | |
|---|-------------|
| “(i) no tobacco product is exposed for sale within 1 metre of any children’s product exposed for sale; or | |
| “(ii) if, because of the size of the place, it is not reasonably practicable to keep all tobacco products exposed for sale at least 1 metre from any children’s product exposed for sale, the retailer has taken all reasonably practicable steps to ensure that every tobacco product exposed for sale that is within 1 metre of any children’s product exposed for sale is as far away from the children’s product as possible; and | 5

10 |
| “(g) no tobacco product is exposed for sale on any counter top or similar surface; and | |
| “(h) there is displayed at each point of sale where tobacco products are exposed for sale a rectangular sign with the words ‘Smoking Kills’ printed in black— | 15 |
| “(i) within a black rectangular border that is no wider than an upper case letter ‘i’ in the point size used for the words; and | 20 |
| “(ii) on a white background within that border; and | |
| “(iii) in the typeface known as Helvetica; and | |
| “(iv) in roman font, and upper case and lower case letters, as it is set out above; and | |
| “(v) with the word ‘Kills’ centred below the word ‘Smoking’; and | 25 |
| “(vi) in type that is clear and legible, of normal weight, and of such a size that the word ‘Smoking’ does not touch the vertical elements of the border, but as nearly as possible takes up the full width of the sign between them. | 30 |
| “(2) The sign must have at least the lesser of the following areas: | |
| “(a) 1 square metre; | |
| “(b) 10% of the area of the display in which the tobacco products are exposed for sale. | 35 |
| “(3) The sign may include the attribution ‘Ministry of Health Warning’, printed after the words ‘Smoking Kills’,— | |

New (unanimous)

- “(a) in upper case and lower case letters, as it is set out above; and
- “(b) in italic font in the type face known as Helvetica; and
- “(c) in a point size such that its risers are no more than half the height of the equivalent risers of the words ‘Smoking Kills’; and 5
- “(d) otherwise in accordance with **subsection (1)(h)**.
- “(4) In **subsection (1)**,—
- “**children’s product**—
- “(a) means a product (such as comics, games, and toys) marketed primarily for children; and 10
- “(b) includes confectionery, ice-cream, soft drinks, and other similar products
- “**point of sale**—
- “(a) means a checkout where tobacco products may be bought; and 15
- “(b) includes a till or cashbox, where tobacco products may be bought, even if it is not at or part of a checkout
- “**tobacco carton** means a box, carton, pack, packet, pouch, tin, wrapping, or other package containing 2 or more tobacco packages 20
- “**tobacconist’s shop**—
- “(a) means a retail shop that,—
- “(i) is held out as a specialist retail seller of tobacco products (even if it is also held out as a specialist retail seller of other products such as newspapers and magazines, or it also provides services such as hairdressing, or both); and 25
- “(ii) obtains from the retail sale of tobacco products at least 60% of the gross revenue it obtains from retail sales; but 30
- “(b) does not include any retail shop within premises in which petroleum products are sold to motorists
- “**tobacco package**—
- “(a) means a box, pack, packet, pouch, tin, wrapping, or other package containing a tobacco product or products; but 35

New (unanimous)

- “(b) does not include a tobacco carton.
- “(5) For the purposes of **subsection (1)(h)**, tobacco products are exposed for sale at a point of sale if they are exposed for sale—
- “(a) in a display that forms part of a unit or counter of which that point of sale forms part; or 5
- “(b) at a place that—
- “(i) is within 2 metres of that point of sale; and
- “(ii) is not closer to some other point of sale than to that point of sale.” 10
- 8B Free distribution and rewards prohibited**
- (1) Section 28 of the principal Act is amended by inserting, after subsection (1), the following subsection:
- “(1A) For the purposes of subsection (1), a tobacco product is distributed or supplied at a reduced charge— 15
- “(a) if the charge for the product itself is reduced; or
- “(b) if—
- “(i) the product is distributed or supplied at a charge that is not or purports not to be reduced; but
- “(ii) some other item is supplied, free or at a reduced charge, together with the product.” 20
- (2) Section 28(3) of the principal Act is repealed.
- 8C New sections 29A and 29B inserted**
- The principal Act is amended by inserting, before section 30, the following sections: 25
- “29A Sale of tobacco products with other products prohibited**
- “(1) This subsection applies to a tobacco product if it is—
- “(a) packed together with a product that is not a tobacco product; or
- “(b) distributed or supplied, together with a product that is not a tobacco product, at a single price. 30
- “(2) No manufacturer, distributor, importer, or retailer of tobacco products may,—
- “(a) distribute a tobacco product to which **subsection (1)** applies; or 35

New (unanimous)

“(b) supply a tobacco product to which subsection (1) applies to another person for later distribution; or	
“(c) in the case of a retailer, supply a tobacco product to which subsection (1) applies to another person for the purpose of that retailer’s business.	5
“29B Restriction on use of automatic vending machines	
“(1) No person may—	
“(a) permit an automatic vending machine that dispenses or is capable of dispensing tobacco products or herbal smoking products to be located in a place to which members of the public have access; or	10
“(b) permit a tobacco product or herbal smoking product to be sold by way of an automatic vending machine in a place to which members of the public have access.	
“(2) Subsection (1) does not apply to an automatic vending machine if—	15
“(a) no individual sale can occur unless the machine is activated by the person who would otherwise be in breach of that subsection (or an employee or agent of that person); and	20
“(b) the device used to activate the machine is permanently located in a place from which any person using it can see the person to whom the sale is to be made.	
“(3) For the purposes of this Act, a person who activates an automatic vending machine so that a sale of a tobacco product or herbal smoking product to another person occurs is a party to the sale of that product to the other person.”	25
9 New sections 30 and 30AA substituted	
The principal Act is amended by repealing section 30, and substituting the following sections:	30
“30 Sale of tobacco products and herbal smoking products to people under 18 prohibited	
“(1) No person may sell a tobacco product or herbal smoking product to a person younger than 18 years.	

New (unanimous)

- “(2) It is a defence to a charge in respect of a contravention of **subsection (1)** if the person charged proves that the contravention occurred without his or her knowledge and that he or she took reasonable precautions and exercised due diligence to prevent the contravention of that subsection. 5
- “(2A) For the purposes of **subsection (2)**, a person charged in respect of a contravention of **subsection (1)** who proves that he or she sighted an evidence of age document (within the meaning of section 2A of the Sale of Liquor Act 1989) of the person to whom the product concerned was sold, indicating that the person was of or over the age of 18 years, proves that the contravention occurred without his or her knowledge and that he or she took reasonable precautions and exercised due diligence to prevent the contravention of that subsection. 10
- “(2B) **Subsection (2A)** does not affect the generality of **subsection (2)**. 15
- “(3) It is not a defence to a charge in respect of a contravention of **subsection (1)**—
- “(a) that the person to whom the product concerned was sold was buying it for or on behalf of, or as agent for, a person of or over the age of 18 years; or 20
- “(b) that the person charged believed on reasonable grounds that the person to whom the product concerned was sold was buying it for or on behalf of, or as agent for, a person of or over the age of 18 years.
- “(6) Every person who sells by retail a tobacco product or herbal smoking product must display clearly for the public a notice to the effect that the sale of tobacco products and herbal smoking products to people who are younger than 18 years is prohibited. 25
- “30AA **Supplying tobacco products or herbal smoking products to people under 18 prohibited** 30
- “(1) No person may, in a public place (within the meaning of section 2 of the Summary Offences Act 1981),—
- “(a) supply a tobacco product or herbal smoking product to a person younger than 18 years; or 35

New (unanimous)

- “(b) supply a tobacco product or herbal smoking product to a person with the intention that it be supplied (directly or indirectly) to a person younger than 18 years.
- “(2) It is a defence to a charge in respect of a contravention of **subsection (1)** if the person charged proves that he or she had no reasonable grounds to suspect that the person supplied was younger than 18 years. 5
- “(3) For the purposes of **subsection (2)**, a person charged in respect of a contravention of **subsection (1)** who proves that he or she sighted an evidence of age document (within the meaning of section 2A of the Sale of Liquor Act 1989) of the person to whom the product concerned was supplied, indicating that the person was of or over the age of 18 years, proves that he or she had no reasonable grounds to suspect that the person supplied was younger than 18 years. 10 15
- “(4) It is not a defence to a charge in respect of a contravention of **subsection (1)**—
- “(a) that the person younger than 18 years was acquiring the product concerned for or on behalf of, or as agent for, a person of or over the age of 18 years; or 20
- “(b) that the person charged believed on reasonable grounds that the person younger than 18 years was acquiring the product concerned for or on behalf of, or as agent for, a person of or over the age of 18 years.
- “(5) **Subsection (1)** applies irrespective of any liability that may attach to a person who has sold the product concerned to any other person.” 25

9A New section 30AB inserted

The principal Act is amended by inserting, before section 30A, the following section: 30

“30AB Certain repeat offenders may be ordered not to sell tobacco products

“(1) This section applies—

“(a) if a person—

New (unanimous)

- | | |
|---|--|
| <p>“(i) has been convicted of and is to be sentenced in respect of an offence against section 30(1) committed after the commencement of section 9 of the Smoke-free Environments Amendment Act 2003 (the repeat offence); and</p> <p>“(ii) within the 2 years before the conviction for the repeat offence was entered, had been convicted of an offence against section 30(1) (whether committed before or after that commencement); or</p> <p>“(b) if a person has been convicted of and is to be sentenced in respect of an offence against section 36(7AA) (a non-compliance offence).</p> <p>“(2) When sentencing a person for a repeat offence or a non-compliance offence, the court may (in addition to any sentence it might impose and any other order in the nature of a penalty it might make) make an order—</p> <p>“(a) prohibiting either or both of the following:</p> <p style="padding-left: 2em;">“(i) the sale of tobacco products by or on behalf of the person:</p> <p style="padding-left: 2em;">“(ii) the sale of tobacco products at a shop at which the offence occurred; or</p> <p>“(b) prohibiting either or both of the following:</p> <p style="padding-left: 2em;">“(i) the sale of tobacco products of a stated kind by or on behalf of the person:</p> <p style="padding-left: 2em;">“(ii) the sale of tobacco products of a stated kind in the place in which the offence occurred; or</p> <p>“(c) imposing any conditions or restrictions (or both) it thinks fit on either or both of the following:</p> <p style="padding-left: 2em;">“(i) the sale of tobacco products by or on behalf of the person:</p> <p style="padding-left: 2em;">“(ii) the sale of tobacco products at a shop at which the offence occurred.</p> <p>“(3) The order must state—</p> <p style="padding-left: 2em;">“(a) the date it takes effect (which may be the date on which it is made or a later date); and</p> <p style="padding-left: 2em;">“(b) the date it expires (which must be a date at least 4 weeks and no more than 3 months after the date it takes effect).”</p> | <p>5</p> <p>10</p> <p>15</p> <p>20</p> <p>25</p> <p>30</p> <p>35</p> |
|---|--|

New (unanimous)

9B Limits on harmful constituents

Section 31 of the principal Act is amended by inserting, after the words “tobacco product”, the words “or herbal smoking product”.

9C New sections 32 to 34 substituted

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The principal Act is amended by repealing sections 32 to 34, and substituting the following sections:

“32 Labelling and health messages for tobacco products

“(1) A manufacturer, importer, distributor, or retailer must not sell a tobacco product or offer a tobacco product for sale unless—

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“(a) the package containing it displays, in accordance with regulations under this Part, as many of the following things as the regulations require:

“(i) a message relating to the effects of its use on health:

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“(ii) a list of the harmful constituents of the product:

“(iii) if the tobacco product is intended for smoking, a list of the harmful constituents, and their respective quantities, present in the smoke:

“(iv) whether as part of or in addition to any message relating to the effects of its use on health, a photograph or picture intended to have effect as a warning relating to the effects of its use on health; and

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“(b) if the regulations so require, there is placed inside the package with the product a leaflet containing—

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“(i) information (prescribed by the regulations for tobacco products generally, or tobacco products of a class to which the product belongs) relating to the effects of the use of the product on health; and

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“(ii) if the tobacco product is intended for smoking, as much of the following information (stated, as the regulations may require, by reference to the class of tobacco product to which it belongs, or its brand as a tobacco product of any class or variant

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New (unanimous)

- of a brand of a tobacco product of any class) as the regulations require:
- “(A) a list of the harmful constituents, and their respective quantities, present in the product: 5
 - “(B) a list of the additives, and their respective quantities, present in the product:
 - “(C) a list of the harmful constituents, and their respective quantities, present in the smoke.
- “(2) In **subsection (1)**, **harmful constituent** means a substance declared by the regulations to be a harmful constituent for the purposes of that subsection. 10
- “(3) A person who sells a tobacco product from an automatic vending machine that can be seen from a place to which members of the public have access must display on the machine, in accordance with regulations under this Act, any health message required by or under this Act (even if the machine is accessible only by the person or his or her employees or agents). 15
- “(4) **Section (3)** does not authorise or excuse a contravention of **section 29B**. 20
- “32AA **Labelling and health messages for herbal smoking products**
- “(1) No manufacturer, importer, distributor, or retailer may sell or offer for sale a herbal smoking product unless— 25
- “(a) the package containing it displays, in accordance with regulations under this Part, as many of the following things as the regulations require:
 - “(i) a message relating to the effects of the use of herbal smoking products on health: 30
 - “(ii) a list of the harmful constituents, and their respective quantities, present in the product:
 - “(iii) a list of the constituents, and their respective quantities, present in the product:
 - “(iv) a list of the harmful constituents, and their respective quantities, present in the smoke: 35

New (unanimous)

“(v) whether as part of or in addition to any message relating to the effects of the use of herbal smoking products on health, a photograph or picture intended to have effect as a warning relating to the effects of the use of the herbal smoking products on health; and	5
“(b) if the regulations so require, a leaflet containing either or both of the following (as the regulations may require) is placed inside the package with the herbal smoking products:	10
“(i) information relating to the effects of the use of herbal smoking products on health:	
“(ii) a list of the harmful constituents, and their respective quantities, present in the smoke.	
“(2) In subsection (1), harmful constituent means a substance declared by the regulations to be a harmful constituent for the purposes of that subsection.	15
“(3) A person who sells a herbal smoking product from an automatic vending machine that can be seen from a place to which members of the public have access must display on the machine, in accordance with regulations under this Act, any health message required by or under this Act (even if the machine is accessible only by the person or his or her employees or agents).	20
“(4) Subsection (3) does not authorise or excuse a contravention of section 29B .	25
“33 Annual testing for constituents	
“(1) This section applies to each product prescribed for the purposes of this section by regulations under this Part.	
“(2) Every manufacturer and every importer of a product to which this section applies must in each year conduct, in accordance with the regulations, either or both of the following (as the regulations require):	30
“(a) a test for the constituents of each brand of the product sold by the manufacturer or importer, and the respective quantities of those constituents:	35

New (unanimous)

- “(b) if the product is intended to be smoked, a test for the constituents of the smoke of each brand of the product sold by the manufacturer or importer, and the respective quantities of those constituents.
- “(3) If the regulations require it, each variant of the brand must be tested separately. 5
- “(4) In this section **and section 34**, **product** means anything that is—
- “(a) a tobacco product of any kind; or
- “(b) herbal smoking products generally; or
- “(c) herbal smoking products of any kind. 10
- “34 Director-General may require further testing**
- “(1) In addition to the annual test or tests required by **section 33**, the Director-General may, by notice in writing to the manufacturer or importer of a product to which that section applies, require a further test or tests to be conducted. 15
- “(2) The further test or tests must be conducted, in accordance with the regulations referred to in **section 33**,—
- “(a) in a laboratory nominated by the Director-General; but
- “(b) at the expense in all respects of the manufacturer or importer. 20
- “(3) In any year, the Director-General must not require tests under this section in respect of more than 10% of the brands of products to which **section 33** applies sold by a particular manufacturer or importer.”
- 9D New section 35 substituted** 25
- The principal Act is amended by repealing section 35, and substituting the following section:
- “35 Returns and reports**
- “(1) Every manufacturer and every importer of tobacco products must, not later than 31 January in each year, file with the Director-General, in the form and manner prescribed by regulations under this Part,— 30
- “(a) a return showing—
- “(i) by class of tobacco product, or brand of tobacco product of any class, or variant of a brand of 35

New (unanimous)

tobacco product of any class, (as the regulations may require) the weight of tobacco and of each additive used in the manufacture of the tobacco products sold by the manufacturer or importer during the previous year; and	5
“(ii) the quantity of each brand, and of each variant of a brand, of tobacco product sold by the manufacturer or importer during the previous year; and	
“(iii) the recommended price of each brand, and of each variant of a brand, of tobacco product sold by the manufacturer or importer during the previous year; and	10
“(b) a report of the results of all tests that the manufacturer or importer conducted during the previous year for the purposes of section 33 or section 34 .	15
“(2) The Director-General—	
“(a) must take all practicable steps to ensure that all returns and reports received under subsection (1) are publicly available on a website under the Director-General’s control; and	20
“(b) may publish or make publicly available in any other way all or any part of any such return or report.”	
10 Offences in respect of tobacco products	
(1) The heading to section 36 of the principal Act is amended by omitting the word “ tobacco ”, and substituting the word “ smoking ”.	25
(2) Section 36 of the principal Act is amended by inserting, after subsection (4), the following subsection:	
“(4A) It is a defence to a charge in respect of a contravention of section 28(1) if the person charged proves that he or she was merely giving a normal trade discount or normal trade rebate.”	30
(3) Section 36 of the principal Act is amended by repealing subsection (6), and substituting the following subsections:	
“(5A) Every person who, in contravention of section 29A(2) distributes a tobacco product to which section 29A(1) applies, or supplies a tobacco product to which section 29A(1) applies to	35

New (unanimous)

- another person for later distribution, or, in the case of a retailer, supplies a tobacco product to which **section 29A(1)** applies to another person for the purpose of that retailer's business 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; and
 - “(b) in any other case, to a fine not exceeding \$5,000.
- “(5B) Every person commits an offence and is liable to a fine not exceeding \$2,000 who in contravention of **section 29B**—
- “(a) permits an automatic vending machine that dispenses or is capable of dispensing tobacco products or herbal smoking products to be located in a place to which members of the public have access; or
 - “(b) permits a tobacco product or herbal smoking product to be sold by way of an automatic vending machine in a place to which members of the public have access.
- “(6) Every person commits an offence and is liable to a fine not exceeding \$2,000 who—
- “(a) sells a tobacco product or herbal smoking product in contravention of **section 30(1)**; or
 - “(b) supplies a tobacco product or herbal smoking product in a public place in contravention of **section 30AA(1)**.”
- (4) Section 36 of the principal Act is amended by inserting, before subsection (7A), the following subsections:
- “(7AA) Every person commits an offence who fails to comply with an order under **section 30AB(2)**; and is liable—
- “(a) in the case of a person who is a body corporate, to a fine not exceeding \$10,000; and
 - “(b) in the case of a person who is not a body corporate, to a fine not exceeding \$4,000.”
- (5) Section 36 of the principal Act is amended by inserting, after subsection (9), the following subsection:
- “(9A) Every manufacturer, importer, distributor, or retailer of herbal smoking products who sells or offers for sale a herbal smoking product knowing that it contravenes **section 32AA(1)** commits an offence and is liable,—

New (unanimous)

- “(a) in the case of a manufacturer, an importer, or a distributor, to a fine not exceeding \$10,000; and
“(b) in the case of a retailer, to a fine not exceeding \$4,000.”
- (6) Section 36(10) of the principal Act is amended by omitting the words “section 32(3) of this Act”, and substituting the words “section 32(3) or **section 32AA(3)**”. 5
- 11 Regulations**
- (1) Section 39(1) of the principal Act is amended by—
- (a) inserting in paragraph (e), after the words “tobacco products” where they first occur, the words “or herbal smoking products,”: 10
- (b) inserting in paragraph (f), after the words “tobacco products”, the words “or herbal smoking products”:
- (c) inserting in paragraph (g), after the words “tobacco products”, the words “or herbal smoking products”: 15
- (d) inserting in paragraph (ga), after the words “tobacco products”, the words “or herbal smoking products”:
- (e) inserting in paragraph (h), after the words “tobacco products”, the words “or herbal smoking products,”.
- (2) Section 39 of the principal Act is amended by adding the following subsections: 20
- “(3) This subsection applies to regulations under this section if they are the first regulations made after the commencement of **section 11** of the Smoke-free Environments Amendment Act **2003** that (substantively, or by amending existing regulations)— 25
- “(a) require tobacco products sold or offered for sale to display a photograph or picture intended to have effect as a warning relating to the effects of their use on health; or 30
- “(b) require a leaflet to be placed inside packages of tobacco products sold or offered for sale; or
- “(c) require herbal smoking products sold or offered for sale to display a message or list; or
- “(d) require herbal smoking products sold or offered for sale to display a photograph or picture intended to have 35

New (unanimous)

- effect as a warning relating to the effects of their use on health; or
- “(e) require a leaflet to be placed inside packages of herbal smoking products sold or offered for sale, or a warning relating to the effects of their use on health; or 5
- “(f) require manufacturers and importers of herbal smoking products to conduct either or both of the following:
- “(i) a test for the constituents of each brand of the product sold by the manufacturers or importers, and the respective quantities of those constituents; 10
- “(ii) a test for the constituents of the smoke of each brand of the product sold by the manufacturers or importers that is intended to be smoked, and the respective quantities of those constituents; or 15
- “(g) require manufacturers and importers of tobacco products or herbal smoking products conducting tests for the constituents of each brand sold by the manufacturers or importers, and the respective quantities of those constituents, to test each variant of the brand separately; or 20
- “(h) require manufacturers and importers of tobacco products or herbal smoking products conducting tests for the constituents of the smoke of each brand of the product sold by the manufacturers or importers that is intended to be smoked, and the respective quantities of those constituents, to test each variant of the brand separately; or 25
- “(i) require manufacturers and importers of tobacco products to file with the Director-General returns showing all additives used in the manufacture of the tobacco products sold by the manufacturer or importer; or 30
- “(j) require manufacturers and importers of tobacco products to file with the Director-General returns showing by brand variant— 35
- “(i) the weight of tobacco (or the weight of tobacco and of each additive) used in the manufacture of

New (unanimous)

- the tobacco products sold by the manufacturer or importer; or
- “(ii) the quantity of each variant of a brand of tobacco product sold by the manufacturer or importer; and 5
- “(iii) the recommended price of each variant of a brand of tobacco product sold by the manufacturer or importer during the previous year.
- “(4) If regulations to which **subsection (3)** applies are made after 31 January and before 1 July in any year, they must come into force no sooner than 1 February in the next year. 10
- “(5) If regulations to which **subsection (3)** applies are made after 30 June in any year and before 1 February in the next year, they must come into force no sooner than 1 February in the year after that next year.” 15

12 New part 2A inserted

The principal Act is amended by inserting, after section 41, the following Part:

“Part 2A

“Powers of enforcement officers 20

“41A Powers of entry and inspection

- “(1) This section applies to a place if—
- “(a) this Act imposes duties, restrictions, or prohibitions in respect of places of a kind to which it belongs; or
- “(b) there is carried out in it, regularly or from time to time, an activity in respect of which this Act imposes duties, restrictions, or prohibitions. 25
- “(2) An enforcement officer may at any reasonable time enter a place if—
- “(a) he or she believes on reasonable grounds that it is a place to which this section applies; and 30
- “(b) it is not a dwellinghouse or other residential accommodation.
- “(3) An enforcement officer who enters a place under **subsection (2)** may do any or all of the following things: 35

New (unanimous)

- “(a) bring a still or video camera, a device for taking samples of air, or both, with him or her:
- “(b) inspect the place:
- “(c) take photographs or videos with any camera he or she brings with him or her: 5
- “(d) take samples of the air in the place with any device for that purpose he or she brings with him or her:
- “(e) if the enforcement officer believes on reasonable grounds that the place is a place where tobacco products or herbal smoking products are sold from time to time,— 10
- “(i) exercise the powers given by **section 41B**:
- “(ii) inspect any advertising or display material relating to tobacco products on display in the place, or on the outside of a building containing the place. 15
- “(4) An enforcement officer exercising powers under this section may be accompanied by a member of the police.
- “(5) **Subsection (2)** does not prevent an enforcement officer from entering a dwellinghouse or other residential accommodation— 20
- “(a) under authority given by or under an enactment other than this section; or
- “(b) with the consent of an occupier.
- “41B Requirement to give identifying information**
- “(1) An enforcement officer who at any time believes on reasonable grounds that within the previous 14 days tobacco products or herbal smoking products have been sold to a person younger than 18 years in a place where tobacco products or herbal smoking products are sold from time to time— 25
- “(a) may, while the person the officer believes on reasonable grounds to have sold the products is in the place, require the person to give the officer his or her name and address; and 30
- “(b) may require a person in the place who appears to be in charge of the place or any part of it to give the officer the name and address of (or, if the address is not within 35

New (unanimous)

- the person's knowledge, the name and any other identifying information within the person's knowledge relating to) any person the officer believes on reasonable grounds to have sold the products other than a person in charge of the place. 5
- “(2) An enforcement officer who suspects that a person is younger than 17 years must not under **subsection (1)(a)** require the person to give the officer his or her name and address unless—
- “(a) there is no other person in the place concerned who appears to be in charge of it; or 10
- “(b) there is another person in the place who appears to be in charge of it, but the enforcement officer suspects that that person is also younger than 17 years.
- “(3) An enforcement officer who suspects that a person is younger than 17 years must not under **subsection (1)(b)** require the person to give the officer the name and address of (or name and other identifying information relating to) any other person if the other person is in the place concerned and appears to be 17 years old or older. 15
- “41C **Purposes for which powers may be used** 20
- “(1) The powers given by **section 41A** must be used only for, and only to the extent necessary for, the following purposes:
- “(a) finding out whether this Act is being complied with in and in respect of the place entered:
- “(b) finding out the extent to which this Act is not being complied with in or in respect of the place entered: 25
- “(c) exercising the powers given by **section 41B**.
- “(2) The powers given by **section 41B** must be used only for, and only to the extent necessary for, finding out the name and address of (or, if the address is not within the knowledge of the person asked, the name and any other identifying information within the person's knowledge relating to) a person the enforcement officer concerned believes to have sold tobacco products or herbal smoking products to a person younger than 18 years in a place where tobacco products or herbal smoking products are sold from time to time. 30 35

New (unanimous)

“(3) This section does not prevent an enforcement officer from using in proceedings for an offence against this Act evidence obtained during the lawful exercise of any of the powers given by **sections 41A and 41B**.

“**41D Duties of enforcement officers** 5

“(1) An enforcement officer exercising powers under **section 41A** in respect of or in a place,—

“(a) if a person in charge of the place is present on initial entry, must identify himself or herself to the person in charge as an enforcement officer; and 10

“(b) if asked by a person in charge to do so, must produce to the person evidence of identity, his or her instrument of appointment as an enforcement officer, or both.

“(2) An enforcement officer exercising powers under **section 41B** in respect of a person,— 15

“(a) must identify himself or herself to the person as an enforcement officer; and

“(b) if asked by the person to do so, must produce to the person evidence of identity, his or her instrument of appointment as an enforcement officer, or both. 20

“**41E Offences in respect of enforcement officers**

Every person commits an offence, and is liable on summary conviction to a fine not exceeding \$1,000, who—

“(a) intentionally obstructs, hinders, or resists an enforcement officer exercising or attempting to exercise powers under **section 41A or section 41B**; or 25

“(b) intentionally fails to comply with a requirement under **section 41B**; or

“(c) when required under **section 41B** to give information, gives information the person knows to be false or misleading. 30

New (unanimous)

“41F Enforcement

“(1) It is the Director-General’s duty to enforce this Part.

“(2) An information in respect of an offence against this Part must be laid by the Director-General or a person authorised by the Director-General.

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“(3) An information in respect of an offence against this Part may be laid at any time within 1 year after the time the matter it relates to arose.

“(4) **Subsection (3)** overrides section 14 of the Summary Proceedings Act 1957.”

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Legislative history

1 July 1999

Introduction (Bill 310–1)

10 May 2000

First reading and referral to Health Committee