

Reprint  
as at 1 September 2017



## Smoke-free Environments Act 1990

Public Act      1990 No 108  
Date of assent      28 August 1990  
Commencement      see section 1

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Changes authorised by subpart 2 of Part 2 of the Legislation Act 2012 have been made in this official reprint.  
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*[Repealed]*

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**Title** *[Repealed]*

Title: repealed, on 23 July 2011, by section 5 of the Smoke-free Environments (Controls and Enforcement) Amendment Act 2011 (2011 No 53).

**1 Title and commencement**

- (1) This Act is the Smoke-free Environments Act 1990.
- (2) Part 1 shall come into force on the expiry of 3 months after the date on which this Act receives the Royal assent.
- (3) Part 2 shall come into force on 16 December 1990.

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

Section 1 heading: amended, on 23 July 2011, by section 6(1) of the Smoke-free Environments (Controls and Enforcement) Amendment Act 2011 (2011 No 53).

Section 1(1): amended, on 23 July 2011, by section 6(2) of the Smoke-free Environments (Controls and Enforcement) Amendment Act 2011 (2011 No 53).

## 2 Interpretation

- (1) In this Act, unless the context otherwise requires,—

**additive**,—

- (a) in relation to a tobacco product, means a substance forming part of the product that is not cured tobacco leaf; and includes—
- (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
- (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; and
  - (ii) any wrapping forming part of the product that is not itself dried, or dried and cured, vegetable matter

**aircraft** has the same meaning as in section 2 of the Civil Aviation Act 1990

**approved evidence of age document** has the meaning given by section 5(1) of the Sale and Supply of Alcohol Act 2012

**automatic vending machine** means any self-service machine that,—

- (a) on the insertion of a coin or token or by any other means, dispenses by way of sale tobacco products, whether automatically or with the assistance of the purchaser; and
- (b) does not require replenishment between each sale

**casino** means a casino for which a casino venue licence is in force under section 122 or section 137 of the Gambling Act 2003

**casino operator's licence** means a licence granted under section 130 of the Gambling Act 2003

**class 4 gambling venue licence** means a class 4 venue licence within the meaning of section 4(1) of the Gambling Act 2003

**coastal cargo** has the meaning given to it by section 198(6) of the Maritime Transport Act 1994

**company name** includes any corporate name, firm name, or business name, whether or not it is registered or registrable under the Companies Act 1993 or any other enactment

**craft** means—

- (a) an aircraft;
- (b) a ship (as defined in section 2(1) 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

**Director-General** means the Director-General of Health

**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

**early childhood education and care centre** has the meaning given to it by section 309 of the Education Act 1989

**employee** means any person of any age employed under a contract of service by an employer to do any work for hire or reward

**employer**—

- (a) means a person who employs 1 or more employees; and
- (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 1 and 2, or provisions of Parts 1 and 2

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

**gambling** has the meaning set out in section 4(1) of the Gambling Act 2003

**gambling area**, in relation to a casino venue, means the area of the venue in which gambling is conducted

**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

**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—

- (a) a ceiling, roof, or similar overhead surface; and
- (b) walls, sides, screens, or other similar surfaces; and

- (c) those openings

**internal flight** means a flight—

- (a) between any 2 or more places in New Zealand; or
- (b) that commences from any place in New Zealand and is intended to terminate at that same place

**Internet sale**, in relation to a tobacco product or herbal smoking product, means a sale (whether by retail or wholesale) of the product pursuant to a contract that—

- (a) has been entered into using the Internet between—
  - (i) a seller whose business is or includes offering the product for sale (whether by retail or wholesale); and
  - (ii) a person (whether the purchaser or a person acting on the purchaser's behalf) who is at a distance from the seller's place of business; and
- (b) contains a term providing for the product to be delivered by or on behalf of the seller to, or to a place or person chosen by, the purchaser

**licensed premises** means any premises, or any part of any premises, on which alcohol is sold pursuant to a licence under the Sale and Supply of Alcohol Act 2012

**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

**manufacturer** includes any company with which a manufacturer is associated within the meaning of subpart YB of the Income Tax Act 2007

**Minister** means the Minister of Health

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

**New Zealand resident** means—

- (a) a New Zealand citizen;
- (b) a permanent resident of New Zealand within the meaning of section 73 of the Electoral Act 1993;
- (c) a company incorporated in New Zealand

**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)

**office** means a place in which any person is employed, directly or indirectly, to do any clerical work in connection with any business carried on by the occupier of that place

**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

**organised activity** means any cultural, educational, sporting, or recreational activity or event

**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

**passenger service vehicle** and **small passenger service vehicle** have the same meaning as in section 2 of the Land Transport Act 1998

**point of sale**—

- (a) means a checkout where tobacco products may be bought; and
- (b) includes a till or cashbox, where tobacco products may be bought, even if it is not at or part of a checkout

**publish** means—

- (a) insert in any newspaper or other periodical publication printed, published, or distributed in New Zealand; or
- (b) send to any person, by post or otherwise; or
- (c) deliver to any person or leave upon premises in the occupation of any person; or
- (d) broadcast within the meaning of the Broadcasting Act 1989; or
- (e) include in any film or video recording; or
- (f) include in any disk for use with a computer; or
- (g) disseminate by means of any other electronic medium; or
- (h) distribute by any means; or
- (ha) display by way of a sign, notice, poster, or other means; or
- (i) bring to the notice of the public in New Zealand in any other manner



**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

**rest home** has the meaning given to it by section 58(4) of the Health and Disability Services (Safety) Act 2001

**restaurant** means any premises, or any part of any premises, where the principal business is the selling of meals or refreshments to the general public for consumption on the premises, whether or not liquor is or may be sold on those premises or that part of those premises; and includes any room or area on a ship or train where meals or refreshments are provided for passengers to consume

**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
  - (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

**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

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

**taxi** has the same meaning as in section 2(1) of the Land Transport Act 1998

**to smoke**—

- (a) means to smoke, hold, or otherwise have control over an ignited tobacco product, weed, or plant; and
- (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
- (c) does not include to hold or have control over an ignited product or thing customarily used as incense

**tobacco carton** means a box, carton, pack, packet, pouch, tin, wrapping, or other package containing 2 or more tobacco packages

**tobacco package** means a box, carton, pack, packet, pouch, tin, wrapping, or other package that—

- (a) contains a tobacco product or products; but
- (b) does not contain other tobacco packages within it

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

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

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

and **advertise** has a corresponding meaning

**toy tobacco product** means an object that—

- (a) looks like a tobacco product or a smoker's pipe, and can be used to simulate smoking; but
- (b) cannot be smoked, is not confectionery, and has a primary purpose other than to help people stop smoking

**trade mark** includes any trade mark whether or not it is registered or registrable as such under the Trade Marks Act 2002; and also includes—

- (a) any brand name:
- (b) any company name, where that name is used for advertising or promotional purposes:
- (c) any name, word, or mark that so resembles any trade mark that it is likely to be taken as, or confused with, that trade mark

**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—

- (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

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

- (a) means an area that is—
    - (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
    - (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 employment; 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 workplace 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
  - (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 assigned to a passenger or passengers, on a train; or
    - (iv) a cabin, for the time being assigned to only 1 employee or volunteer, or to the master or owner, on a ship; or
    - (v) a sleeping compartment, for the time being assigned to only 1 employee or volunteer, on a train; or
    - (vi) *[Repealed]*
    - (vii) a dwellinghouse occupied by the employer.
- (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:
  - (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:
    - (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:
    - (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 workplace in subsection (1), no part of a ship is capable of being a dwellinghouse occupied by an employer.

Section 2(1) **additive**: inserted, on 11 December 2003, by section 3(1) of the Smoke-free Environments Amendment Act 2003 (2003 No 127).

Section 2(1) **aircraft**: amended, on 1 September 1990, pursuant to section 101(1) of the Civil Aviation Act 1990 (1990 No 98).

Section 2(1) **approved evidence of age document**: inserted, on 18 December 2013, by section 417(1) of the Sale and Supply of Alcohol Act 2012 (2012 No 120).

Section 2(1) **area health board**: repealed, on 1 July 1993, by section 32 of the Health Sector (Transfers) Act 1993 (1993 No 23).

Section 2(1) **automatic vending machine**: inserted, on 29 July 1997, by section 2(1) of the Smoke-free Environments Amendment Act 1997 (1997 No 32).

Section 2(1) **casino**: substituted, on 1 July 2004, by section 374 of the Gambling Act 2003 (2003 No 51).

Section 2(1) **casino operator’s licence**: substituted, on 1 July 2004, by section 374 of the Gambling Act 2003 (2003 No 51).

Section 2(1) **children’s product**: repealed, on 23 July 2012, by section 7(1) of the Smoke-free Environments (Controls and Enforcement) Amendment Act 2011 (2011 No 53).

Section 2(1) **class 4 gambling venue licence**: inserted, on 11 December 2003, by section 3(1) of the Smoke-free Environments Amendment Act 2003 (2003 No 127).

Section 2(1) **coastal cargo**: inserted, on 11 December 2003, by section 3(1) of the Smoke-free Environments Amendment Act 2003 (2003 No 127).

Section 2(1) **code of practice** or **code**: repealed, on 11 December 1998, by section 7(3)(a) of the Smoke-free Environments Amendment Act 1997 (1997 No 32).

Section 2(1) **company name**: amended, on 5 December 2013, by section 14 of the Companies Amendment Act 2013 (2013 No 111).

Section 2(1) **company name**: amended, on 1 July 1994, by section 2 of the Company Law Reform (Transitional Provisions) Act 1994 (1994 No 16).

Section 2(1) **Council**: repealed, on 1 July 2012, by section 14(2) of the New Zealand Public Health and Disability Amendment Act 2012 (2012 No 41).

Section 2(1) **craft** paragraph (b): amended, on 1 February 1995, pursuant to section 202(1) of the Maritime Transport Act 1994 (1994 No 104).

Section 2(1) **dedicated smoking room**: inserted, on 11 December 2003, by section 3(1) of the Smoke-free Environments Amendment Act 2003 (2003 No 127).

Section 2(1) **Director**: repealed, on 25 January 2005, by section 200 of the Crown Entities Act 2004 (2004 No 115).

Section 2(1) **distributor**: substituted, on 11 December 2003, by section 3(1) of the Smoke-free Environments Amendment Act 2003 (2003 No 127).

Section 2(1) **early childhood centre**: repealed, on 1 December 2008, by section 60(1) of the Education Amendment Act 2006 (2006 No 19).

Section 2(1) **early childhood education and care centre**: inserted, on 1 December 2008, by section 60(1) of the Education Amendment Act 2006 (2006 No 19).

Section 2(1) **employer**: substituted, on 11 December 2003, by section 3(1) of the Smoke-free Environments Amendment Act 2003 (2003 No 127).

Section 2(1) **enforcement officer**: inserted, on 11 December 2003, by section 3(1) of the Smoke-free Environments Amendment Act 2003 (2003 No 127).

Section 2(1) **face**: repealed, on 23 July 2012, by section 7(1) of the Smoke-free Environments (Controls and Enforcement) Amendment Act 2011 (2011 No 53).

Section 2(1) **foreign ship**: inserted, on 11 December 2003, by section 3(1) of the Smoke-free Environments Amendment Act 2003 (2003 No 127).

Section 2(1) **gambling**: inserted, on 1 July 2004, by section 374 of the Gambling Act 2003 (2003 No 51).

Section 2(1) **gambling area**: inserted, on 1 July 2004, by section 374 of the Gambling Act 2003 (2003 No 51).

Section 2(1) **gaming**: repealed, on 11 December 2003, by section 3(1) of the Smoke-free Environments Amendment Act 2003 (2003 No 127).

Section 2(1) **gaming area**: repealed, on 11 December 2003, by section 3(1) of the Smoke-free Environments Amendment Act 2003 (2003 No 127).

Section 2(1) **herbal smoking product**: inserted, on 11 December 2003, by section 3(1) of the Smoke-free Environments Amendment Act 2003 (2003 No 127).

Section 2(1) **hospital**: repealed, on 11 December 2003, by section 3(1) of the Smoke-free Environments Amendment Act 2003 (2003 No 127).

Section 2(1) **hospital care institution**: inserted, on 11 December 2003, by section 3(1) of the Smoke-free Environments Amendment Act 2003 (2003 No 127).

Section 2(1) **internal area**: inserted, on 11 December 2003, by section 3(1) of the Smoke-free Environments Amendment Act 2003 (2003 No 127).

Section 2(1) **Internet sale**: inserted, on 23 July 2012, by section 7(2) of the Smoke-free Environments (Controls and Enforcement) Amendment Act 2011 (2011 No 53).

Section 2(1) **licensed premises**: replaced, on 18 December 2013, by section 417(1) of the Sale and Supply of Alcohol Act 2012 (2012 No 120).

Section 2(1) **managers**: inserted, on 11 December 2003, by section 3(1) of the Smoke-free Environments Amendment Act 2003 (2003 No 127).

Section 2(1) **manufacturer**: amended, on 1 April 2010, by section 861 of the Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34).

Section 2(1) **manufacturer**: amended, on 1 April 2008 (effective for 2008–09 income year and later income years, except when the context requires otherwise), by section ZA 2(1) of the Income Tax Act 2007 (2007 No 97).

Section 2(1) **New Zealand continental waters**: inserted, on 11 December 2003, by section 3(1) of the Smoke-free Environments Amendment Act 2003 (2003 No 127).

Section 2(1) **New Zealand resident** paragraph (b): amended, on 1 July 1994, pursuant to section 284 of the Electoral Act 1993 (1993 No 87).

Section 2(1) **New Zealand ship**: inserted, on 11 December 2003, by section 3(1) of the Smoke-free Environments Amendment Act 2003 (2003 No 127).

Section 2(1) **of the same kind**: inserted, on 11 December 2003, by section 3(1) of the Smoke-free Environments Amendment Act 2003 (2003 No 127).

Section 2(1) **open area**: inserted, on 11 December 2003, by section 3(1) of the Smoke-free Environments Amendment Act 2003 (2003 No 127).

Section 2(1) **operating taxi**: inserted, on 11 December 2003, by section 3(1) of the Smoke-free Environments Amendment Act 2003 (2003 No 127).

Section 2(1) **package**: substituted, on 11 December 2003, by section 3(1) of the Smoke-free Environments Amendment Act 2003 (2003 No 127).

Section 2(1) **passenger service vehicle** and **small passenger service vehicle**: amended, on 1 October 2007, by section 95(6) of the Land Transport Amendment Act 2005 (2005 No 77).

Section 2(1) **permitted smoking area**: repealed, on 11 December 2003, by section 3(1) of the Smoke-free Environments Amendment Act 2003 (2003 No 127).

Section 2(1) **point of sale**: inserted, on 11 December 2003, by section 3(1) of the Smoke-free Environments Amendment Act 2003 (2003 No 127).

Section 2(1) **pouch pack**: repealed, on 23 July 2012, by section 7(1) of the Smoke-free Environments (Controls and Enforcement) Amendment Act 2011 (2011 No 53).

Section 2(1) **prescribed petroleum operations**: repealed, on 4 April 2016, by section 232 of the Health and Safety at Work Act 2015 (2015 No 70).

Section 2(1) **prison**: repealed, on 5 March 2013, by section 48(2) of the Corrections Amendment Act 2013 (2013 No 5).

Section 2(1) **publish** paragraph (ha): inserted, on 29 July 1997, by section 2(2) of the Smoke-free Environments Amendment Act 1997 (1997 No 32).

Section 2(1) **registered school**: inserted, on 11 December 2003, by section 3(1) of the Smoke-free Environments Amendment Act 2003 (2003 No 127).

Section 2(1) **residential disability care institution**: inserted, on 11 December 2003, by section 3(1) of the Smoke-free Environments Amendment Act 2003 (2003 No 127).

Section 2(1) **rest home**: substituted, on 1 October 2002, by section 58(1) of the Health and Disability Services (Safety) Act 2001 (2001 No 93).

Section 2(1) **retailer**: substituted, on 11 December 2003, by section 3(1) of the Smoke-free Environments Amendment Act 2003 (2003 No 127).

Section 2(1) **school premises**: inserted, on 11 December 2003, by section 3(1) of the Smoke-free Environments Amendment Act 2003 (2003 No 127).

Section 2(1) **ship**: inserted, on 11 December 2003, by section 3(1) of the Smoke-free Environments Amendment Act 2003 (2003 No 127).

Section 2(1) **ship on demise charter to a New Zealand-based operator**: inserted, on 11 December 2003, by section 3(1) of the Smoke-free Environments Amendment Act 2003 (2003 No 127).

Section 2(1) **taxi**: substituted, on 1 January 2009, by section 63(2) of the Public Transport Management Act 2008 (2008 No 87).

Section 2(1) **to smoke**: substituted, on 11 December 2003, by section 3(1) of the Smoke-free Environments Amendment Act 2003 (2003 No 127).

Section 2(1) **tobacco carton**: inserted, on 11 December 2003, by section 3(1) of the Smoke-free Environments Amendment Act 2003 (2003 No 127).

Section 2(1) **tobacco package**: inserted, on 11 December 2003, by section 3(1) of the Smoke-free Environments Amendment Act 2003 (2003 No 127).

Section 2(1) **tobacco packages in a visible stack**: repealed, on 23 July 2012, by section 7(1) of the Smoke-free Environments (Controls and Enforcement) Amendment Act 2011 (2011 No 53).

Section 2(1) **tobacconist's shop**: repealed, on 23 July 2012, by section 7(1) of the Smoke-free Environments (Controls and Enforcement) Amendment Act 2011 (2011 No 53).

Section 2(1) **toy tobacco product**: inserted, on 11 December 2003, by section 3(1) of the Smoke-free Environments Amendment Act 2003 (2003 No 127).

Section 2(1) **trade mark**: amended, on 20 August 2003, by section 201 of the Trade Marks Act 2002 (2002 No 49).

Section 2(1) **variant**: inserted, on 11 December 2003, by section 3(1) of the Smoke-free Environments Amendment Act 2003 (2003 No 127).

Section 2(1) **volunteer**: inserted, on 11 December 2003, by section 3(1) of the Smoke-free Environments Amendment Act 2003 (2003 No 127).

Section 2(1) **workplace**: substituted, on 11 December 2003, by section 3(1) of the Smoke-free Environments Amendment Act 2003 (2003 No 127).

Section 2(1) **workplace** paragraph (e)(vi): repealed, on 5 March 2013, by section 48(3) of the Corrections Amendment Act 2013 (2013 No 5).

Section 2(2): added, on 11 December 2003, by section 3(3) of the Smoke-free Environments Amendment Act 2003 (2003 No 127).

Section 2(3): added, on 11 December 2003, by section 3(3) of the Smoke-free Environments Amendment Act 2003 (2003 No 127).

### 3 Act binds the Crown

This Act shall bind the Crown.

#### 3A Purposes of this Act

- (1) The purposes of this Act are, in general, as follows:
  - (a) to reduce the exposure of people who do not themselves smoke to any detrimental effect on their health caused by smoking by others; and
  - (b) to regulate and control the marketing, advertising, and promotion of tobacco products, whether directly or through the sponsoring of other products, services, or events; and
  - (c) to monitor and regulate the presence of harmful constituents in tobacco products and tobacco smoke; and
  - (d) to establish a Health Sponsorship Council.
- (2) Subsection (1) does not limit or affect the particular purposes, stated in sections 4 and 21, of Parts 1 and 2.

Section 3A: inserted, on 23 July 2011, by section 8 of the Smoke-free Environments (Controls and Enforcement) Amendment Act 2011 (2011 No 53).

## Part 1

### Smoke-free workplaces and public areas

Part 1 heading: substituted, on 11 December 2003, by section 4 of the Smoke-free Environments Amendment Act 2003 (2003 No 127).

#### 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
- (b) to prevent young people who are being taught or cared for in registered schools or early childhood education and care 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 education and care centres.

Section 4: substituted, on 11 December 2003, by section 4 of the Smoke-free Environments Amendment Act 2003 (2003 No 127).

Section 4(b): amended, on 1 December 2008, by section 60(1) of the Education Amendment Act 2006 (2006 No 19).

Section 4(c): amended, on 1 December 2008, by section 60(1) of the Education Amendment Act 2006 (2006 No 19).

#### 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—
  - (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.

Section 5: substituted, on 10 December 2004, by section 5 of the Smoke-free Environments Amendment Act 2003 (2003 No 127).

#### 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—

- (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—
  - (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—
  - (i) no longer wishes the employer to permit smoking in it; or
  - (ii) now objects to other employees and volunteers smoking in it.

Section 5A: inserted, on 10 December 2004, by section 5 of the Smoke-free Environments Amendment Act 2003 (2003 No 127).

## **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—
  - (a) the smoking takes place only in 1 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
  - (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
  - (d) for each dedicated smoking room, there is available for patients or residents who wish to socialise in a smokefree 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,—
  - (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—
    - (i) directly; or
    - (ii) through 1 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.
- (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.

Section 6: substituted, on 10 December 2004, by section 5 of the Smoke-free Environments Amendment Act 2003 (2003 No 127).

## **6A Smoking in prison cells**

*[Repealed]*

Section 6A: repealed, on 5 March 2013, by section 48(4) of the Corrections Amendment Act 2013 (2013 No 5).

## **7 Duties of employer**

*[Repealed]*

Section 7: repealed, on 10 December 2004, by section 5 of the Smoke-free Environments Amendment Act 2003 (2003 No 127).

## **7A Smoking prohibited at schools and early childhood education and care centres**

- (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
  - (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
    - (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
  - (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—
  - (a) is being used as an early childhood education and care centre; or
  - (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 education and care centre.
- (4) This subsection applies to premises—
  - (a) that are used exclusively or primarily as an early childhood education and care centre; or

- (b) that are facilities, grounds, structures, or other premises, controlled and managed by the managers of premises that are used exclusively or primarily as an early childhood education and care 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.

Section 7A: inserted, on 1 January 2004, by section 6(1) of the Smoke-free Environments Amendment Act 2003 (2003 No 127).

Section 7A heading: amended, on 1 December 2008, by section 60(1) of the Education Amendment Act 2006 (2006 No 19).

Section 7A(3)(a): amended, on 1 December 2008, by section 60(1) of the Education Amendment Act 2006 (2006 No 19).

Section 7A(3)(b): amended, on 1 December 2008, by section 60(1) of the Education Amendment Act 2006 (2006 No 19).

Section 7A(4)(a): amended, on 1 December 2008, by section 60(1) of the Education Amendment Act 2006 (2006 No 19).

Section 7A(4)(b): amended, on 1 December 2008, by section 60(1) of the Education Amendment Act 2006 (2006 No 19).

## **8 Smoking prohibition on aircraft**

- (1) The operator of an aircraft shall not permit any person to smoke on that aircraft while the aircraft is carrying passengers for hire or reward on any internal flight.
- (2) *[Repealed]*

Section 8(2): repealed, on 1 June 2004, by section 41(3) of the Civil Aviation Amendment Act 2004 (2004 No 8).

## **9 Smoking restricted in passenger service vehicles**

- (1) Subject to subsection (3), the operator of a passenger service vehicle shall not permit any person to smoke in that vehicle while it is carrying passengers.
  - (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) Subject to subsection (3), no person shall smoke in any passenger service vehicle while it is carrying passengers.
- (3) Nothing in this section shall apply to any small passenger service vehicle (other than an operating taxi) where the driver and every passenger in the vehicle agree that smoking shall be permitted.

Section 9(1A): inserted, on 10 December 2004, by section 7(1) of the Smoke-free Environments Amendment Act 2003 (2003 No 127).

Section 9(1B): inserted, on 10 December 2004, by section 7(1) of the Smoke-free Environments Amendment Act 2003 (2003 No 127).

Section 9(3): amended, on 10 December 2004, by section 7(2) of the Smoke-free Environments Amendment Act 2003 (2003 No 127).

## **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 mining operations within the meaning of the Crown Minerals Act 1991.

Section 10: substituted, on 10 December 2004, by section 8 of the Smoke-free Environments Amendment Act 2003 (2003 No 127).

Section 10(c): amended, on 4 April 2016, by section 232 of the Health and Safety at Work Act 2015 (2015 No 70).

## **11 Smoking prohibited in certain travel premises**

- (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 waiting room, or passenger lounge.
- (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.

Section 11: substituted, on 10 December 2004, by section 8 of the Smoke-free Environments Amendment Act 2003 (2003 No 127).

## **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.
- (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.
- (3) No person may smoke at any time in a part of any licensed premises that is not an open area.

Section 12: substituted, on 10 December 2004, by section 8 of the Smoke-free Environments Amendment Act 2003 (2003 No 127).

## **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.

- (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.

Section 13: substituted, on 10 December 2004, by section 8 of the Smoke-free Environments Amendment Act 2003 (2003 No 127).

### **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.
- (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.

Section 13A: substituted, on 10 December 2004, by section 8 of the Smoke-free Environments Amendment Act 2003 (2003 No 127).

### **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.
- (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.

Section 13B: inserted, on 10 December 2004, by section 8 of the Smoke-free Environments Amendment Act 2003 (2003 No 127).

## **14 Enforcement officers**

- (1) The Director-General must appoint to enforce this Part and Part 2 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
  - (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 section 163 of the Health and Safety at Work Act 2015.

- (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,—
  - (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.
- (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 2:
  - (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.
- (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 2; or
    - (ii) only stated provisions of this Part and Part 2; or
    - (iii) all the provisions of this Part and Part 2 other than certain stated provisions; and
  - (b) that he or she is appointed to exercise—
    - (i) all enforcement powers; or
    - (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).

Section 14: substituted, on 10 March 2004, by section 9 of the Smoke-free Environments Amendment Act 2003 (2003 No 127).

Section 14(1)(d): amended, on 4 April 2016, by section 232 of the Health and Safety at Work Act 2015 (2015 No 70).

## **15 Complaints relating to workplace smoking**

- (1) Where any person believes on reasonable grounds that any person has contravened any provision of this Part in so far as it relates to any workplace, the person may complain to the employer of that workplace, or to the Director-General, specifying the particulars of the complaint.

- (2) Where an employer receives a complaint under subsection (1), or a complaint is referred to an employer under section 16(2)(a), the employer shall, within 20 working days after receipt of the complaint, investigate the complaint, and, if it appears that a contravention has occurred, shall try to resolve the complaint.
- (3) Where the contravention is on the part of the employer, the employer shall settle the cause of the complaint, or give an assurance that satisfies the complainant that there will be no repetition of the cause of the complaint.
- (4) Where the contravention is on the part of an employee or volunteer, the employer shall seek to obtain from the employee or volunteer an assurance that satisfies the employer that there will be no repetition of the cause of the complaint.
- (5) The representative of the employees in the workplace shall be entitled to be present at any meeting called by the employer for the purpose of resolving the complaint and avoiding future cause for complaint.
- (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.

Section 15 heading: amended, on 10 December 2004, by section 10(1) of the Smoke-free Environments Amendment Act 2003 (2003 No 127).

Section 15(1): amended, on 1 July 1993, by section 32 of the Health Sector (Transfers) Act 1993 (1993 No 23).

Section 15(4): amended, on 10 December 2004, by section 10(2) of the Smoke-free Environments Amendment Act 2003 (2003 No 127).

Section 15(6): substituted, on 10 December 2004, by section 10(3) of the Smoke-free Environments Amendment Act 2003 (2003 No 127).

## **16 Complaints to Director-General**

- (1) Any person may make a complaint to the Director-General concerning a contravention by any person of any provision of this Part.
- (2) When the Director-General receives any complaint alleging contravention of this Part, the following provisions shall apply:
  - (a) where—
    - (i) the contravention allegedly occurred in any workplace; and
    - (ii) the person who is the subject of the complaint is the employer for that workplace, or an employee or volunteer of that employer; and
    - (iii) the complaint was not referred to the Director-General by the employer under subsection (6) of section 15,—

the complaint shall be forwarded by the Director-General to the employer to be dealt with under that section:
  - (b) in all other cases, the matter shall be dealt with as though it were a complaint to which subsection (3) applied.

- (3) On receipt by the Director-General of a complaint under this Part, a person appointed under section 14 may make further inquiries by way of investigation in respect of the complaint.
- (4) The person who investigates the complaint may take no further action if the complaint is trivial, frivolous, vexatious, or not made in good faith, or if, during the investigation, the person receives a satisfactory assurance that there will be no repetition of the cause for the complaint; and in any such case the person who made the complaint shall be advised of the reasons why no further action is being taken.
- (5) The person investigating the complaint may, on investigation, try to settle the cause of the complaint and obtain a satisfactory assurance against repetition of the cause of the complaint.
- (6) Where no such settlement and assurance can be obtained, or if the cause of complaint is in breach of a previously given assurance, a charging document may be filed under section 14 of the Criminal Procedure Act 2011 in respect of the relevant offence.

Section 16 heading: substituted, on 29 July 1997, by section 4 of the Smoke-free Environments Amendment Act 1997 (1997 No 32).

Section 16(1): amended, on 1 July 1993, by section 32 of the Health Sector (Transfers) Act 1993 (1993 No 23).

Section 16(2): amended, on 1 July 1993, by section 32 of the Health Sector (Transfers) Act 1993 (1993 No 23).

Section 16(2)(a): amended, on 1 July 1993, by section 32 of the Health Sector (Transfers) Act 1993 (1993 No 23).

Section 16(2)(a)(ii): amended, on 11 December 2003, by section 11 of the Smoke-free Environments Amendment Act 2003 (2003 No 127).

Section 16(2)(a)(iii): amended, on 29 July 1997, by section 4 of the Smoke-free Environments Amendment Act 1997 (1997 No 32).

Section 16(3): amended, on 1 July 1993, by section 32 of the Health Sector (Transfers) Act 1993 (1993 No 23).

Section 16(6): amended, on 1 July 2013, by section 413 of the Criminal Procedure Act 2011 (2011 No 81).

## **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.
- (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.
- (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.



- (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.
- (8) The operator of a restaurant who fails to comply with section 13(1) commits an offence.
- (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.
- (9) A person who smokes in contravention of section 8(2) commits an offence.

Section 17: substituted, on 10 December 2004, by section 12 of the Smoke-free Environments Amendment Act 2003 (2003 No 127).

#### **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
  - (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,—
  - (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.
- (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.
- (4) A person who commits an offence against section 17(9) is liable to a fine not exceeding \$400.

Section 17A: inserted, on 10 December 2004, by section 12 of the Smoke-free Environments Amendment Act 2003 (2003 No 127).

**18 Prosecution of offences**

- (1) Every prosecution for an offence against this Part must be commenced by a person appointed under section 14.
- (2) Despite anything to the contrary in section 25 of the Criminal Procedure Act 2011, the limitation period in respect of an offence against this Part ends on the date that is 12 months after the date on which the offence was committed.

Section 18: replaced, on 1 July 2013, by section 413 of the Criminal Procedure Act 2011 (2011 No 81).

**19 Protection of persons acting under authority of Act**

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

**20 Saving of powers to make bylaws**

Nothing in this Part shall limit or affect the powers of a local authority under section 145(b) of the Local Government Act 2002, to make bylaws providing greater protection from tobacco smoke than is provided by this Part.

Section 20: amended, on 1 July 2003, by section 262 of the Local Government Act 2002 (2002 No 84).

Section 20: amended, on 1 July 1993, by section 32 of the Health Sector (Transfers) Act 1993 (1993 No 23).

**20A Health and Safety at Work Act 2015 not affected**

Nothing in this Part, and no steps taken in compliance or purported compliance with this Part, limits or affects—

- (a) the Health and Safety at Work Act 2015; or
- (b) the obligations of any person under that Act.

Section 20A: replaced, on 4 April 2016, by section 232 of the Health and Safety at Work Act 2015 (2015 No 70).

**Part 2****Control of smoking products**

Part 2 heading: substituted, on 11 December 2003, by section 14 of the Smoke-free Environments Amendment Act 2003 (2003 No 127).

**21 Purpose of this Part**

The purpose of this Part is—

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

- (i) imposing controls on the marketing, advertising, or promotion of tobacco products and their association through sponsorship with other products and events; and
  - (ii) requiring health messages and other information to be displayed on, or included with, packages containing tobacco products, and on automatic vending machines; and
  - (iii) prohibiting the sale of toy tobacco products to people younger than 18 years; and
- (b) to reduce some of the harmful effects of tobacco products on the health of users by monitoring and regulating the presence of harmful substances in the products and in tobacco smoke; and
- (c) to facilitate the harmonisation of the laws of New Zealand and Australia relating to the labelling of tobacco products (including, without limitation, requirements relating to the display of health messages).

Section 21: substituted, on 29 July 1997, by section 6 of the Smoke-free Environments Amendment Act 1997 (1997 No 32).

Section 21(a)(iii): added, on 11 December 2003, by section 15 of the Smoke-free Environments Amendment Act 2003 (2003 No 127).

### *Promotion and advertising*

## **22 Advertising of tobacco products**

- (1) No person may, unless authorised by section 22A or 23, publish in New Zealand, or arrange for any other person to publish in New Zealand, a tobacco product advertisement (as defined in section 2(1)).
- (2) A notice or sign must be treated as a tobacco product advertisement if the notice or sign—
- (a) communicates information that is or includes tobacco product health information or warnings, tobacco product purchase age information or warnings, or both; and
  - (b) is displayed inside or at the outside of the place of business of a person who offers tobacco products for sale (whether by retail or wholesale); and
  - (c) is not required or permitted by this Act, regulations under this Act, or both.
- (3) A message must be treated as a tobacco product advertisement if the message—
- (a) communicates information that is or includes tobacco product health information or warnings, tobacco product purchase age information or warnings, or both; and
  - (b) is an Internet-sales message; and

- (c) is not required or permitted by this Act, regulations under this Act, or both.
- (4) Subsections (2) and (3) do not limit the generality of subsection (1) or of the definition in section 2(1) of the term tobacco product advertisement.

Section 22: replaced, on 23 July 2012, by section 9 of the Smoke-free Environments (Controls and Enforcement) Amendment Act 2011 (2011 No 53).

## **22A Exemptions from advertising prohibition for specified publications**

Nothing in section 22(1) applies to any of the following:

- (a) any price list given to retailers of tobacco products if the price list includes the health messages required by or under this Part:
- (b) any advertisement included in any book, magazine, or newspaper printed outside New Zealand, or in any radio or television transmission originating outside New Zealand, or in any film or video recording made outside New Zealand, unless—
  - (i) the main purpose of the book, magazine, newspaper, transmission, film, or video recording is the promotion of the use of tobacco products; or
  - (ii) the book, magazine, newspaper, film, or video recording is intended for sale, distribution, or exhibition primarily in New Zealand; or
  - (iii) in the case of an advertisement in any radio or television transmission, the advertisement is targeted primarily at a New Zealand audience:
- (c) the publication by a tobacco products manufacturer of a tobacco product advertisement in a magazine that is intended for distribution only to employees of the manufacturer:
- (d) the exhibition, in any museum or art gallery, of any work or artifact:
- (e) the dissemination, broadcasting, or exhibition of any film, video recording, or sound recording, where—
  - (i) that film, video recording, or sound recording was made before 16 December 1990; and
  - (ii) the tobacco product advertisement included in that film, video recording, or sound recording is in the form of a reference to, or a depiction of, a tobacco product trade mark that is only an incidental part of that film, video recording, or sound recording.

Section 22A: inserted, on 23 July 2012, by section 9 of the Smoke-free Environments (Controls and Enforcement) Amendment Act 2011 (2011 No 53).

## **23 Exemptions from advertising prohibition for retailers, vending machines, and Internet sellers**

- (1) A retailer of tobacco products may do all or any of the following things:

- (a) provide, inside that retailer's place of business, and on a request (however expressed) made for the purpose by a person who has asked to purchase a specified, or any available, tobacco product, any information (in any medium, but only in the form of printed, written, or spoken words) that—
    - (i) does no more than identify the tobacco products that are available for purchase in that place and indicate their price; and
    - (ii) complies with any regulations for the time being in force under section 39(1)(ia):
  - (b) display inside that retailer's place of business any notice for the public that—
    - (i) does no more than indicate, using only printed or written words, the fact that, and the location or locations where, tobacco products in general are available for purchase in that place; and
    - (ii) complies with any regulations for the time being in force under section 39(1)(ib):
  - (c) display the retailer's name or trade name at the outside of the retailer's place of business so long as the name is not and does not include either or both of the following:
    - (i) any word or expression signifying that any tobacco product is available in that place for purchase:
    - (ii) the trade mark of a tobacco product or the company name of a tobacco products manufacturer.
- (2) Any person who offers any tobacco products for sale (whether by retail or wholesale) by way of an automatic vending machine may display, on the outside of the vending machine, any notice for the public that—
- (a) does no more than identify (using only printed or written words) the tobacco products and indicate (using only printed or written words) their prices; and
  - (b) complies with any regulations for the time being in force under section 39(1)(ic).
- (3) Any person who offers any tobacco product for Internet sale (whether by retail or wholesale) may, on a request (however expressed) made for the purpose by another person who has asked to purchase a specified, or any available, tobacco product, allow to be visible on the person's Internet site when people browse, enter, or otherwise access it information that is only in the form of printed or written words, and that—
- (a) does no more than identify the tobacco product and indicate its price; and

- (b) complies with any regulations for the time being in force under section 39(1)(id).

Section 23: replaced, on 23 July 2012, by section 9 of the Smoke-free Environments (Controls and Enforcement) Amendment Act 2011 (2011 No 53).

### **23A Display of tobacco products in or from sales outlets or vending machines generally prohibited**

- (1) A person who offers tobacco products for sale (whether by retail or wholesale) must not allow any part of a tobacco product, tobacco package, or tobacco carton at the outside of or inside the person's place of business to be for any reason visible—
  - (a) from outside the place; or
  - (b) from an area inside the place to which members of the public are allowed access.
- (2) A person who offers any tobacco product for sale (whether by retail or wholesale) by way of an automatic vending machine must not allow any part of a tobacco product, tobacco package, or tobacco carton to be for any reason visible from outside the machine.
- (3) Subsection (1) does not limit or affect, and is not limited or affected by, subsection (2).
- (4) Subsections (1) and (2) do not, however, apply to a tobacco product, tobacco package, or tobacco carton that is visible only to the extent that is necessary for it to be delivered—
  - (a) to the person at the place or, as the case requires, to the machine; or
  - (b) to its purchaser at or from the place or, as the case requires, from the machine.
- (5) A tobacco product, tobacco package, or tobacco carton must be treated as being visible only to the extent that is authorised by subsection (4)(a) or (b) if it is delivered—
  - (a) to a person and at or from a place or machine specified in that paragraph; and
  - (b) using a form of visible delivery prescribed by any relevant acceptable forms of visible delivery regulations for the time being in force under section 39(1)(ie).
- (6) Subsections (1) and (2) do not, however, apply to a tobacco product, tobacco package, or tobacco carton that is visible in a way that complies with any relevant temporary transitional exemption regulations for the time being in force under section 39(1)(if).

Section 23A: replaced, on 23 July 2012, by section 9 of the Smoke-free Environments (Controls and Enforcement) Amendment Act 2011 (2011 No 53).

**23B Transitional exemption regulations expire 12 months after section 23A comes into force**

- (1) The following enactments expire at the end of the 12-month transition period:
  - (a) sections 23A(6) and 39(1)(if) and (6C); and
  - (b) all regulations under section 39(1)(if) that are in force immediately before the end of that period.
- (2) The 12-month transition period ends at the close of the period of 12 months that starts on the day on which section 23A (as substituted by section 9 of the Smoke-free Environments (Controls and Enforcement) Amendment Act 2011) comes into force.
- (3) On their expiry those enactments are repealed or, as the case requires, revoked.

Section 23B: replaced, on 23 July 2012, by section 9 of the Smoke-free Environments (Controls and Enforcement) Amendment Act 2011 (2011 No 53).

**24 Use of trade marks, etc, on goods other than tobacco products, or in relation to sponsored events**

- (1) No person shall use, otherwise than in a private capacity, a tobacco product trade mark—
  - (a) on any article other than a tobacco product or a package or container in which a tobacco product is sold or shipped; or
  - (b) for the purpose of advertising or identifying to the public—
    - (i) any article other than a tobacco product; or
    - (ii) any service, activity, or event; or
    - (iii) any scholarship, fellowship, or other educational benefit,—even though that person would be, but for this Act, entitled to use the trade mark on that article or for that purpose.
- (2) Where a trade mark includes the company name, or part of the company name, of a manufacturer, importer, or distributor in New Zealand of any tobacco product, no person shall, otherwise than in a private capacity, use that company name for the purpose of advertising or identifying to the public—
  - (a) any article other than a tobacco product; or
  - (b) any service, activity, or event; or
  - (c) any scholarship, fellowship, or other educational benefit,—even though that person would be, but for this Act, entitled to use that trade mark or company name for that purpose.
- (3) No person shall distribute, sell, or offer or expose for sale any article, other than a tobacco product or a package or container in which a tobacco product is sold or shipped, that bears a trade mark of a tobacco product that is sold in New Zealand.

- (4) Nothing in subsections (1) to (3) shall apply to a trade mark or company name that, during the year ending with 31 March 1990, was applied to tobacco products and other articles sold at retail in New Zealand if the estimated retail value of those other articles sold during that year exceeded one-quarter of the estimated retail value of those tobacco products sold during that year.
- (5) Nothing in subsections (1) to (3) shall apply to the use, by any person (other than a manufacturer, an importer, a distributor, or a retailer of any tobacco products, or a person acting on behalf of any such manufacturer, importer, distributor, or retailer), of a trade mark or company name for any purpose (other than for application to, or for use in connection with, tobacco products or smoking accessories) if the trade mark or company name—
  - (a) was in use in New Zealand for that purpose before 17 May 1990; or
  - (b) was in use for that purpose at any time before that trade mark or company name was first used, in New Zealand, for application to, or in connection with, any tobacco product or smoking accessory.

## **25 Sponsoring activity involving use of trade mark, etc, of tobacco products**

- (1) No person who is a manufacturer, importer, distributor, or retailer of tobacco products may sponsor (within the meaning of subsection (2)) an organised activity that is to take place, is taking place, or has taken place, in whole or in part, in New Zealand, and that involves the use, in the name of that activity, or on or through any thing other than a tobacco product, of all or any of the following:
  - (a) a tobacco product trade mark:
  - (b) all or any part of a company name included in a tobacco product trade mark:
  - (c) 1 or more words, logos, colours, shapes, sounds, smells, or other elements of a tobacco product trade mark that, as those 1 or more elements are used in the name, or on or through the thing, are likely to cause a person exposed to the name or thing to believe that the 1 or more elements are used in, on, or through it only or mainly for the purpose of advertising the product.
- (2) A person sponsors an activity for the purposes of subsection (1) or section 25A(1) if, and only if, the person does all or any of the following:
  - (a) organises or promotes, before the activity is to take place, or during the time that it takes place, some or all of the activity:
  - (b) makes, before the activity is to take place, or during or after the time that it takes place, any financial or non-financial contribution towards some or all of the activity:
  - (c) makes, before the activity is to take place, or during or after the time that it takes place, any financial or non-financial contribution to any other person in respect of the organisation or promotion, by that other person,



of, or the participation, by that other person, in, some or all of the activity.

Section 25: replaced, on 23 July 2012, by section 10 of the Smoke-free Environments (Controls and Enforcement) Amendment Act 2011 (2011 No 53).

### **25A Sponsoring activity involving exclusive supply arrangement**

- (1) No person who is a manufacturer, importer, distributor, or retailer of tobacco products may sponsor (within the meaning of section 25(2)) an organised activity that is to take place, is taking place, or has taken place, in whole or in part, in New Zealand, and that involves an arrangement for the person to be the only person supplying tobacco products at, or for the purposes of, some or all of the event.
- (2) The arrangement may be a contract, or a legally binding or other agreement, undertaking, or understanding.
- (3) Subsection (2) does not limit subsection (1).
- (4) This section operates in parallel with (that is, is not subject to, and does not override) the Commerce Act 1986.

Section 25A: inserted, on 23 July 2012, by section 10 of the Smoke-free Environments (Controls and Enforcement) Amendment Act 2011 (2011 No 53).

### **26 Exemptions for participants in certain events**

- (1) Nothing in section 22 or section 24 or section 25 shall apply to the display, on any craft, of any tobacco product trade mark or the company name of any tobacco products manufacturer, where—
  - (a) that craft is participating in an international race; and
  - (b) the tobacco products manufacturer who manufactures that tobacco product, or whose company name is so displayed, is sponsoring, in whole or in part, the participation of that craft in that race; and
  - (c) New Zealand is a port of call for that race.
- (2) Notwithstanding anything in section 22 or section 24 or section 25, the Minister may, by notice in writing, grant an exemption from any of the provisions of those sections in respect of the promotion of any international craft race where New Zealand is a port of call for that race.
- (3) Notwithstanding anything in section 22 or section 24 or section 25, where—
  - (a) the Minister is satisfied that any competition is of international significance; and
  - (b) any part of that competition is to take place in New Zealand,—

the Minister may, by notice in writing, grant an exemption from any of those sections in respect of any participant in that competition (not being a participant who is a New Zealand resident) for the purpose of allowing that participant to fulfil any obligation imposed on that participant to acknowledge any

sponsor (being an obligation incurred before that participant submitted that person's entry for that competition).

- (4) The Minister may grant an exemption under subsection (2) or subsection (3) either unconditionally or subject to such conditions as the Minister thinks fit.
- (5) The Minister may from time to time, by notice in writing to the person to whom any exemption is granted under subsection (2) or subsection (3), amend or revoke that exemption.

#### **26A Exemption for multinational sporting events**

- (1) In this section, **multinational sporting event** means any sporting event, or any series of sporting events,—
  - (a) in which 3 or more countries are, or will be, represented; and
  - (b) that is being held, or will be held, in 2 or more countries, including New Zealand.
- (2) Notwithstanding anything in section 22 or section 24 or section 25, the Minister may, by notice in writing, grant an exemption from any of the provisions of those sections in respect of—
  - (a) the use, in the name of a multinational sporting event, of—
    - (i) a tobacco product trade mark; or
    - (ii) a company name, or any part of a company name, of any manufacturer, importer, or distributor of tobacco products; or
  - (b) the advertisement of—
    - (i) a multinational sporting event; or
    - (ii) the fact that a multinational sporting event is organised or promoted or sponsored, in whole or in part, by any manufacturer, importer, or distributor of tobacco products; or
  - (c) the use, on any article, of—
    - (i) a tobacco product trade mark; or
    - (ii) a company name, or any part of a company name, of any manufacturer, importer, or distributor of tobacco products—  
for the purpose of advertising or promoting or identifying to the public—
    - (iii) a multinational sporting event; or
    - (iv) the fact that a multinational sporting event is organised or promoted or sponsored, in whole or in part, by any manufacturer, importer, or distributor of tobacco products.
- (3) The Minister may grant an exemption under subsection (2) either unconditionally or subject to such conditions as the Minister thinks fit.

Section 26A: inserted, on 12 June 1991, by section 2 of the Smoke-free Environments Amendment Act 1991 (1991 No 35).

## **27 Exemption for craft in emergencies**

Where any craft on which is displayed any tobacco product trade mark or the company name of any tobacco products manufacturer is compelled, for reasons of health or safety, or for the preservation of life or property, to enter New Zealand, nothing in section 22 or section 24 or section 25 shall apply to the display, on that craft, of that tobacco product trade mark or that company name for as long as that craft is in New Zealand for any of those reasons.

## **28 Free distribution and rewards prohibited**

- (1) No manufacturer, distributor, importer, or retailer of tobacco products may,—
- (a) distribute any tobacco product; or
  - (b) supply any tobacco product to any person for subsequent distribution; or
  - (c) in the case of a retailer, supply any tobacco product to any person for the purpose of that retailer's business—
- free of charge, or at a reduced charge.
- (1A) For the purposes of subsection (1), a tobacco product is distributed or supplied at a reduced charge—
- (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.
- (2) No person may—
- (a) offer any gift or cash rebate, or the right to participate in any contest, lottery, or game, to the purchaser of a tobacco product in consideration for the purchase of that product, or to any person in consideration for the provision of evidence of such a purchase; or
  - (b) offer, to any retailer, any gift or cash rebate, or the right to participate in any contest, lottery, or game, as an inducement or reward in relation to—
    - (i) the purchase or sale of tobacco products by that retailer; or
    - (ii) the advertising of tobacco products inside that retailer's place of business; or
    - (iii) the location of tobacco products in a particular part of that retailer's place of business.
- (3) *[Repealed]*

- (4) Nothing in subsection (2) applies in respect of any payment or reward to any person who,—
- (a) with the authority of the Director-General or of some other person authorised for that purpose by the Director-General; and
  - (b) for the purpose of monitoring compliance with the provisions of this Part,—
- purchases or attempts to purchase any tobacco product.

Section 28: substituted, on 29 July 1997, by section 8 of the Smoke-free Environments Amendment Act 1997 (1997 No 32).

Section 28(1A): inserted, on 10 December 2004, by section 19(1) of the Smoke-free Environments Amendment Act 2003 (2003 No 127).

Section 28(3): repealed, on 11 December 2003, by section 19(2) of the Smoke-free Environments Amendment Act 2003 (2003 No 127).

#### **28A Arrangements conflicting with Act have no effect**

- (1) A term has no effect if—
- (a) it is expressed or implied in an arrangement of any kind in any form; and
  - (b) compliance with it would limit or prevent compliance with section 28(1) or (2).
- (2) The arrangement may be a contract, or a legally binding or other agreement, undertaking, or understanding.
- (3) Subsection (2) does not limit subsection (1).
- (4) A person who is, or is claiming through or under, a party to the arrangement may (regardless of whether it is a contract) seek relief under subpart 5 of Part 2 of the Contract and Commercial Law Act 2017 (which applies with the necessary modifications) as if compliance with the term were performance, in a way that gives rise to illegality, of a provision of a contract.

Section 28A: inserted, on 23 July 2011, by section 11 of the Smoke-free Environments (Controls and Enforcement) Amendment Act 2011 (2011 No 53).

Section 28A(4): amended, on 1 September 2017, by section 347 of the Contract and Commercial Law Act 2017 (2017 No 5).

#### **29 Tobacco product not to be advertised or labelled as suitable for chewing, etc**

- (1) No person shall publish an advertisement for a tobacco product that directly or indirectly states or suggests that the product is suitable for chewing or for any other oral use (other than smoking).
- (2) No person shall import for sale, sell, pack, or distribute any tobacco product labelled or otherwise described as suitable for chewing, or for any other oral use (other than smoking).

*Sale and labelling*

**29AA Point-of-sale health information or warnings signs**

Every person who offers a tobacco product or herbal smoking product for sale (by retail or wholesale) must, at all times when point-of-sale health information or warnings signs regulations under section 39(1)(ig) that apply to the person are in force, display clearly at each point of sale at the outside of or inside the person's place of business a sign for the public that—

- (a) does no more than communicate health information or warnings (which may, without limitation, be or include the message “SMOKING KILLS Ka mate koe i te kai hikareti”); and
- (b) complies with any regulations for the time being in force under section 39(1)(ig).

Section 29AA: inserted, on 23 July 2012, by section 12 of the Smoke-free Environments (Controls and Enforcement) Amendment Act 2011 (2011 No 53).

**29AAB Internet-sales health information or warnings**

- (1) Every person who offers a tobacco product or herbal smoking product for Internet sale (by retail or wholesale) must, at all times when Internet-sales health information or warnings regulations under section 39(1)(ih) that apply to the person are in force, comply with all provisions of those regulations (if any) requiring health information or warnings to be visible on the person's Internet site when people browse, enter, or otherwise access it.
- (2) The health information or warnings to be visible—
  - (a) may, without limitation, be or include the message “SMOKING KILLS Ka mate koe i te kai hikareti”; and
  - (b) must comply with any regulations for the time being in force under section 39(1)(ih).

Section 29AAB: inserted, on 23 July 2012, by section 12 of the Smoke-free Environments (Controls and Enforcement) Amendment Act 2011 (2011 No 53).

**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.
- (2) No manufacturer, distributor, importer, or retailer of tobacco products may,—
  - (a) distribute a tobacco product to which subsection (1) applies; or
  - (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.

Section 29A: inserted, on 10 December 2004, by section 20 of the Smoke-free Environments Amendment Act 2003 (2003 No 127).

### **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
  - (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—
- (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
  - (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.

Section 29B: inserted, on 10 December 2004, by section 20 of the Smoke-free Environments Amendment Act 2003 (2003 No 127).

### **30 Sale, and sellers' arranging or effecting delivery, of tobacco products and herbal smoking products to people under 18 prohibited**

- (1) No person may sell a tobacco product or herbal smoking product, or having sold it to a person of any age deliver it or arrange for it to be delivered, 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 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.
- (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 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.

- (2B) Subsection (2A) does not affect the generality of subsection (2).
- (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
  - (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 offers a tobacco product or herbal smoking product for sale by retail must, at all times when point-of-sale purchase age information or warnings regulations under section 39(1)(ii) that apply to the person are in force, display clearly at each point of sale at the outside of or inside the person's place of business a notice for the public that—
- (a) does no more than communicate information or warnings to the effect that the sale of tobacco products and herbal smoking products to people who are younger than 18 years is prohibited; and
  - (b) complies with any regulations for the time being in force under section 39(1)(ii).
- (6A) Every person who offers a tobacco product or herbal smoking product for Internet sale (by retail or wholesale) must, at all times when Internet-sales purchase age information or warnings regulations under section 39(1)(ij) that apply to the person are in force, comply with all provisions of those regulations (if any) requiring purchase age information or warnings to be visible on the person's Internet site when people browse, enter, or otherwise access it.
- (6B) The purchase age information or warnings required by subsection (6A) to be visible must—
- (a) do no more than communicate information or warnings to the effect that the sale of tobacco products and herbal smoking products to people who are younger than 18 years is prohibited; and
  - (b) comply with any regulations for the time being in force under section 39(1)(ij).

Section 30: substituted, on 11 December 2003, by section 21 of the Smoke-free Environments Amendment Act 2003 (2003 No 127).

Section 30 heading: amended, on 23 July 2011, by section 13(1) of the Smoke-free Environments (Controls and Enforcement) Amendment Act 2011 (2011 No 53).

Section 30(1): amended, on 23 July 2011, by section 13(2) of the Smoke-free Environments (Controls and Enforcement) Amendment Act 2011 (2011 No 53).

Section 30(2A): amended, on 18 December 2013, by section 417(1) of the Sale and Supply of Alcohol Act 2012 (2012 No 120).

Section 30(6): replaced, on 23 July 2012, by section 13(3) of the Smoke-free Environments (Controls and Enforcement) Amendment Act 2011 (2011 No 53).

Section 30(6A): inserted, on 23 July 2012, by section 13(3) of the Smoke-free Environments (Controls and Enforcement) Amendment Act 2011 (2011 No 53).

Section 30(6B): inserted, on 23 July 2012, by section 13(3) of the Smoke-free Environments (Controls and Enforcement) Amendment Act 2011 (2011 No 53).

### **30AA Supplying tobacco products or herbal smoking products to people under 18 prohibited**

- (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
  - (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.
- (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 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.
- (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
  - (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.

Section 30AA: inserted, on 11 December 2003, by section 21 of the Smoke-free Environments Amendment Act 2003 (2003 No 127).

Section 30AA(3): amended, on 18 December 2013, by section 417(1) of the Sale and Supply of Alcohol Act 2012 (2012 No 120).

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

- (1) This section applies—
  - (a) if a person—
    - (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 21 of the Smoke-free Environments Amendment Act 2003 (the **repeat offence**); and
- (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
- (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**).
- (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—
- (a) prohibiting either or both of the following:
    - (i) the sale of tobacco products by or on behalf of the person:
    - (ii) the sale of tobacco products at a shop at which the offence occurred; or
  - (b) prohibiting either or both of the following:
    - (i) the sale of tobacco products of a stated kind by or on behalf of the person:
    - (ii) the sale of tobacco products of a stated kind in the place in which the offence occurred; or
  - (c) imposing any conditions or restrictions (or both) it thinks fit on either or both of the following:
    - (i) the sale of tobacco products by or on behalf of the person:
    - (ii) the sale of tobacco products at a shop at which the offence occurred.
- (3) The order must state—
- (a) the date it takes effect (which may be the date on which it is made or a later date); and
  - (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).

Section 30AB: inserted, on 10 March 2004, by section 22 of the Smoke-free Environments Amendment Act 2003 (2003 No 127).

### **30A Restrictions on sale of certain tobacco products in small quantities**

- (1) In this section and section 36(7A), unless the context otherwise requires,—
- cigarette** includes the tobacco product commonly known as a cigarillo
- loose cigarettes** means cigarettes that are not contained in a package
- loose tobacco** means—
- (a) tobacco prepared for smoking in hand-rolled cigarettes:
  - (b) pipe tobacco.

- (2) No person may—
- (a) sell by retail; or
  - (b) offer for sale by retail—  
loose cigarettes in amounts of fewer than 20 cigarettes.
- (3) No manufacturer, importer, distributor, or retailer may sell or offer for sale—
- (a) cigarettes in a package that contains fewer than 20 cigarettes; or
  - (b) loose tobacco in a package that contains less than 30 grams of loose tobacco.
- (4) Nothing in subsection (2) or subsection (3)(a) applies in respect of cigars (other than cigarillos).

Section 30A: inserted, on 29 July 1997, by section 9 of the Smoke-free Environments Amendment Act 1997 (1997 No 32).

### **31 Limits on harmful constituents**

No manufacturer or importer may offer for sale or export any tobacco product or herbal smoking product that—

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

Section 31: substituted, on 29 July 1997, by section 10 of the Smoke-free Environments Amendment Act 1997 (1997 No 32).

Section 31: amended, on 1 February 2005, by section 23 of the Smoke-free Environments Amendment Act 2003 (2003 No 127).

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

- (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
  - (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 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:
    - (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.
- (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).
- (4) Subsection (3) does not authorise or excuse a contravention of section 29B.

Section 32: substituted, on 10 December 2004, by section 24 of the Smoke-free Environments Amendment Act 2003 (2003 No 127).

### 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—
- (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:
    - (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:
    - (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 photo-

- graph or picture intended to have effect as a warning relating to the effects of the use of the herbal smoking products on health; and
- (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:
- (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.
- (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).
- (4) Subsection (3) does not authorise or excuse a contravention of section 29B.

Section 32AA: inserted, on 10 December 2004, by section 24 of the Smoke-free Environments Amendment Act 2003 (2003 No 127).

### *Testing, reports, and returns*

#### **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):
- (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:
  - (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.
- (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.

Section 33: substituted, on 10 December 2004, by section 24 of the Smoke-free Environments Amendment Act 2003 (2003 No 127).

### **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.
- (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.
- (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.

Section 34: substituted, on 10 December 2004, by section 24 of the Smoke-free Environments Amendment Act 2003 (2003 No 127).

### **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,—
  - (a) a return showing—
    - (i) by class of tobacco product, or brand of tobacco product of any class, or variant of a brand of 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
    - (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
  - (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.
- (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
  - (b) may publish or make publicly available in any other way all or any part of any such return or report.

Section 35: substituted, on 1 February 2004, by section 25 of the Smoke-free Environments Amendment Act 2003 (2003 No 127).

*Offences***36 Offences in respect of tobacco products and herbal smoking products**

- (1) Every person who, without reasonable excuse, publishes any advertisement for a tobacco product in contravention of section 22 commits an offence and is liable,—
  - (a) in the case of a manufacturer, an importer, or a distributor, to a fine not exceeding \$50,000; or
  - (b) in any other case, to a fine not exceeding \$10,000.
- (1A) A person who, without reasonable excuse, allows a tobacco product, tobacco package, or tobacco carton to be visible in contravention of section 23A(1) or (2) commits an offence and is liable to a fine not exceeding \$10,000.
- (2) Every person who, without reasonable excuse, uses any trade mark or company name in contravention of subsection (1) or subsection (2) of section 24, or who distributes, sells, or offers or exposes for sale any article in contravention of subsection (3) of that section commits an offence and is liable,—
  - (a) in the case of a manufacturer, an importer, or a distributor, to a fine not exceeding \$50,000; or
  - (b) in any other case, to a fine not exceeding \$10,000.
- (3) Every manufacturer, importer, distributor, or retailer of tobacco products who, in contravention of section 25(1), sponsors (within the meaning of section 25(2)) an organised activity commits an offence and is liable,—
  - (a) in the case of a manufacturer, an importer, or a distributor, to a fine not exceeding \$50,000; or
  - (b) in any other case, to a fine not exceeding \$10,000.
- (3A) Every manufacturer, importer, distributor, or retailer of tobacco products who, in contravention of section 25A(1), sponsors (within the meaning of section 25(2)) any organised activity, commits an offence and is liable,—
  - (a) in the case of a manufacturer, an importer, or a distributor, to a fine not exceeding \$50,000; or
  - (b) in any other case, to a fine not exceeding \$10,000.
- (4) Every manufacturer, distributor, importer, or retailer of tobacco products who distributes or supplies any tobacco product in contravention of section 28(1) commits an offence and is liable to a fine not exceeding \$50,000.
- (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.
- (5) Every person who offers any gift, cash rebate, or right of participation in contravention of section 28(2), or who publishes any advertisement in contravention of section 29(1), or who imports, sells, packs, or distributes any tobac-

- co product in contravention of section 29(2), commits an offence and is liable,—
- (a) in the case of a manufacturer, an importer, or a distributor, to a fine not exceeding \$10,000; or
  - (b) in any other case, to a fine not exceeding \$5,000.
- (5AA) Every person who offers a tobacco product for sale (by retail or wholesale) and who fails, without reasonable excuse, to display any point-of-sale health information or warnings sign or signs required by section 29AA commits an offence and is liable to a fine not exceeding \$2,000.
- (5AAB) Every person who offers a tobacco product for Internet sale (by retail or wholesale) and who fails, without reasonable excuse, to make visible in accordance with section 29AAB the health information or warnings required by section 29AAB commits an offence and is liable to a fine not exceeding \$2,000.
- (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 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 who sells a tobacco product, or who having sold it delivers it or arranges for it to be delivered, in contravention of section 30(1) commits an offence 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 \$5,000.

- (6A) Every person who sells a herbal smoking product, or who having sold it delivers it or arranges for it to be delivered, in contravention of section 30(1) commits an offence and is liable to a fine not exceeding \$2,000.
- (6B) Every person who supplies a tobacco product or herbal smoking product in a public place in contravention of section 30AA(1) commits an offence and is liable to a fine not exceeding \$2,000.
- (7) Every person who offers a tobacco product or herbal smoking product for sale by retail and who fails, without reasonable excuse, to display in accordance with section 30(6) the point-of-sale purchase age information sign or signs required by section 30(6) commits an offence and is liable to a fine not exceeding \$2,000.
- (7AAA) Every person who offers a tobacco product or herbal smoking product for Internet sale (by retail or wholesale) and who fails, without reasonable excuse, to make visible in accordance with section 30(6A) the purchase age information or warnings required by section 30(6A) commits an offence and is liable to a fine not exceeding \$2,000.
- (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.
- (7A) Every person commits an offence and is liable to a fine not exceeding \$2,000 who,—
- (a) sells or offers for sale any cigarettes in contravention of section 30A(2); or
  - (b) being a manufacturer, importer, distributor, or retailer, sells or offers for sale any cigarettes or tobacco in contravention of section 30A(3).
- (8) Every person commits an offence and is liable to a fine not exceeding \$10,000 who, being a manufacturer or importer, offers for sale or export any tobacco product that—
- (a) contains, or generates in its smoke, any harmful constituent prohibited by regulations made under this Part for the purposes of section 31(a); or
  - (b) contains, or generates in its smoke, any harmful constituent in excess of the level permitted by regulations made under this Part for the purposes of section 31(b), as determined in accordance with any tests so prescribed.
- (9) Every manufacturer, importer, distributor, or retailer of tobacco products who sells or offers for sale any tobacco product knowing that it contravenes section 32(1) commits an offence and is liable,—



- (a) in the case of a manufacturer, an importer, or a distributor, to a fine not exceeding \$10,000; or
  - (b) in the case of a retailer, to a fine not exceeding \$4,000.
- (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,—
- (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.
- (10) Every person who offers for sale, by way of an automatic vending machine, any tobacco product and who, in contravention of section 32(3) or section 32AA(3), fails, without reasonable excuse, to display on that vending machine such health message as is required by or under this Act commits an offence and is liable to a fine not exceeding \$4,000.
- (11) Every manufacturer or importer of tobacco products who fails, without reasonable excuse,—
- (a) to conduct any test required by section 33(2); or
  - (b) to conduct any further test required under section 34; or
  - (c) to submit any return required by section 35(1)(a); or
  - (d) to submit any report required by section 35(1)(b),—
- commits an offence and is liable to a fine not exceeding \$10,000.

Section 36 heading: amended, on 23 July 2011, by section 15(1) of the Smoke-free Environments (Controls and Enforcement) Amendment Act 2011 (2011 No 53).

Section 36(1A): replaced, on 23 July 2012, by section 15(2) of the Smoke-free Environments (Controls and Enforcement) Amendment Act 2011 (2011 No 53).

Section 36(3): amended, on 23 July 2012, by section 15(3) of the Smoke-free Environments (Controls and Enforcement) Amendment Act 2011 (2011 No 53).

Section 36(3A): inserted, on 23 July 2012, by section 15(4) of the Smoke-free Environments (Controls and Enforcement) Amendment Act 2011 (2011 No 53).

Section 36(4A): inserted, on 11 December 2003, by section 26(3) of the Smoke-free Environments Amendment Act 2003 (2003 No 127).

Section 36(5AA): inserted, on 23 July 2012, by section 15(5) of the Smoke-free Environments (Controls and Enforcement) Amendment Act 2011 (2011 No 53).

Section 36(5AAB): inserted, on 23 July 2012, by section 15(5) of the Smoke-free Environments (Controls and Enforcement) Amendment Act 2011 (2011 No 53).

Section 36(5A): inserted, on 10 December 2004, by section 26(4) of the Smoke-free Environments Amendment Act 2003 (2003 No 127).

Section 36(5B): inserted, on 10 December 2004, by section 26(4) of the Smoke-free Environments Amendment Act 2003 (2003 No 127).

Section 36(6): substituted, on 23 July 2011, by section 15(6) of the Smoke-free Environments (Controls and Enforcement) Amendment Act 2011 (2011 No 53).

Section 36(6A): inserted, on 23 July 2011, by section 15(6) of the Smoke-free Environments (Controls and Enforcement) Amendment Act 2011 (2011 No 53).

Section 36(6B): inserted, on 23 July 2011, by section 15(6) of the Smoke-free Environments (Controls and Enforcement) Amendment Act 2011 (2011 No 53).

Section 36(7): substituted, on 23 July 2011, by section 15(6) of the Smoke-free Environments (Controls and Enforcement) Amendment Act 2011 (2011 No 53).

Section 36(7AAA): inserted, on 23 July 2011, by section 15(6) of the Smoke-free Environments (Controls and Enforcement) Amendment Act 2011 (2011 No 53).

Section 36(7AA): inserted, on 10 March 2004, by section 26(6) of the Smoke-free Environments Amendment Act 2003 (2003 No 127).

Section 36(7A): inserted, on 29 July 1997, by section 12 of the Smoke-free Environments Amendment Act 1997 (1997 No 32).

Section 36(8): substituted, on 29 July 1997, by section 12 of the Smoke-free Environments Amendment Act 1997 (1997 No 32).

Section 36(9A): inserted, on 10 December 2004, by section 26(7) of the Smoke-free Environments Amendment Act 2003 (2003 No 127).

Section 36(10): amended, on 10 December 2004, by section 26(8) of the Smoke-free Environments Amendment Act 2003 (2003 No 127).

### **36A Toy tobacco products**

- (1) No person may sell a toy tobacco product to a person younger than 18 years.
- (2) Every person who sells a toy tobacco product to a person younger than 18 years in contravention of subsection (1) commits an offence, and is liable to a fine not exceeding \$2,000.
- (3) 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.
- (4) For the purposes of subsection (3), a person charged in respect of a contravention of subsection (1) who proves that he or she sighted an evidence of age document 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.
- (5) Subsection (4) does not affect the generality of subsection (3).
- (6) 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
  - (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.

Section 36A: inserted, on 11 December 2003, by section 27 of the Smoke-free Environments Amendment Act 2003 (2003 No 127).

Section 36A(4): amended, on 18 December 2013, by section 417(1) of the Sale and Supply of Alcohol Act 2012 (2012 No 120).

### **37 Enforcement**

- (1) It shall be the duty of the Director-General to enforce the provisions of this Part.
- (2) Every prosecution for an offence against this Part must be commenced by the Director-General or a person authorised by the Director-General.
- (3) Despite anything to the contrary in section 25 of the Criminal Procedure Act 2011, the limitation period in respect of an offence against this Part ends on the date that is 12 months after the date on which the offence was committed.

Section 37(2): replaced, on 1 July 2013, by section 413 of the Criminal Procedure Act 2011 (2011 No 81).

Section 37(3): replaced, on 1 July 2013, by section 413 of the Criminal Procedure Act 2011 (2011 No 81).

### **38 Liability of employees, employers, agents, and principals**

- (1) For the purposes of this Part, every person is deemed to publish a tobacco product advertisement, whether he or she does so on his or her own account or as the agent or employee of any other person.
- (2) Anything done by a person as the employee of another person is, for the purposes of an offence against section 36(6) in respect of a contravention of section 30(1), to be treated as done by that other person as well as by the first-mentioned person, whether or not it was done with that other person's knowledge or approval.
- (3) Anything done by a person as the agent of another person is, for the purposes of an offence against section 36(6) in respect of a contravention of section 30(1), to be treated as done by that other person as well as by the first-mentioned person, unless it is done without that other person's express or implied authority, precedent or subsequent.

Section 38: substituted, on 29 July 1997, by section 13 of the Smoke-free Environments Amendment Act 1997 (1997 No 32).

### **38A Infringement offences**

In this section and sections 38B to 39,—

**infringement fee**, in relation to an infringement offence, means an amount—

- (a) prescribed for the purposes of this section in regulations made under section 39(1)(ik); and
- (b) not exceeding the maximum infringement fee amount specified for that offence (in the relevant paragraph of the definition in this section of infringement offence)

**infringement offence** means an offence that is an offence against a section, and that relates to contravening the section or sections, specified in any one of

the following paragraphs (and that has the maximum infringement fee amount specified in that paragraph):

- (a) section 36(5), but only so far as it relates to contravening section 29(1) (on publishing an advertisement for a tobacco product that directly or indirectly states or suggests that the product is suitable for chewing or for any other oral use (other than smoking)) or section 29(2) (on importing for sale, selling, packing, or distributing a tobacco product labelled or otherwise described as suitable for chewing, or for any other oral use (other than smoking))—maximum infringement fee amount \$1,000:
- (b) section 36(5AA) (which relates to contravening section 29AA, which in certain circumstances requires point-of-sale signs to be displayed by a person who offers for sale (by retail or wholesale) a tobacco product or herbal smoking product)—maximum infringement fee amount \$400:
- (c) section 36(5AAB) (which relates to contravening section 29AAB, which in certain circumstances requires health information or warnings to be made visible by a person who offers for Internet sale (by retail or wholesale) a tobacco product)—maximum infringement fee amount \$400:
- (d) section 36(5A) (which relates to contravening section 29A(2), which relates to distributing a tobacco product to which section 29A(1) applies, or supplying a tobacco product to which section 29A(1) applies to another person for later distribution, or, in the case of a retailer, supplying a tobacco product to which section 29A(1) applies to another person for the purpose of that retailer's business)—maximum infringement fee amount \$1,000:
- (e) section 36(5B) (which relates to contravening section 29B, which relates to permitting 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, and also to permitting 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)—maximum infringement fee amount \$400:
- (f) section 36(6) (which relates to contravening section 30(1) by selling, or after selling them delivering or arranging for the delivery of, tobacco products to people younger than 18 years)—maximum infringement fee amount \$1,000:
- (g) section 36(6A) (which relates to contravening section 30(1) by selling, or after selling them delivering or arranging for the delivery of, herbal smoking products to people younger than 18 years)—maximum infringement fee amount \$400:
- (h) section 36(7) (which relates to contravening section 30(6), which in certain circumstances requires point-of-sale purchase age information or warnings to be displayed by a person who offers a tobacco product or

herbal smoking product for sale by retail)—maximum infringement fee amount \$400:

- (i) section 36(7AAA) (which relates to contravening section 30(6A), which in certain circumstances requires purchase age information or warnings to be made visible by a person who offers a tobacco product or herbal smoking product for Internet sale (by retail or wholesale))—maximum infringement fee amount \$400:
- (j) section 36(7A) (which relates to contravening section 30A(2) or (3), both of which impose restrictions on the sale of certain tobacco products in small quantities)—maximum infringement fee amount \$400:
- (k) section 36A(2) (which relates to contravening section 36A(1), which prohibits sale of a toy tobacco product to a person younger than 18 years)—maximum infringement fee amount \$400.

Compare: 1989 No 63 s 162A

Section 38A: inserted, on 23 July 2011, by section 16(1) of the Smoke-free Environments (Controls and Enforcement) Amendment Act 2011 (2011 No 53).

Section 38A **infringement offence** paragraph (a): replaced, on 23 July 2012, by section 16(2) of the Smoke-free Environments (Controls and Enforcement) Amendment Act 2011 (2011 No 53).

Section 38A **infringement offence** paragraph (b): replaced, on 23 July 2012, by section 16(2) of the Smoke-free Environments (Controls and Enforcement) Amendment Act 2011 (2011 No 53).

Section 38A **infringement offence** paragraph (c): replaced, on 23 July 2012, by section 16(2) of the Smoke-free Environments (Controls and Enforcement) Amendment Act 2011 (2011 No 53).

Section 38A **infringement offence** paragraph (d): replaced, on 23 July 2012, by section 16(2) of the Smoke-free Environments (Controls and Enforcement) Amendment Act 2011 (2011 No 53).

Section 38A **infringement offence** paragraph (e): replaced, on 23 July 2012, by section 16(2) of the Smoke-free Environments (Controls and Enforcement) Amendment Act 2011 (2011 No 53).

Section 38A **infringement offence** paragraph (f): replaced, on 23 July 2012, by section 16(2) of the Smoke-free Environments (Controls and Enforcement) Amendment Act 2011 (2011 No 53).

Section 38A **infringement offence** paragraph (g): replaced, on 23 July 2012, by section 16(2) of the Smoke-free Environments (Controls and Enforcement) Amendment Act 2011 (2011 No 53).

Section 38A **infringement offence** paragraph (h): inserted, on 23 July 2012, by section 16(2) of the Smoke-free Environments (Controls and Enforcement) Amendment Act 2011 (2011 No 53).

Section 38A **infringement offence** paragraph (i): inserted, on 23 July 2012, by section 16(2) of the Smoke-free Environments (Controls and Enforcement) Amendment Act 2011 (2011 No 53).

Section 38A **infringement offence** paragraph (j): inserted, on 23 July 2012, by section 16(2) of the Smoke-free Environments (Controls and Enforcement) Amendment Act 2011 (2011 No 53).

Section 38A **infringement offence** paragraph (k): inserted, on 23 July 2012, by section 16(2) of the Smoke-free Environments (Controls and Enforcement) Amendment Act 2011 (2011 No 53).

### **38B Commission of infringement offences**

A person who is alleged to have committed an infringement offence may either—

- (a) be proceeded against for the alleged offence by filing a charging document under section 14 of the Criminal Procedure Act 2011; or

(b) be served with an infringement notice as provided for in section 38C.

Compare: 1989 No 63 s 162B

Section 38B: inserted, on 23 July 2011, by section 16(1) of the Smoke-free Environments (Controls and Enforcement) Amendment Act 2011 (2011 No 53).

Section 38B(a): amended, on 1 July 2013, by section 413 of the Criminal Procedure Act 2011 (2011 No 81).

### **38C Infringement notices**

- (1) If an enforcement officer observes a person committing an infringement offence, or he or she has reasonable cause to believe that such an offence is being or has been committed by that person, an infringement notice in respect of that offence may be served on that person.
- (2) Any enforcement officer (not necessarily the person who issued the notice) may deliver the infringement notice (or a copy of it) to the person alleged to have committed an infringement offence personally or by post addressed to that person's last known place of residence or business.
- (3) An infringement notice (or a copy of it) sent to a person under subsection (2) is to be treated as having been served on that person when it was posted.
- (4) Every infringement notice must be in the prescribed form and must contain the following particulars:
  - (a) such details of the alleged infringement offence as are sufficient fairly to inform a person of the time, place, and nature of the alleged offence; and
  - (b) the amount of the infringement fee; and
  - (c) the address of the place at which the infringement fee may be paid; and
  - (d) the time within which the infringement fee must be paid; and
  - (e) a summary of the provisions of section 21(10) of the Summary Proceedings Act 1957; and
  - (f) a statement that the person served with the notice has a right to request a hearing; and
  - (g) a statement of what will happen if the person served with the notice neither pays the infringement fee nor requests a hearing; and
  - (h) any other particulars that may be prescribed.
- (5) If an infringement notice has been issued under this section, the procedure under section 21 of the Summary Proceedings Act 1957 may be used in respect of the offence to which the infringement notice relates; and, in that case, the provisions of that section apply with all necessary modifications.

Compare: 1989 No 63 s 162C

Section 38C: inserted, on 23 July 2011, by section 16(1) of the Smoke-free Environments (Controls and Enforcement) Amendment Act 2011 (2011 No 53).

Section 38C(3): amended, on 1 July 2013, by section 413 of the Criminal Procedure Act 2011 (2011 No 81).

### **38D Payment of infringement fees**

All infringement fees paid in respect of infringement offences must be paid into a Crown Bank Account.

Compare: 1989 No 63 s 162D

Section 38D: inserted, on 23 July 2011, by section 16(1) of the Smoke-free Environments (Controls and Enforcement) Amendment Act 2011 (2011 No 53).

### *Miscellaneous provisions*

### **39 Regulations**

- (1) The Governor-General may from time to time, by Order in Council, make regulations for all or any of the following purposes:
  - (a) prescribing forms, certificates, notices, leaflets, signs, particulars, and notifications, and the persons by whom and the persons to whom any such forms, certificates, notices, leaflets, signs, particulars, and notifications are to be supplied:
  - (b) prescribing records and registers for the purposes of this Part; prescribing the manner in which and the period during which any such records and registers are to be kept; and prescribing the persons to whom, and the conditions on which, any such records and registers may be available for searching, inspection, and copying:
  - (c) *[Repealed]*
  - (d) *[Repealed]*
  - (e) prescribing the form, size, and content of information and messages to be displayed with, on, or in packages of, tobacco products or herbal smoking products, or on automatic vending machines that dispense tobacco products; and prescribing the circumstances and manner in which the information and messages are to be so displayed:
  - (f) prescribing the class or classes of tobacco products or herbal smoking products to which section 33 is to apply, and regulating the tests that are to be conducted under that section:
  - (g) specifying harmful constituents of tobacco products or herbal smoking products for the purposes of this Part:
  - (ga) prohibiting harmful constituents of tobacco products or herbal smoking products for the purposes of section 31(a):
  - (h) prescribing the method of determining the constituents of tobacco products or herbal smoking products, and the smoke produced from their combustion:
  - (i) prescribing the form and manner in which returns and reports are to be filed under section 35:

- (ia) prescribing for the purposes of section 23(1)(a)(ii) (on retailers) requirements with which tobacco product and price information under section 23(1)(a) must comply:
- (ib) prescribing for the purposes of section 23(1)(b)(ii) (on retailers) requirements with which a tobacco product availability and locations notice under section 23(1)(b) must comply:
- (ic) prescribing for the purposes of section 23(2)(b) (on vending machines) requirements with which a tobacco product and price notice under section 23(2) must comply:
- (id) prescribing for the purposes of section 23(3)(b) (on Internet sales) requirements with which a tobacco product and price information under section 23(3) must comply:
- (ie) prescribing for the purposes of section 23A(5)(b) acceptable forms of visible delivery of all or any of tobacco products, tobacco packages, and tobacco cartons:
- (if) prescribing for the purposes of section 23A(6) ways in which a class or classes of people who offer tobacco products for sale may allow a tobacco product, tobacco package, or tobacco carton to be visible:
- (ig) prescribing for the purposes of section 29AA requirements with which point-of-sale health information or warnings signs under that section must comply:
- (ih) prescribing for the purposes of section 29AAB requirements that a person who offers a tobacco product for Internet sale (by retail or wholesale) make visible as required by section 29AAB health information or warnings, and prescribing requirements with which that information or those warnings must comply:
- (ii) prescribing for the purposes of section 30(6)(b) requirements with which a notice for the public (to the effect that the sale of tobacco products and herbal smoking products to people who are younger than 18 years is prohibited) under section 30(6) must comply:
- (ij) prescribing for the purposes of section 30(6A) requirements that a person who offers a tobacco product or herbal smoking product for Internet sale (by retail or wholesale) make visible as required by section 30(6A) tobacco product and herbal smoking product purchase age information or warnings, and prescribing requirements with which that information or those warnings must comply:
- (ik) prescribing for the purposes of section 38A the infringement fee or infringement fees payable in respect of different kinds of infringement offences:
- (il) prescribing for the purposes of (and for the purposes of the procedure in section 21 of the Summary Proceedings Act 1957 as modified and ap-



plied by) section 38C the form of infringement notices and reminder notices for infringement offences, and any other particulars to be contained in infringement notices and reminder notices:

- (j) providing for such other matters as are contemplated by or necessary for giving full effect to the provisions of this Part or its due administration.
- (2) *[Repealed]*
- (3) *[Repealed]*
- (4) *[Repealed]*
- (5) *[Repealed]*
- (6) Regulations made under subsection (1)(ia), (ic), (ig), (ih), (ii), or (ij) must come into force no earlier than the day 6 months after the date on which they are made.
- (6A) Regulations under all or any of subsection (1)(ia), (ib), (ic), (ig), (ih), (ii), and (ij) may (without limitation) prescribe different requirements for all or any of the following:
  - (a) different classes of people who offer tobacco products or herbal smoking products for sale:
  - (b) different classes of place of business:
  - (c) different classes of points of sale:
  - (d) different circumstances of the sales for which requirements are prescribed.
- (6B) Regulations under subsection (1)(ie) may (without limitation) do either or both of the following:
  - (a) prescribe for different classes of people who offer tobacco products for sale different acceptable forms of visible delivery of all or any of tobacco products, tobacco packages, and tobacco cartons:
  - (b) prescribe conditions with which 1 or more classes of people of that kind must comply before, or while, using a prescribed acceptable form of visible delivery.
- (6C) Regulations under subsection (1)(if) may (without limitation) do either or both of the following:
  - (a) prescribe for different classes of people who offer tobacco products for sale different ways of allowing a tobacco product, tobacco package, or tobacco carton to be visible:
  - (b) prescribe conditions with which 1 or more classes of people of that kind must comply before, or while, allowing a tobacco product, tobacco package, or tobacco carton to be visible in a way prescribed.

- (6D) Regulations under subsection (1)(ig) may (without limitation) prescribe requirements relating to all or any of the following matters relating to signs under section 29AA:
- (a) the health information or warnings to be communicated by them:
  - (b) the shape and lengths of their sides:
  - (c) the width, and other aspects of, the borders around their edges:
  - (d) the typeface or font, point size, other aspects of the format or layout, or of the clarity, legibility, and weight, of the printing on them of the health information or warnings to be communicated by them:
  - (e) the minimum area that they must have for printing across:
  - (f) any official attribution (which may, without limitation, be or include “Ministry of Health Warning”) that they are to contain, and the way in which that attribution is to be communicated by them.
- (6E) Regulations under subsection (1)(ih) may (without limitation) prescribe requirements relating to all or any of the following matters relating to the health information or warnings to be made visible under section 29AAB:
- (a) the shape, and lengths of, the sides of that information or those warnings:
  - (b) the width, and other aspects of, the borders around the edges of that information or those warnings:
  - (c) the typeface or font, point size, other aspects of the format or layout, or of the clarity, legibility, and weight, of all or any of the text of that information or those warnings:
  - (d) the minimum area of that information or those warnings:
  - (e) any official attribution (which may, without limitation, be or include “Ministry of Health Warning”) that that information is, or that those warnings are, to contain.
- (7) This subsection applies to regulations under this section if they are the first regulations made after the commencement of section 28 of the Smoke-free Environments Amendment Act 2003 that (substantively, or by amending existing regulations)—
- (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
  - (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 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
  - (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:
    - (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
  - (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
  - (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
  - (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
  - (j) require manufacturers and importers of tobacco products to file with the Director-General returns showing by brand variant—
    - (i) the weight of tobacco (or the weight of tobacco and of each additive) used in the manufacture of the tobacco products sold by the manufacturer or importer; and
    - (ii) the quantity of each variant of a brand of tobacco product sold by the manufacturer or importer; and
    - (iii) the recommended price of each variant of a brand of tobacco product sold by the manufacturer or importer during the previous year.
- (8) If regulations to which subsection (7) 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.

- (9) If regulations to which subsection (7) 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.

Section 39(1)(a): substituted, on 29 July 1997, by section 14(1) of the Smoke-free Environments Amendment Act 1997 (1997 No 32).

Section 39(1)(c): repealed, on 23 July 2012, by section 17(1) of the Smoke-free Environments Amendment Act 1997 (1997 No 32).

Section 39(1)(d): repealed, on 11 December 1998, by section 7(3)(b) of the Smoke-free Environments Amendment Act 1997 (1997 No 32).

Section 39(1)(e): amended, on 10 December 2004, by section 28(1)(a) of the Smoke-free Environments Amendment Act 2003 (2003 No 127).

Section 39(1)(f): amended, on 10 December 2004, by section 28(1)(b) of the Smoke-free Environments Amendment Act 2003 (2003 No 127).

Section 39(1)(g): substituted, on 29 July 1997, by section 14(3) of the Smoke-free Environments Amendment Act 1997 (1997 No 32).

Section 39(1)(g): amended, on 10 December 2004, by section 28(1)(c) of the Smoke-free Environments Amendment Act 2003 (2003 No 127).

Section 39(1)(ga): inserted, on 29 July 1997, by section 14(3) of the Smoke-free Environments Amendment Act 1997 (1997 No 32).

Section 39(1)(ga): amended, on 10 December 2004, by section 28(1)(d) of the Smoke-free Environments Amendment Act 2003 (2003 No 127).

Section 39(1)(h): amended, on 10 December 2004, by section 28(1)(e) of the Smoke-free Environments Amendment Act 2003 (2003 No 127).

Section 39(1)(ia): replaced, on 23 July 2012, by section 17(2) of the Smoke-free Environments (Controls and Enforcement) Amendment Act 2011 (2011 No 53).

Section 39(1)(ib): inserted, on 23 July 2012, by section 17(2) of the Smoke-free Environments (Controls and Enforcement) Amendment Act 2011 (2011 No 53).

Section 39(1)(ic): inserted, on 23 July 2012, by section 17(2) of the Smoke-free Environments (Controls and Enforcement) Amendment Act 2011 (2011 No 53).

Section 39(1)(id): inserted, on 23 July 2012, by section 17(2) of the Smoke-free Environments (Controls and Enforcement) Amendment Act 2011 (2011 No 53).

Section 39(1)(ie): inserted, on 23 July 2012, by section 17(2) of the Smoke-free Environments (Controls and Enforcement) Amendment Act 2011 (2011 No 53).

Section 39(1)(if): inserted, on 23 July 2012, by section 17(2) of the Smoke-free Environments (Controls and Enforcement) Amendment Act 2011 (2011 No 53).

Section 39(1)(ig): inserted, on 23 July 2012, by section 17(2) of the Smoke-free Environments (Controls and Enforcement) Amendment Act 2011 (2011 No 53).

Section 39(1)(ih): inserted, on 23 July 2012, by section 17(2) of the Smoke-free Environments (Controls and Enforcement) Amendment Act 2011 (2011 No 53).

Section 39(1)(ii): inserted, on 23 July 2012, by section 17(2) of the Smoke-free Environments (Controls and Enforcement) Amendment Act 2011 (2011 No 53).

Section 39(1)(ij): inserted, on 23 July 2012, by section 17(2) of the Smoke-free Environments (Controls and Enforcement) Amendment Act 2011 (2011 No 53).

Section 39(1)(ik): inserted, on 23 July 2011, by section 17(4) of the Smoke-free Environments (Controls and Enforcement) Amendment Act 2011 (2011 No 53).

Section 39(1)(il): inserted, on 23 July 2011, by section 17(4) of the Smoke-free Environments (Controls and Enforcement) Amendment Act 2011 (2011 No 53).

Section 39(2): repealed, on 29 July 1997, by section 14(4) of the Smoke-free Environments Amendment Act 1997 (1997 No 32).

Section 39(3): repealed, on 23 July 2012, by section 17(3)(a) of the Smoke-free Environments Amendment Act 1997 (1997 No 32).

Section 39(4): repealed, on 23 July 2012, by section 17(3)(a) of the Smoke-free Environments Amendment Act 1997 (1997 No 32).

Section 39(5): repealed, on 23 July 2012, by section 17(3)(a) of the Smoke-free Environments Amendment Act 1997 (1997 No 32).

Section 39(6): added, on 10 December 2004, by section 28(3) of the Smoke-free Environments Amendment Act 2003 (2003 No 127).

Section 39(6): amended, on 23 July 2012, by section 17(3)(b) of the Smoke-free Environments Amendment Act 1997 (1997 No 32).

Section 39(6A): inserted, on 23 July 2012, by section 17(5) of the Smoke-free Environments Amendment Act 1997 (1997 No 32).

Section 39(6B): inserted, on 23 July 2012, by section 17(5) of the Smoke-free Environments Amendment Act 1997 (1997 No 32).

Section 39(6C): inserted, on 23 July 2012, by section 17(5) of the Smoke-free Environments Amendment Act 1997 (1997 No 32).

Section 39(6D): inserted, on 23 July 2012, by section 17(5) of the Smoke-free Environments Amendment Act 1997 (1997 No 32).

Section 39(6E): inserted, on 23 July 2012, by section 17(5) of the Smoke-free Environments Amendment Act 1997 (1997 No 32).

Section 39(7): added, on 10 December 2004, by section 28(3) of the Smoke-free Environments Amendment Act 2003 (2003 No 127).

Section 39(8): added, on 10 December 2004, by section 28(3) of the Smoke-free Environments Amendment Act 2003 (2003 No 127).

Section 39(9): added, on 10 December 2004, by section 28(3) of the Smoke-free Environments Amendment Act 2003 (2003 No 127).

#### **40 Transitional provisions**

- (1) Nothing in section 24(3) shall apply in respect of the distribution or sale before 1 January 1996 of any article that was—
  - (a) manufactured before 17 May 1990; or
  - (b) ordered before 17 May 1990 from the manufacturer or distributor otherwise than by the placing of a standing order that required confirmation, or that was subject to cancellation, after that date.
- (2) Notwithstanding anything in section 22 or section 24 or section 25, where it is so required by a contract entered into before 17 May 1990, the name of any manufacturer or importer of tobacco products or the trade mark of any tobacco product may be used until the close of 30 June 1995, otherwise than in association with a tobacco product, in a representation to the public—
  - (a) that promotes or is associated with an organised activity; or
  - (b) that acknowledges financial or other contributions made by the manufacturer or importer of the tobacco product toward any such activity.

- (3) The first reports required by section 35(1)(b) shall be submitted to the Director-General—
- (a) by 31 January 1991, in the case of cigarettes; or
  - (b) by 31 January 1992, in the case of cigarette tobacco; or
  - (c) by the date specified by the Director-General by notice in writing to the manufacturer or importer, in the case of any other tobacco product.

Section 40(2): amended, on 21 March 1993, by section 2 of the Smoke-free Environments Amendment Act 1993 (1993 No 5).

#### **41 Amendment, repeals, and revocations**

- (1) *[Repealed]*
- (2) *[Repealed]*
- (3) *[Repealed]*
- (4) *[Repealed]*
- (5), (6) *Amendment(s) incorporated in the regulations.*

Section 41(1): repealed, on 2 July 2001, by section 150(1) of the Hazardous Substances and New Organisms Act 1996 (1996 No 30).

Section 41(2): repealed, on 2 July 2001, by section 150(1) of the Hazardous Substances and New Organisms Act 1996 (1996 No 30).

Section 41(3): repealed, on 2 July 2001, by section 150(1) of the Hazardous Substances and New Organisms Act 1996 (1996 No 30).

Section 41(4): repealed, on 2 July 2001, by section 150(1) of the Hazardous Substances and New Organisms Act 1996 (1996 No 30).

#### **41AA Purposes of Smoke-free Environments (Controls and Enforcement) Amendment Act 2011**

- (1) The purpose of Part 1 of the Smoke-free Environments (Controls and Enforcement) Amendment Act 2011 is to amend this Act so that it—
  - (a) generally prohibits the display of tobacco products in or at the outside of retail and other sales outlets, but also provides for temporary transitional exemptions from compliance during a 12-month transition period;
  - (b) prohibits the display, on the outside of retail premises, of retailers' names or trading names that are or include words, phrases, trade marks, or company names that have the effect of advertising the availability of tobacco products;
  - (c) treats sales-outlet notices or signs and Internet-sales messages that are or include tobacco product health or purchase age information or warnings as prohibited advertisements unless those sales-outlet notices or signs or Internet-sales messages are ones that it requires or permits;
  - (d) requires people who offer tobacco products or herbal smoking products for Internet sale to make visible on their Internet sites health and purchase age information or warnings:

- (e) prohibits (more fully, or for the first time) manufacturers, importers, distributors, and retailers of tobacco products from sponsoring activities involving the use of tobacco product trade marks:
  - (f) prohibits manufacturers, importers, distributors, and retailers of tobacco products from sponsoring activities involving exclusive supply arrangements:
  - (g) facilitates the enforcement of prohibitions on distribution or supply of tobacco products free of charge or at a reduced charge, or with rewards, by providing that a term of an arrangement has no effect if compliance with the term would prevent or limit compliance with those prohibitions:
  - (h) is adjusted by related amendments and repeals.
- (2) The purpose of Part 2 of the Smoke-free Environments (Controls and Enforcement) Amendment Act 2011 is to amend this Act so that—
- (a) it makes an infringement notice scheme available to enforce specified prohibitions, including the prohibitions on the sale of tobacco products and herbal smoking products to people younger than 18 years:
  - (b) its provisions relating to offences, regulations, and amendments are adjusted in the light of the amendments made to it by that Amendment Act.

Section 41AA: inserted, on 23 July 2011, by section 19 of the Smoke-free Environments (Controls and Enforcement) Amendment Act 2011 (2011 No 53).

## Part 2A

### Powers of enforcement officers

Part 2A: inserted, on 10 March 2004, by section 29 of the Smoke-free Environments Amendment Act 2003 (2003 No 127).

#### **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.
- (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
  - (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:
  - (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:
  - (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,—
    - (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.
- (4) An enforcement officer exercising powers under this section may be accompanied by a constable.
- (5) Subsection (2) does not prevent an enforcement officer from entering a dwellinghouse or other residential accommodation—
- (a) under authority given by or under an enactment other than this section; or
  - (b) with the consent of an occupier.

Section 41A: inserted, on 10 March 2004, by section 29 of the Smoke-free Environments Amendment Act 2003 (2003 No 127).

Section 41A(4): amended, on 1 October 2008, pursuant to section 116(a)(ii) of the Policing Act 2008 (2008 No 72).

#### **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, or have after they are sold been delivered, to a person younger than 18 years in or from a place where tobacco products or herbal smoking products are sold, or after they are sold (at that place or another place) are delivered, from time to time—
- (a) may, while the person the officer believes on reasonable grounds to have sold, or to have after they are sold delivered or arranged the delivery of, the products is in the place, require the person to give the officer his or her name and address; and
  - (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 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, or to have after they are sold delivered or arranged the delivery of, the products other than a person in charge of the place.



- (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
  - (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.

Section 41B: inserted, on 10 March 2004, by section 29 of the Smoke-free Environments Amendment Act 2003 (2003 No 127).

Section 41B(1): amended, on 23 July 2011, by section 20(1) of the Smoke-free Environments (Controls and Enforcement) Amendment Act 2011 (2011 No 53).

Section 41B(1): amended, on 23 July 2011, by section 20(2) of the Smoke-free Environments (Controls and Enforcement) Amendment Act 2011 (2011 No 53).

Section 41B(1)(a): amended, on 23 July 2011, by section 20(3) of the Smoke-free Environments (Controls and Enforcement) Amendment Act 2011 (2011 No 53).

Section 41B(1)(b): amended, on 23 July 2011, by section 20(3) of the Smoke-free Environments (Controls and Enforcement) Amendment Act 2011 (2011 No 53).

#### **41C Purposes for which powers may be used**

- (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:
  - (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, or to have after selling them delivered or arranged the delivery of, tobacco products or herbal smoking products to a person younger than 18 years in or from a place where tobacco products or herbal smoking products are sold, or having been sold (at that place or another place) are delivered, from time to time.

- (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.

Section 41C: inserted, on 10 March 2004, by section 29 of the Smoke-free Environments Amendment Act 2003 (2003 No 127).

Section 41C(2): substituted, on 23 July 2011, by section 21 of the Smoke-free Environments (Controls and Enforcement) Amendment Act 2011 (2011 No 53).

#### **41D Duties of enforcement officers**

- (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
  - (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,—
- (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.

Section 41D: inserted, on 10 March 2004, by section 29 of the Smoke-free Environments Amendment Act 2003 (2003 No 127).

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

Every person commits an offence, and is liable on 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
- (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.

Section 41E: inserted, on 10 March 2004, by section 29 of the Smoke-free Environments Amendment Act 2003 (2003 No 127).

Section 41E: amended, on 1 July 2013, by section 413 of the Criminal Procedure Act 2011 (2011 No 81).

#### **41F Enforcement**

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

- (2) Every prosecution for an offence against this Part must be commenced by the Director-General or a person authorised by the Director-General.
- (3) Despite anything to the contrary in section 25 of the Criminal Procedure Act 2011, the limitation period in respect of an offence against this Part ends on the date that is 12 months after the date on which the offence was committed.
- (4) *[Repealed]*
- Section 41F: inserted, on 10 March 2004, by section 29 of the Smoke-free Environments Amendment Act 2003 (2003 No 127).
- Section 41F(2): replaced, on 1 July 2013, by section 413 of the Criminal Procedure Act 2011 (2011 No 81).
- Section 41F(3): replaced, on 1 July 2013, by section 413 of the Criminal Procedure Act 2011 (2011 No 81).
- Section 41F(4): repealed, on 1 July 2013, by section 413 of the Criminal Procedure Act 2011 (2011 No 81).

### **Part 3**

#### **Health Sponsorship Council**

*[Repealed]*

Part 3: repealed, on 1 July 2012, by section 14(3) of the New Zealand Public Health and Disability Amendment Act 2012 (2012 No 41).

#### **42 Meaning of sponsorship**

*[Repealed]*

Section 42: repealed, on 1 July 2012, by section 14(3) of the New Zealand Public Health and Disability Amendment Act 2012 (2012 No 41).

#### **43 Council established**

*[Repealed]*

Section 43: repealed, on 1 July 2012, by section 14(3) of the New Zealand Public Health and Disability Amendment Act 2012 (2012 No 41).

#### **44 Principal functions of Council**

*[Repealed]*

Section 44: repealed, on 1 July 2012, by section 14(3) of the New Zealand Public Health and Disability Amendment Act 2012 (2012 No 41).

#### **45 Membership of Council**

*[Repealed]*

Section 45: repealed, on 1 July 2012, by section 14(3) of the New Zealand Public Health and Disability Amendment Act 2012 (2012 No 41).

#### **46 Term of office of members of Council**

*[Repealed]*

Section 46: repealed, on 25 January 2005, by section 200 of the Crown Entities Act 2004 (2004 No 115).

**47 Meetings of Council***[Repealed]*

Section 47: repealed, on 25 January 2005, by section 200 of the Crown Entities Act 2004 (2004 No 115).

**48 Conflict of interest***[Repealed]*

Section 48: repealed, on 25 January 2005, by section 200 of the Crown Entities Act 2004 (2004 No 115).

**49 Council to appoint chief executive***[Repealed]*

Section 49: repealed, on 1 July 2012, by section 14(3) of the New Zealand Public Health and Disability Amendment Act 2012 (2012 No 41).

**50 Other staff***[Repealed]*

Section 50: repealed, on 25 January 2005, by section 200 of the Crown Entities Act 2004 (2004 No 115).

**51 Council may appoint advisory and technical committees***[Repealed]*

Section 51: repealed, on 25 January 2005, by section 200 of the Crown Entities Act 2004 (2004 No 115).

**52 Council may co-opt specialist advice***[Repealed]*

Section 52: repealed, on 25 January 2005, by section 200 of the Crown Entities Act 2004 (2004 No 115).

**53 Remuneration and allowances for members of Council and committees***[Repealed]*

Section 53: repealed, on 25 January 2005, by section 200 of the Crown Entities Act 2004 (2004 No 115).

**54 Salaries, etc, to be paid out of funds of Council***[Repealed]*

Section 54: repealed, on 25 January 2005, by section 200 of the Crown Entities Act 2004 (2004 No 115).

**55 Powers of Council***[Repealed]*

Section 55: repealed, on 25 January 2005, by section 200 of the Crown Entities Act 2004 (2004 No 115).

**56 Council to provide alternative sponsorship**

*[Repealed]*

Section 56: repealed, on 25 January 2005, by section 200 of the Crown Entities Act 2004 (2004 No 115).

**57 Minister may give Council directions**

*[Repealed]*

Section 57: repealed, on 25 January 2005, by section 200 of the Crown Entities Act 2004 (2004 No 115).

**58 Council to submit annual budget and plans for Minister's approval**

*[Repealed]*

Section 58: repealed, on 25 January 2005, by section 200 of the Crown Entities Act 2004 (2004 No 115).

**59 Funds of Council**

*[Repealed]*

Section 59: repealed, on 25 January 2005, by section 200 of the Crown Entities Act 2004 (2004 No 115).

**60 Further provisions relating to funds**

*[Repealed]*

Section 60: repealed, on 1 July 2012, by section 14(3) of the New Zealand Public Health and Disability Amendment Act 2012 (2012 No 41).

**61 Liability of Council and members**

*[Repealed]*

Section 61: repealed, on 1 July 2012, by section 14(3) of the New Zealand Public Health and Disability Amendment Act 2012 (2012 No 41).

**62 Accounts**

*[Repealed]*

Section 62: repealed, on 21 December 1992, by section 42 of the Public Finance Amendment Act 1992 (1992 No 142).

**62A Crown entity**

*[Repealed]*

Section 62A: repealed, on 25 January 2005, by section 200 of the Crown Entities Act 2004 (2004 No 115).

**63 Annual reports**

*[Repealed]*

Section 63: repealed, on 25 January 2005, by section 200 of the Crown Entities Act 2004 (2004 No 115).

**64 Ombudsmen Act 1975 amended**

*[Repealed]*

Section 64: repealed, on 25 January 2005, by section 200 of the Crown Entities Act 2004 (2004 No 115).

**65 Films Act 1983 amended**

*[Repealed]*

Section 65: repealed, on 1 October 1994, by section 150(2) of the Films, Videos, and Publications Classification Act 1993 (1993 No 94).

## Reprints notes

### 1 *General*

This is a reprint of the Smoke-free Environments Act 1990 that incorporates all the amendments to that Act as at the date of the last amendment to it.

### 2 *Legal status*

Reprints are presumed to correctly state, as at the date of the reprint, the law enacted by the principal enactment and by any amendments to that enactment. Section 18 of the Legislation Act 2012 provides that this reprint, published in electronic form, has the status of an official version under section 17 of that Act. A printed version of the reprint produced directly from this official electronic version also has official status.

### 3 *Editorial and format changes*

Editorial and format changes to reprints are made using the powers under sections 24 to 26 of the Legislation Act 2012. See also <http://www.pco.parliament.govt.nz/editorial-conventions/>.

### 4 *Amendments incorporated in this reprint*

Contract and Commercial Law Act 2017 (2017 No 5): section 347

Health and Safety at Work Act 2015 (2015 No 70): section 232

Companies Amendment Act 2013 (2013 No 111): section 14

Corrections Amendment Act 2013 (2013 No 5): section 48

Sale and Supply of Alcohol Act 2012 (2012 No 120): section 417(1)

New Zealand Public Health and Disability Amendment Act 2012 (2012 No 41): section 14

Criminal Procedure Act 2011 (2011 No 81): section 413

Smoke-free Environments (Controls and Enforcement) Amendment Act 2011 (2011 No 53)

Taxation (International Taxation, Life Insurance, and Remedial Matters) Act 2009 (2009 No 34): section 861

Public Transport Management Act 2008 (2008 No 87): section 63(2)

Policing Act 2008 (2008 No 72): section 116(a)(ii)

Income Tax Act 2007 (2007 No 97): section ZA 2(1)

Education Amendment Act 2006 (2006 No 19): section 60(1)

Land Transport Amendment Act 2005 (2005 No 77): section 95(6)

Crown Entities Act 2004 (2004 No 115): section 200

Civil Aviation Amendment Act 2004 (2004 No 8): section 41(3)

Smoke-free Environments Amendment Act 2003 (2003 No 127)

Gambling Act 2003 (2003 No 51): section 374

Local Government Act 2002 (2002 No 84): section 262

Trade Marks Act 2002 (2002 No 49): section 201

Health and Disability Services (Safety) Act 2001 (2001 No 93): section 58(1)

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Smoke-free Environments Amendment Act 1997 (1997 No 32)  
Hazardous Substances and New Organisms Act 1996 (1996 No 30): section 150(1)  
Maritime Transport Act 1994 (1994 No 104): section 202(1)  
Company Law Reform (Transitional Provisions) Act 1994 (1994 No 16): section 2  
Films, Videos, and Publications Classification Act 1993 (1993 No 94): section 150(2)  
Electoral Act 1993 (1993 No 87): section 284  
Health Sector (Transfers) Act 1993 (1993 No 23): section 32  
Smoke-free Environments Amendment Act 1993 (1993 No 5)  
Public Finance Amendment Act 1992 (1992 No 142): section 42  
Smoke-free Environments Amendment Act 1991 (1991 No 35)  
Civil Aviation Act 1990 (1990 No 98): section 101(1)