



Smoke-free Environments (Tobacco Standardised Packaging) Amendment Act 2016

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Commencement see section 2

Contents

	Page
1 Title	2
2 Commencement	2
Part 1	
Amendments to Smoke-free Environments Act 1990	
3 Principal Act	2
4 Section 2 amended (Interpretation)	3
5 Section 3A amended (Purposes of this Act)	3
6 Section 21 amended (Purpose of this Part)	3
7 Section 24 amended (Use of trade marks, etc, on goods other than tobacco products, or in relation to sponsored events)	4
8 Cross-heading above section 29AA replaced	4
9 Section 30A amended (Restrictions on sale of certain tobacco products in small quantities)	4
10 New section 31A inserted (Standardised packaging of tobacco products)	4
31A Standardised packaging of tobacco products	4
11 Section 32 amended (Labelling and health messages for tobacco products)	5
12 Section 32AA amended (Labelling and health messages for herbal smoking products)	6
13 Section 36 amended (Offences in respect of tobacco products and herbal smoking products)	7
14 New sections 36AA and 36AAB inserted	7

	36AA	Offence in respect of standardised packaging of tobacco products	7
	36AAB	Presumption about large retailer	8
15		Section 38A amended (Infringement offences)	8
16		Section 39 amended (Regulations)	9
17		New section 39A inserted (Regulations for standardised packaging (including messages and information))	9
	39A	Regulations for standardised packaging (including messages and information)	9
18		New section 41BA inserted (Search warrant)	11
	41BA	Search warrant	11
19		New Part 3 inserted	11
Part 3			
Transitional provisions for certain amendments			
	42	Transitional provisions for certain amendments	12
20		New Schedule inserted	12
Part 2			
Amendments to other enactments			
21		Amendment to Designs Act 1953	12
22		Amendment to Search and Surveillance Act 2012	12
Schedule			
New Schedule inserted			

The Parliament of New Zealand enacts as follows:

1 Title

This Act is the Smoke-free Environments (Tobacco Standardised Packaging) Amendment Act 2016.

2 Commencement

- (1) This Act comes into force on a date appointed by the Governor-General by Order in Council.
- (2) However, if this Act is not in force by the day that is 18 months after the date on which it receives the Royal assent, it comes into force on that day.

Part 1

Amendments to Smoke-free Environments Act 1990

3 Principal Act

This Part amends the Smoke-free Environments Act 1990 (the **principal Act**).

4 Section 2 amended (Interpretation)

In section 2(1), insert in its appropriate alphabetical order:

large retailer, in relation to a person that is alleged to have committed an offence in a certain accounting period, means a retailer whose total turnover in the prior accounting period exceeded \$50 million (as accounting period and turnover are defined by section 2(1) of the Commerce Act 1986, except that in those definitions body corporate is to be read as any retailer)

5 Section 3A amended (Purposes of this Act)

(1) Replace section 3A(1)(b) with:

- (b) to regulate and control the marketing, advertising, and promotion of tobacco products (whether directly, including through the appearance of tobacco products and packages, or through the sponsoring of other products, services, or events) in order to improve public health by—
- (i) discouraging people from taking up smoking or using tobacco products; and
 - (ii) encouraging people to quit smoking and to stop using tobacco products; and
 - (iii) discouraging people who have quit smoking, or who no longer use tobacco products, from resuming smoking or tobacco use; and
 - (iv) reducing people's exposure to smoke from tobacco products; and

(2) Replace section 3A(1)(d) with:

- (d) to give effect to certain obligations and commitments that New Zealand has as a party to the WHO Framework Convention on Tobacco Control, done at Geneva on 21 May 2003.

6 Section 21 amended (Purpose of this Part)

After section 21(a), insert:

- (aa) to require the standardised appearance of tobacco products and packages (including messages and information) for tobacco products in order to—
- (i) reduce the appeal of smoking and tobacco products, particularly for young people; and
 - (ii) further reduce any social and cultural acceptance and approval of smoking and tobacco products; and
 - (iii) make warning messages and images more noticeable and effective; and
 - (iv) reduce the likelihood of consumers acquiring false perceptions about the harmful effects of tobacco products; and

7 Section 24 amended (Use of trade marks, etc, on goods other than tobacco products, or in relation to sponsored events)

(1) Before section 24(1), insert:

(1AA) In this section, **non-tobacco article** means an article that is not—

- (a) a tobacco product; or
- (b) a package or container in which a tobacco product is sold or shipped.

(2) Replace section 24(1)(a) with:

- (a) on any non-tobacco article; or

(3) Replace section 24(1)(b)(i) with:

- (i) any non-tobacco article; or

(4) Replace section 24(2)(a) with:

- (a) any non-tobacco article; or

(5) In section 24(3), replace “any article, other than a tobacco product or a package or container in which a tobacco product is sold or shipped,” with “any non-tobacco article”.

8 Cross-heading above section 29AA replaced

Replace the cross-heading above section 29AA with:

Sale and messages and information

9 Section 30A amended (Restrictions on sale of certain tobacco products in small quantities)

- (1) In section 30A(1), repeal the definition of **loose cigarettes**.
- (2) Repeal section 30A(2).
- (3) In section 30A(4), delete “subsection (2) or”.

10 New section 31A inserted (Standardised packaging of tobacco products)

After section 31, insert:

31A Standardised packaging of tobacco products

- (1) A tobacco product—
 - (a) must comply with regulations under this Part; and
 - (b) if sold or offered for sale,—
 - (i) must be contained in a package; and
 - (ii) must be packaged in a quantity that complies with regulations under this Part.
- (2) The package for a tobacco product—

- (a) must comply with section 32(1) (which relates to messages and information); and
- (b) other than part of the package that is wrapping or lining, may display the brand or company name for the product, but only in accordance with regulations under this Part; and
- (c) must comply with regulations under this Part in all other respects.

11 Section 32 amended (Labelling and health messages for tobacco products)

- (1) Replace the heading to section 32 with “**Messages and information required for tobacco products**”.
- (2) Replace section 32(1) with:
 - (1) The package for a tobacco product must comply with the following requirements:
 - (a) the package must display, in accordance with regulations under this Part, as many of the following things as the regulations require:
 - (i) a message relating to—
 - (A) the harmful health, social, cultural, or economic effects, or other harmful effects, of using the product:
 - (B) the beneficial effects of stopping the use of the product or of not using the product:
 - (ii) a list of the harmful constituents of the product:
 - (iii) if the 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 about effects, a photograph or picture relating to—
 - (A) the harmful health, social, cultural, or economic effects, or other harmful effects, of using the product:
 - (B) the beneficial effects of stopping the use of the product or of not using the product; and
 - (b) if required by the regulations, the package must contain a leaflet with—
 - (i) information (prescribed by the regulations for tobacco products generally, or tobacco products of a class to which the product belongs) relating to—
 - (A) the harmful health, social, cultural, or economic effects, or other harmful effects, of using the product:
 - (B) the beneficial effects of stopping the use of the product or of not using the product; and
 - (ii) if the 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 the product belongs, or to the product's 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.

12 Section 32AA amended (Labelling and health messages for herbal smoking products)

(1) Replace the heading to section 32AA with “**Messages and information required for herbal smoking products**”.

(2) Replace section 32AA(1) with:

(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—

(A) the harmful health, social, cultural, or economic effects, or other harmful effects, of using the product:

(B) the beneficial effects of stopping the use of the product or of not using the product:

(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 about effects, a photograph or picture relating to—

(A) the harmful health, social, cultural, or economic effects, or other harmful effects, of using the product:

(B) the beneficial effects of stopping the use of the product or of not using the product; and

(b) if required by the regulations, the package containing the product contains a leaflet with as much of the following information as the regulations require:

- (i) information relating to—
 - (A) the harmful health, social, cultural, or economic effects, or other harmful effects, of using the product;
 - (B) the beneficial effects of stopping the use of the product or of not using the product; and
- (ii) a list of the harmful constituents, and their respective quantities, present in the smoke.

13 Section 36 amended (Offences in respect of tobacco products and herbal smoking products)

- (1) Replace paragraphs (a) and (b) in each of section 36(1), (2), (3), and (3A) with:
 - (a) in the case of a manufacturer, an importer, or a distributor, to a fine not exceeding \$600,000; or
 - (b) in the case of a large retailer, to a fine not exceeding \$200,000; or
 - (c) in any other case, to a fine not exceeding \$50,000.
- (2) Replace section 36(4) with:
- (4) Every manufacturer, importer, distributor, or retailer of tobacco products who distributes or supplies any tobacco product in contravention of section 28(1) commits an offence and is liable,—
 - (a) in the case of a manufacturer, an importer, or a distributor, to a fine not exceeding \$600,000; or
 - (b) in the case of a large retailer, to a fine not exceeding \$200,000; or
 - (c) in any other case, to a fine not exceeding \$50,000.
- (3) Replace section 36(7A) with:
- (7A) Every person commits an offence and is liable to a fine not exceeding \$2,000 who, being a manufacturer, importer, distributor, or retailer, sells or offers for sale any cigarettes or tobacco in contravention of section 30A(3).
- (4) Repeal section 36(9).

14 New sections 36AA and 36AAB inserted

After section 36, insert:

36AA Offence in respect of standardised packaging of tobacco products

- (1) This section applies to—
 - (a) a person who manufactures, distributes, sells, offers for sale, or otherwise supplies a tobacco product knowing that the product contravenes section 31A(1); or
 - (b) a person who distributes, sells, offers for sale, or otherwise supplies a tobacco product in a package knowing that the package contravenes section 31A(2); or

- (c) a person who does the following knowing that a package for a tobacco product contravenes section 31A(2):
 - (i) manufactures, distributes, sells, offers for sale, or otherwise supplies the package; or
 - (ii) packages, or arranges for the packaging of, a tobacco product in the package.
- (2) The person commits an offence and is liable on conviction,—
 - (a) in the case of a manufacturer, an importer, or a distributor, to a fine not exceeding \$600,000; or
 - (b) in the case of a large retailer, to a fine not exceeding \$200,000; or
 - (c) in any other case, to a fine not exceeding \$50,000.
- (3) However, the person does not commit an offence against this section in relation to a tobacco product or a package for a tobacco product if—
 - (a) the product or package is intended for export; and
 - (b) the product or package has not been sold or supplied at retail, or offered for retail sale, in New Zealand.
- (4) In proceedings for an offence against this section,—
 - (a) the prosecutor need not assert in the charging document that the exception in subsection (3) does not apply; and
 - (b) the burden of proving that the exception applies is on the defendant.

36AAB Presumption about large retailer

- (1) This section applies to proceedings for—
 - (a) an offence against section 36 for which the maximum fine for a large retailer is separately specified;
 - (b) an offence against section 36AA.
- (2) In proceedings for the offence, a defendant who is not a manufacturer, an importer, or a distributor is presumed to be a large retailer unless there is evidence to the contrary.
- (3) Evidence to the contrary must include financial statements of the defendant that are sufficient to determine whether the defendant is a large retailer.

15 Section 38A amended (Infringement offences)

- (1) In section 38A, definition of **infringement offence**, paragraph (j), replace “section 30A(2) or (3), both of which impose” with “section 30A(3), which imposes”.
- (2) In section 38A, definition of **infringement offence**, after paragraph (j), insert:
 - (ja) section 36AA(2) (which relates to contravening section 31A, which requires tobacco products and packages to comply with certain standar-

dised packaging requirements), except that a person commits the infringement offence if the product or package contravenes section 31A(1) or (2) regardless of the person's knowledge of the contravention—maximum infringement fee amount \$1,000:

16 Section 39 amended (Regulations)

(1) Replace section 39(1)(e) with:

- (e) prescribing for the purposes of sections 32(3) and 32AA(3)—
 - (i) the form, size, and content of messages to be displayed on automatic vending machines that dispense tobacco products or on automatic vending machines that dispense herbal smoking products:
 - (ii) the circumstances and manner in which the messages must be displayed:
- (ea) prescribing for the purposes of section 32AA(1)—
 - (i) the form, size, and content of messages and information to be displayed with, on, or in the package for a herbal smoking product:
 - (ii) the photographs and pictures to be displayed as part of or in addition to messages about effects relating to a herbal smoking product:
 - (iii) the circumstances and manner in which the messages, information, photographs, and pictures must be displayed:

(2) Repeal section 39(7) to (9).

17 New section 39A inserted (Regulations for standardised packaging (including messages and information))

After section 39, insert:

39A Regulations for standardised packaging (including messages and information)

- (1) The Governor-General may, by Order in Council, make regulations for all or any of the following purposes:
- (a) prescribing for the purposes of section 31A(1)(a) requirements, or options permitted, for all or any aspects of the appearance of a tobacco product:
 - (b) prescribing for the purposes of section 31A(1)(b)(ii) the quantity or quantities in which a tobacco product must be packaged:
 - (c) prescribing for the purposes of section 32(1)—
 - (i) the form, size, and content of messages and information to be displayed with, on, or in the package for a tobacco product:

- (ii) the photographs and pictures to be displayed as part of or in addition to messages about effects relating to a tobacco product:
 - (iii) the circumstances and manner in which the messages, information, photographs, and pictures must be displayed:
 - (d) prescribing for the purposes of section 31A(2)(b) requirements, or options permitted, for the display of the brand or company name on the package for a tobacco product, including the circumstances and manner in which the name is to be displayed:
 - (e) prescribing for the purposes of section 31A(2)(c) requirements, or options permitted, for all or any other aspects of the appearance of the package for a tobacco product:
 - (f) providing for any other related matters contemplated by this Act, necessary for its administration, or necessary for giving it full effect.
- (2) Regulations under subsection (1)(a) or (e) may (without limitation) do all or any of the following:
- (a) require a tobacco product, or the package for a tobacco product, to be a prescribed size and shape:
 - (b) prohibit a tobacco product, or the package for a tobacco product, from displaying any words or other marks unless they are permitted by section 31A(2)(b) or the regulations:
 - (c) specify types of words or other marks that are permitted to be displayed on a tobacco product or the package for a tobacco product (for example, bar codes or marks used to record manufacturing information or to detect legitimate products or packages):
 - (d) specify requirements for the display of the permitted words or marks, including the circumstances and manner in which the words or marks are to be displayed (for example, the typeface or font, size, colour, and position of the words or marks):
 - (e) prohibit any type of feature from a tobacco product or the package for a tobacco product (for example, any feature designed to promote the product by changing the appearance of the product or package after retail sale or by making a noise or smell).
- (3) Regulations under subsection (1)(b)—
- (a) may, for example, prescribe the number of cigarettes or the weight of loose tobacco that must be contained in a package; but
 - (b) must not prescribe a quantity that does not comply with section 30A(3).
- (4) Regulations under subsection (1) may (without limitation) prescribe—
- (a) requirements or options for all parts of a product or a package (for example, all surfaces of a package must be a consistent drab brown colour with a matt finish):

- (b) separate requirements or options for different parts of a product or a package (for example, any plastic or other wrapping must be consistently transparent, uncoloured, and unmarked):
 - (c) separate requirements or options for—
 - (i) different classes of tobacco product:
 - (ii) the packages for different classes of tobacco product.
- (5) In this section,—
- appearance** includes—
- (a) anything that may affect a person’s senses; and
 - (b) any aspect of design, such as shape, size, colour, texture, or material
- cigarette**—
- (a) does not include a cigar; but
 - (b) includes the tobacco product commonly known as a cigarillo
- loose tobacco** means—
- (a) tobacco prepared for smoking in hand-rolled cigarettes:
 - (b) pipe tobacco.

18 New section 41BA inserted (Search warrant)

After section 41B, insert:

41BA Search warrant

- (1) An enforcement officer may apply for a search warrant in respect of any place.
- (2) The enforcement officer must apply in the manner provided in subpart 3 of Part 4 of the Search and Surveillance Act 2012.
- (3) An issuing officer may issue a search warrant in respect of the place if satisfied that there are reasonable grounds—
 - (a) to suspect that an offence has been, is being, or will be committed against this Act; and
 - (b) to believe that there is evidential material in the place.
- (4) The provisions of Part 4 of the Search and Surveillance Act 2012 (except sections 118 and 119) apply.
- (5) In this section, **evidential material** and **issuing officer** have the meanings given by section 3(1) of the Search and Surveillance Act 2012.

19 New Part 3 inserted

After section 41F, insert:

Part 3

Transitional provisions for certain amendments

42 Transitional provisions for certain amendments

- (1) The transitional provisions set out in the Schedule have effect for the purposes of this Act.
- (2) The provisions relate to amendments made to this Act by the Smoke-free Environments (Tobacco Standardised Packaging) Amendment Act 2016 or any later amendment Act.

20 New Schedule inserted

After section 42, insert the Schedule set out in the Schedule of this Act.

Part 2

Amendments to other enactments

21 Amendment to Designs Act 1953

- (1) This section amends the Designs Act 1953.
- (2) In section 51, insert as subsection (2):
- (2) However, the Commissioner may register a design even if its use is restricted or prohibited under the Smoke-free Environments Act 1990.

22 Amendment to Search and Surveillance Act 2012

- (1) This section amends the Search and Surveillance Act 2012.
- (2) In the Schedule, insert in its appropriate alphabetical order:

Smoke-free Environments Act 1990	41BA	Enforcement officer may obtain and execute search warrant to search for evidential material in relation to suspected offence against Smoke-free Environments Act 1990	All (except sections 118 and 119)
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Schedule

New Schedule inserted

s 20

Schedule

Transitional provisions for certain amendments

s 42

1 Interpretation

In this schedule, **amendment Act** means the Smoke-free Environments (Tobacco Standardised Packaging) Amendment Act 2016.

2 No transitional period for manufacturers, importers, or persons who package

To avoid doubt, there is no transitional period for a manufacturer or an importer or for a person who packages, or arranges for the packaging of, a tobacco product.

3 Transitional period of 6 weeks for distributors

- (1) Despite anything in this Act, a distributor does not commit an offence against this Act in the 6-week transitional period if the act that would have constituted the offence would not have been an offence against the Act as it was, and as the regulations made under it were, immediately before the commencement of the amendment Act.
- (2) In this clause, **6-week transitional period** means the period of 6 weeks starting at the commencement of the amendment Act.

4 Transitional period of 12 weeks for other relevant persons

- (1) Despite anything in this Act, any other relevant person does not commit an offence against this Act in the 12-week transitional period if the act that would have constituted the offence would not have been an offence against the Act as it was, and as the regulations made under it were, immediately before the commencement of the amendment Act.
- (2) In this clause,—

12-week transitional period means the period of 12 weeks starting at the commencement of the amendment Act

other relevant person—

 - (a) means a person who sells, offers for sale, or otherwise supplies a tobacco product or a package for a tobacco product; but
 - (b) does not include a manufacturer, an importer, a distributor, or a person who packages, or arranges for the packaging of, a tobacco product.

Legislative history

17 December 2013	Introduction (Bill 186–1)
11 February 2014	First reading and referral to Health Committee
5 August 2014	Reported from Health Committee (Bill 186–2)
30 June 2016	Second reading
23 August 2016	Committee of the whole House
8 September 2016	Third reading
14 September 2016	Royal assent

This Act is administered by the Ministry of Health.