

Smoke-free Environments (Removing Tobacco Displays) Amendment Bill

Member's Bill

Explanatory note

General policy statement

Tobacco displays at point of sale raise consumer awareness, motivate impulse purchases, increase susceptibility to smoking in youth, undermine smokers' attempts to quit, and promote relapse amongst ex-smokers.

The purpose of the Bill is to amend the Smoke-free Environments Act 1990 (the **principal Act**) to ban the display of tobacco products and smoking accessories at the points of sale. The main rationale for the ban is to protect children and young people from being influenced by tobacco imagery and becoming users of tobacco products.

Tobacco promotion increases the likelihood that adolescents will start smoking. The younger a person begins smoking, the greater likelihood of getting lung cancer and other smoking-related diseases. As nicotine is highly addictive, only around half of all smokers manage to stop smoking before they die.

Tobacco sale display bans have already been implemented in Iceland, Thailand, and 10 of the 13 provinces in Canada. Tasmania and Ireland have also adopted legislation that is soon to come into effect. Studies undertaken in some jurisdictions that have enforced point of sale display bans have seen a decrease in smoking prevalence among young people.

Since the implementation of the ban on other forms of tobacco advertising and promotion in New Zealand, contained in the principal Act and its subsequent amendments, tobacco companies are now more reliant on tobacco displays to attract consumers to their product and to boost sales. The main purpose of this marketing is to attract new smokers since established smokers tend to be brand loyal.

Tobacco products usually occupy the most prominent display areas in stores. Such display areas are highly visible to children. Studies have demonstrated that children are most likely to remember product brands and think that the products are easy to

purchase. The location of tobacco displays alongside everyday items such as confectionary and magazines also undermines the impact of health warnings, and allows tobacco products to continue to be viewed as a normal consumer product.

To ensure consistency, the Bill seeks to restrict advertising on automatic vending machines that stock tobacco products so that such products may not be visible before purchase. In addition, all smoking accessories must also be removed from visual display, with the exception of lighters and matches (which have a more widespread use beyond association with tobacco use).

Clause by clause analysis

Clause 1 is the Title clause.

Clause 2 is the commencement clause and provides that the Bill comes into force on the day 12 months after the date on which it receives the Royal assent.

Clause 3 provides that the Bill amends the Smoke-free Environments Act 1990.

Part 1

Preliminary provisions

Clause 4 states the purpose of the Bill which is to ban the display of tobacco products and smoking accessories at points of sale within retail outlets or in automatic vending machines where members of the public can view them.

Clause 5 amends section 2. It deletes three definitions that are no longer required as a result of the insertion of *new sections 23A and 23B*.

Part 2

Amendments to principal Act

Clause 6 amends section 21 to provide a more general requirement for health messages at points of sale (including automatic vending machines).

Clause 7 amends section 22 to clarify that only one price list may be displayed at any point of sale.

Clause 8 amends section 23 to provide for exemptions for retailers from the comprehensive ban on tobacco advertising set out in section 22. In future the only exemption provided for would be the ability for retailers to display their name or trading name, even where that name contains words or expressions signifying that tobacco products are available for sale at that place. Provisions allowing price notices to be displayed inside retail outlets or on automatic vending machines are repealed. This means that the only permitted notification to the public of the availability of tobacco products and their prices would be a single price list at the point of sale, as provided for by *new section 22(2A)*.

Clause 9 repeals sections 23A and 23B and replaces them with *new sections 23A, 23AB, and 23B* banning the visible storage or display of tobacco products. The re-

requirement that health message signs be displayed at every point of sale is retained. Specifications for the signage are also included. Limitations on the display of such signs are proposed as a means of preventing the use of these signs as a mechanism for advertising the availability of tobacco products for sale. *New section 23AB* provides that smoking accessories cannot be visible from inside or outside of the retail outlet. There is an exception for cigarette lighters and matches and other smoking accessories that have a widespread use, beyond association with tobacco use. *New section 23B* clarifies the meaning of the application of the term *visibility* for the purposes of *new sections 23A and 23AB*. The prohibition on the display of tobacco products and smoking accessories includes their packaging being visible or their being visible for a short period of time while product is being selected by the retailer for sale to a customer. This means that cabinetry, drawers, automatic vending machines, and other storage devices in which tobacco products and smoking accessories are stored will have to be so sited or constructed that only the retailer may view tobacco products stored within them.

Clause 10 amends section 29B to further restrict automatic vending machines that stock tobacco products or herbal smoking products. Machines may continue to be used in retail outlets, provided that no products in the machine are visible and no tobacco product advertisement is displayed on the machine. Health messages are required wherever automatic vending machines are used, in line with *new section 23A* for a health message to be displayed at any point of sale of tobacco products.

Clauses 11 and 12 repeal sections 32(3) and section 32AA(3) respectively. These relate to the display of health messages on the outside of automatic vending machines selling tobacco products and herbal smoking products. These sections are no longer required given the general requirement for a health message contained in *new section 23A*, and by the proposed amendments to *new section 29B*.

Clause 13 provides for offence provisions consistent with new and amended requirements set out in *clauses 6 to 12*.

Clause 14 provides for regulation-making powers consistent with new and amended requirements set out in *clauses 6 to 12*.

Clause 15 provides for the revocation of the relevant regulation.

Iain Lees-Galloway

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The Parliament of New Zealand enacts as follows:

- 1 Title**
This Act is the Smoke-free Environments (Removing Tobacco Displays) Amendment Act **2010**.
- 2 Commencement** 5
This Act comes into force on the day 12 months after the date on which it receives the Royal assent.
- 3 Principal Act amended**
This Act amends the Smoke-free Environments Act 1990.
- Part 1** 10
Preliminary provisions
- 4 Purpose**
The purpose of this Act is to ban the display of tobacco products and smoking accessories at points of sale within retail outlets or in automatic vending machines where members of the public can view them. 15
- 5 Interpretation**
Section 2(1) is amended by repealing the following definitions: “**of the same kind**”, “**tobacconist’s shop**”, “**tobacco packages in a visible stack**”.
- Part 2**
Amendments to principal Act 20
- 6 Purpose of this Part**
Section 21(a)(ii) is amended by omitting “, and on automatic vending machines”.
- 7 Advertising of tobacco products** 25
Section 22(2) is amended by inserting the following subsection after subsection (2):
- (2A) No person shall display, where members of the public may view it, more than one of the price lists referred to in subsection (1) at any one point of sale.
- 8 Exemption for retailers** 30
Section 23 is repealed and the following section substituted:

23 Exemption for retailers

Despite anything in section 22, a retailer of tobacco products may display the retailer's name or trade name on the exterior of the retailer's place of business, in accordance with regulations made under this Part, even though the name contains a word or expression signifying that a tobacco product is available in that place for purchase, so long as the name does not include the trade mark of a tobacco product or the company name of a tobacco products manufacturer.

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9 New sections 23A, 23AB, and 23B inserted

Sections 23A and 23B are repealed and the following sections substituted:

23A Compliant product storage and display

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(1) No person shall store or display, or permit the storage or display, of tobacco products in any place or premises from which tobacco is sold or offered for sale at retail—

(a) by any means or in any manner, including the use of a countertop or wall display, that permits a consumer in the place or premises to view tobacco before purchasing it; or

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(b) by any means or in any manner that makes tobacco visible to the public from the inside or outside of the place or premises; or

(c) by any means that is inconsistent with any regulations for the time being in force under section 39(1)(ba).

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(2) No person shall sell or offer for sale any tobacco product unless there is displayed at each point of sale where tobacco products are available for sale a rectangular sign, with its longer sides horizontal and its shorter sides vertical, and the message "SMOKING KILLS Ka mate koe i te kai hikareti" printed in black across it—

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(a) within a black rectangular border that is no wider than an upper case letter "i" in the point size used for the words "SMOKING KILLS"; and

(b) on a white background within that border; and

(c) in the type face known as Helvetica; and

(d) in roman font; and

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(e) with the words "SMOKING KILLS" printed centred, in upper case letters, in one line; and

(f) with the words "Ka mate koe i te kai hikareti" printed centred, in upper case and lower case letters (as it is printed in this subparagraph) in one line—

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(i) beneath the words "SMOKING KILLS"; and

(ii) in a point size such that its risers are two-thirds the height of the words "SMOKING KILLS"; and

(g) in a type that is clear and legible, of normal weight, and of such a point size that the words “Ka mate koe i te kai hikareti” do not touch the vertical elements of the border, but as nearly as possible take up the full width of the sign between them.	
(3) The sign referred to in subsection (2) —	5
(a) must be at least 1 square metre in area; and	
(b) may include the attribution “Ministry of Health Warning”, printed centred, in one line beneath the words “Ka mate koe i te kai hikareti”,—	
(i) in upper case and lower case letters (as it is set out above); and	
(ii) in an italic font in the type face known as Helvetica; and	10
(iii) in a point size such that its risers are no more than half the height of the words “SMOKING KILLS”; and	
(iv) otherwise in accordance with subsection (2) .	
(c) must not include anything that is not—	
(i) required by subsection (2) ; or	15
(ii) authorised by subsection (3)(b) .	
(4) The sign referred to in subsection (2) may be displayed only once at each point of sale and must be displayed in a manner that prevents it from being visible from outside the place or premises from which tobacco products are sold or offered for sale.	20
23AB Display of smoking accessories	
(1) No person shall store or display, or permit the storage or display, of smoking accessories in any place or premises where smoking accessories are sold or offered for sale—	
(a) by any means or in any manner that permits a consumer in the place or premises to view smoking accessories before purchasing them; or	25
(b) by any means or in any manner that makes smoking accessories visible to the public from the inside or outside of the place or premises; or	
(c) by any means that is inconsistent with any regulations for the time being in force under section 39(1)(bb).	30
(2) Despite subsection (1) a person may store or display cigarette lighters and matches, as well as other items that have common use beyond association with tobacco use, so that they are visible to the public inside the premises.	
23B Visible storage and display	
For the purpose of sections 23A and 23AB —	35
(a) a tobacco product is visible if the tobacco package or tobacco carton it is in is visible; and	

- (b) a smoking accessory is visible if the package it is in is visible and carries words or images that make it apparent what is contained in that package; and
- (c) a tobacco product or smoking accessory is visible if it can be viewed, even for a short time, when a cabinet, drawer, or other unit storing that tobacco product or smoking accessory is opened for stocking or for selection of a product for sale to a customer.

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10 Restriction on use of automatic vending machines

Section 29(3) is amended by adding the following subsection:

- (4) Any person who installs or operates an automatic vending machine inside a retailer's place of business must comply with the following requirements:
 - (a) no tobacco product in the automatic vending machine may be visible before the product is dispensed; and
 - (b) no tobacco product advertisement may be displayed on the automatic vending machine; and
 - (c) a health message must be displayed at all points of sale where tobacco products are dispensed for sale by way of automatic vending machines, in accordance with **section 23A(2)** and any regulations made under this Act.

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11 Labelling and health messages for tobacco products

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Section 32(3) is repealed.

12 Labelling and health messages for herbal smoking products

Section 32AA(3) is repealed.

13 Offences in respect of smoking products

- (1) Section 36(1A) is amended by omitting "exposes a tobacco product for sale" and substituting "stores or displays a tobacco product".
- (2) Section 36 is amended by inserting the following subsection after subsection (1A):

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- (1AB) Every person who, without reasonable excuse, stores or displays a smoking accessory in any premises or place from which smoking accessories are sold, otherwise than in compliance with **section 23AB** commits an offence and is liable to a fine not exceeding \$10,000.

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- (3) Section 36(5B)(b) is amended by omitting "." and inserting "; or", and also by adding the following paragraph:

- (c) operates an automatic vending machine otherwise than in compliance with **section 29B(4)**.

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Part 2 cl 14

14 Regulations

- (1) Section 39(1) is amended by inserting the following paragraphs after paragraph (b):
- (ba) prescribing for the purposes of **section 23A(1)** requirements with which the storage and display of tobacco products in a retailer’s place of business must comply: 5
 - (bb) prescribing for the purposes of **section 23AB(1)** requirements with which the storage and display of smoking accessories in any place or premises where smoking accessories are sold must comply:
- (2) Section 39(1) is amended by repealing paragraphs (c) and (ia). 10
- (3) Section 39 is amended by repealing subsections (3), (4), and (5).
- (4) Section 39(6) is amended by omitting “subsection (1)(ia)” and substituting “**subsection (1)(ba) or (bb)**”.

15 Regulation 31 revoked

Regulation 31 of the Smoke-free Environments Regulations 2007 is revoked. 15