

Smokefree Environments and Regulated Products Amendment Bill

Government Bill

Explanatory note

General policy statement

The Government is committed to the Smokefree 2025 goal of daily smoking rates of less than 5% for all population groups and continues to support initiatives to provide people with practical tools and support to help them quit. These include ensuring the provision of effective services to stop smoking, providing access to alternative products to help smoking cessation, and promoting social marketing campaigns to stop smoking and vaping.

The Government supports a change in approach to the regulation of smoked tobacco and the achievement of the Smokefree 2025 goal. As part of the Government's 100-Day Plan, this Bill removes the changes made in the Smokefree Environments and Regulated Products (Smoked Tobacco) Amendment Act 2022 (the **amendment Act**) that relate to retail reduction, limiting nicotine levels in smoked tobacco products, and introducing a smokefree generation (the **3 main changes**). Those changes were to take effect in 2024, 2025, and 2027.

The Bill amends the Smokefree Environments and Regulated Products Act 1990 and the amendment Act as follows:

- it removes requirements for retailers of smoked tobacco products to apply to, and be approved by, the Director-General of Health before selling smoked tobacco products:
- it removes the limit on the number of retailers that can sell smoked tobacco products in New Zealand:
- it removes the requirement for smoked tobacco products to be approved by the Director-General of Health before they can be manufactured, imported, or offered for sale or supply, in New Zealand:

- it removes the requirement for smoked tobacco products to meet a low nicotine content limit of 0.8 mg/g:
- it retains a minimum sales age of 18 years for smoked tobacco products rather than providing for a smokefree generation under which sales to anyone born on or after 1 January 2009 would have been prohibited:
- it removes offences related to the matters above:
- it removes provisions relating to te Tiriti o Waitangi associated with the matters above.

As a consequence of the amendments listed above, amendments are made to the Smokefree Environments and Regulated Products Regulations 2021 and the amendment Act. Amendments to the Customs and Excise Act 2018 yet to enter into force under the amendment Act are also consequentially repealed. Minor and technical amendments are also made. They include amendments to regulation 84 and Schedule 9 of the Smokefree Environments and Regulated Products Regulations 2021 to insert minor consequential amendments missed in the amendment Act.

Changes made by the amendment Act that are unrelated to the 3 main changes and that will support compliance and enforcement efforts are not affected by this Bill.

Departmental disclosure statement

The Ministry of Health is required to prepare a disclosure statement to assist with the scrutiny of this Bill. The disclosure statement provides access to information about the policy development of the Bill and identifies any significant or unusual legislative features of the Bill.

A copy of the statement can be found at <http://legislation.govt.nz/disclosure.aspx?type=bill&subtype=government&year=2024&no=22>

Regulatory impact statement

The policy decisions relating to the contents of this Bill are not subject to the regulatory impact statement requirements. This reflects the decision by Cabinet to suspend the requirement for regulatory impact statements for decisions relating to 100-Day Plan proposals (taken within the 100 days) that solely involve the repeal of legislation.

Clause by clause analysis

Clause 1 is the Title clause.

Clause 2 is the commencement clause. The Bill comes into force on the day after Royal assent.

Clause 3 provides that the principal Act amended is the Smokefree Environments and Regulated Products Act 1990.

Part 1

Amendments to principal Act

Clause 4 amends section 2 to repeal definitions of terms used in provisions that are repealed by this Bill.

Clause 5 replaces section 3A (purposes of this Act) with the section 3A(1) that was in force prior to the commencement of the Smokefree Environments and Regulated Products (Smoked Tobacco) Amendment Act 2022. *New section 3A* is updated to reflect changes made by that Act that are unaffected by this Bill.

Clause 6 amends section 3AA (guide to this Act) to reflect the changes made by this Bill.

Clause 7 amends section 3AB, which deals with the effect of the principal Act in relation to te Tiriti o Waitangi (the Treaty of Waitangi).

Clause 9 repeals subpart 1 of Part 1B, which provides for the approval of smoked tobacco retailers, and *clause 8* consequentially amends the heading to Part 1B.

Clause 10 repeals the cross-heading above section 57A.

Clause 11 repeals sections 57B to 57E, which provide for the approval of smoked tobacco products.

Clause 12 repeals section 57I, which provides for limits on nicotine for smoked tobacco products.

Clause 13 amends section 81, which provides for the making of regulations, to reflect the changes made by this Bill.

Clause 14 repeals section 82A, which provides for the making of regulations relating to the approval of smoked tobacco retailers.

Clause 15 amends section 82B, which provides for the making of regulations relating to requirements for smoked tobacco products.

Clause 16 repeals section 85(1)(a)(vi) and (vii), which provides for the making of regulations requiring payment of fees in relation to the approval of a smoked tobacco retailer or smoked tobacco product.

Clause 17 replaces section 86(1) to remove the power to impose a levy on a retailer, distributor, importer, or manufacturer of a smoked tobacco product and makes a consequential amendment to section 86(2)(b).

Clause 18 amends section 90A to reflect the changes made by this Bill. Section 90A deals with the liability of an employer for the actions of an employee in relation to certain offences under the principal Act.

Clause 19 amends section 90B to reflect the changes made by this Bill. Section 90B deals with the burden of proof for establishing the defence of reasonable excuse in relation to certain offences under the principal Act.

Clause 20 repeals section 100(2A) which provides for reporting requirements for distributors of smoked tobacco products. This provision is not required as distributors of

smoked tobacco products must notify the Director-General of Health of the smoked tobacco products they are distributing under section 20S.

Clauses 21 and 22 amend sections 102 and 103, which deal with appeals against decisions to cancel or suspend approvals or notifications, to remove references to the approval of a smoked tobacco product.

Clause 23 repeals section 105, which requires the Ministry to review certain provisions of the principal Act.

Clause 24 amends Schedule 1 to remove transitional provisions relating to approved smoked tobacco retailers and approved smoked tobacco products.

Part 2

Amendments to other enactments

Subpart 1—Amendments to Smokefree Environments and Regulated Products (Smoked Tobacco) Amendment Act 2022

Clause 25 provides that *subpart 1* amends the Smokefree Environments and Regulated Products (Smoked Tobacco) Amendment Act 2022.

Clause 26 repeals section 2(1) to (3), which relate to commencement of provisions not yet in force and that are repealed by this Bill, and makes a consequential amendment to section 2(4).

Clause 27 repeals section 20, which amends the heading of subpart 7 in Part 2.

Clause 28 amends section 21 to repeal the provisions that replace “regulated product” with “notifiable product” in section 40 of the Smokefree Environments and Regulated Products Act 1990. The amendment to section 21 is required in consequence of the repeal in *clause 29* of the prohibition on sale, delivery, and supply of smoked tobacco products to persons born on or after 1 January 2009 (the **smokefree generation**).

Clause 29 repeals sections 22 to 26, which relate to the prohibition on sale, delivery, and supply of smoked tobacco products to the smokefree generation.

Clause 30 amends section 41, which amends section 81 of the Smokefree Environments and Regulated Products Act 1990. Section 81 provides for the making of regulations. The amendment to section 41 is required in consequence of the repeal of the prohibition on sale, delivery, and supply of smoked tobacco products to the smokefree generation (*see clause 29*).

Clause 31 repeals section 52, which amends section 94 of the Smokefree Environments and Regulated Products Act 1990. The repeal of section 52 is required in consequence of the repeal of the prohibition on sale, delivery, and supply of smoked tobacco products to the smokefree generation (*see clause 29*).

Clause 32 repeals subpart 1 of Part 2, which amends the Customs and Excise Act 2018. The repeal of subpart 1 is required in consequence of the repeal of the requirement for approval of smoked tobacco products (*see clause 11*).

Clause 33 repeals sections 61 to 63, which amend regulations 56 to 58 of the Smokefree Environments and Regulated Products Regulations 2021. The repeal of sections 61 to 63 is required in consequence of the repeal of the prohibition on sale, delivery, and supply of smoked tobacco products to the smokefree generation (*see clause 29*).

Subpart 2—Amendments to Smokefree Environments and Regulated Products Regulations 2021

Clause 34 provides that subpart 2 amends the Smokefree Environments and Regulated Products Regulations 2021.

Clause 35 revokes subparts 2A, 2B, and 2C of Part 3. Subpart 2A sets out limits on constituents of smoked tobacco products. Subpart 2B sets out product safety requirements for smoked tobacco products. Subpart 2C sets out information that the manufacturer or importer must provide with an application for approval for sale, import, or manufacture of a smoked tobacco product.

Clause 36 revokes subpart 4 of Part 3, which sets out analytical testing methods to determine nicotine levels in smoked tobacco products.

Clause 37 revokes Part 6A, which sets out requirements for approval as a smoked tobacco retailer.

Clause 38 amends regulation 84 in consequence of the amendment to section 100(2) of the Smokefree Environments and Regulated Products Act 1990 made by the Smokefree Environments and Regulated Products (Smoked Tobacco) Amendment Act 2022, and to make minor changes to the regulation.

Clause 39 amends Schedule 1 by revoking clause 7 and inserting the transitional provisions set out in *Schedule 1* of this Bill. The transitional provisions authorise the Director-General of Health to refund fees paid by an applicant to be an approved smoked tobacco retailer.

Clause 40 amends Schedule 8 by revoking the items that set fees for an applicant to be an approved smoked tobacco retailer, an applicant for approval of a smoked tobacco product, and an applicant for temporary approval of a smoked tobacco product that cannot meet product requirements.

Clause 41 amends Schedule 9 by inserting the *new form 5* set out in *Schedule 2* of this Bill. The amendment is in consequence of the amendment to section 100(2) of the Smokefree Environments and Regulated Products Act 1990 made by the Smokefree Environments and Regulated Products (Smoked Tobacco) Amendment Act 2022.

Subpart 3—Amendments to Smokefree Environments and Regulated Products Amendment Regulations 2023

Clause 42 provides that *subpart 3* amends the Smokefree Environments and Regulated Products Amendment Regulations 2023.

Clause 43 revokes regulation 2(2), which relates to the commencement of regulation 7.

Clause 44 revokes regulation 7, which revokes regulation 63 of the Smokefree Environments and Regulated Products Regulations 2021. Regulation 63 sets out standard methods for conducting tests of manufactured cigarettes.

Hon Casey Costello

Smokefree Environments and Regulated Products Amendment Bill

Government Bill

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Part 2

Amendments to other enactments

Subpart 1—Amendments to Smokefree Environments and
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25	Principal Act	6
26	Section 2 amended (Commencement)	6
27	Section 20 repealed (Subpart 7 heading in Part 2 amended)	6
28	Section 21 amended (Section 40 amended (Sale and delivery of regulated product to people younger than 18 years prohibited))	6
29	Sections 22 to 26 repealed	7
30	Section 41 amended (Section 81 amended (Regulations))	7
31	Section 52 repealed (Section 94 amended (Enforcement officer may require identifying information))	7
32	Subpart 1 of Part 2 repealed	7
33	Sections 61 to 63 repealed	7

Subpart 2—Amendments to Smokefree Environments and
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34	Principal regulations	7
35	Subparts 2A, 2B, and 2C of Part 3 revoked	7
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Subpart 3—Amendments to Smokefree Environments and
Regulated Products Amendment Regulations 2023

42	Principal regulations	8
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New Part 3 inserted into Schedule 1	
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The Parliament of New Zealand enacts as follows:

1 Title
This Act is the Smokefree Environments and Regulated Products Amendment Act **2024**.

2 Commencement 5
This Act comes into force on the day after Royal assent.

3 Principal Act
This Act amends the Smokefree Environments and Regulated Products Act 1990.

Part 1 10
Amendments to principal Act

4 Section 2 amended (Interpretation)
In section 2(1), repeal the definitions of **approved smoked tobacco retail premises, approved smoked tobacco retailer, entity, iwi-Māori partnership board, Māori Health Authority, and responsible person.** 15

5 Section 3A replaced (Purposes of this Act)
Replace section 3A with:

3A Purposes of this Act
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 20
- (b) to prevent the normalisation of vaping; and
- (c) to reduce the appeal of regulated products to children and young people; and
- (d) to minimise harm from regulated products, in particular to children and young people; and 25
- (e) to regulate and control the marketing, advertising, and promotion of regulated products (whether directly, including through the appearance of regulated products and packages, or through the sponsoring of other products, services, or events) in order to improve public health by— 30

<ul style="list-style-type: none"> (i) discouraging people, especially children and young people, from taking up smoking; and (ii) discouraging non-smokers, especially children and young people, from taking up vaping or using smokeless tobacco products; and (iii) encouraging people to stop smoking, vaping, or otherwise using regulated products; and (iv) discouraging people who have stopped smoking, vaping, or otherwise using regulated products from resuming smoking, vaping, or using regulated products; and 	5
<ul style="list-style-type: none"> (f) to support smokers to switch to regulated products that are significantly less harmful than smoking; and (g) to regulate the safety of regulated products; and (h) to monitor and regulate the presence of the constituents of regulated products and their emissions; and (i) 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. 	10 15
6 Section 3AA amended (Guide to this Act)	
(1) Replace section 3AA(3) with:	
(3) Part 1B regulates entry into the vaping products market.	20
(2) Replace section 3AA(6) with:	
(6) Part 3A provides for the regulation of constituents of smoked tobacco products.	
(3) In section 3AA(8)(b)(iii), replace “product approval and notification decisions” with “notifiable product decisions”.	
7 Section 3AB amended (Te Tiriti o Waitangi (the Treaty of Waitangi))	25
Repeal section 3AB(a) to (c).	
8 Part 1B heading amended	
In the Part 1B heading, replace “ smoked tobacco and vaping products markets ” with “ vaping products market ”.	
9 Subpart 1 of Part 1B repealed	30
Repeal subpart 1 of Part 1B.	
10 Cross-heading above section 57A repealed	
Repeal the cross-heading above section 57A.	
11 Sections 57B to 57E repealed	
Repeal sections 57B to 57E.	35

- 12 Section 57I repealed (Limits on nicotine for smoked tobacco products)**
Repeal section 57I.
- 13 Section 81 amended (Regulations)**
- (1) Repeal section 81(1)(20) to (21A) and the headings above section 81(1)(20) and (21A). 5
- (2) In section 81(1)(22)(i), replace “approved smoked tobacco retailers, and specialist vape retailers” with “and retailers of regulated products”.
- (3) Repeal section 81(22)(ia).
- 14 Section 82A repealed (Regulations for sale and distribution of smoked tobacco products)** 10
Repeal section 82A.
- 15 Section 82B amended (Regulations relating to requirements for smoked tobacco products)**
- (1) Repeal section 82B(1)(b) and (e).
- (2) In section 82B(2), replace “subsection (1)(a), (c), or (e)” with “subsection (1)(a) or (c)”. 15
- 16 Section 85 amended (Regulations imposing fees)**
Repeal section 85(1)(a)(vi) and (vii).
- 17 Section 86 amended (Regulations imposing levies)**
- (1) Replace section 86(1) with: 20
- (1) The Governor-General may, by Order in Council made on the recommendation of the Minister, make regulations providing for the levies that must be paid by a retailer, distributor, importer, or manufacturer of a notifiable product under Part 4.
- (2) In section 86(2)(b), replace “Parts 1B and 3A” with “Part 1B”. 25
- 18 Section 90A amended (Liability for action of employee)**
Replace section 90A(1) with:
- (1) This section applies to an offence against section 40(2), 43(3), 44(4), 57F(2), 57H(6), or 69B(7).
- 19 Section 90B amended (Burden of proof of reasonable excuse)** 30
- (1) In section 90B, delete “20G(3), 20H(2), 20J(8),” and “55(2), 57(6), 57C(8), 57D(8),”.
- (2) In section 90B, replace “43(4)” with “43(3)”.

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Part 1 cl 20	
20	Section 100 amended (Annual reporting requirements for manufacturers, importers, distributors, and retailers of regulated products)
	Repeal section 100(2A).
21	Section 102 amended (Appeals against decision to suspend or cancel product approval or notification)
	5
(1)	Replace section 102(1) with:
(1)	If the Director-General decides to suspend or cancel a notification of a notifiable product, the notifier may appeal to the appeals committee against the decision.
(2)	In section 102(2), delete “holder of the approval or the”.
	10
22	Section 103 amended (Appeals committee)
	In section 103(2), delete “an approval of a smoked tobacco product or”.
23	Section 105 repealed (Ministry must review certain provisions of Act)
	Repeal section 105.
24	Schedule 1 amended
	15
(1)	In Schedule 1, repeal clause 17.
(2)	In Schedule 1, repeal clause 18(1)(a) and (c) and (2).

Part 2

Amendments to other enactments

	Subpart 1—Amendments to Smokefree Environments and Regulated Products (Smoked Tobacco) Amendment Act 2022	20
25	Principal Act	
	This subpart amends the Smokefree Environments and Regulated Products (Smoked Tobacco) Amendment Act 2022.	
26	Section 2 amended (Commencement)	25
(1)	Repeal section 2(1) to (3).	
(2)	In section 2(4), replace “The rest of this Act” with “This Act”.	
27	Section 20 repealed (Subpart 7 heading in Part 2 amended)	
	Repeal section 20.	
28	Section 21 amended (Section 40 amended (Sale and delivery of regulated product to people younger than 18 years prohibited))	30
	Repeal section 21(1) and (2).	

29	Sections 22 to 26 repealed	
	Repeal sections 22 to 26.	
30	Section 41 amended (Section 81 amended (Regulations))	
	Repeal section 41(1) and (2).	
31	Section 52 repealed (Section 94 amended (Enforcement officer may require identifying information))	5
	Repeal section 52.	
32	Subpart 1 of Part 2 repealed	
	Repeal subpart 1 of Part 2.	
33	Sections 61 to 63 repealed	10
	Repeal sections 61 to 63.	
<p>Subpart 2—Amendments to Smokefree Environments and Regulated Products Regulations 2021</p>		
34	Principal regulations	
	This subpart amends the Smokefree Environments and Regulated Products Regulations 2021.	15
35	Subparts 2A, 2B, and 2C of Part 3 revoked	
	Revoke subparts 2A, 2B, and 2C of Part 3.	
36	Subpart 4 of Part 3 revoked	
	Revoke subpart 4 of Part 3.	20
37	Part 6A revoked	
	Revoke Part 6A.	
38	Regulation 84 amended (Annual returns and reports)	
(1)	In regulation 84(1) and (2), replace “be in” with “contain the information required by” in each place.	25
(2)	Replace regulation 84(3)(b) with:	
(b)	for—	
(i)	specialist vape retailers, contain the information required by form 4 of Schedule 9; and	
(ii)	other retailers of regulated products, contain the information required by form 5 of Schedule 9 .	30

39 Schedule 1 amended

- (1) In Schedule 1, revoke clause 7.
- (2) In Schedule 1,—
 - (a) insert the Part set out in **Schedule 1** of this Act as the last Part; and
 - (b) make all necessary consequential amendments. 5

40 Schedule 8 amended

In Schedule 8, revoke the items relating to an applicant to be an approved smoked tobacco retailer, an applicant for approval of a smoked tobacco product, and an applicant for temporary approval of a smoked tobacco product that cannot meet product requirements. 10

41 Schedule 9 amended

- (1) In Schedule 9, forms 3 and 4, replace “UPC” with “EAN/UPC”.
- (2) In Schedule 9, after form 4, insert the **form 5** set out in **Schedule 2** of this Act.

Subpart 3—Amendments to Smokefree Environments and Regulated
Products Amendment Regulations 2023 15

42 Principal regulations

This subpart amends the Smokefree Environments and Regulated Products Amendment Regulations 2023.

43 Regulation 2 amended (Commencement) 20

Revoke regulation 2(2).

44 Regulation 7 revoked (Regulation 63 revoked (Conduct of tests of manufactured cigarettes))

Revoke regulation 7.

Schedule 1
New Part 3 inserted into Schedule 1

s 39(2)

Part 3		
Provisions relating to Smokefree Environments and Regulated Products Amendment Act 2024		5
16	Interpretation	
	In this Part, unless the context otherwise requires,—	
	amendment Act means the Smokefree Environments and Regulated Products Amendment Act 2024	10
	commencement date means the date on which section 42 of the amendment Act comes into force.	
17	Refund of fee paid by applicant to be approved smoked tobacco retailer	
(1)	This clause applies in respect of a fee paid before the commencement date by an applicant to be an approved smoked tobacco retailer under regulation 82 and Schedule 8 of the Smokefree Environments and Regulated Products Regulations 2021.	15
(2)	The Director-General may refund the fee paid (inclusive of goods and services tax), in whole or in part, if the Director-General considers that it is fair and reasonable to do so in the circumstances.	20

Schedule 2

New form 5 inserted into Schedule 9

s 41(2)

Form 5								
Annual return (sales-related information) for retailers of regulated products other than specialist vape retailers	5							
Business name:								
Account number for Ministry database (if available and applicable):								
NZ Business Number:								
Calendar year:	10							
Product class: smoked tobacco/vaping device/vaping substance/kit/smokeless tobacco product/cigars/herbal cigarettes/dry herbal mix/herbal shisha/other [<i>specify</i>]*								
*Delete as appropriate								
Information about products sold (for each product sold):								
<table style="width: 100%; border-collapse: collapse;"> <thead> <tr> <th style="text-align: left;">Product class</th> <th style="text-align: left;">EAN/UPC</th> <th style="text-align: left;">Brand</th> <th style="text-align: left;">Variant</th> <th style="text-align: left;">Nicotine strength (if applicable)</th> <th style="text-align: left;">Container size (if applicable)</th> <th style="text-align: left;">Quantity sold</th> </tr> </thead> </table>	Product class	EAN/UPC	Brand	Variant	Nicotine strength (if applicable)	Container size (if applicable)	Quantity sold	
Product class	EAN/UPC	Brand	Variant	Nicotine strength (if applicable)	Container size (if applicable)	Quantity sold		
I, [<i>full name</i>] of [<i>address</i>], [<i>position held</i>], certify that the information contained in/and attached to* this return is correct for the purposes of the Smokefree Environments and Regulated Products Regulations 2021.	15							
*Delete as appropriate								
Place:								
Date:	20							