Version
as at 1 January 2023

Smokefree Environments and Regulated Products Act 1990

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

Act title: replaced, on 11 November 2020, by section 4 of the Smokefree Environments and Regulated Products (Vaping) Amendment Act 2020 (2020 No 62).

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Note

The Parliamentary Counsel Office has made editorial and format changes to this version using the powers under subpart 2 of Part 3 of the Legislation Act 2019.

Note 4 at the end of this version provides a list of the amendments included in it.

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Title *[Repealed]*

Title: repealed, on 23 July 2011, by section 5 of the Smoke-free Environments (Controls and Enforcement) Amendment Act 2011 (2011 No 53).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 Smokefree Environments and Regulated Products 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): replaced, on 11 November 2020, by section 4 of the Smokefree Environments and Regulated Products (Vaping) Amendment Act 2020 (2020 No 62).

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; and

(c) in relation to a vaping substance, means a substance that is not propylene glycol or vegetable glycerin

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

approved Internet site means an Internet site to which a person's approval as a specialist vape retailer applies

approved smoked tobacco retail premises means premises from which an approved smoked tobacco retailer is approved to sell smoked tobacco products

approved smoked tobacco retailer means a person who is approved by the Director-General as an approved smoked tobacco retailer under section 20H

approved vaping premises means premises to which a person's approval as a specialist vape retailer applies

automatic vending machine means any machine that,—

(a) on the insertion of a coin or token or by any other means, dispenses by way of sale regulated 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

constituent means any thing that makes up, is present in, or is emitted from a regulated product

craft means—

(a) an aircraft:

(b) a ship (as defined in section 2(1) of the Maritime Transport Act 1994)

database means the database established under section 77

dedicated room means an internal area in a hospital care institution, a residential disability care institution, or a rest home that is used solely to—

(a) enable patients or residents who smoke to smoke, or to socialise with each other in a place where smoking is permitted; or

(b) enable patients or residents who vape to vape, or to socialise with each other in a place where vaping is permitted

Director-General means the Director-General of Health

distributor means a person engaged in the business of selling regulated products otherwise than at retail only

early childhood education and care centre has the meaning given to it by section 10(1) of the Education and Training Act 2020

emissions means the smoke, vapour, or aerosol produced by the use of a regulated product, whether inhaled, exhaled, or otherwise

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 appointed under section 91

entity includes—

(a) a body corporate:

(b) a corporation sole:

(c) in the case of a trust that has—

(i) only 1 trustee, the trustee acting in that capacity as trustee:

(ii) more than 1 trustee, the trustees acting jointly in their capacity as trustees:

(d) an unincorporated body (including a partnership)

flavour, in relation to a notifiable product, means a clearly noticeable smell or taste—

(a) resulting from an additive or a combination of additives; and

(b) that is noticeable before or during use of the product

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

general vape retailer means a retailer of vaping products, other than a specialist vape retailer

heated tobacco product means a smokeless tobacco product that has a device that uses or facilitates the use of heat to aerosolise nicotine from tobacco leaf directly

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,—

(a) means the area determined as an internal area in accordance with regulations made under section 81(1)(3); but

(b) if those regulations are not in force, 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—

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

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

(iii) 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 regulated 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

iwi-Māori partnership board has the same meaning as in section 4 of the Pae Ora (Healthy Futures) Act 2022

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)

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

Māori Health Authority means the health entity established under section 17 of the Pae Ora (Healthy Futures) Act 2022

Minister means the Minister of Health

Ministry means the department of State that, with the authority of the Prime Minister, is responsible for the administration of this Act

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

notifiable product means—

(a) a vaping product; or

(b) a smokeless tobacco product; or

(c) a herbal smoking product; or

(d) any other regulated product (other than a smoked tobacco product) declared by regulations to be a notifiable product

notifier means the manufacturer or importer of a notifiable product

of the same kind,—

(a) in relation to tobacco products and herbal smoking products, means not differing in a manner stated in subsection (2):

(b) in relation to vaping products and heated tobacco products, means not differing in a manner stated in subsection (2A)

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

package means a pack, carton, wrapping, or other container in which a regulated product is sold at retail

point of sale means a checkout, till, or cashbox where regulated products may be bought

product request means a request (however expressed) made to a retailer by a person who has asked to purchase a specified, or any available, regulated product

product safety requirements means safety requirements prescribed in regulations for a notifiable product

prohibited flavour means a flavour or a class of flavour listed in Part 2 of Schedule 2

prohibited substance means a substance declared under section 70 to be unsafe for use in a notifiable product

public service—

(a) means any of the following public service agencies:

(i) a department:

(ii) a departmental agency:

(iii) an interdepartmental executive board:

(iv) an interdepartmental venture; and

(b) includes a Crown agent

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 10(1) of the Education and Training Act 2020

regulated product means a tobacco product, vaping product, or herbal smoking product

regulated product advertisement—

(a) means any words, whether written, printed, or spoken (including on film, video recording, or other medium, or broadcast or telecast), and any pictorial representation, design, or device, used to—

(i) encourage the use of a regulated product; or

(ii) notify the availability of a regulated product; or

(iii) promote the sale of a regulated product; or

(iv) promote smoking or vaping behaviour; and

(b) includes—

(i) any trade circular, any label, and any advertisement in any trade journal; and

(ii) any depiction of a regulated product or a regulated product trade mark in a film, video recording, telecast, or other visual medium where in return for that depiction any money is paid, or any valuable thing is given, to any person; and

(iii) the use of the company name of a regulated product manufacturer in any advertisement or promotion to the public where the company name or any part of it is used as, or is included in, a regulated product trade mark,—

and **advertising** has a corresponding meaning

regulations means regulations made under this Act

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

responsible person, in relation to an entity, means—

(a) a director, partner, or trustee of the entity; or

(b) if the entity does not have directors, partners, or trustees, a person who acts in relation to the entity in the same or a similar way as a director, partner, or trustee would were the entity a company, partnership, or trust

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 regulated 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

smoked tobacco product means a tobacco product that is intended to be used in a way that involves ignition or the combustion process

smokeless tobacco product means a tobacco product that is intended to be used in a way that does not involve ignition or the combustion process

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

smoking cessation programme means a programme that is funded (whether wholly or partly and whether directly or indirectly) by a public service with the intention of encouraging smokers to stop smoking

specialist vape retailer means a person who is approved by the Director-General as a specialist vape retailer under section 20P

suitably qualified health worker means—

(a) a registered health practitioner; or

(b) a person who—

(i) has completed the Stop Smoking Practitioners Programme certified by the New Zealand Qualifications Authority (the **programme**); or

(ii) is undertaking the programme and is being supervised by a person who has completed the programme; or

(iii) is a peer support worker and is being supervised by a person who has completed the programme; or

(c) a person specified by the Director-General by notice in the *Gazette* for the purpose of the exemption in section 24(h) or 27(3)(e)

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

to vape means to inhale using a vaping device or a heated tobacco product, and **vaping** has a corresponding meaning

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

toy regulated product means—

(a) a toy tobacco product; or

(b) an object that—

(i) looks like a vaping product or a heated tobacco product and can be used to simulate vaping; but

(ii) cannot be used for vaping and has a primary purpose other than to help people to stop vaping

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

vaping device means a device that—

(a) vaporises or aerosolises a substance or a mixture of substances by heating it for the purpose of inhalation through a mouthpiece; and

(b) is sold as a complete unit or to be assembled from individual components

vaping product means any of the following:

(a) a vaping device:

(b) a vaping substance:

(c) any 1 or more components of a vaping device:

(d) a package containing 2 or more items described in any of paragraphs (a) to (c)

vaping substance—

(a) means a substance or mixture of substances that is intended to be vaporised or aerosolised with a vaping device; but

(b) does not include a medicinal cannabis product within the meaning of regulation 4 of the Misuse of Drugs (Medicinal Cannabis) Regulations 2019 or a CBD product within the meaning of section 2A of the Misuse of Drugs Act 1975; and

(c) does not include a heated tobacco product

variant means, as applicable,—

(a) sold in tobacco packages that are not of the same kind; or

(b) sold in packages of a herbal smoking product that are not of the same kind; or

(c) sold in packages of a vaping product that are not of the same kind; or

(d) sold in packages of a heated tobacco 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 paragraph (a) 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.

(2A) For the purposes of paragraph (b) of the definition of **of the same kind** in subsection (1), vaping products, heated tobacco products, or any packages of those products differ if they bear the same brand name, but the products they contain differ in 1 or more of the following ways:

(a) containing differing levels of nicotine:

(b) being otherwise differently flavoured:

(c) having a different size, shape, or capacity:

(d) containing different numbers of pieces:

(e) being different in a way prescribed in regulations.

(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.

(4) For the purposes of this Act,—

(a) a vaping product that contains tobacco is not a tobacco product:

(b) a vaping device is not a medical device within the meaning of the Medicines Act 1981:

(c) a vaping substance is not a medicine within the meaning of the Medicines Act 1981.

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) **additive** paragraph (c): inserted, on 11 November 2020, by section 5(4) of the Smokefree Environments and Regulated Products (Vaping) Amendment Act 2020 (2020 No 62).

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) **approved Internet site**: inserted, on 11 November 2020, by section 5(2) of the Smokefree Environments and Regulated Products (Vaping) Amendment Act 2020 (2020 No 62).

Section 2(1) **approved smoked tobacco retail premises**: inserted, on 1 January 2023, by section 4(1) of the Smokefree Environments and Regulated Products (Smoked Tobacco) Amendment Act 2022 (2022 No 79).

Section 2(1) **approved smoked tobacco retailer**: inserted, on 1 January 2023, by section 4(1) of the Smokefree Environments and Regulated Products (Smoked Tobacco) Amendment Act 2022 (2022 No 79).

Section 2(1) **approved vaping premises**: inserted, on 11 November 2020, by section 5(2) of the Smokefree Environments and Regulated Products (Vaping) Amendment Act 2020 (2020 No 62).

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 Smokefree Environments Amendment Act 1997 (1997 No 32).

Section 2(1) **automatic vending machine**: amended, on 1 January 2023, by section 4(2) of the Smokefree Environments and Regulated Products (Smoked Tobacco) Amendment Act 2022 (2022 No 79).

Section 2(1) **automatic vending machine** paragraph (a): amended, on 11 November 2020, by section 5(3) of the Smokefree Environments and Regulated Products (Vaping) Amendment Act 2020 (2020 No 62).

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) **constituent**: inserted, on 1 January 2023, by section 4(1) of the Smokefree Environments and Regulated Products (Smoked Tobacco) Amendment Act 2022 (2022 No 79).

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) **database**: inserted, on 1 January 2023, by section 4(1) of the Smokefree Environments and Regulated Products (Smoked Tobacco) Amendment Act 2022 (2022 No 79).

Section 2(1) **dedicated room**: inserted, on 11 November 2020, by section 5(2) of the Smokefree Environments and Regulated Products (Vaping) Amendment Act 2020 (2020 No 62).

Section 2(1) **dedicated smoking room**: repealed, on 11 November 2020, by section 5(1) of the Smokefree Environments and Regulated Products (Vaping) Amendment Act 2020 (2020 No 62).

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**: replaced, on 11 November 2020, by section 5(2) of the Smokefree Environments and Regulated Products (Vaping) Amendment Act 2020 (2020 No 62).

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) **early childhood education and care centre**: amended, on 1 August 2020, by section 668 of the Education and Training Act 2020 (2020 No 38).

Section 2(1) **emissions**: inserted, on 11 November 2020, by section 5(2) of the Smokefree Environments and Regulated Products (Vaping) Amendment Act 2020 (2020 No 62).

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**: replaced, on 11 November 2020, by section 5(2) of the Smokefree Environments and Regulated Products (Vaping) Amendment Act 2020 (2020 No 62).

Section 2(1) **entity**: inserted, on 1 January 2023, by section 4(1) of the Smokefree Environments and Regulated Products (Smoked Tobacco) Amendment Act 2022 (2022 No 79).

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) **flavour**: inserted, on 1 January 2023, by section 4(1) of the Smokefree Environments and Regulated Products (Smoked Tobacco) Amendment Act 2022 (2022 No 79).

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) **general vape retailer**: inserted, on 1 January 2023, by section 4(1) of the Smokefree Environments and Regulated Products (Smoked Tobacco) Amendment Act 2022 (2022 No 79).

Section 2(1) **harmful constituent**: repealed, on 1 January 2023, by section 4(3) of the Smokefree Environments and Regulated Products (Smoked Tobacco) Amendment Act 2022 (2022 No 79).

Section 2(1) **heated tobacco product**: inserted, on 11 November 2020, by section 5(2) of the Smokefree Environments and Regulated Products (Vaping) Amendment Act 2020 (2020 No 62).

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 Smokefree Environments Amendment Act 2003 (2003 No 127).

Section 2(1) **internal area**: replaced, on 11 November 2020, by section 5(2) of the Smokefree Environments and Regulated Products (Vaping) Amendment Act 2020 (2020 No 62).

Section 2(1) **internal area** paragraph (a): amended, on 28 October 2021, by section 3 of the Secondary Legislation Act 2021 (2021 No 7).

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) **Internet sale**: amended, on 11 November 2020, by section 5(5) of the Smokefree Environments and Regulated Products (Vaping) Amendment Act 2020 (2020 No 62).

Section 2(1) **iwi-Māori partnership board**: inserted, on 1 January 2023, by section 4(1) of the Smokefree Environments and Regulated Products (Smoked Tobacco) Amendment Act 2022 (2022 No 79).

Section 2(1) **large retailer**: inserted, on 14 March 2018, by section 4 of the Smoke-free Environments (Tobacco Standardised Packaging) Amendment Act 2016 (2016 No 43).

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) **Māori Health Authority**: inserted, on 1 January 2023, by section 4(1) of the Smokefree Environments and Regulated Products (Smoked Tobacco) Amendment Act 2022 (2022 No 79).

Section 2(1) **Ministry**: inserted, on 1 January 2023, by section 4(1) of the Smokefree Environments and Regulated Products (Smoked Tobacco) Amendment Act 2022 (2022 No 79).

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) **notifiable product**: inserted, on 1 January 2023, by section 4(1) of the Smokefree Environments and Regulated Products (Smoked Tobacco) Amendment Act 2022 (2022 No 79).

Section 2(1) **notifier**: inserted, on 1 January 2023, by section 4(1) of the Smokefree Environments and Regulated Products (Smoked Tobacco) Amendment Act 2022 (2022 No 79).

Section 2(1) **of the same kind**: replaced, on 11 November 2020, by section 5(2) of the Smokefree Environments and Regulated Products (Vaping) Amendment Act 2020 (2020 No 62).

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**: repealed, on 1 October 2017, by section 110(3) of the Land Transport Amendment Act 2017 (2017 No 34).

Section 2(1) **organised activity**: repealed, on 11 November 2020, by section 5(1) of the Smokefree Environments and Regulated Products (Vaping) Amendment Act 2020 (2020 No 62).

Section 2(1) **package**: replaced, on 11 November 2020, by section 5(2) of the Smokefree Environments and Regulated Products (Vaping) Amendment Act 2020 (2020 No 62).

Section 2(1) **passenger service vehicle** and **small passenger service vehicle**: repealed, on 1 October 2017, by section 110(3) of the Land Transport Amendment Act 2017 (2017 No 34).

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**: replaced, on 11 November 2020, by section 5(2) of the Smokefree Environments and Regulated Products (Vaping) Amendment Act 2020 (2020 No 62).

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) **product request**: inserted, on 11 November 2020, by section 5(2) of the Smokefree Environments and Regulated Products (Vaping) Amendment Act 2020 (2020 No 62).

Section 2(1) **product safety requirements**: inserted, on 1 January 2023, by section 4(1) of the Smokefree Environments and Regulated Products (Smoked Tobacco) Amendment Act 2022 (2022 No 79).

Section 2(1) **prohibited flavour**: inserted, on 1 January 2023, by section 4(1) of the Smokefree Environments and Regulated Products (Smoked Tobacco) Amendment Act 2022 (2022 No 79).

Section 2(1) **prohibited substance**: inserted, on 1 January 2023, by section 4(1) of the Smokefree Environments and Regulated Products (Smoked Tobacco) Amendment Act 2022 (2022 No 79).

Section 2(1) **public service**: inserted, on 11 November 2020, by section 5(2) of the Smokefree Environments and Regulated Products (Vaping) Amendment Act 2020 (2020 No 62).

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) **registered school**: amended, on 1 August 2020, by section 668 of the Education and Training Act 2020 (2020 No 38).

Section 2(1) **regulated product**: inserted, on 11 November 2020, by section 5(2) of the Smokefree Environments and Regulated Products (Vaping) Amendment Act 2020 (2020 No 62).

Section 2(1) **regulated product advertisement**: inserted, on 11 November 2020, by section 5(2) of the Smokefree Environments and Regulated Products (Vaping) Amendment Act 2020 (2020 No 62).

Section 2(1) **regulations**: inserted, on 11 November 2020, by section 5(2) of the Smokefree Environments and Regulated Products (Vaping) Amendment Act 2020 (2020 No 62).

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) **responsible person**: inserted, on 1 January 2023, by section 4(1) of the Smokefree Environments and Regulated Products (Smoked Tobacco) Amendment Act 2022 (2022 No 79).

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**: replaced, on 11 November 2020, by section 5(2) of the Smokefree Environments and Regulated Products (Vaping) Amendment Act 2020 (2020 No 62).

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) **smoked tobacco product**: inserted, on 1 January 2023, by section 4(1) of the Smokefree Environments and Regulated Products (Smoked Tobacco) Amendment Act 2022 (2022 No 79).

Section 2(1) **smokeless tobacco product**: inserted, on 11 November 2020, by section 5(2) of the Smokefree Environments and Regulated Products (Vaping) Amendment Act 2020 (2020 No 62).

Section 2(1) **smoking cessation programme**: inserted, on 11 November 2020, by section 5(2) of the Smokefree Environments and Regulated Products (Vaping) Amendment Act 2020 (2020 No 62).

Section 2(1) **specialist vape retailer**: inserted, on 11 November 2020, by section 5(2) of the Smokefree Environments and Regulated Products (Vaping) Amendment Act 2020 (2020 No 62).

Section 2(1) **specialist vape retailer**: amended, on 1 January 2023, by section 4(4) of the Smokefree Environments and Regulated Products (Smoked Tobacco) Amendment Act 2022 (2022 No 79).

Section 2(1) **suitably qualified health worker**: inserted, on 11 November 2020, by section 5(2) of the Smokefree Environments and Regulated Products (Vaping) Amendment Act 2020 (2020 No 62).

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) **to vape**: inserted, on 11 November 2020, by section 5(2) of the Smokefree Environments and Regulated Products (Vaping) Amendment Act 2020 (2020 No 62).

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) **tobacco product advertisement**: repealed, on 11 November 2020, by section 5(1) of the Smokefree Environments and Regulated Products (Vaping) Amendment Act 2020 (2020 No 62).

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 regulated product**: inserted, on 11 November 2020, by section 5(2) of the Smokefree Environments and Regulated Products (Vaping) Amendment Act 2020 (2020 No 62).

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) **vaping device**: inserted, on 11 November 2020, by section 5(2) of the Smokefree Environments and Regulated Products (Vaping) Amendment Act 2020 (2020 No 62).

Section 2(1) **vaping product**: inserted, on 11 November 2020, by section 5(2) of the Smokefree Environments and Regulated Products (Vaping) Amendment Act 2020 (2020 No 62).

Section 2(1) **vaping substance**: inserted, on 11 November 2020, by section 5(2) of the Smokefree Environments and Regulated Products (Vaping) Amendment Act 2020 (2020 No 62).

Section 2(1) **variant**: replaced, on 11 November 2020, by section 5(2) of the Smokefree Environments and Regulated Products (Vaping) Amendment Act 2020 (2020 No 62).

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(2): amended, on 11 November 2020, by section 5(6) of the Smokefree Environments and Regulated Products (Vaping) Amendment Act 2020 (2020 No 62).

Section 2(2A): inserted, on 11 November 2020, by section 5(7) of the Smokefree Environments and Regulated Products (Vaping) Amendment Act 2020 (2020 No 62).

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

Section 2(4): inserted, on 11 November 2020, by section 5(8) of the Smokefree Environments and Regulated Products (Vaping) Amendment Act 2020 (2020 No 62).

3 Act binds the Crown

This Act shall bind the Crown.

3A Purposes of this Act

(1) The purposes of this Act are—

(a) to provide for the regulation of smoked tobacco products—

(i) to reduce disparities in smoking rates and smoking-related illnesses between New Zealand population groups and, in particular, between Māori and other groups; and

(ii) to prevent the harmful effect of other people's smoking on the health of others, and especially on young people and children; and

(iii) to significantly reduce the retail availability of smoked tobacco products; and

(iv) to prevent young people, and successive generations, from ever taking up smoking; and

(v) to reduce the appeal and addictiveness of smoked tobacco products; and

(vi) to restrict all forms of advertising and promotion; and

(b) to provide for the regulation of notifiable products in a way that seeks to minimise harm, especially harm to young people and children; and

(c) 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.

(2) *[Repealed]*

Section 3A(1): replaced, on 1 January 2023, by section 5 of the Smokefree Environments and Regulated Products (Smoked Tobacco) Amendment Act 2022 (2022 No 79).

Section 3A(2): repealed, on 1 January 2023, by section 5 of the Smokefree Environments and Regulated Products (Smoked Tobacco) Amendment Act 2022 (2022 No 79).

3AA Guide to this Act

(1) Part 1 prohibits smoking and vaping in workplaces, certain public enclosed areas, registered schools, and early childhood education and care centres.

(2) Part 1A prohibits smoking and vaping in vehicles carrying children.

(3) Part 1B regulates entry into the smoked tobacco and vaping products markets.

(4) Part 2 regulates and controls the advertising, promotion, sale, and distribution of regulated products.

(5) Part 3 regulates the packaging and labelling of regulated products.

(6) Part 3A provides for—

(a) the approval of smoked tobacco products; and

(b) the regulation of constituents of smoked tobacco products.

(7) Part 4 regulates the safety of notifiable products.

(8) Part 5—

(a) empowers the making of secondary legislation; and

(b) contains provisions relating to—

(i) the enforcement of this Act; and

(ii) reporting requirements relating to regulated products; and

(iii) appeals against product approval and notification decisions.

(9) This section is intended as a guide only.

Section 3AA: inserted, on 1 January 2023, by section 6 of the Smokefree Environments and Regulated Products (Smoked Tobacco) Amendment Act 2022 (2022 No 79).

3AB Te Tiriti o Waitangi (the Treaty of Waitangi)

In order to provide for the Crown's intention to give effect to the principles of te Tiriti o Waitangi (the Treaty of Waitangi), this Act—

(a) requires the Director-General, before determining an application process for the approval of smoked tobacco retailers, to consult—

(i) the Māori Health Authority; and

(ii) each iwi-Māori partnership board; and

(iii) any iwi or other Māori who the Director-General considers have an interest in the application process; and

(b) requires the Director-General, before determining the maximum number of approved smoked tobacco retailers and the area to which that number applies, to consult—

(i) the Māori Health Authority; and

(ii) any iwi-Māori partnership board for all or part of the proposed area; and

(iii) any iwi whose rohe includes all or part of the proposed area; and

(iv) any other Māori who the Director-General considers will be affected; and

(c) requires the Director-General to—

(i) have systems in place for the purposes of carrying out the consultation referred to in paragraphs (a) and (b); and

(ii) consult the Māori Health Authority before determining the iwi or other Māori to consult; and

(d) requires the Minister, before preparing regulations relating to requirements for smoked tobacco products, to consider the risks and benefits to Māori of regulating a constituent (including both users and non-users of smoked tobacco products).

Section 3AB: inserted, on 1 January 2023, by section 6 of the Smokefree Environments and Regulated Products (Smoked Tobacco) Amendment Act 2022 (2022 No 79).

3B Transitional, savings, and related provisions

The transitional, savings, and related provisions set out in Schedule 1 have effect according to their terms.

Section 3B: inserted, on 11 November 2020, by section 7 of the Smokefree Environments and Regulated Products (Vaping) Amendment Act 2020 (2020 No 62).

Part 1
Smoking and vaping prohibited in workplaces and public areas

Part 1 heading: replaced, on 11 November 2020, by section 8 of the Smokefree Environments and Regulated Products (Vaping) Amendment Act 2020 (2020 No 62).

4 Purposes of this Part

[Repealed]

Section 4: repealed, on 1 January 2023, by section 7 of the Smokefree Environments and Regulated Products (Smoked Tobacco) Amendment Act 2022 (2022 No 79).

5 Smoking and vaping in workplaces prohibited

(1) An employer must take all reasonably practicable steps to ensure that no person smokes or vapes at any time in a workplace that is not—

(a) a vehicle in which smoking or vaping is permitted under section 5A; or

(b) a dedicated room in which smoking or vaping is permitted under section 6.

(2) No employee or volunteer may smoke or vape at any time in a workplace that is not a vehicle in which smoking or vaping is permitted under section 5A.

(3) Nothing in this section permits smoking or vaping in a vehicle carrying child occupants (*see* section 20D).

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

Section 5 heading: amended, on 11 November 2020, by section 10(1) of the Smokefree Environments and Regulated Products (Vaping) Amendment Act 2020 (2020 No 62).

Section 5(1): amended, on 11 November 2020, by section 10(2) of the Smokefree Environments and Regulated Products (Vaping) Amendment Act 2020 (2020 No 62).

Section 5(1)(a): amended, on 11 November 2020, by section 10(3) of the Smokefree Environments and Regulated Products (Vaping) Amendment Act 2020 (2020 No 62).

Section 5(1)(b): amended, on 11 November 2020, by section 10(4) of the Smokefree Environments and Regulated Products (Vaping) Amendment Act 2020 (2020 No 62).

Section 5(2): amended, on 11 November 2020, by section 10(3) of the Smokefree Environments and Regulated Products (Vaping) Amendment Act 2020 (2020 No 62).

Section 5(2): amended, on 11 November 2020, by section 10(5) of the Smokefree Environments and Regulated Products (Vaping) Amendment Act 2020 (2020 No 62).

Section 5(3): inserted, on 28 November 2021, by section 6 of the Smoke-free Environments (Prohibiting Smoking in Motor Vehicles Carrying Children) Amendment Act 2020 (2020 No 19).

5A Employer may permit smoking or vaping in vehicle with consent of users

(1) An employer may permit smoking or vaping 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 or vaping in it; or

(ii) stating that they do not object to other employees and volunteers smoking or vaping 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 or vaping in it; or

(ii) now objects to other employees and volunteers smoking or vaping in it.

(2) Nothing in this section permits smoking or vaping in a vehicle carrying child occupants (*see* section 20D).

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

Section 5A heading: amended, on 11 November 2020, by section 11(1) of the Smokefree Environments and Regulated Products (Vaping) Amendment Act 2020 (2020 No 62).

Section 5A(1): amended, on 11 November 2020, by section 11(2) of the Smokefree Environments and Regulated Products (Vaping) Amendment Act 2020 (2020 No 62).

Section 5A(1)(b)(i): amended, on 11 November 2020, by section 11(2) of the Smokefree Environments and Regulated Products (Vaping) Amendment Act 2020 (2020 No 62).

Section 5A(1)(b)(ii): amended, on 11 November 2020, by section 11(2) of the Smokefree Environments and Regulated Products (Vaping) Amendment Act 2020 (2020 No 62).

Section 5A(1)(c)(i): amended, on 11 November 2020, by section 11(2) of the Smokefree Environments and Regulated Products (Vaping) Amendment Act 2020 (2020 No 62).

Section 5A(1)(c)(ii): amended, on 11 November 2020, by section 11(2) of the Smokefree Environments and Regulated Products (Vaping) Amendment Act 2020 (2020 No 62).

Section 5A(2): inserted, on 28 November 2021, by section 7 of the Smoke-free Environments (Prohibiting Smoking in Motor Vehicles Carrying Children) Amendment Act 2020 (2020 No 19).

6 Dedicated rooms in hospital care institutions, residential disability care institutions, and rest homes

(1) An employer may permit smoking or vaping 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 rooms for smoking; and

(aa) the vaping takes place only in 1 or more dedicated rooms for vaping; and

(b) each dedicated 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 emissions from the dedicated smoking or vaping rooms into any part of the workplace that is not a dedicated room; and

(d) for each dedicated room, an adequate equivalent room is available for patients or residents who wish to socialise in an atmosphere without emissions.

(2) This subsection applies to a mechanical ventilation system with which a dedicated 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 emissions the air may contain will not enter any part of the workplace, either—

(i) directly; or

(ii) through 1 or more other dedicated rooms; and

(b) no part of the workplace that is not a dedicated 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 or vape in a dedicated room; and

(b) does not authorise a person who is not a patient or resident of the institution or home concerned to smoke or vape in a dedicated room.

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

Section 6 heading: amended, on 11 November 2020, by section 12(1) of the Smokefree Environments and Regulated Products (Vaping) Amendment Act 2020 (2020 No 62).

Section 6: amended, on 11 November 2020, by section 12(2) of the Smokefree Environments and Regulated Products (Vaping) Amendment Act 2020 (2020 No 62).

Section 6(1): amended, on 11 November 2020, by section 12(4) of the Smokefree Environments and Regulated Products (Vaping) Amendment Act 2020 (2020 No 62).

Section 6(1)(a): replaced, on 11 November 2020, by section 12(3) of the Smokefree Environments and Regulated Products (Vaping) Amendment Act 2020 (2020 No 62).

Section 6(1)(a): amended, on 1 January 2023, by section 8 of the Smokefree Environments and Regulated Products (Smoked Tobacco) Amendment Act 2022 (2022 No 79).

Section 6(1)(aa): inserted, on 11 November 2020, by section 12(3) of the Smokefree Environments and Regulated Products (Vaping) Amendment Act 2020 (2020 No 62).

Section 6(1)(b): amended, on 11 November 2020, by section 12(2) of the Smokefree Environments and Regulated Products (Vaping) Amendment Act 2020 (2020 No 62).

Section 6(1)(c): amended, on 11 November 2020, by section 12(2) of the Smokefree Environments and Regulated Products (Vaping) Amendment Act 2020 (2020 No 62).

Section 6(1)(c): amended, on 11 November 2020, by section 12(4) of the Smokefree Environments and Regulated Products (Vaping) Amendment Act 2020 (2020 No 62).

Section 6(1)(c): amended, on 11 November 2020, by section 12(5) of the Smokefree Environments and Regulated Products (Vaping) Amendment Act 2020 (2020 No 62).

Section 6(1)(d): replaced, on 11 November 2020, by section 12(7) of the Smokefree Environments and Regulated Products (Vaping) Amendment Act 2020 (2020 No 62).

Section 6(2): amended, on 11 November 2020, by section 12(2) of the Smokefree Environments and Regulated Products (Vaping) Amendment Act 2020 (2020 No 62).

Section 6(2)(a): amended, on 11 November 2020, by section 12(5) of the Smokefree Environments and Regulated Products (Vaping) Amendment Act 2020 (2020 No 62).

Section 6(2)(a)(ii): amended, on 11 November 2020, by section 12(8) of the Smokefree Environments and Regulated Products (Vaping) Amendment Act 2020 (2020 No 62).

Section 6(2)(b): amended, on 11 November 2020, by section 12(2) of the Smokefree Environments and Regulated Products (Vaping) Amendment Act 2020 (2020 No 62).

Section 6(3)(a): amended, on 11 November 2020, by section 12(2) of the Smokefree Environments and Regulated Products (Vaping) Amendment Act 2020 (2020 No 62).

Section 6(3)(a): amended, on 11 November 2020, by section 12(9) of the Smokefree Environments and Regulated Products (Vaping) Amendment Act 2020 (2020 No 62).

Section 6(3)(b): amended, on 11 November 2020, by section 12(2) of the Smokefree Environments and Regulated Products (Vaping) Amendment Act 2020 (2020 No 62).

Section 6(3)(b): amended, on 11 November 2020, by section 12(9) of the Smokefree Environments and Regulated Products (Vaping) Amendment Act 2020 (2020 No 62).

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 and vaping 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 or vapes 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 and vaping 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 or vapes 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 emissions from people smoking and vaping in it are 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 11 November 2020, by section 13(1) of the Smokefree Environments and Regulated Products (Vaping) Amendment Act 2020 (2020 No 62).

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

Section 7A(1)(a): amended, on 11 November 2020, by section 13(2) of the Smokefree Environments and Regulated Products (Vaping) Amendment Act 2020 (2020 No 62).

Section 7A(1)(b): amended, on 11 November 2020, by section 13(3) of the Smokefree Environments and Regulated Products (Vaping) Amendment Act 2020 (2020 No 62).

Section 7A(3): amended, on 11 November 2020, by section 13(4) of the Smokefree Environments and Regulated Products (Vaping) Amendment Act 2020 (2020 No 62).

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 11 November 2020, by section 13(3) of the Smokefree Environments and Regulated Products (Vaping) Amendment Act 2020 (2020 No 62).

Section 7A(3)(b): amended, on 11 November 2020, by section 13(5) of the Smokefree Environments and Regulated Products (Vaping) Amendment Act 2020 (2020 No 62).

Section 7A(3)(b): amended, on 11 November 2020, by section 13(6) of the Smokefree Environments and Regulated Products (Vaping) Amendment Act 2020 (2020 No 62).

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 and vaping prohibited on aircraft

(1) The operator of an aircraft must not permit any person to smoke or vape on that aircraft while the aircraft is carrying passengers for hire or reward on any internal flight.

(2) *[Repealed]*

Section 8 heading: amended, on 11 November 2020, by section 14(1) of the Smokefree Environments and Regulated Products (Vaping) Amendment Act 2020 (2020 No 62).

Section 8(1): amended, on 11 November 2020, by section 14(2) of the Smokefree Environments and Regulated Products (Vaping) Amendment Act 2020 (2020 No 62).

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

9 Smoking and vaping restricted in passenger service vehicles

(1) This section applies to the following (**passenger service vehicles**):

(a) a large passenger service vehicle while it is carrying passengers:

(b) a small passenger service vehicle at all times except when it is returning from carrying a passenger at the end of a shift:

(c) a vehicle being used in a small passenger service.

(1A) *[Repealed]*

(1B) *[Repealed]*

(2) The operator of a passenger service vehicle must not permit any person to smoke or vape in the vehicle.

(3) No person may smoke or vape in a passenger service vehicle.

(4) In this section,—

large passenger service vehicle has the same meaning as in section 2(1) of the Land Transport Act 1998

small passenger service has the same meaning as in section 2(1) of the Land Transport Act 1998

small passenger service vehicle has the same meaning as in section 2(1) of the Land Transport Act 1998.

(5) Nothing in this section permits smoking or vaping in a vehicle carrying child occupants (*see* section 20D).

Section 9 heading: amended, on 11 November 2020, by section 15(1) of the Smokefree Environments and Regulated Products (Vaping) Amendment Act 2020 (2020 No 62).

Section 9(1): replaced, on 1 October 2017, by section 110(3) of the Land Transport Amendment Act 2017 (2017 No 34).

Section 9(1A): repealed, on 1 October 2017, by section 110(3) of the Land Transport Amendment Act 2017 (2017 No 34).

Section 9(1B): repealed, on 1 October 2017, by section 110(3) of the Land Transport Amendment Act 2017 (2017 No 34).

Section 9(2): replaced, on 1 October 2017, by section 110(3) of the Land Transport Amendment Act 2017 (2017 No 34).

Section 9(2): amended, on 11 November 2020, by section 15(2) of the Smokefree Environments and Regulated Products (Vaping) Amendment Act 2020 (2020 No 62).

Section 9(3): replaced, on 1 October 2017, by section 110(3) of the Land Transport Amendment Act 2017 (2017 No 34).

Section 9(3): amended, on 11 November 2020, by section 15(2) of the Smokefree Environments and Regulated Products (Vaping) Amendment Act 2020 (2020 No 62).

Section 9(4): inserted, on 1 October 2017, by section 110(3) of the Land Transport Amendment Act 2017 (2017 No 34).

Section 9(5): inserted, on 28 November 2021, by section 8 of the Smoke-free Environments (Prohibiting Smoking in Motor Vehicles Carrying Children) Amendment Act 2020 (2020 No 19).

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 and vaping 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 or vape in it.

(3) No person may smoke or vape 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).

Section 11 heading: amended, on 11 November 2020, by section 16(1) of the Smokefree Environments and Regulated Products (Vaping) Amendment Act 2020 (2020 No 62).

Section 11(2): amended, on 11 November 2020, by section 16(2) of the Smokefree Environments and Regulated Products (Vaping) Amendment Act 2020 (2020 No 62).

Section 11(3): amended, on 11 November 2020, by section 16(2) of the Smokefree Environments and Regulated Products (Vaping) Amendment Act 2020 (2020 No 62).

12 Smoking and vaping on licensed premises

(1) The licensee of any licensed premises must take all reasonably practicable steps to ensure that no person smokes or vapes 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 or vaping in a part of the premises that is an open area.

(3) No person may smoke or vape 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).

Section 12 heading: amended, on 11 November 2020, by section 17(1) of the Smokefree Environments and Regulated Products (Vaping) Amendment Act 2020 (2020 No 62).

Section 12(1): amended, on 11 November 2020, by section 17(2) of the Smokefree Environments and Regulated Products (Vaping) Amendment Act 2020 (2020 No 62).

Section 12(2): amended, on 11 November 2020, by section 17(3) of the Smokefree Environments and Regulated Products (Vaping) Amendment Act 2020 (2020 No 62).

Section 12(3): amended, on 11 November 2020, by section 17(4) of the Smokefree Environments and Regulated Products (Vaping) Amendment Act 2020 (2020 No 62).

13 Smoking and vaping in restaurants

(1) The operator of a restaurant must take all reasonably practicable steps to ensure that no person smokes or vapes 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 or vaping in a part of the restaurant that is an open area.

(3) No person may smoke or vape 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).

Section 13 heading: amended, on 11 November 2020, by section 18(1) of the Smokefree Environments and Regulated Products (Vaping) Amendment Act 2020 (2020 No 62).

Section 13(1): amended, on 11 November 2020, by section 18(2) of the Smokefree Environments and Regulated Products (Vaping) Amendment Act 2020 (2020 No 62).

Section 13(2): amended, on 11 November 2020, by section 18(3) of the Smokefree Environments and Regulated Products (Vaping) Amendment Act 2020 (2020 No 62).

Section 13(3): amended, on 11 November 2020, by section 18(4) of the Smokefree Environments and Regulated Products (Vaping) Amendment Act 2020 (2020 No 62).

13A Smoking and vaping 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 or vapes 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 or vaping in a part of the casino that is an open area.

(3) No person may smoke or vape 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).

Section 13A heading: amended, on 11 November 2020, by section 19(1) of the Smokefree Environments and Regulated Products (Vaping) Amendment Act 2020 (2020 No 62).

Section 13A(1): amended, on 11 November 2020, by section 19(2) of the Smokefree Environments and Regulated Products (Vaping) Amendment Act 2020 (2020 No 62).

Section 13A(2): amended, on 11 November 2020, by section 19(3) of the Smokefree Environments and Regulated Products (Vaping) Amendment Act 2020 (2020 No 62).

Section 13A(3): amended, on 11 November 2020, by section 19(4) of the Smokefree Environments and Regulated Products (Vaping) Amendment Act 2020 (2020 No 62).

13B Smoking and vaping 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 or vapes 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 or vaping in a part of the place that is an open area.

(3) No person may smoke or vape 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).

Section 13B heading: amended, on 11 November 2020, by section 20(1) of the Smokefree Environments and Regulated Products (Vaping) Amendment Act 2020 (2020 No 62).

Section 13B(1): amended, on 11 November 2020, by section 20(2) of the Smokefree Environments and Regulated Products (Vaping) Amendment Act 2020 (2020 No 62).

Section 13B(2): amended, on 11 November 2020, by section 20(3) of the Smokefree Environments and Regulated Products (Vaping) Amendment Act 2020 (2020 No 62).

Section 13B(3): amended, on 11 November 2020, by section 20(4) of the Smokefree Environments and Regulated Products (Vaping) Amendment Act 2020 (2020 No 62).

14 Specialist vape retailers and vaping in approved vaping premises exempt

(1) Section 5 does not apply to—

(a) a person who vapes in any approved vaping premises of a specialist vape retailer; and

(b) the specialist vape retailer who allows the person to vape in those premises.

(2) A specialist vape retailer must take all practicable steps to prevent a person under the age of 18 years from entering the retailer's approved vaping premises.

(3) A specialist vape retailer who contravenes subsection (2) commits an offence and is liable,—

(a) in the case of a body corporate, to a fine not exceeding $10,000; or

(b) in any other case, to a fine not exceeding $5,000.

(4) In subsection (1), **to vape** means to inhale using a vaping device only.

Section 14: replaced, on 11 November 2020, by section 21 of the Smokefree Environments and Regulated Products (Vaping) Amendment Act 2020 (2020 No 62).

Section 14(1): amended, on 1 January 2023, by section 9 of the Smokefree Environments and Regulated Products (Smoked Tobacco) Amendment Act 2022 (2022 No 79).

14A Application for approval as specialist vape retailer

[Repealed]

Section 14A: repealed, on 1 January 2023, by section 10 of the Smokefree Environments and Regulated Products (Smoked Tobacco) Amendment Act 2022 (2022 No 79).

15 Complaints relating to smoking or vaping in workplace

(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 11 November 2020, by section 22 of the Smokefree Environments and Regulated Products (Vaping) Amendment Act 2020 (2020 No 62).

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 91 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 January 2023, by section 11 of the Smokefree Environments and Regulated Products (Smoked Tobacco) Amendment Act 2022 (2022 No 79).

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 and vaping

(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 or vape 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 or vape in contravention of section 9(2) 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 or vape 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) *[Repealed]*

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

Section 17 heading: amended, on 11 November 2020, by section 23(1) of the Smokefree Environments and Regulated Products (Vaping) Amendment Act 2020 (2020 No 62).

Section 17(3): amended, on 11 November 2020, by section 23(2) of the Smokefree Environments and Regulated Products (Vaping) Amendment Act 2020 (2020 No 62).

Section 17(4): amended, on 11 November 2020, by section 23(2) of the Smokefree Environments and Regulated Products (Vaping) Amendment Act 2020 (2020 No 62).

Section 17(4): amended, on 1 October 2017, by section 110(3) of the Land Transport Amendment Act 2017 (2017 No 34).

Section 17(6): amended, on 11 November 2020, by section 23(2) of the Smokefree Environments and Regulated Products (Vaping) Amendment Act 2020 (2020 No 62).

Section 17(9): repealed, on 11 November 2020, by section 23(3) of the Smokefree Environments and Regulated Products (Vaping) Amendment Act 2020 (2020 No 62).

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) or (8C) 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) *[Repealed]*

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

Section 17A(2): amended, on 11 November 2020, by section 24(1) of the Smokefree Environments and Regulated Products (Vaping) Amendment Act 2020 (2020 No 62).

Section 17A(4): repealed, on 11 November 2020, by section 24(2) of the Smokefree Environments and Regulated Products (Vaping) Amendment Act 2020 (2020 No 62).

18 Prosecution of offences

[Repealed]

Section 18: repealed, on 1 January 2023, by section 12 of the Smokefree Environments and Regulated Products (Smoked Tobacco) Amendment Act 2022 (2022 No 79).

19 Protection of persons acting under authority of Act

[Repealed]

Section 19: repealed, on 11 November 2020, by section 26 of the Smokefree Environments and Regulated Products (Vaping) Amendment Act 2020 (2020 No 62).

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 1A
Smoke-free motor vehicles carrying child occupants

Part 1A: inserted, on 28 November 2021, by section 9 of the Smoke-free Environments (Prohibiting Smoking in Motor Vehicles Carrying Children) Amendment Act 2020 (2020 No 19).

20B Purpose of this Part

[Repealed]

Section 20B: repealed, on 1 January 2023, by section 13 of the Smokefree Environments and Regulated Products (Smoked Tobacco) Amendment Act 2022 (2022 No 79).

20C Interpretation for this Part

In this Part, unless the context otherwise requires,—

child occupant means a person under the age of 18 years who is in a motor vehicle

motor vehicle has the meaning given to it in section 2(1) of the Land Transport Act 1998

road has the meaning given to it in section 2(1) of the Land Transport Act 1998.

Section 20C: inserted, on 28 November 2021, by section 9 of the Smoke-free Environments (Prohibiting Smoking in Motor Vehicles Carrying Children) Amendment Act 2020 (2020 No 19).

20D Smoking or vaping prohibited in motor vehicle carrying child occupant

(1) A person must not smoke or vape in a motor vehicle, whether moving or stationary, that is on a road and has a child occupant.

(2) However, a person may smoke or vape in a motor vehicle if—

- (a) the person is the only occupant of the motor vehicle who is under the age of 18 years; or
- (b) the motor vehicle is—
  - (i) manufactured for use as an occasional or permanent dwelling; and
  - (ii) stationary on a road and in use as a dwelling.

(3) A person who contravenes subsection (1) commits an infringement offence and is liable to—

- (a) an infringement fee of $50; or
- (b) a fine imposed by a court not exceeding $100.

(4) Sections 88 to 90 apply to the infringement offence in subsection (3) as if—

- (a) the infringement offence were an infringement offence defined in section 87; and
- (b) the infringement fee in subsection (3)(a) were an infringement fee specified in section 87 for the infringement offence; and
- (c) a constable were the enforcement officer referred to in those sections.

Section 20D: inserted, on 28 November 2021, by section 9 of the Smoke-free Environments (Prohibiting Smoking in Motor Vehicles Carrying Children) Amendment Act 2020 (2020 No 19).

20E Constable's powers

(1) A constable who sees a person smoking or vaping in a motor vehicle that is on a road and that appears to have a child occupant may do 1 or more of the following, if the constable is in uniform, or wearing a distinctive cap, hat, or helmet, with a badge of authority affixed to it:

- (a) signal or request the driver of the motor vehicle to stop the vehicle as soon as practicable:
- (b) require the driver to remain stopped for as long as is reasonably necessary for the constable to make the inquiries and complete the exercise of powers under this section:
- (c) require the person who is smoking or vaping to stop smoking or vaping in the motor vehicle:
- (d) require any person who is smoking or vaping or appears to be aged under 18 years to provide the person's—
  - (i) full name; and
  - (ii) full address; and
  - (iii) date of birth; and
  - (iv) occupation; and
  - (v) telephone number.

(2) A constable who sees a person smoking or vaping in a motor vehicle that is on a road and that appears to have a child occupant may do 1 or more of the following, if the constable is in another vehicle following the motor vehicle:

- (a) by displaying flashing blue, or blue and red, lights or sounding a siren, require the driver of the other vehicle to stop:
- (b) require the driver to remain stopped for as long as is reasonably necessary for the constable to make the inquiries and complete the exercise of powers under this section:
- (c) require the person who is smoking or vaping to stop smoking or vaping in the motor vehicle:
- (d) require any person who is smoking or vaping or appears to be aged under 18 years to provide the person's—
  - (i) full name; and
  - (ii) full address; and
  - (iii) date of birth; and
  - (iv) occupation; and
  - (v) telephone number.

(3) Despite subsection (1), a constable must not take either of the actions referred to in subsection (1)(c) and (d) if the motor vehicle is—

(a) manufactured for use as an occasional or permanent dwelling; and

(b) stationary on a road and in use as a dwelling.

Section 20E: inserted, on 28 November 2021, by section 9 of the Smoke-free Environments (Prohibiting Smoking in Motor Vehicles Carrying Children) Amendment Act 2020 (2020 No 19).

Offences

Heading: inserted, on 28 November 2021, by section 9 of the Smoke-free Environments (Prohibiting Smoking in Motor Vehicles Carrying Children) Amendment Act 2020 (2020 No 19).

20F Offences in respect of constables

A person commits an offence, and is liable on conviction to a fine not exceeding $1,000, if the person—

(a) intentionally obstructs, hinders, or resists a constable exercising or attempting to exercise powers under section 20E; or

(b) intentionally fails to comply with a requirement under section 20E; or

(c) when required under section 20E(1)(d) or (2)(d) to give information, gives information the person knows to be false or misleading.

Section 20F: inserted, on 28 November 2021, by section 9 of the Smoke-free Environments (Prohibiting Smoking in Motor Vehicles Carrying Children) Amendment Act 2020 (2020 No 19).

Part 1B
Regulation of entry into smoked tobacco and vaping products markets

Part 1B: inserted, on 1 January 2023, by section 14 of the Smokefree Environments and Regulated Products (Smoked Tobacco) Amendment Act 2022 (2022 No 79).

Subpart 1—Approval as smoked tobacco retailer

Subpart 1: inserted, on 1 January 2023, by section 14 of the Smokefree Environments and Regulated Products (Smoked Tobacco) Amendment Act 2022 (2022 No 79).

20G Sale of smoked tobacco products other than by approved smoked tobacco retailer prohibited

(1) A person must not sell or offer for sale a smoked tobacco product unless the person is an approved smoked tobacco retailer.

(2) Subsection (1) does not apply to a person who sells or offers for sale a smoked tobacco product—

(a) for export; or

(b) to an approved smoked tobacco retailer; or

(c) to a distributor of smoked tobacco products who has complied with section 20S.

(3) A person who, without reasonable excuse, contravenes subsection (1) commits an offence and is liable on conviction to a fine not exceeding $400,000.

Section 20G: inserted, on 1 January 2023, by section 14 of the Smokefree Environments and Regulated Products (Smoked Tobacco) Amendment Act 2022 (2022 No 79).

20H Application for approval as smoked tobacco retailer

(1) A person may apply to the Director-General, in accordance with the application process determined under section 20L, to be an approved smoked tobacco retailer in relation to—

(a) specified retail premises; and

(b) if applicable, a specified Internet site that is or will be operated together with the specified retail premises.

(2) A person who, without reasonable excuse, provides false or misleading information in an application for approval to be an approved smoked tobacco retailer commits an offence and is liable on conviction to a fine not exceeding $10,000.

Section 20H: inserted, on 1 January 2023, by section 14 of the Smokefree Environments and Regulated Products (Smoked Tobacco) Amendment Act 2022 (2022 No 79).

20I Grant of approval as smoked tobacco retailer

(1) The Director-General must not give a person approval to be an approved smoked tobacco retailer unless satisfied that,—

(a) for an individual, the applicant is—

(i) a fit and proper person; and

(ii) a New Zealand resident; and

(b) for an entity,—

(i) each responsible person is a fit and proper person; and

(ii) the applicant is—

(A) carrying on business in New Zealand; or

(B) incorporated or registered under New Zealand law; and

(c) any retail premises in which the products are or will be sold are—

(i) a fixed permanent structure; and

(ii) appropriate premises from which to operate; and

(d) for a specified Internet site,—

(i) the Internet site is or will be operated together with the specified retail premises for which approval is sought; and

(ii) there is no reasonable access to retail premises in which smoked tobacco products are or will be sold—

(A) in an identifiable geographic area; or

(B) by an identifiable part of the population who smoke the products; and

(e) the applicant's security, training, sales, delivery, and other business systems meet any requirements in regulations; and

(f) any other requirements in regulations have been met.

(2) Despite subsection (1)(d), the Director-General may decline to give any person or class of person approval to be an approved smoked tobacco retailer for a specified Internet site if the Director-General is satisfied that giving the approval would be inconsistent with the purpose set out in section 3A(a)(iii).

(3) When considering a matter in subsection (1)(a)(i) or (b)(i), the Director-General must have regard to any criteria or requirements specified in regulations.

(4) It is a condition of an approval that the criteria in subsection (1)(a) to (f) continue to be complied with.

(5) It is a condition of an approval in respect of a specified Internet site that the holder must not sell or offer for sale at retail smoked tobacco products—

(a) at a URL other than the approved URL; and

(b) outside the approved geographic area (if any).

(6) The Director-General may, in accordance with regulations, impose any other conditions on an approval, or on a class of approval, including the expiry date of the approval.

(7) An approval expires on the date specified in the approval unless it is earlier cancelled.

(8) An approval is not transferable.

Section 20I: inserted, on 1 January 2023, by section 14 of the Smokefree Environments and Regulated Products (Smoked Tobacco) Amendment Act 2022 (2022 No 79).

20J Director-General may suspend approval

(1) The Director-General may suspend an approval granted under section 20I for 1 month if the Director-General has reasonable grounds to believe that—

(a) any condition of the approval is not being complied with; or

(b) an applicable requirement under this Act or regulations is not being complied with.

(2) Before suspending an approval, the Director-General must give the holder of the approval a reasonable opportunity to be heard.

(3) The Director-General may extend the period of suspension—

(a) for a further month:

(b) more than once.

(4) The Director-General must tell the holder of the approval in writing of the suspension and give reasons.

(5) Before the period of suspension ends, the Director-General must—

(a) decide whether to cancel or reinstate the approval; and

(b) tell the holder of the approval in writing of the decision and give reasons.

(6) A cancellation or reinstatement takes effect immediately after the end of the period of suspension.

(7) A person whose approval is suspended must not sell a smoked tobacco product during the period of suspension.

(8) A person who, without reasonable excuse, contravenes subsection (7) commits an offence and is liable on conviction to a fine not exceeding $400,000.

Section 20J: inserted, on 1 January 2023, by section 14 of the Smokefree Environments and Regulated Products (Smoked Tobacco) Amendment Act 2022 (2022 No 79).

20K Director-General may cancel approval

(1) The Director-General may cancel an approval without any prior suspension if the Director-General is satisfied that 1 or more of the following are not being complied with:

(a) a condition of the approval:

(b) a requirement in this Act or regulations.

(2) Before cancelling an approval without prior suspension, the Director-General must give the holder of the approval a reasonable opportunity to be heard.

(3) The Director-General must tell the holder of the approval in writing of the cancellation and give reasons.

Section 20K: inserted, on 1 January 2023, by section 14 of the Smokefree Environments and Regulated Products (Smoked Tobacco) Amendment Act 2022 (2022 No 79).

20L Director-General to determine and publish application process

(1) The Director-General must determine an application process for the approval of smoked tobacco retailers that—

(a) ensures that any maximum number of approved smoked tobacco retail premises declared for the relevant area under section 20M is not exceeded; and

(b) includes a system for ranking applications, including relative weighting of criteria; and

(c) meets any requirements set out in regulations.

(2) Before determining the application process, the Director-General—

(a) may consult any person whom the Director-General considers appropriate; and

(b) must consult Māori in accordance with section 20N.

(3) The Director-General must set out the application process in writing and publish it on an Internet site maintained by, or on behalf of, the Ministry.

(4) The published application process must include—

(a) any additional assessment criteria set out in regulations; and

(b) a description of the system for ranking applications determined by the Director-General.

Section 20L: inserted, on 1 January 2023, by section 14 of the Smokefree Environments and Regulated Products (Smoked Tobacco) Amendment Act 2022 (2022 No 79).

20M Director-General must set maximum numbers of approved smoked tobacco retail premises

(1) The Director-General must, by written notice, determine the maximum number of approved smoked tobacco retail premises permitted in 1 or more areas described in the notice (which may include all of New Zealand).

(2) The maximum number of approved smoked tobacco retail premises in New Zealand must not exceed 600.

(3) The maximum number for each area may be a single current maximum or a series of reducing maximum numbers over time.

(4) Before determining the maximum number and the area to which that number applies, the Director-General—

(a) may consult any person whom the Director-General considers appropriate; and

(b) must consult Māori in accordance with section 20N.

(5) In determining the maximum number and the area to which that number applies, the Director-General must take into account—

(a) the population size in the area and the estimated number of people in the area who smoke; and

(b) the geographic nature of the area, including the estimated average travel time required to purchase smoked tobacco products; and

(c) the views of those consulted under subsection (4).

(6) The Director-General may amend or replace a notice made under this section in accordance with subsections (1) to (5).

(7) A notice made under this section is secondary legislation (*see* Part 3 of the Legislation Act 2019 for publication requirements).

Legislation Act 2019 requirements for secondary legislation made under this section		
Publication	The maker must publish it in accordance with the Legislation (Publication) Regulations 2021	LA19 s 74(1)(aa)
Presentation	The Minister must present it to the House of Representatives	LA19 s 114
Disallowance	It may be disallowed by the House of Representatives	LA19 ss 115, 116

This note is not part of the Act.

Section 20M: inserted, on 1 January 2023, by section 14 of the Smokefree Environments and Regulated Products (Smoked Tobacco) Amendment Act 2022 (2022 No 79).

20N Consultation with Māori

(1) For the purposes of section 20L(2), the Director-General must consult—

(a) the Māori Health Authority; and

(b) each iwi-Māori partnership board; and

(c) any iwi or other Māori who the Director-General considers have an interest in the application process.

(2) For the purposes of section 20M(4), the Director-General must consult—

(a) the Māori Health Authority; and

(b) any iwi-Māori partnership board for all or part of a proposed area; and

(c) any iwi whose rohe includes all or part of a proposed area; and

(d) any other Māori who the Director-General considers will be affected.

(3) The Director-General must consult the Māori Health Authority before determining whom to consult for the purposes of subsections (1)(c) and (2)(c) and (d).

(4) The Director-General must have systems in place for the purposes of—

(a) carrying out the consultation under subsections (1) and (2); and

(b) enabling that consultation to inform the Director-General's decisions under sections 20L(1) and 20M(1).

Section 20N: inserted, on 1 January 2023, by section 14 of the Smokefree Environments and Regulated Products (Smoked Tobacco) Amendment Act 2022 (2022 No 79).

20O Director-General to ensure maximum numbers of approved smoked tobacco retail premises not exceeded

The Director-General must ensure, when granting a person approval to be an approved smoked tobacco retailer, that any maximum number of approved smoked tobacco retail premises determined for the relevant area under section 20M is not exceeded.

Section 20O: inserted, on 1 January 2023, by section 14 of the Smokefree Environments and Regulated Products (Smoked Tobacco) Amendment Act 2022 (2022 No 79).

Subpart 2—Approval as specialist vape retailer

Subpart 2: inserted, on 1 January 2023, by section 14 of the Smokefree Environments and Regulated Products (Smoked Tobacco) Amendment Act 2022 (2022 No 79).

20P Application for approval as specialist vape retailer

(1) A person who sells vaping products from retail premises may apply to the Director-General for approval to be a specialist vape retailer in relation to specified retail premises and, if applicable, specified Internet sites.

(2) The Director-General must not give a person approval to be a specialist vape retailer unless satisfied that—

(a) the retail premises in which the vaping products are or will be sold are—

(i) a fixed permanent structure; and

(ii) appropriate premises from which to operate; and

(b) at least—

(i) 70% of the total sales from the retail premises are or will be from the sale of vaping products; or

(ii) 60% of the total sales from the retail premises are or will be from the sale of vaping products and the Director-General is satisfied that the lower threshold is appropriate in the circumstances; and

(c) any requirements in regulations have been met.

(3) In determining whether the lower threshold is appropriate in the circumstances, the Director-General must, in accordance with regulations (if any), have regard to—

(a) the geographic location of the retail premises; and

(b) the population in relation to which the retailer carries out their business; and

(c) any criteria prescribed in regulations.

(4) In making an assessment under subsection (2)(b), the Director-General may take into account the total sales from the retail premises for the previous 12 months (if any) and any other information that the Director-General considers relevant.

(5) A person who, without reasonable excuse, provides false or misleading information in an application for approval to be a specialist vape retailer commits an offence and is liable on conviction to a fine not exceeding $10,000.

Section 20P: inserted, on 1 January 2023, by section 14 of the Smokefree Environments and Regulated Products (Smoked Tobacco) Amendment Act 2022 (2022 No 79).

20Q Conditions of approval granted under section 20P

(1) It is a condition of an approval granted under section 20P that—

(a) the criteria in section 20P(2)(a) to (c) and the requirements in section 14(2) continue to be complied with; and

(b) the sales threshold be maintained or, if it was not attained when approval was given, that it be maintained on and from a date specified in the approval.

(2) The Director-General may, in accordance with regulations, impose any other conditions on the approval.

(3) The Director-General may suspend an approval if the Director-General has reasonable grounds to believe that any condition of the approval is not being complied with.

(4) The Director-General may cancel an approval if the Director-General is satisfied that any condition of the approval is not being complied with.

(5) In this section, **sales threshold** means at least 70% or, if section 20P(2)(b)(ii) applies, 60% of total sales from the retail premises are from the sale of vaping products.

Section 20Q: inserted, on 1 January 2023, by section 14 of the Smokefree Environments and Regulated Products (Smoked Tobacco) Amendment Act 2022 (2022 No 79).

Subpart 3—Notification obligations

Subpart 3: inserted, on 1 January 2023, by section 14 of the Smokefree Environments and Regulated Products (Smoked Tobacco) Amendment Act 2022 (2022 No 79).

20R Obligation of person selling notifiable products

(1) A person who sells notifiable products in New Zealand must notify the Director-General that they are selling the products.

(2) A person who sells notifiable products in New Zealand must renew their notification each year before the anniversary of their previous notification.

(3) A notification (including a renewal of a notification) must be made on the database in accordance with requirements in regulations.

(4) A person who, without reasonable excuse, fails to notify the Director-General that they are selling a notifiable product or fails to renew a notification commits an offence and is liable to a fine not exceeding $5,000.

Section 20R: inserted, on 1 January 2023, by section 14 of the Smokefree Environments and Regulated Products (Smoked Tobacco) Amendment Act 2022 (2022 No 79).

20S Obligation of distributor in respect of smoked tobacco products

(1) A distributor of smoked tobacco products in New Zealand must notify the Director-General that they are distributing the products.

(2) A distributor of smoked tobacco products in New Zealand must renew their notification each year before the anniversary of their previous notification.

(3) A notification (including a renewal of a notification) must be made on the database in accordance with requirements in regulations.

(4) A distributor of smoked tobacco products in New Zealand who, without reasonable excuse, fails to notify the Director-General that they are distributing a smoked tobacco product or fails to renew a notification commits an offence and is liable to a fine not exceeding $5,000.

Section 20S: inserted, on 1 January 2023, by section 14 of the Smokefree Environments and Regulated Products (Smoked Tobacco) Amendment Act 2022 (2022 No 79).

Part 2
Restrictions on advertising, promotion, sale, and distribution of regulated products

Part 2: inserted, on 11 November 2020, by section 27 of the Smokefree Environments and Regulated Products (Vaping) Amendment Act 2020 (2020 No 62).

21 Outline of this Part

[Repealed]

Section 21: repealed, on 1 January 2023, by section 15 of the Smokefree Environments and Regulated Products (Smoked Tobacco) Amendment Act 2022 (2022 No 79).

22 Purposes of this Part

[Repealed]

Section 22: repealed, on 1 January 2023, by section 16 of the Smokefree Environments and Regulated Products (Smoked Tobacco) Amendment Act 2022 (2022 No 79).

Subpart 1—Restrictions on advertising of regulated products and related communications

Subpart 1: inserted, on 11 November 2020, by section 27 of the Smokefree Environments and Regulated Products (Vaping) Amendment Act 2020 (2020 No 62).

23 Publishing regulated product advertisement prohibited

(1) A person must not publish a regulated product advertisement in New Zealand, or arrange for another person to publish it in New Zealand, unless the person is authorised by or under this subpart or subpart 2.

(2) A notice or sign must be treated as a regulated product advertisement if the notice or sign—

(a) communicates information that is or includes product health information or warnings, 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 the products for sale (whether by retail or wholesale); and

(c) is not required or permitted by this Act or regulations.

(3) A message must be treated as a regulated product advertisement if the message—

(a) communicates information that is or includes product health information or warnings, 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 or regulations.

(4) Subsections (2) and (3) do not limit the generality of subsection (1) or of the definition of regulated product advertisement in section 2(1).

(5) A person who, without reasonable excuse, contravenes subsection (1) commits an offence and is liable,—

(a) in the case of a manufacturer, an importer, or a distributor,—

(i) to a fine not exceeding $600,000; but

(ii) if the contravention relates to a vaping product or smokeless tobacco product, to a fine not exceeding $200,000; and

(b) in the case of a large retailer,—

(i) to a fine not exceeding $200,000; but

(ii) if the contravention relates to a vaping product or smokeless tobacco product, to a fine not exceeding $70,000; and

(c) in any other case,—

(i) to a fine not exceeding $50,000; but

(ii) if the contravention relates to a vaping product or smokeless tobacco product, to a fine not exceeding $15,000.

Section 23: inserted, on 11 November 2020, by section 27 of the Smokefree Environments and Regulated Products (Vaping) Amendment Act 2020 (2020 No 62).

24 Specified publications exempt from advertising prohibition

Section 23 does not apply to—

(a) any price list given to retailers of regulated products if the price list—

(i) complies with regulations; and

(ii) includes the health messages required by or under Part 3:

(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 regulated 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) any regulated product advertisement published by a regulated products manufacturer in a magazine intended for distribution only to the manufacturer's employees:

(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 regulated 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:

(f) a public health message issued by the Director-General for the purposes of this Act or any of its Parts that is published by a public service or an individual or organisation that is funded (whether wholly or partly and whether directly or indirectly) by a public service:

(g) the following activities:

(i) the display, in accordance with any regulations, of vaping products that are available for sale within the retail premises or on the Internet site of the retailer; and

(ii) if regulations made under section 81(1)(5)(ii) are in force and apply to the retailer, a retailer providing within their retail premises or on their Internet site information (in any medium) relating to vaping products in accordance with regulations; and

(iii) until regulations made under section 81(1)(5)(ii) are in force, a retailer providing within their retail premises or on their Internet site information about vaping being a less harmful alternative to smoking:

(h) any advice or message given by a suitably qualified health worker to an individual or to groups for the purpose of supporting them to switch from smoking to vaping:

(i) the following activities:

(i) the publication and dissemination of research about vaping products, smokeless tobacco products, and their use:

(ii) the publication and dissemination of research about encouraging smokers to switch to a product that is less harmful than smoking:

(j) the publication of media articles, commentary, and opinion that—

(i) encourage people to switch to a regulated product that is significantly less harmful than smoking; and

(ii) are not sponsored by the manufacturer, importer, retailer, or distributor of that product:

(k) information provided by manufacturers and importers, in accordance with any regulations, to retailers about the use of vaping products and smokeless tobacco products:

(l) communications about vaping products made, in accordance with any regulations, by specialist vape retailers to their existing customers.

Section 24: inserted, on 11 November 2020, by section 27 of the Smokefree Environments and Regulated Products (Vaping) Amendment Act 2020 (2020 No 62).

Section 24(g)(i): amended, on 1 January 2023, by section 17 of the Smokefree Environments and Regulated Products (Smoked Tobacco) Amendment Act 2022 (2022 No 79).

Section 24(g)(ii): amended, on 28 October 2021, by section 3 of the Secondary Legislation Act 2021 (2021 No 7).

Section 24(g)(iii): amended, on 28 October 2021, by section 3 of the Secondary Legislation Act 2021 (2021 No 7).

25 Retailers, vending machines, and Internet sellers exempt from advertising prohibition in certain circumstances

Retailer exemption

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

(a) in response to a product request, provide, inside that retailer's place of business, information (in any medium) that—

(i) is in the form of printed, written, or spoken words; and

(ii) does no more than identify the regulated products available for purchase in that place and indicate their price; and

(iii) complies with any requirements in regulations:

(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 regulated products in general are available for purchase in that place and the location or locations where they may be purchased; and

(ii) complies with any requirements in regulations:

(c) display the retailer's name or trade name at the outside of the retailer's place of business or on their Internet site so long as the name is not and does not include a reserved name.

(2) *[Repealed]*

Vending machine exemption

(3) A person who offers regulated 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—

(i) identify (using only printed or written words) the regulated products; and

(ii) indicate (using only printed or written words) their prices; and

(b) complies with any requirements in regulations.

Internet-seller exemption

(4) A person who offers regulated products for Internet sale (whether by retail or wholesale) may, in response to a product request, allow to be visible on the person's Internet site when people browse, enter, or otherwise access the site, information that—

(a) is in the form of printed or written words; and

(b) does no more than identify the regulated product and indicate its price; and

(c) complies with any requirements in regulations.

(5) Subsections (1)(a) and (b) and (4) do not limit the exemption in section 24(g) relating to the display of, and provision of information relating to, vaping products.

(6) In this section, **reserved name** means,—

(a) in respect of a name displayed on the outside of a specialist vape retailer's approved vaping premises or on their approved Internet site, a name that includes—

(i) any word or expression signifying that a regulated product other than a vaping product is available for purchase in that place; or

(ii) the trade mark of a regulated product, other than a trade mark registered by the specialist vape retailer relating to—

(A) a vaping product manufactured by the specialist vape retailer; or

(B) the specialist vape retailer's retail vaping business; or

(iii) the company name of a manufacturer or an importer of regulated products, unless it is also the company name of the specialist vape retailer; and

(b) in respect of a name that is displayed on the outside of the place of business or the approved Internet site of any other retailer of regulated products, a name that includes—

(i) any word or expression signifying that a regulated product is available for purchase in that place; or

(ii) the trade mark of a regulated product; or

(iii) the company name of a manufacturer or an importer of regulated products.

Section 25: inserted, on 11 November 2020, by section 27 of the Smokefree Environments and Regulated Products (Vaping) Amendment Act 2020 (2020 No 62).

Section 25(1)(c): replaced, on 1 January 2023, by section 18(1) of the Smokefree Environments and Regulated Products (Smoked Tobacco) Amendment Act 2022 (2022 No 79).

Section 25(2): repealed, on 1 January 2023, by section 18(2) of the Smokefree Environments and Regulated Products (Smoked Tobacco) Amendment Act 2022 (2022 No 79).

Section 25(6): inserted, on 1 January 2023, by section 18(3) of the Smokefree Environments and Regulated Products (Smoked Tobacco) Amendment Act 2022 (2022 No 79).

26 Liability of employees, employers, agents, and principals

For the purposes of this Act, every person is deemed to publish a regulated product advertisement whether the person does so on the person's own account or as the agent or employee of any other person.

Section 26: inserted, on 11 November 2020, by section 27 of the Smokefree Environments and Regulated Products (Vaping) Amendment Act 2020 (2020 No 62).

27 Prohibited oral communications

(1) A retailer must not make any oral communication to any customer within their retail premises that has the effect of—

- (a) encouraging the use of a regulated product:
- (b) notifying the availability of a regulated product:
- (c) promoting the sale of a regulated product:
- (d) promoting smoking or vaping behaviour.

(2) A person who, without reasonable excuse, contravenes subsection (1) commits an offence and is liable,—

- (a) in the case of a large retailer,—
  - (i) to a fine not exceeding $200,000; but
  - (ii) if the contravention relates to a vaping product or smokeless tobacco product, to a fine not exceeding $70,000; and
- (b) in any other case,—
  - (i) to a fine not exceeding $50,000; but
  - (ii) if the contravention relates to a vaping product or smokeless tobacco product, to a fine not exceeding $15,000.

(3) Subsection (1) does not apply to—

- (a) communications made in response to a product request that do no more than identify the regulated products available for purchase in that place and indicate their price:
- (b) communications encouraging smokers to switch to a product that is less harmful than smoking:

(c) communications about vaping products made, in accordance with any regulations, by specialist vape retailers to customers in their approved vaping premises:

(d) information provided, in accordance with any regulations, by a specialist vape retailer relating to the safe use of regulated products available for purchase in their approved vaping premises:

(e) communications made by a retailer who is a suitably qualified health worker for the purpose of supporting customers to switch from smoking to vaping.

Section 27: inserted, on 11 November 2020, by section 27 of the Smokefree Environments and Regulated Products (Vaping) Amendment Act 2020 (2020 No 62).

Subpart 2—Restrictions on sponsorship and related activities

Subpart 2: inserted, on 11 November 2020, by section 27 of the Smokefree Environments and Regulated Products (Vaping) Amendment Act 2020 (2020 No 62).

28 Defined terms in this subpart

In this subpart, unless the context otherwise requires,—

organised activity means a cultural, educational, sporting, or recreational activity or event that is to take place, is taking place, or has taken place, in whole or in part, in New Zealand

sponsor, in relation to an organised activity, means to do all or any of the following:

(a) to organise or promote, before the activity is to take place, or during the time that it takes place, some or all of the activity:

(b) to make, before the activity is to take place, or during or after the time that it takes place, a financial or non-financial contribution towards some or all of the activity:

(c) to make, before the activity is to take place, or during or after the time that it takes place, a financial or non-financial contribution to a person—

(i) in respect of that person's organisation or promotion of some or all of the activity; or

(ii) in respect of that person's participation in some or all of the activity.

Section 28: inserted, on 11 November 2020, by section 27 of the Smokefree Environments and Regulated Products (Vaping) Amendment Act 2020 (2020 No 62).

29 Sponsoring activity involving use of trade mark, etc, of regulated product

(1) A manufacturer, importer, distributor, or retailer of regulated products must not sponsor an organised activity that involves the use, in the name of that activity, or on or through any thing other than a regulated product, of all or any of the following:

(a) a regulated product trade mark:

(b) all or any part of a company name included in a regulated product trade mark:

(c) 1 or more words, logos, colours, shapes, sounds, smells, or other elements of a regulated 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 who, without reasonable excuse, contravenes subsection (1) commits an offence and is liable,—

(a) in the case of a manufacturer, an importer, or a distributor,—

(i) to a fine not exceeding $600,000; but

(ii) if the contravention relates to a vaping product or smokeless tobacco product, to a fine not exceeding $200,000; and

(b) in the case of a large retailer,—

(i) to a fine not exceeding $200,000; but

(ii) if the contravention relates to a vaping product or smokeless tobacco product, to a fine not exceeding $70,000; and

(c) in any other case,—

(i) to a fine not exceeding $50,000; but

(ii) if the contravention relates to a vaping product or smokeless tobacco product, to a fine not exceeding $15,000.

Section 29: inserted, on 11 November 2020, by section 27 of the Smokefree Environments and Regulated Products (Vaping) Amendment Act 2020 (2020 No 62).

30 Sponsoring activity involving exclusive supply arrangement

(1) A manufacturer, importer, distributor, or retailer of regulated products must not sponsor an organised activity that involves an arrangement for the person to be the only person supplying regulated products at, or for the purposes of, some or all of the activity.

(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 is not subject to, and does not override, the Commerce Act 1986.

(5) A person who, without reasonable excuse, contravenes subsection (1) commits an offence and is liable,—

(a) in the case of a manufacturer, an importer, or a distributor,—

(i) to a fine not exceeding $600,000; but

(ii) if the contravention relates to a vaping product or smokeless tobacco product, to a fine not exceeding $200,000; and

(b) in the case of a large retailer,—

(i) to a fine not exceeding $200,000; but

(ii) if the contravention relates to a vaping product or smokeless tobacco product, to a fine not exceeding $70,000; and

(c) in any other case,—

(i) to a fine not exceeding $50,000; but

(ii) if the contravention relates to a vaping product or smokeless tobacco product, to a fine not exceeding $15,000.

Section 30: inserted, on 11 November 2020, by section 27 of the Smokefree Environments and Regulated Products (Vaping) Amendment Act 2020 (2020 No 62).

31 Use of trade marks, etc, on goods other than regulated products or in relation to sponsored events

(1) A person must not use a regulated product trade mark—

(a) on a non-regulated article; or

(b) for the purpose of advertising or identifying to the public—

(i) any non-regulated article; 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) If a trade mark includes the company name, or part of the company name, of a manufacturer, importer, or distributor in New Zealand of any regulated product, no person may use that company name for the purpose of advertising or identifying to the public—

(a) any non-regulated article; 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) A person must not distribute, sell, or offer or expose for sale any non-regulated article that bears a trade mark of a regulated product that is sold in New Zealand.

(4) In this section, **non-regulated article** means an article that is not—

(a) a regulated product; or

(b) a package in which a regulated product is sold or shipped.

(5) A person who, without reasonable excuse, contravenes subsection (1), (2), or (3) commits an offence and is liable,—

(a) in the case of a manufacturer, an importer, or a distributor,—

(i) to a fine not exceeding $600,000; but

(ii) if the contravention relates to a vaping product or smokeless tobacco product, to a fine not exceeding $200,000; and

(b) in the case of a large retailer,—

(i) to a fine not exceeding $200,000; but

(ii) if the contravention relates to a vaping product or smokeless tobacco product, to a fine not exceeding $70,000; and

(c) in any other case,—

(i) to a fine not exceeding $50,000; but

(ii) if the contravention relates to a vaping product or smokeless tobacco product, to a fine not exceeding $15,000.

Section 31: inserted, on 11 November 2020, by section 27 of the Smokefree Environments and Regulated Products (Vaping) Amendment Act 2020 (2020 No 62).

32 Exemption for craft in emergencies

(1) In this section, **craft with a prohibited display** means a craft on which is displayed the trade mark of a regulated product or the company name of a regulated product manufacturer.

(2) If a craft with a prohibited display is compelled to enter New Zealand by reason of health or safety, or for the preservation of life or property, nothing in sections 23, 30, and 31 applies to that craft as long as it is in New Zealand for any of those reasons.

Section 32: inserted, on 11 November 2020, by section 27 of the Smokefree Environments and Regulated Products (Vaping) Amendment Act 2020 (2020 No 62).

Subpart 3—Prohibited ways of supplying and distributing regulated products

Subpart 3: inserted, on 11 November 2020, by section 27 of the Smokefree Environments and Regulated Products (Vaping) Amendment Act 2020 (2020 No 62).

33 Free distribution of regulated product prohibited

(1) A manufacturer, distributor, importer, or retailer of regulated products must not do either of the following free of charge or at a reduced charge:

(a) distribute any regulated product:

(b) supply any regulated product to any person for subsequent distribution.

(2) A retailer of regulated products must not supply free of charge, or at a reduced charge, any regulated product to any person for the purpose of that retailer's business.

(3) For the purposes of this section, a regulated product is distributed or supplied **at a reduced charge** if—

(a) the charge for the product itself is reduced; or

(b) the charge for distribution or supply of the product is not reduced or purports not to be reduced, but some other item is supplied free of charge or at a reduced charge, together with the product.

(4) Subsection (2) does not apply to the supply of vaping products by a specialist vape retailer from their approved vaping premises or approved Internet site.

(5) Subsections (1) and (2) do not apply in relation to vaping products that are distributed or supplied free of charge or at a reduced charge as part of a smoking cessation programme.

(6) A person who, without reasonable excuse, distributes or supplies any regulated product in contravention of subsection (1) or (2) commits an offence and is liable,—

(a) in the case of a manufacturer, an importer, or a distributor,—

(i) to a fine not exceeding $600,000; but

(ii) if the contravention relates to a vaping product or smokeless tobacco product, to a fine not exceeding $200,000; and

(b) in the case of a large retailer,—

(i) to a fine not exceeding $200,000; but

(ii) if the contravention relates to a vaping product or smokeless tobacco product, to a fine not exceeding $70,000; and

(c) in any other case,—

(i) to a fine not exceeding $50,000; but

(ii) if the contravention relates to a vaping product or smokeless tobacco product, to a fine not exceeding $15,000.

(7) It is a defence to a charge in respect of a contravention of subsection (1) if the person charged proves that they were merely giving a normal trade discount or normal trade rebate.

Section 33: inserted, on 11 November 2020, by section 27 of the Smokefree Environments and Regulated Products (Vaping) Amendment Act 2020 (2020 No 62).

Section 33(4): replaced, on 1 January 2023, by section 19 of the Smokefree Environments and Regulated Products (Smoked Tobacco) Amendment Act 2022 (2022 No 79).

34 Distribution and supply of regulated product with other product prohibited

(1) A manufacturer, distributor, importer, or retailer of regulated products must not—

(a) distribute an accompanied regulated product; or

(b) supply an accompanied regulated product to another person for later distribution.

(2) A retailer of a regulated product must not supply an accompanied regulated product to another person for the purpose of that retailer's business.

(3) In this section, **accompanied regulated product** means a regulated product that is—

(a) packed together with a product that is not a regulated product; or

(b) distributed or supplied, together with a product that is not a regulated product, at a single price.

(4) A person who, without reasonable excuse, contravenes subsection (1) or (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; and

(b) in any other case, to a fine not exceeding $5,000.

Section 34: inserted, on 11 November 2020, by section 27 of the Smokefree Environments and Regulated Products (Vaping) Amendment Act 2020 (2020 No 62).

35 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 33 or 34.

(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 party to the arrangement (or a person who is claiming through or under that party) may seek relief under subpart 5 of Part 2 of the Contract and Commercial Law Act 2017 (which applies with all necessary modifications),—

(a) regardless of whether the arrangement is a contract:

(b) as if compliance with the term were performance, in a way that gives rise to illegality, of a provision of a contract.

Section 35: inserted, on 11 November 2020, by section 27 of the Smokefree Environments and Regulated Products (Vaping) Amendment Act 2020 (2020 No 62).

Subpart 4—Inducements and rewards involving regulated products prohibited

Subpart 4: inserted, on 11 November 2020, by section 27 of the Smokefree Environments and Regulated Products (Vaping) Amendment Act 2020 (2020 No 62).

36 Rewards involving regulated product prohibited

(1) A person must not offer any gift or cash rebate, or the right to participate in any contest, lottery, or game, to—

(a) the purchaser of a regulated product in consideration for the purchase of that product; or

(b) any person in consideration for the provision of evidence of the purchase of a regulated product.

(2) A person must not 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—

(a) the purchase or sale of regulated products by that retailer; or

(b) the advertising of regulated products inside that retailer's place of business; or

(c) the location of regulated products in a particular part of that retailer's place of business.

(3) Subsections (1) and (2) do not apply in respect of any payment or reward to a person who—

(a) purchases or attempts to purchase a regulated product for the purpose of monitoring compliance with this Part; and

(b) is authorised—

(i) by the Director-General for that purpose; or

(ii) by a person authorised by the Director-General for that purpose.

(4) Subsection (1) does not apply to a specialist vape retailer who offers any gift or cash rebate, or the right to participate in any contest, lottery, or game in the manner described in subsection (1) with respect to vaping products.

(5) A person who, without reasonable excuse, contravenes subsection (1) or (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.

Section 36: inserted, on 11 November 2020, by section 27 of the Smokefree Environments and Regulated Products (Vaping) Amendment Act 2020 (2020 No 62).

Subpart 5—Visibility of regulated products

Subpart 5: inserted, on 11 November 2020, by section 27 of the Smokefree Environments and Regulated Products (Vaping) Amendment Act 2020 (2020 No 62).

37 Regulated product (other than vaping product) must not be visible from place of business

(1) A person who offers a regulated product other than a vaping product for sale (whether by retail or wholesale) must not allow any part of the regulated product or its package—

(a) to be visible from outside the person's place of business; or

(b) to be visible from an area inside the person's place of business to which members of the public are allowed access.

(2) Subsection (1) does not apply to a regulated product or package that is being delivered if—

(a) the product or package is visible only to the extent that is necessary for it to be delivered—

(i) to the person at the place; or

(ii) to its purchaser at or from the place; and

(b) the form of its delivery complies with any regulations made under section 81(1)(13) that are in force.

(3) Subsection (1) does not apply to a regulated product or package that is visible in a way that complies with any relevant temporary transitional exemption regulations in force under section 81(1)(14).

(4) A person who, without reasonable excuse, contravenes subsection (1) commits an offence and is liable to a fine not exceeding $10,000.

Section 37: inserted, on 11 November 2020, by section 27 of the Smokefree Environments and Regulated Products (Vaping) Amendment Act 2020 (2020 No 62).

Section 37(2)(b): amended, on 28 October 2021, by section 3 of the Secondary Legislation Act 2021 (2021 No 7).

Section 37(3): amended, on 28 October 2021, by section 3 of the Secondary Legislation Act 2021 (2021 No 7).

Subpart 6—Information and warnings at point of sale and on Internet

Subpart 6: inserted, on 11 November 2020, by section 27 of the Smokefree Environments and Regulated Products (Vaping) Amendment Act 2020 (2020 No 62).

38 Point-of-sale health information or warning signs

(1) This section applies if regulations made under section 81(1)(15) requiring point-of-sale health information or warnings are in force.

(2) A person to whom those regulations apply who offers a regulated product for sale (by retail or wholesale) must—

(a) display a sign for the public that—

(i) does no more than communicate health information or warnings; and

(ii) complies with those regulations; and

(b) display the sign clearly at each point of sale at the outside of or inside the person's place of business.

(3) A person who, without reasonable excuse, contravenes subsection (2) commits an offence and is liable to a fine not exceeding $2,000.

Section 38: inserted, on 11 November 2020, by section 27 of the Smokefree Environments and Regulated Products (Vaping) Amendment Act 2020 (2020 No 62).

Section 38(1): amended, on 28 October 2021, by section 3 of the Secondary Legislation Act 2021 (2021 No 7).

39 Internet-sales health information or warnings

(1) This section applies if regulations made under section 81(1)(16) are in force requiring sales health information or warnings to be visible on a person's Internet site when people access it.

(2) A person to whom those regulations apply who offers a regulated product for Internet sale (by retail or wholesale) must comply with those regulations.

(3) A person who, without reasonable excuse, contravenes subsection (2) commits an offence and is liable to a fine not exceeding $2,000.

Section 39: inserted, on 11 November 2020, by section 27 of the Smokefree Environments and Regulated Products (Vaping) Amendment Act 2020 (2020 No 62).

Section 39(1): amended, on 28 October 2021, by section 3 of the Secondary Legislation Act 2021 (2021 No 7).

Subpart 7—Sale of regulated products and toy regulated products to people under 18 years

Subpart 7: inserted, on 11 November 2020, by section 27 of the Smokefree Environments and Regulated Products (Vaping) Amendment Act 2020 (2020 No 62).

40 Sale and delivery of regulated product to people younger than 18 years prohibited

(1) A person—

(a) must not sell a regulated product to a person younger than 18 years; or

(b) having sold a regulated product to a person of any age, must not deliver it, or arrange for it to be delivered, to a person younger than 18 years.

(2) A person who contravenes subsection (1)(a) or (b) commits an offence and is liable,—

(a) in the case of a body corporate, to a fine not exceeding $10,000; and

(b) in any other case, to a fine not exceeding $5,000.

(3) It is a defence to a charge under subsection (2) if the person charged proves that—

(a) the contravention occurred without the person's knowledge; and

(b) the person took reasonable precautions and exercised due diligence to prevent the contravention.

(4) A person charged with contravening subsection (1)(a) satisfies the requirements of subsection (3)(a) and (b) if the person proves that they have sighted an evidence of age document of the person to whom the product was sold that indicated that the person was of or over the age of 18 years.

(4A) A person charged with contravening subsection (1)(a) does not satisfy the requirements of subsection (3)(a) and (b) if the person relies solely on a statement (given orally or in written form) from the person to whom the product was sold that indicated that the person was of or over the age of 18 years.

(5) Subsection (4) does not affect the generality of subsection (3).

(6) It is not a defence to a charge under subsection (2)—

(a) that the person to whom the product 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 was sold was buying it for or on behalf of, or as agent for, a person of or over the age of 18 years.

(7) *[Repealed]*

(8) *[Repealed]*

Section 40: inserted, on 11 November 2020, by section 27 of the Smokefree Environments and Regulated Products (Vaping) Amendment Act 2020 (2020 No 62).

Section 40(4A): inserted, on 1 January 2023, by section 21(3) of the Smokefree Environments and Regulated Products (Smoked Tobacco) Amendment Act 2022 (2022 No 79).

Section 40(7): repealed, on 1 January 2023, by section 21(4) of the Smokefree Environments and Regulated Products (Smoked Tobacco) Amendment Act 2022 (2022 No 79).

Section 40(8): repealed, on 1 January 2023, by section 21(4) of the Smokefree Environments and Regulated Products (Smoked Tobacco) Amendment Act 2022 (2022 No 79).

41 Supplying regulated product to people younger than 18 years prohibited

(1) A person must not, in a public place,—

(a) supply a regulated product to a person younger than 18 years; or

(b) supply a regulated product to a person with the intention that it be supplied (directly or indirectly) to a person younger than 18 years.

(2) A person who contravenes subsection (1) commits an offence and is liable to a fine not exceeding $2,000.

(3) It is a defence to a charge under subsection (2) if the person charged proves that—

(a) the contravention occurred without the person's knowledge; and

(b) the person took reasonable precautions and exercised due diligence to prevent the contravention.

(4) A person charged with contravening subsection (1)(a) satisfies the requirements of subsection (3)(a) and (b) if the person proves that they have sighted an evidence of age document of the person to whom the product was supplied that indicated that the person was of or over the age of 18 years.

(5) It is not a defence to a charge under subsection (2)—

(a) that the person younger than 18 years was acquiring the product 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 for or on behalf of, or as agent for, a person of or over the age of 18 years.

(6) Subsection (1) applies irrespective of any liability that may attach to a person who has sold the product to any other person.

(7) In this section, **public place** has the meaning given to it in section 2(1) of the Summary Offences Act 1981.

Section 41: inserted, on 11 November 2020, by section 27 of the Smokefree Environments and Regulated Products (Vaping) Amendment Act 2020 (2020 No 62).

42 Sale of toy regulated product to people younger than 18 years prohibited

(1) A person must not sell a toy regulated product to a person younger than 18 years.

(2) A person who contravenes subsection (1) commits an offence, and is liable to a fine not exceeding $2,000.

(3) It is a defence to a charge under subsection (2) if the person charged proves that—

(a) the contravention occurred without the person's knowledge; and

(b) the person took reasonable precautions and exercised due diligence to prevent the contravention.

(4) The person charged satisfies the requirements of subsection (3)(a) and (b) if the person proves that they have sighted an evidence of age document of the person to whom the product was sold that indicated that the person was of or over the age of 18 years.

(5) Subsection (4) does not affect the generality of subsection (3).

(6) It is not a defence to a charge under subsection (2) that—

(a) the person to whom the product 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) the person charged believed on reasonable grounds that the person to whom the product 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 42: inserted, on 11 November 2020, by section 27 of the Smokefree Environments and Regulated Products (Vaping) Amendment Act 2020 (2020 No 62).

43 Point-of-sale purchase age information

(1) This section applies if regulations made under section 81(1)(17) requiring point-of-sale purchase age information or warnings are in force.

(2) A person to whom those regulations apply who offers a regulated product for sale by retail must 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 regulated products to people who are younger than 18 years is prohibited; and

(b) complies with any requirements of those regulations.

(3) A person who, without reasonable excuse, contravenes subsection (2) commits an offence and is liable to a fine not exceeding $2,000.

Section 43: inserted, on 11 November 2020, by section 27 of the Smokefree Environments and Regulated Products (Vaping) Amendment Act 2020 (2020 No 62).

Section 43(1): amended, on 28 October 2021, by section 3 of the Secondary Legislation Act 2021 (2021 No 7).

44 Internet-sales purchase age information or warnings

(1) This section applies if regulations made under section 81(1)(18) are in force requiring purchase age information or warnings to be visible on a person's Internet site when people access it.

(2) A person to whom those regulations apply who offers regulated products for sale must comply with those regulations.

(3) The health warning information or warnings that are required to be visible must—

(a) do no more than communicate information or warnings to the effect that the sale of regulated products to people who are younger than 18 years is prohibited; and

(b) comply with the applicable requirements of those regulations.

(4) A person who, without reasonable excuse, contravenes subsection (2) commits an offence and is liable to a fine not exceeding $2,000.

Section 44: inserted, on 11 November 2020, by section 27 of the Smokefree Environments and Regulated Products (Vaping) Amendment Act 2020 (2020 No 62).

Section 44(1): amended, on 28 October 2021, by section 3 of the Secondary Legislation Act 2021 (2021 No 7).

45 Court may order certain repeat offenders not to sell regulated product

(1) In this section, a **repeat offence** means an offence against section 40(2) that a person has committed within 2 years of being convicted of—

(a) another offence against section 40(2); or

(b) an offence against section 30(1) of this Act before it was amended by the Smokefree Environments and Regulated Products (Vaping) Amendment Act 2020.

(2) When sentencing a person for a repeat offence or an offence against subsection (4), 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 regulated products by or on behalf of the person:

(ii) the sale of regulated products at a shop at which the offence occurred; or

(b) prohibiting either or both of the following:

(i) the sale of regulated products of a stated kind by or on behalf of the person:

(ii) the sale of regulated products of a stated kind in the place in which the offence occurred; or

(c) imposing any conditions or restrictions (or both) that it thinks fit on either or both of the following:

(i) the sale of regulated products by or on behalf of the person:

(ii) the sale of regulated products at a shop at which the offence occurred.

(3) The order must state—

(a) the date on which it takes effect (which may be the date on which it is made or a later date); and

(b) the date on which it expires (which must be a date at least 4 weeks and no more than 3 months after the date on which it takes effect).

(4) A person who fails to comply with an order under subsection (2) commits an offence and is liable,—

(a) in the case of a body corporate, to a fine not exceeding $10,000; and

(b) in any other case, to a fine not exceeding $5,000.

Section 45: inserted, on 11 November 2020, by section 27 of the Smokefree Environments and Regulated Products (Vaping) Amendment Act 2020 (2020 No 62).

Subpart 8—Sale of regulated products by way of automatic vending machines

Subpart 8: inserted, on 11 November 2020, by section 27 of the Smokefree Environments and Regulated Products (Vaping) Amendment Act 2020 (2020 No 62).

46 Regulated product (other than vaping product) must not be visible from outside automatic vending machines

(1) A person who offers a regulated product other than a vaping product for sale by way of an automatic vending machine must not allow any part of the regulated product or its package to be visible from outside the machine.

(2) However, subsection (1) does not apply to a regulated product or package that is being delivered if—

(a) the product or package is visible only to the extent that is necessary for it to be delivered to or from the machine; and

(b) the form of its delivery complies with regulations made under section 81(1)(13) that are in force.

(3) A person who, without reasonable excuse, contravenes subsection (1) commits an offence and is liable to a fine not exceeding $10,000.

(4) Subsection (1) does not apply to a regulated product or package that is visible in a way that complies with any relevant temporary transitional exemption regulations in force under section 81(1)(14).

Section 46: inserted, on 11 November 2020, by section 27 of the Smokefree Environments and Regulated Products (Vaping) Amendment Act 2020 (2020 No 62).

Section 46(2)(b): amended, on 28 October 2021, by section 3 of the Secondary Legislation Act 2021 (2021 No 7).

Section 46(4): amended, on 28 October 2021, by section 3 of the Secondary Legislation Act 2021 (2021 No 7).

47 Automatic vending machines must not be located in public place

(1) A person must not—

(a) permit an automatic vending machine that dispenses or is capable of dispensing regulated products to be located in a public place; or

(b) permit a regulated product to be sold by way of an automatic vending machine in a public place.

(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—

(i) in a place that provides the person using it with a direct line of sight to the person to whom the sale is to be made; and

(ii) close to the machine.

(3) For the purposes of this Act, a person who activates an automatic vending machine so that the sale of a regulated product to another person occurs is a party to that sale.

(4) A person who, without reasonable excuse, contravenes subsection (1)(a) or (b) commits an offence and is liable to a fine not exceeding $2,000.

(5) In this section, public place has the same meaning as in section 2(1) of the Summary Offences Act 1981.

Section 47: replaced, on 1 January 2023, by section 27 of the Smokefree Environments and Regulated Products (Smoked Tobacco) Amendment Act 2022 (2022 No 79).

48 Automatic vending machines must display health messages required by or under this Act

(1) A person who sells a regulated product from an automatic vending machine that can be seen from a place to which members of the public have access—

(a) must display on the machine any health message required by or under this Act (even if the machine is accessible only by the person or their employees or agent); and

(b) must display the health message in accordance with regulations.

(2) A person commits an offence if the person—

(a) offers for sale a regulated product by way of an automatic vending machine; and

(b) fails, without reasonable excuse, to display on that machine any health message required by or under this Act.

(3) A person who commits an offence against subsection (2) is liable to a fine not exceeding $5,000.

(4) Subsection (1) does not authorise or excuse a contravention of section 47.

Section 48: inserted, on 11 November 2020, by section 27 of the Smokefree Environments and Regulated Products (Vaping) Amendment Act 2020 (2020 No 62).

Part 2
Control of smoking products

[Repealed]

Part 2: repealed, on 11 November 2020, by section 27 of the Smokefree Environments and Regulated Products (Vaping) Amendment Act 2020 (2020 No 62).

21 Purpose of this Part

[Repealed]

Section 21: repealed, on 11 November 2020, by section 27 of the Smokefree Environments and Regulated Products (Vaping) Amendment Act 2020 (2020 No 62).

Promotion and advertising

[Repealed]

Heading: repealed, on 11 November 2020, by section 27 of the Smokefree Environments and Regulated Products (Vaping) Amendment Act 2020 (2020 No 62).

22 Advertising of tobacco products

[Repealed]

Section 22: repealed, on 11 November 2020, by section 27 of the Smokefree Environments and Regulated Products (Vaping) Amendment Act 2020 (2020 No 62).

22A Exemptions from advertising prohibition for specified publications

[Repealed]

Section 22A: repealed, on 11 November 2020, by section 27 of the Smokefree Environments and Regulated Products (Vaping) Amendment Act 2020 (2020 No 62).

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

[Repealed]

Section 23: repealed, on 11 November 2020, by section 27 of the Smokefree Environments and Regulated Products (Vaping) Amendment Act 2020 (2020 No 62).

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

[Repealed]

Section 23A: repealed, on 11 November 2020, by section 27 of the Smokefree Environments and Regulated Products (Vaping) Amendment Act 2020 (2020 No 62).

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

[Repealed]

Section 23B: repealed, on 11 November 2020, by section 27 of the Smokefree Environments and Regulated Products (Vaping) Amendment Act 2020 (2020 No 62).

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

[Repealed]

Section 24: repealed, on 11 November 2020, by section 27 of the Smokefree Environments and Regulated Products (Vaping) Amendment Act 2020 (2020 No 62).

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

[Repealed]

Section 25: repealed, on 11 November 2020, by section 27 of the Smokefree Environments and Regulated Products (Vaping) Amendment Act 2020 (2020 No 62).

25A Sponsoring activity involving exclusive supply arrangement

[Repealed]

Section 25A: repealed, on 11 November 2020, by section 27 of the Smokefree Environments and Regulated Products (Vaping) Amendment Act 2020 (2020 No 62).

26 Exemptions for participants in certain events

[Repealed]

Section 26: repealed, on 11 November 2020, by section 27 of the Smokefree Environments and Regulated Products (Vaping) Amendment Act 2020 (2020 No 62).

26A Exemption for multinational sporting events

[Repealed]

Section 26A: repealed, on 11 November 2020, by section 27 of the Smokefree Environments and Regulated Products (Vaping) Amendment Act 2020 (2020 No 62).

27 Exemption for craft in emergencies

[Repealed]

Section 27: repealed, on 11 November 2020, by section 27 of the Smokefree Environments and Regulated Products (Vaping) Amendment Act 2020 (2020 No 62).

28 Free distribution and rewards prohibited

[Repealed]

Section 28: repealed, on 11 November 2020, by section 27 of the Smokefree Environments and Regulated Products (Vaping) Amendment Act 2020 (2020 No 62).

28A Arrangements conflicting with Act have no effect

[Repealed]

Section 28A: repealed, on 11 November 2020, by section 27 of the Smokefree Environments and Regulated Products (Vaping) Amendment Act 2020 (2020 No 62).

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

[Repealed]

Section 29: repealed, on 11 November 2020, by section 27 of the Smokefree Environments and Regulated Products (Vaping) Amendment Act 2020 (2020 No 62).

Sale and messages and information

[Repealed]

Heading: repealed, on 11 November 2020, by section 27 of the Smokefree Environments and Regulated Products (Vaping) Amendment Act 2020 (2020 No 62).

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

[Repealed]

Section 29AA: repealed, on 11 November 2020, by section 27 of the Smokefree Environments and Regulated Products (Vaping) Amendment Act 2020 (2020 No 62).

29AAB Internet-sales health information or warnings

[Repealed]

Section 29AAB: repealed, on 11 November 2020, by section 27 of the Smokefree Environments and Regulated Products (Vaping) Amendment Act 2020 (2020 No 62).

29A Sale of tobacco products with other products prohibited

[Repealed]

Section 29A: repealed, on 11 November 2020, by section 27 of the Smokefree Environments and Regulated Products (Vaping) Amendment Act 2020 (2020 No 62).

29B Restriction on use of automatic vending machines

[Repealed]

Section 29B: repealed, on 11 November 2020, by section 27 of the Smokefree Environments and Regulated Products (Vaping) Amendment Act 2020 (2020 No 62).

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

[Repealed]

Section 30: repealed, on 11 November 2020, by section 27 of the Smokefree Environments and Regulated Products (Vaping) Amendment Act 2020 (2020 No 62).

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

[Repealed]

Section 30AA: repealed, on 11 November 2020, by section 27 of the Smokefree Environments and Regulated Products (Vaping) Amendment Act 2020 (2020 No 62).

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

[Repealed]

Section 30AB: repealed, on 11 November 2020, by section 27 of the Smokefree Environments and Regulated Products (Vaping) Amendment Act 2020 (2020 No 62).

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

[Repealed]

Section 30A: repealed, on 11 November 2020, by section 27 of the Smokefree Environments and Regulated Products (Vaping) Amendment Act 2020 (2020 No 62).

31 Limits on harmful constituents

[Repealed]

Section 31: repealed, on 11 November 2020, by section 27 of the Smokefree Environments and Regulated Products (Vaping) Amendment Act 2020 (2020 No 62).

31A Standardised packaging of tobacco products

[Repealed]

Section 31A: repealed, on 11 November 2020, by section 27 of the Smokefree Environments and Regulated Products (Vaping) Amendment Act 2020 (2020 No 62).

32 Messages and information required for tobacco products

[Repealed]

Section 32: repealed, on 11 November 2020, by section 27 of the Smokefree Environments and Regulated Products (Vaping) Amendment Act 2020 (2020 No 62).

32AA Messages and information required for herbal smoking products

[Repealed]

Section 32AA: repealed, on 11 November 2020, by section 27 of the Smokefree Environments and Regulated Products (Vaping) Amendment Act 2020 (2020 No 62).

Testing, reports, and returns

[Repealed]

Heading: repealed, on 11 November 2020, by section 27 of the Smokefree Environments and Regulated Products (Vaping) Amendment Act 2020 (2020 No 62).

33 Annual testing for constituents

[Repealed]

Section 33: repealed, on 11 November 2020, by section 27 of the Smokefree Environments and Regulated Products (Vaping) Amendment Act 2020 (2020 No 62).

34 Director-General may require further testing

[Repealed]

Section 34: repealed, on 11 November 2020, by section 27 of the Smokefree Environments and Regulated Products (Vaping) Amendment Act 2020 (2020 No 62).

35 Returns and reports

[Repealed]

Section 35: repealed, on 11 November 2020, by section 27 of the Smokefree Environments and Regulated Products (Vaping) Amendment Act 2020 (2020 No 62).

Offences

[Repealed]

Heading: repealed, on 11 November 2020, by section 27 of the Smokefree Environments and Regulated Products (Vaping) Amendment Act 2020 (2020 No 62).

36 Offences in respect of tobacco products and herbal smoking products

[Repealed]

Section 36: repealed, on 11 November 2020, by section 27 of the Smokefree Environments and Regulated Products (Vaping) Amendment Act 2020 (2020 No 62).

36AA Offence in respect of standardised packaging of tobacco products

[Repealed]

Section 36AA: repealed, on 11 November 2020, by section 27 of the Smokefree Environments and Regulated Products (Vaping) Amendment Act 2020 (2020 No 62).

36AAB Presumption about large retailer

[Repealed]

Section 36AAB: repealed, on 11 November 2020, by section 27 of the Smokefree Environments and Regulated Products (Vaping) Amendment Act 2020 (2020 No 62).

36A Toy tobacco products

[Repealed]

Section 36A: repealed, on 11 November 2020, by section 27 of the Smokefree Environments and Regulated Products (Vaping) Amendment Act 2020 (2020 No 62).

37 Enforcement

[Repealed]

Section 37: repealed, on 11 November 2020, by section 27 of the Smokefree Environments and Regulated Products (Vaping) Amendment Act 2020 (2020 No 62).

38 Liability of employees, employers, agents, and principals

[Repealed]

Section 38: repealed, on 11 November 2020, by section 27 of the Smokefree Environments and Regulated Products (Vaping) Amendment Act 2020 (2020 No 62).

38A Infringement offences

[Repealed]

Section 38A: repealed, on 11 November 2020, by section 27 of the Smokefree Environments and Regulated Products (Vaping) Amendment Act 2020 (2020 No 62).

38B Commission of infringement offences

[Repealed]

Section 38B: repealed, on 11 November 2020, by section 27 of the Smokefree Environments and Regulated Products (Vaping) Amendment Act 2020 (2020 No 62).

38C Infringement notices

[Repealed]

Section 38C: repealed, on 11 November 2020, by section 27 of the Smokefree Environments and Regulated Products (Vaping) Amendment Act 2020 (2020 No 62).

38D Payment of infringement fees

[Repealed]

Section 38D: repealed, on 11 November 2020, by section 27 of the Smokefree Environments and Regulated Products (Vaping) Amendment Act 2020 (2020 No 62).

Miscellaneous provisions

[Repealed]

Heading: repealed, on 11 November 2020, by section 27 of the Smokefree Environments and Regulated Products (Vaping) Amendment Act 2020 (2020 No 62).

39 Regulations

[Repealed]

Section 39: repealed, on 11 November 2020, by section 27 of the Smokefree Environments and Regulated Products (Vaping) Amendment Act 2020 (2020 No 62).

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

[Repealed]

Section 39A: repealed, on 11 November 2020, by section 27 of the Smokefree Environments and Regulated Products (Vaping) Amendment Act 2020 (2020 No 62).

40 Transitional provisions

[Repealed]

Section 40: repealed, on 11 November 2020, by section 27 of the Smokefree Environments and Regulated Products (Vaping) Amendment Act 2020 (2020 No 62).

41 Amendment, repeals, and revocations

[Repealed]

Section 41: repealed, on 11 November 2020, by section 27 of the Smokefree Environments and Regulated Products (Vaping) Amendment Act 2020 (2020 No 62).

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

[Repealed]

Section 41AA: repealed, on 11 November 2020, by section 27 of the Smokefree Environments and Regulated Products (Vaping) Amendment Act 2020 (2020 No 62).

Part 2A
Powers of enforcement officers

[Repealed]

Part 2A: repealed, on 11 November 2020, by section 27 of the Smokefree Environments and Regulated Products (Vaping) Amendment Act 2020 (2020 No 62).

41A Powers of entry and inspection

[Repealed]

Section 41A: repealed, on 11 November 2020, by section 27 of the Smokefree Environments and Regulated Products (Vaping) Amendment Act 2020 (2020 No 62).

41B Requirement to give identifying information

[Repealed]

Section 41B: repealed, on 11 November 2020, by section 27 of the Smokefree Environments and Regulated Products (Vaping) Amendment Act 2020 (2020 No 62).

41BA Search warrant

[Repealed]

Section 41BA: repealed, on 11 November 2020, by section 27 of the Smokefree Environments and Regulated Products (Vaping) Amendment Act 2020 (2020 No 62).

41C Purposes for which powers may be used

[Repealed]

Section 41C: repealed, on 11 November 2020, by section 27 of the Smokefree Environments and Regulated Products (Vaping) Amendment Act 2020 (2020 No 62).

41D Duties of enforcement officers

[Repealed]

Section 41D: repealed, on 11 November 2020, by section 27 of the Smokefree Environments and Regulated Products (Vaping) Amendment Act 2020 (2020 No 62).

41E Offences in respect of enforcement officers

[Repealed]

Section 41E: repealed, on 11 November 2020, by section 27 of the Smokefree Environments and Regulated Products (Vaping) Amendment Act 2020 (2020 No 62).

41F Enforcement

[Repealed]

Section 41F: repealed, on 11 November 2020, by section 27 of the Smokefree Environments and Regulated Products (Vaping) Amendment Act 2020 (2020 No 62).

Part 3
Packaging and labelling of regulated products

Part 3: inserted, on 11 November 2020, by section 27 of the Smokefree Environments and Regulated Products (Vaping) Amendment Act 2020 (2020 No 62).

Part 3 heading: replaced, on 1 January 2023, by section 28 of the Smokefree Environments and Regulated Products (Smoked Tobacco) Amendment Act 2022 (2022 No 79).

49 Purposes of this Part

[Repealed]

Section 49: repealed, on 1 January 2023, by section 29 of the Smokefree Environments and Regulated Products (Smoked Tobacco) Amendment Act 2022 (2022 No 79).

Subpart 1—Packaging and labelling requirements

Subpart 1: inserted, on 11 November 2020, by section 27 of the Smokefree Environments and Regulated Products (Vaping) Amendment Act 2020 (2020 No 62).

50 Standardised packaging of regulated products

(1) A regulated product—

(a) must comply with the requirements in regulations that apply to that product; 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.

(2) The package for a regulated product—

(a) must comply with section 52 (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; and

(c) must comply with regulations in all other respects.

Section 50: inserted, on 11 November 2020, by section 27 of the Smokefree Environments and Regulated Products (Vaping) Amendment Act 2020 (2020 No 62).

51 Offence in respect of standardised packaging of regulated products

(1) This section applies to—

(a) a person who manufactures, distributes, sells, offers for sale, or otherwise supplies a regulated product knowing that the product contravenes section 50(1); or

(b) a person who distributes, sells, offers for sale, or otherwise supplies a regulated product in a package knowing that the package contravenes section 50(2); or

(c) a person who does the following knowing that a package for a regulated product contravenes section 50(2):

(i) manufactures, distributes, sells, offers for sale, or otherwise supplies the package; or

(ii) packages, or arranges for the packaging of, a regulated 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,—

(i) to a fine not exceeding $600,000; but

(ii) if the contravention relates to a vaping product or smokeless tobacco product, to a fine not exceeding $200,000; and

(b) in the case of a large retailer,—

(i) to a fine not exceeding $200,000; but

(ii) if the contravention relates to a vaping product or smokeless tobacco product, to a fine not exceeding $70,000; and

(c) in any other case,—

(i) to a fine not exceeding $50,000; but

(ii) if the contravention relates to a vaping product or smokeless tobacco product, to a fine not exceeding $15,000.

(3) However, the person does not commit an offence against this section in relation to a regulated product or a package 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.

Section 51: inserted, on 11 November 2020, by section 27 of the Smokefree Environments and Regulated Products (Vaping) Amendment Act 2020 (2020 No 62).

52 Messages and information required for regulated product package

(1) A package must display, in accordance with regulations, as many of the following things as regulations require:

(a) a message relating to—

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

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

(b) for a smoked tobacco product, the constituents required by regulations to be listed, and their respective quantities, that are present in the product or its emissions:

(c) whether as part of or in addition to any message about effects, a photograph or picture relating to—

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

(ii) the beneficial effects of stopping the use of the product or of not using the regulated product.

(2) A package must, if required by regulations, contain a leaflet with—

(a) information (prescribed by regulations for regulated products generally, or regulated products of a class to which the product belongs) relating to—

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

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

(b) if the regulated product is intended for smoking, as much of the following information (stated, as regulations may require, by reference to the class of regulated product to which the product belongs, or to the product's brand as a regulated product of any class or variant of a brand of a regulated product of any class) as regulations require:

(i) a list of the constituents, and their respective quantities, present in the product:

(ii) a list of the additives, and their respective quantities, present in the product:

(iii) a list of the constituents, and their respective quantities, present in the product's emissions.

Section 52: inserted, on 11 November 2020, by section 27 of the Smokefree Environments and Regulated Products (Vaping) Amendment Act 2020 (2020 No 62).

Section 52(1)(b): replaced, on 1 January 2023, by section 30(1) of the Smokefree Environments and Regulated Products (Smoked Tobacco) Amendment Act 2022 (2022 No 79).

Section 52(2)(b)(i): amended, on 1 January 2023, by section 30(2) of the Smokefree Environments and Regulated Products (Smoked Tobacco) Amendment Act 2022 (2022 No 79).

Section 52(2)(b)(iii): amended, on 1 January 2023, by section 30(2) of the Smokefree Environments and Regulated Products (Smoked Tobacco) Amendment Act 2022 (2022 No 79).

53 Restrictions on sale of certain regulated products in small quantities

(1) A manufacturer, importer, distributor, or retailer must not 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; or

(c) any other regulated product in a package that contains fewer than the number (if any) prescribed in regulations for that product.

(2) In this section, unless the context otherwise requires,—

cigarette includes the tobacco product commonly known as a cigarillo

loose tobacco means—

(a) tobacco prepared for smoking in hand-rolled cigarettes:

(b) pipe tobacco.

(3) Nothing in subsection (1)(a) applies in respect of cigars (other than cigarillos).

(4) A person who, without reasonable excuse, contravenes subsection (1) commits an offence and is liable to a fine not exceeding $2,000.

Section 53: inserted, on 11 November 2020, by section 27 of the Smokefree Environments and Regulated Products (Vaping) Amendment Act 2020 (2020 No 62).

54 Restrictions on advertising, labelling, and sale of oral use products

(1) A person must not publish a regulated product advertisement that directly or indirectly states or suggests that a regulated product is suitable for chewing or for any other oral use.

(2) A person must not import for sale, sell, pack, or distribute any regulated product labelled or otherwise described as suitable for chewing, or for any other oral use.

(3) A person must not import for sale, sell, pack, or distribute any regulated product suitable for chewing or for any other oral use unless the Minister of Health has given consent or provisional consent to the distribution of the product under the Medicines Act 1981.

(4) A person who, without reasonable excuse, contravenes subsection (1), (2), or (3) 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.

(5) In this section, **oral use**, in relation to a product, means the absorption of the product primarily through the oral mucosa.

Section 54: inserted, on 11 November 2020, by section 27 of the Smokefree Environments and Regulated Products (Vaping) Amendment Act 2020 (2020 No 62).

Section 54(3): amended, on 1 January 2023, by section 31 of the Smokefree Environments and Regulated Products (Smoked Tobacco) Amendment Act 2022 (2022 No 79).

Subpart 2—Constituents of regulated products

[Repealed]

Subpart 2: repealed, on 1 January 2023, by section 32 of the Smokefree Environments and Regulated Products (Smoked Tobacco) Amendment Act 2022 (2022 No 79).

55 Limits on harmful constituents of tobacco products and herbal smoking products

[Repealed]

Section 55: repealed, on 1 January 2023, by section 32 of the Smokefree Environments and Regulated Products (Smoked Tobacco) Amendment Act 2022 (2022 No 79).

56 Annual testing for constituents of prescribed regulated products

[Repealed]

Section 56: repealed, on 1 January 2023, by section 32 of the Smokefree Environments and Regulated Products (Smoked Tobacco) Amendment Act 2022 (2022 No 79).

57 Director-General may require testing or further testing

[Repealed]

Section 57: repealed, on 1 January 2023, by section 32 of the Smokefree Environments and Regulated Products (Smoked Tobacco) Amendment Act 2022 (2022 No 79).

Part 3
Transitional provisions for certain amendments

[Repealed]

Part 3: repealed, on 11 November 2020, by section 27 of the Smokefree Environments and Regulated Products (Vaping) Amendment Act 2020 (2020 No 62).

42 Transitional provisions for certain amendments

[Repealed]

Section 42: repealed, on 11 November 2020, by section 27 of the Smokefree Environments and Regulated Products (Vaping) Amendment Act 2020 (2020 No 62).

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).

Part 3A
Requirements for smoked tobacco products

Part 3A: inserted, on 1 January 2023, by section 33 of the Smokefree Environments and Regulated Products (Smoked Tobacco) Amendment Act 2022 (2022 No 79).

Smoked tobacco products must be approved

Heading: inserted, on 1 January 2023, by section 33 of the Smokefree Environments and Regulated Products (Smoked Tobacco) Amendment Act 2022 (2022 No 79).

57A Interpretation

In this Part, **manufacture** does not include the making of 1 or more smoked tobacco products by a person for their personal use if the total annual mass of manufactured product is less than 5 kilograms.

Section 57A: inserted, on 1 January 2023, by section 33 of the Smokefree Environments and Regulated Products (Smoked Tobacco) Amendment Act 2022 (2022 No 79).

57B Smoked tobacco products must be approved

(1) A person must not sell, offer for sale, manufacture, import, or supply a smoked tobacco product unless the product has been approved by the Director-General.

(2) A person who knowingly or recklessly contravenes subsection (1) commits an offence and is liable on conviction to a fine not exceeding $600,000.

Section 57B: inserted, on 1 January 2023, by section 33 of the Smokefree Environments and Regulated Products (Smoked Tobacco) Amendment Act 2022 (2022 No 79).

57C Application for approval for sale or import of smoked tobacco products

(1) A person may apply to the Director-General for approval of a smoked tobacco product intended for sale, manufacture, import, or supply in New Zealand in accordance with any requirements in regulations.

(2) The Director-General must not grant approval of a smoked tobacco product for sale, manufacture, import, or supply unless satisfied that—

(a) the applicant is,—

(i) for an individual, a New Zealand resident:

(ii) for an entity,—

(A) carrying on business in New Zealand; or

(B) incorporated or registered under New Zealand law; and

(b) the product has been tested in accordance with regulations; and

(c) the product does not contain a constituent—

(i) prohibited by this Act or regulations; or

(ii) in a quantity that exceeds any limits in this Act or regulations; and

(d) any other criteria in regulations have been met.

(3) However, the Director-General may grant a specified smoked tobacco product that does not meet 1 or more of the requirements listed in subsection (2) temporary approval for sale, manufacture, import, or supply in New Zealand if the Director-General is satisfied—

(a) that—

(i) the specified product is not a cigarette; and

(ii) no similar compliant product can be sourced; and

(iii) the sale and supply of the specified product will not result in a significant increase in the appeal and addictiveness of smoked tobacco products; and

(iv) any other criteria specified in regulations are met; or

(b) that—

(i) the specified product will be manufactured in, or imported into, New Zealand for research purposes only and will not be offered for sale or supply; and

(ii) any other criteria specified in regulations are met.

(4) A temporary approval granted under subsection (3)—

(a) is subject to review by the Director-General in accordance with any requirements in regulations; and

(b) may be revoked following a review under paragraph (a); and

(c) expires on the date that is 12 months after the date on which it is granted unless earlier revoked; and

(d) may be renewed for a further period of up to 12 months.

(5) It is a condition of any approval granted under subsection (2) that—

(a) the product continues to meet the requirements in subsection (2); and

(b) there is no significant change to the product.

(6) In this section, **significant change** means any of the following changes (as applicable):

(a) a change that produces different results in any testing of the product required by this Act or regulations made under this Act:

(b) any other change to the product that is specified in regulations.

(7) The Director-General may, in accordance with regulations, impose any other conditions on an approval or a temporary approval.

(8) A person who, without reasonable excuse, provides false or misleading information in an application for approval or temporary approval under this section commits an offence and is liable on conviction to a fine not exceeding $50,000.

Section 57C: inserted, on 1 January 2023, by section 33 of the Smokefree Environments and Regulated Products (Smoked Tobacco) Amendment Act 2022 (2022 No 79).

57D Director-General may suspend approval or temporary approval

(1) The Director-General may suspend an approval or a temporary approval granted under section 57C for 1 month if the Director-General has reasonable grounds to believe that—

(a) any condition of the approval is not being complied with; or

(b) an applicable requirement under this Act or regulations is not being complied with.

(2) Before suspending an approval or a temporary approval, the Director-General must give the holder of the approval or temporary approval a reasonable opportunity to be heard.

(3) The Director-General may extend the period of suspension—

(a) for a further month:

(b) more than once.

(4) The Director-General must tell the holder of the approval or temporary approval in writing of the suspension and give reasons.

(5) Before the period of suspension ends, the Director-General must—

(a) decide whether to cancel or reinstate the approval or temporary approval; and

(b) tell the holder of the approval or temporary approval in writing of the decision and give reasons.

(6) A cancellation or reinstatement takes effect immediately after the end of the period of suspension.

(7) A person must not sell, offer for sale, manufacture, import, or supply a smoked tobacco product whose approval is suspended during the period of suspension.

(8) A person who, without reasonable excuse, contravenes subsection (7) commits an offence and is liable on conviction to a fine not exceeding $400,000.

Section 57D: inserted, on 1 January 2023, by section 33 of the Smokefree Environments and Regulated Products (Smoked Tobacco) Amendment Act 2022 (2022 No 79).

57E Director-General may cancel approval or temporary approval

(1) The Director-General may cancel an approval or a temporary approval without any prior suspension if the Director-General is satisfied that—

(a) any condition of the approval is not being complied with; or

(b) an applicable requirement under this Act or regulations is not being complied with.

(2) Before cancelling an approval or a temporary approval without prior suspension, the Director-General must give the holder of the approval or temporary approval a reasonable opportunity to be heard.

(3) The Director-General must tell the holder of the approval or temporary approval in writing of the cancellation and give reasons.

Section 57E: inserted, on 1 January 2023, by section 33 of the Smokefree Environments and Regulated Products (Smoked Tobacco) Amendment Act 2022 (2022 No 79).

Constituents of smoked tobacco products

Heading: inserted, on 1 January 2023, by section 33 of the Smokefree Environments and Regulated Products (Smoked Tobacco) Amendment Act 2022 (2022 No 79).

57F Limits on constituents of smoked tobacco products

(1) A person must not sell, offer for sale, manufacture, import, or supply a smoked tobacco product that contains, or generates in its emissions, a constituent that is—

(a) prohibited by this Act or regulations; or

(b) in a quantity that exceeds any limits in this Act or regulations, as determined in accordance with any prescribed tests.

(2) A person who knowingly or recklessly contravenes subsection (1) commits an offence and is liable on conviction to a fine not exceeding $400,000.

Section 57F: inserted, on 1 January 2023, by section 33 of the Smokefree Environments and Regulated Products (Smoked Tobacco) Amendment Act 2022 (2022 No 79).

57G Annual testing for constituents of smoked tobacco products

(1) This section applies to a smoked tobacco product specified in regulations as a product to which this section applies.

(2) Every manufacturer and every importer of a smoked tobacco product must, at their own expense, conduct a test to ensure that the constituents of the product, and their respective quantities, comply with any limits or prohibitions prescribed in this Act or regulations.

(3) The tests must be conducted each year by 31 December in accordance with any requirements in regulations.

(4) A manufacturer or an importer who, without reasonable excuse, fails to comply with subsection (2) or (3) commits an offence and is liable on conviction to a fine not exceeding $50,000.

Section 57G: inserted, on 1 January 2023, by section 33 of the Smokefree Environments and Regulated Products (Smoked Tobacco) Amendment Act 2022 (2022 No 79).

57H Director-General may require testing or further testing

(1) The Director-General may, by notice in writing, require a manufacturer or an importer of a smoked tobacco product to conduct tests of the product.

(2) Any tests required under this section may be in addition to any tests required under section 57G.

(3) The tests must be conducted—

(a) in accordance with regulations (if any); and

(b) at the expense in all respects of the manufacturer or importer.

(4) The manufacturer or importer must, if required by the Director-General in the notice in writing, provide, at their own cost, a sample of the product required to be tested—

(a) to the Director-General; and

(b) in the quantity specified in the notice.

(5) In any year, the Director-General must not require tests to be conducted under this section in respect of more than 1 of the brands of smoked tobacco products sold by a particular manufacturer or importer.

(6) A person commits an offence if the person, without reasonable excuse,—

(a) fails to conduct any tests required under this section; or

(b) fails to conduct those tests in accordance with regulations.

(7) A person who commits an offence under subsection (6) is liable on conviction to a fine not exceeding $50,000.

Section 57H: inserted, on 1 January 2023, by section 33 of the Smokefree Environments and Regulated Products (Smoked Tobacco) Amendment Act 2022 (2022 No 79).

57I Limits on nicotine for smoked tobacco products

(1) The limit for the nicotine content in the tobacco in an individual smoked tobacco product is 0.8 mg/g.

(2) Nicotine must not be present in any other constituent of an individual smoked tobacco product, unless it is derived from the tobacco in the product.

Section 57I: inserted, on 1 January 2023, by section 33 of the Smokefree Environments and Regulated Products (Smoked Tobacco) Amendment Act 2022 (2022 No 79).

Part 4
Regulated products that must be notified

Part 4: inserted, on 11 November 2020, by section 27 of the Smokefree Environments and Regulated Products (Vaping) Amendment Act 2020 (2020 No 62).

58 Purpose of this Part

[Repealed]

Section 58: repealed, on 1 January 2023, by section 34 of the Smokefree Environments and Regulated Products (Smoked Tobacco) Amendment Act 2022 (2022 No 79).

59 Defined terms

[Repealed]

Section 59: repealed, on 1 January 2023, by section 35 of the Smokefree Environments and Regulated Products (Smoked Tobacco) Amendment Act 2022 (2022 No 79).

60 Notifier must not sell product unless it has been notified

(1) A notifier of a notifiable product must not sell the product in New Zealand unless it—

(a) has been notified in accordance with this Part; and

(b) complies with product safety requirements.

(2) A notifier must not sell a notifiable product in New Zealand whose notification has expired.

(3) A person who, without reasonable excuse, contravenes subsection (1) or (2) commits an offence and is liable to a fine not exceeding $400,000.

Section 60: inserted, on 11 November 2020, by section 27 of the Smokefree Environments and Regulated Products (Vaping) Amendment Act 2020 (2020 No 62).

61 Notifier must be New Zealand resident or company registered in New Zealand

A notifier of a notifiable product must be a New Zealand resident or a company registered in New Zealand.

Section 61: inserted, on 11 November 2020, by section 27 of the Smokefree Environments and Regulated Products (Vaping) Amendment Act 2020 (2020 No 62).

62 Pre-notification requirements

Before notifying a notifiable product that is intended for sale in New Zealand, the notifier must ensure that the product complies with—

(a) product safety requirements; and

(b) sections 68 and 69; and

(c) any applicable requirements in regulations.

Section 62: inserted, on 11 November 2020, by section 27 of the Smokefree Environments and Regulated Products (Vaping) Amendment Act 2020 (2020 No 62).

63 How to notify product

(1) A notifier must notify the notifiable product by entering on the database—

(a) the notifier's contact details; and

(b) a description of the product and its parts (including its substances) in accordance with regulations; and

(c) a declaration by the notifier that the product complies with the requirements referred to in section 62.

(2) A person who, without reasonable excuse, provides false or misleading information in notifying a notifiable product commits an offence and is liable to a fine not exceeding $50,000.

Section 63: inserted, on 11 November 2020, by section 27 of the Smokefree Environments and Regulated Products (Vaping) Amendment Act 2020 (2020 No 62).

64 When notification expires

(1) A notification of a notifiable product expires 12 months after the date of notification (or its last notification) unless earlier cancelled or renewed.

(2) A notifier may renew a product notification by notifying it in accordance with this Part before it expires.

Section 64: inserted, on 11 November 2020, by section 27 of the Smokefree Environments and Regulated Products (Vaping) Amendment Act 2020 (2020 No 62).

65 Obligations of retailers

(1) A retailer must not sell or supply a notifiable product in New Zealand—

(a) unless it has been notified in accordance with this Part; or

(b) that does not comply with product safety requirements; or

(c) for which notification has been cancelled or suspended; or

(d) whose notification has been expired for more than 3 months; or

(e) that has been recalled under section 73.

(2) A retailer must not, unless subsection (3) applies, sell a vaping product or smokeless tobacco product that contains a flavour that is not listed in Part 1 of Schedule 2.

(3) A specialist vape retailer—

(a) may sell a vaping product that contains any flavour except a prohibited flavour; but

(b) if the vaping product contains a flavour that is not from a class of flavour listed in Part 1 of Schedule 2, must sell the product only from the retailer's approved vaping premises or the retailer's approved Internet site.

(4) A retailer must comply with any requirements in regulations (if any) relating to the sale of vaping products or smokeless tobacco products that contain a flavour.

(5) However, subsections (2) to (4) do not apply to vaping products that are part of a smoking cessation programme.

(6) A person who, without reasonable excuse, contravenes subsection (1), (2), (3), or (4) commits an offence and is liable to a fine not exceeding $400,000 in the case of a large retailer, or $50,000 in any other case.

Section 65: inserted, on 11 November 2020, by section 27 of the Smokefree Environments and Regulated Products (Vaping) Amendment Act 2020 (2020 No 62).

Section 65(1): amended, on 1 January 2023, by section 36(1) of the Smokefree Environments and Regulated Products (Smoked Tobacco) Amendment Act 2022 (2022 No 79).

Section 65(2): amended, on 1 January 2023, by section 36(2) of the Smokefree Environments and Regulated Products (Smoked Tobacco) Amendment Act 2022 (2022 No 79).

Section 65(4): amended, on 1 January 2023, by section 36(3) of the Smokefree Environments and Regulated Products (Smoked Tobacco) Amendment Act 2022 (2022 No 79).

66 Obligation to notify adverse reaction

(1) A notifier must advise the Director-General as soon as practicable after the notifier becomes aware of any adverse reaction to the notifiable product.

(2) A person who, without reasonable excuse, contravenes subsection (1) commits an offence and is liable to a fine not exceeding $400,000.

(3) In this section, **adverse reaction** means an unwanted or harmful reaction—

(a) that is experienced by an individual who has used the product; and

(b) that is suspected to have been caused (wholly or partly) by the use of the product.

Section 66: inserted, on 11 November 2020, by section 27 of the Smokefree Environments and Regulated Products (Vaping) Amendment Act 2020 (2020 No 62).

67 When notifiable product must be renotified

(1) If, after a notifiable product has been notified, the product or any part of the product undergoes a significant change, the notifier must, as soon as practicable,—

(a) cancel the product notification for the product; and

(b) complete a new product notification that accurately reflects the change to the product.

(2) In this section, **significant change** means any of the following changes (as applicable):

(a) a change to the composition or nicotine level of the product's vaping substance:

(b) a change to the composition or strength of the product's tobacco component:

(c) a change to the product's atomiser:

(d) a change to any other part or component of the product that is specified in regulations.

Section 67: inserted, on 11 November 2020, by section 27 of the Smokefree Environments and Regulated Products (Vaping) Amendment Act 2020 (2020 No 62).

68 Notifiable product must not contain prohibited substance, prohibited flavour, or colouring substance

(1) A notifiable product must not contain a prohibited substance.

(2) A notifiable product must not contain a prohibited flavour.

(3) A substance or mixture of substances that is intended to be vaporised or aerosolised by a notifiable product must not contain a colouring substance.

Section 68: inserted, on 11 November 2020, by section 27 of the Smokefree Environments and Regulated Products (Vaping) Amendment Act 2020 (2020 No 62).

69 Substances in notifiable product must not exceed maximum limits

(1) A notifiable product must not contain a substance in excess of any maximum limit declared under this section.

(2) The Director-General may declare a maximum limit for a substance contained in a notifiable product if satisfied, on reasonable grounds, that exceeding the limit causes the product to become unsafe.

(3) A declaration under this section is secondary legislation (*see* Part 3 of the Legislation Act 2019 for publication requirements).

Legislation Act 2019 requirements for secondary legislation made under this section		
Publication	The maker must publish it on an Internet site maintained by, or on behalf of, the Ministry of Health	LA19 ss 73, 74(1)(a), Sch 1 cl 14
Presentation	It is not required to be presented to the House of Representatives because a transitional exemption applies under Schedule 1 of the Legislation Act 2019	LA19 s 114, Sch 1 cl 32(1)(a)
Disallowance	It may be disallowed by the House of Representatives	LA19 ss 115, 116

This note is not part of the Act.

Section 69: inserted, on 11 November 2020, by section 27 of the Smokefree Environments and Regulated Products (Vaping) Amendment Act 2020 (2020 No 62).

Section 69(3): replaced, on 28 October 2021, by section 3 of the Secondary Legislation Act 2021 (2021 No 7).

69A Annual testing for constituents of notifiable products

(1) This section applies to a notifiable product specified in regulations as a product to which this section applies.

(2) Every manufacturer and every importer of a notifiable product must, at their own expense, conduct either or both of the following tests (as 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) a test for the constituents of any emissions.

(3) The tests must be conducted each year by 31 December in accordance with any requirements in regulations.

(4) If regulations require it, each variant of the brand must be tested separately.

(5) A person commits an offence if the person, without reasonable excuse,—

(a) fails to conduct any tests required under this section; or

(b) fails to conduct those tests in accordance with regulations.

(6) A person who commits an offence under subsection (5) is liable on conviction,—

(a) in the case of a body corporate, to a fine not exceeding $10,000; or

(b) in any other case, to a fine not exceeding $5,000.

Section 69A: inserted, on 1 January 2023, by section 37 of the Smokefree Environments and Regulated Products (Smoked Tobacco) Amendment Act 2022 (2022 No 79).

69B Director-General may require testing or further testing of notifiable product

(1) The Director-General may, by written notice, require a manufacturer or an importer of a notifiable product to conduct tests of the product.

(2) Any tests required under this section may be in addition to any tests required under section 69A.

(3) The tests must be conducted—

(a) in accordance with regulations; and

(b) at the expense in all respects of the manufacturer or importer.

(4) The manufacturer or importer must, if required by the Director-General in the written notice, provide, at their own cost, a sample of the product required to be tested—

(a) to the Director-General; and

(b) in the quantity specified in the notice.

(5) In any year, the Director-General must not require tests to be conducted under this section in respect of more than 1 of the brands of prescribed notifiable products to which section 69A applies that are sold by a particular manufacturer or importer.

(6) However, subsection (5) does not apply to vaping products.

(7) A person commits an offence if the person, without reasonable excuse,—

(a) fails to conduct any tests required under this section; or

(b) fails to conduct those tests in accordance with regulations.

(8) A person who commits an offence under subsection (7) is liable on conviction,—

(a) in the case of a body corporate, to a fine not exceeding $10,000; or

(b) in any other case, to a fine not exceeding $5,000.

Section 69B: inserted, on 1 January 2023, by section 37 of the Smokefree Environments and Regulated Products (Smoked Tobacco) Amendment Act 2022 (2022 No 79).

70 Declaration of prohibited substance

(1) The Director-General may declare a substance to be a prohibited substance if satisfied that the substance is unsafe for use in a notifiable product.

(2) A declaration under this section is secondary legislation (*see* Part 3 of the Legislation Act 2019 for publication requirements).

Legislation Act 2019 requirements for secondary legislation made under this section

Publication	The maker must publish it on an Internet site maintained by, or on behalf of, the Ministry of Health	LA19 ss 73, 74(1)(a), Sch 1 cl 14
Presentation	It is not required to be presented to the House of Representatives because a transitional exemption applies under Schedule 1 of the Legislation Act 2019	LA19 s 114, Sch 1 cl 32(1)(a)
Disallowance	It may be disallowed by the House of Representatives	LA19 ss 115, 116

This note is not part of the Act.

Section 70: inserted, on 11 November 2020, by section 27 of the Smokefree Environments and Regulated Products (Vaping) Amendment Act 2020 (2020 No 62).

Section 70(2): replaced, on 28 October 2021, by section 3 of the Secondary Legislation Act 2021 (2021 No 7).

71 Director-General may require notifier to provide information about safety of notifiable product

(1) The Director-General may, by written notice, require a notifier of a notifiable product to provide information relating to the safety of the notifiable product.

(2) The notifier must provide the information within the period specified in the notice.

(3) A notifier who knowingly provides false or misleading information in response to the notice commits an offence and is liable to a fine not exceeding $50,000.

(4) A notifier who fails to comply with subsection (2) commits an offence and is liable to a fine not exceeding $1,000.

Section 71: inserted, on 11 November 2020, by section 27 of the Smokefree Environments and Regulated Products (Vaping) Amendment Act 2020 (2020 No 62).

72 Director-General may issue warning

(1) If the Director-General has reasonable grounds to believe that the continued availability of a notifiable product poses a risk of harm to people, the Director-General may issue a public warning to that effect.

(2) A public warning issued under subsection (1) is protected by qualified privilege.

Section 72: inserted, on 11 November 2020, by section 27 of the Smokefree Environments and Regulated Products (Vaping) Amendment Act 2020 (2020 No 62).

73 Recall

(1) If the Director-General is satisfied, on reasonable grounds, that the continued availability of a notifiable product poses an unacceptable risk to people's safety, the Director-General may—

(a) issue a public statement to that effect; and

(b) by written notice, require the notifier to arrange for the recall of the product.

(2) The notice may specify when and how the notifier must comply with the notice.

(3) The notifier must advise the Director-General as soon as practicable when the notice has been complied with.

(4) A notifier who, without reasonable excuse, fails to comply with the notice commits an offence and is liable to a fine not exceeding $400,000.

(5) A public statement issued under subsection (1) is protected by qualified privilege.

Section 73: inserted, on 11 November 2020, by section 27 of the Smokefree Environments and Regulated Products (Vaping) Amendment Act 2020 (2020 No 62).

74 Director-General may suspend product notification

(1) The Director-General may suspend a product notification of a notifiable product for 1 month if—

(a) the Director-General has reasonable grounds to believe that the continued availability of a notifiable product poses an unacceptable risk of harm to people; or

(b) the Director-General has reasonable grounds to believe the notifier has provided false, misleading, or incomplete information in the product notification or in response to a requirement under section 71; or

(c) the Director-General has reasonable grounds for concern because of new information about the safety of the product; or

(d) the Director-General has reasonable grounds to believe that the product contains a prohibited substance, a prohibited flavour, or a colouring substance, or contains a substance that exceeds any maximum limit.

(2) Before suspending a product notification of a notifiable product, the Director-General must give the notifier a reasonable opportunity to be heard.

(3) The Director-General may extend the period of suspension—

(a) for a further month:

(b) more than once.

(4) The Director-General must tell the notifier in writing of the suspension and give reasons.

(5) Before the period of suspension ends, the Director-General must—

(a) decide whether to cancel or reinstate the product notification for the product; and

(b) tell the notifier in writing of the decision and give reasons.

(6) A cancellation or reinstatement takes effect immediately after the end of the period of suspension.

(7) If a product notification of a notifiable product is cancelled, the notifier must comply with section 75(4).

Section 74: inserted, on 11 November 2020, by section 27 of the Smokefree Environments and Regulated Products (Vaping) Amendment Act 2020 (2020 No 62).

75 Cancellation of product notification

(1) The Director-General may cancel a product notification of a notifiable product without any prior suspension if—

(a) the Director-General has reasonable grounds to believe that the continued availability of the product poses an unacceptable risk of harm to people; or

(b) the Director-General has reasonable grounds to believe the notifier has provided false, misleading, or incomplete information in the product notification or in response to a requirement under section 71; or

(c) the Director-General has reasonable grounds for concern because of new information about the safety of the product; or

(d) the Director-General has reasonable grounds to believe that the product contains a prohibited substance, a prohibited flavour, or a colouring substance, or contains a substance that exceeds any maximum limit.

(2) Before cancelling a product notification of a notifiable product, the Director-General must give the notifier a reasonable opportunity to be heard.

(3) The Director-General must tell the notifier in writing of the cancellation and give reasons.

(4) If a product notification of a notifiable product is cancelled under this section or section 74, the notifier—

(a) must ensure that the product is not sold by any person on and from the date on which the cancellation takes effect; and

(b) must not complete another product notification for the product unless the Director-General is satisfied, on application by the product notifier, that—

(i) the grounds for cancellation no longer apply; or

(ii) any concerns of the Director-General leading to the cancellation have been addressed appropriately.

(5) A person who, without reasonable excuse, contravenes subsection (4)(a) commits an offence and is liable to a fine not exceeding $400,000.

(6) A person who, without reasonable excuse, contravenes subsection (4)(b) commits an offence and is liable to a fine not exceeding $10,000, in the case of a body corporate, or to a fine not exceeding $5,000 in any other case.

Section 75: inserted, on 11 November 2020, by section 27 of the Smokefree Environments and Regulated Products (Vaping) Amendment Act 2020 (2020 No 62).

76 Appeals against decision to suspend or cancel product notification

[Repealed]

Section 76: repealed, on 1 January 2023, by section 38 of the Smokefree Environments and Regulated Products (Smoked Tobacco) Amendment Act 2022 (2022 No 79).

77 Establishment of database and confidentiality of certain information

(1) The Director-General must establish and maintain a database for the purpose of this Part.

(2) The database may be in any form that the Director-General thinks fit.

(3) The Director-General must protect the confidentiality of any information that—

(a) is entered on the database; and

(b) may reasonably be regarded as confidential or commercially sensitive.

Section 77: inserted, on 11 November 2020, by section 27 of the Smokefree Environments and Regulated Products (Vaping) Amendment Act 2020 (2020 No 62).

Section 77(3)(a): amended, on 1 January 2023, by section 39 of the Smokefree Environments and Regulated Products (Smoked Tobacco) Amendment Act 2022 (2022 No 79).

78 Technical advisory committee

(1) The Director-General may establish 1 or more advisory committees to advise the Director-General on the exercise and performance of the Director-General's powers and functions under this Part.

(2) The Director-General may—

(a) appoint members of the advisory committee on any terms and conditions that the Director-General thinks fit; and

(b) specify terms of reference for the committee's work.

(3) In appointing members of the advisory committee, the Director-General—

(a) must take into account the need for members to collectively have knowledge and expertise relating to—

(i) the risks and benefits associated with alternative tobacco and nicotine-delivery products; and

(ii) how alternative tobacco and nicotine-delivery products are regulated internationally; and

(iii) the manufacture, importation, and retail sale of alternative tobacco and nicotine-delivery products; and

(b) may take into account any other knowledge or expertise that the Director-General considers relevant.

(4) An advisory committee may, subject to any provision in this Act, the regulations, and any terms of reference, determine its own procedure.

Section 78: inserted, on 11 November 2020, by section 27 of the Smokefree Environments and Regulated Products (Vaping) Amendment Act 2020 (2020 No 62).

79 Appeals committee

[Repealed]

Section 79: repealed, on 1 January 2023, by section 40 of the Smokefree Environments and Regulated Products (Smoked Tobacco) Amendment Act 2022 (2022 No 79).

Part 5
Regulations, enforcement, and other matters

Part 5: inserted, on 11 November 2020, by section 27 of the Smokefree Environments and Regulated Products (Vaping) Amendment Act 2020 (2020 No 62).

80 Outline

(1) Subpart 1 provides for regulations that may be made for the purposes of this Act.

(2) Subpart 2 provides for infringement offences.

(3) Subpart 3 relates to the appointment and powers of enforcement officers.

(4) Subpart 4 relates to annual returns and reports that must be supplied by manufacturers and importers of regulated products and specialist vape retailers.

Section 80: inserted, on 11 November 2020, by section 27 of the Smokefree Environments and Regulated Products (Vaping) Amendment Act 2020 (2020 No 62).

Subpart 1—Regulations

Subpart 1: inserted, on 11 November 2020, by section 27 of the Smokefree Environments and Regulated Products (Vaping) Amendment Act 2020 (2020 No 62).

81 Regulations

(1) The Governor-General may from time to time, by Order in Council, make regulations for all or any of the following purposes:

Forms, registers, and other documents

(1) prescribing forms, certificates, notices, leaflets, signs, particulars, and notifications, and the persons by whom and the persons to whom any of them must be supplied:

(2) prescribing records and registers for the purposes of this Act or any of its Parts, including—

(i) prescribing the manner in which and the period during which any such records and registers must be kept; and

(ii) prescribing the persons to whom, and the conditions on which, any such records and registers may be available for searching, inspection, and copying:

Internal area

(3) prescribing criteria or a means for determining whether part of any premises or vehicle is an internal area for the purpose of paragraph (a) of the definition of internal area in section 2(1):

Health messages on automatic vending machines

(4) prescribing for the purposes of section 48—

(i) the form, size, and content of messages to be displayed on automatic vending machines that dispense regulated products:

(ii) the circumstances and manner in which the messages must be displayed:

Section 24 exemptions

(5) for the purposes of the exemption in section 24(g), prescribing—

(i) vaping products that may be displayed in retail premises or on a retailer's Internet site and how those products may be displayed:

(ii) information relating to vaping products that may be provided in retail premises or on a retailer's Internet site and how that information may be provided:

(6) prescribing—

(i) for the purposes of the exemption in section 24(k), the information that manufacturers and importers may provide to retailers about the use of vaping products and smokeless tobacco products and how that information may be provided:

(ii) for the purposes of the exemption in section 24(l), the communications about vaping products that may be made by specialist vape retailers to their existing customers and how those communications may be made:

(7) prescribing for the purposes of the exemption in section 24(a), any requirements with which a price list must comply:

Section 25 exemptions

(8) prescribing for the purposes of the exemption in section 25(1)(a)(ii) (relating to retailers) requirements with which regulated product and price information under section 25(1)(a) must comply:

(9) prescribing for the purposes of the exemption in section 25(1)(b)(ii) (relating to retailers) requirements with which a regulated product availability and locations notice under section 25(1)(b) must comply:

(10) prescribing for the purposes of the exemption in section 25(3)(b) (relating to vending machines) requirements with which a regulated product and price notice under section 25(3) must comply:

(11) prescribing for the purposes of the exemption in section 25(4)(c) (relating to Internet sales) requirements with which regulated product and price information under section 25(4) must comply:

Section 27 exemptions

(12) prescribing for the purposes of section 27(3)(c) and (d) requirements relating to—

(i) communications about vaping products that a specialist vape retailer may make to customers in their approved vaping premises; and

(ii) communications by a specialist vape retailer about the safe use of regulated products available for purchase in their approved vaping premises:

Acceptable forms of delivery and visibility

(13) prescribing for the purposes of section 37(2) or 46(2)(b) acceptable forms of visible delivery in relation to a regulated product or package:

(14) prescribing for the purposes of section 37(3) or 46(4) ways in which a class or classes of people who offer regulated products for sale may allow a regulated product or package to be visible:

Health information and warnings at point of sale and on Internet

(15) prescribing for the purposes of section 38 requirements relating to point-of-sale health information or warnings:

(16) requiring sales health information or warnings to be visible on an Internet site of a person who offers regulated products for Internet sale (by retail or wholesale), including—

(i) prescribing information or warnings that must be made visible; and

(ii) prescribing the requirements with which the information or warnings must comply:

(17) prescribing for the purposes of section 43(2)(b) requirements with which a notice for the public (to the effect that the sale of regulated products to people who are younger than 18 years is prohibited) under section 43(2) must comply:

(18) requiring purchase age information or warnings to be visible on an Internet site of a person who offers regulated products for Internet sale (by retail or wholesale), including—

(i) prescribing information or warnings that must be made visible; and

(ii) prescribing the requirements with which the information or warnings must comply:

Infringement notices

(19) prescribing for the purposes of section 89 (and for the purposes of the procedure in section 21 of the Summary Proceedings Act 1957 as modified and applied by section 89) the form of infringement notices and reminder notices for infringement offences, and any other particulars to be contained in infringement notices and reminder notices:

Approval of smoked tobacco products

(20) prescribing requirements for the purposes of section 57C(1):

(20A) prescribing criteria that the Director-General must have regard to for the purpose of section 57C(2)(d) or (4):

(20B) prescribing criteria that a smoked tobacco product or class of smoked tobacco product must meet for temporary approval by the Director-General under section 57C(3):

(20C) prescribing the circumstances in which a temporary approval granted under section 57C(3) may be reviewed or revoked:

(20D) providing conditions that may be imposed by the Director-General when granting an approval or a temporary approval under section 57C or criteria that apply when imposing a condition:

(21) specifying the class or classes of regulated products to which section 56 is to apply:

Testing requirements

(21A) prescribing standards and requirements for testing for the purpose of section 57C(2)(b):

Annual returns, reports, and records

(22) prescribing for the purposes of section 100—

(i) sales-related information that manufacturers, importers, approved smoked tobacco retailers, and specialist vape retailers must provide in the annual return required under that section:

(ia) reporting requirements for distributors of smoked tobacco products and general vape retailers:

(ii) the form and manner in which returns and reports required under that section must be prepared and filed:

(22A) prescribing for the purposes of section 101 the constituents of a regulated product that the manufacturer must record:

How certain regulated products may differ

(23) prescribing for the purposes of section 2(2A) the way in which vaping products, heated tobacco products, or any packages of those products that bear the same brand name may differ in the products they contain:

Specialist vape retailers

(24) providing, in relation to applications for approval to be a specialist vape retailer,—

(i) for the manner in which the application must be made; and

(ii) requirements that must be met before approval may be given; and

(iii) conditions that may be imposed by the Director-General when granting an approval or criteria that apply when imposing a condition:

(25) for the purpose of section 20P(4), prescribing matters that must be considered by the Director-General when having regard to—

(i) the geographic location of the retail premises; or

(ii) the population in relation to which the retailer carries out their business:

(26) prescribing any other criteria that the Director-General must have regard to for the purpose of section 20P(4):

General matters

(27) providing for any other related matters contemplated by this Act, necessary for its administration, or necessary for giving it full effect.

(2) Regulations under this section are secondary legislation (*see* Part 3 of the Legislation Act 2019 for publication requirements).

Legislation Act 2019 requirements for secondary legislation made under this section		
Publication	PCO must publish it on the legislation website and notify it in the *Gazette*	LA19 s 69(1)(c)
Presentation	The Minister must present it to the House of Representatives	LA19 s 114, Sch 1 cl 32(1)(a)
Disallowance	It may be disallowed by the House of Representatives	LA19 ss 115, 116

This note is not part of the Act.

Section 81: inserted, on 11 November 2020, by section 27 of the Smokefree Environments and Regulated Products (Vaping) Amendment Act 2020 (2020 No 62).

Section 81(1)(20) heading: replaced, on 1 January 2023, by section 41(3) of the Smokefree Environments and Regulated Products (Smoked Tobacco) Amendment Act 2022 (2022 No 79).

Section 81(1)(20): replaced, on 1 January 2023, by section 41(3) of the Smokefree Environments and Regulated Products (Smoked Tobacco) Amendment Act 2022 (2022 No 79).

Section 81(1)(20A): inserted, on 1 January 2023, by section 41(3) of the Smokefree Environments and Regulated Products (Smoked Tobacco) Amendment Act 2022 (2022 No 79).

Section 81(1)(20B): inserted, on 1 January 2023, by section 41(3) of the Smokefree Environments and Regulated Products (Smoked Tobacco) Amendment Act 2022 (2022 No 79).

Section 81(1)(20C): inserted, on 1 January 2023, by section 41(3) of the Smokefree Environments and Regulated Products (Smoked Tobacco) Amendment Act 2022 (2022 No 79).

Section 81(1)(20D): inserted, on 1 January 2023, by section 41(3) of the Smokefree Environments and Regulated Products (Smoked Tobacco) Amendment Act 2022 (2022 No 79).

Section 81(1)(21A) heading: inserted, on 1 January 2023, by section 41(4) of the Smokefree Environments and Regulated Products (Smoked Tobacco) Amendment Act 2022 (2022 No 79).

Section 81(1)(21A): inserted, on 1 January 2023, by section 41(4) of the Smokefree Environments and Regulated Products (Smoked Tobacco) Amendment Act 2022 (2022 No 79).

Section 81(1)(22) heading: amended, on 1 January 2023, by section 41(5) of the Smokefree Environments and Regulated Products (Smoked Tobacco) Amendment Act 2022 (2022 No 79).

Section 81(1)(22)(i): replaced, on 1 January 2023, by section 41(6) of the Smokefree Environments and Regulated Products (Smoked Tobacco) Amendment Act 2022 (2022 No 79).

Section 81(1)(22)(ia): inserted, on 1 January 2023, by section 41(6) of the Smokefree Environments and Regulated Products (Smoked Tobacco) Amendment Act 2022 (2022 No 79).

Section 81(1)(22A): inserted, on 1 January 2023, by section 41(7) of the Smokefree Environments and Regulated Products (Smoked Tobacco) Amendment Act 2022 (2022 No 79).

Section 81(1)(25): amended, on 1 January 2023, by section 41(8) of the Smokefree Environments and Regulated Products (Smoked Tobacco) Amendment Act 2022 (2022 No 79).

Section 81(1)(26): amended, on 1 January 2023, by section 41(9) of the Smokefree Environments and Regulated Products (Smoked Tobacco) Amendment Act 2022 (2022 No 79).

Section 81(2): inserted, on 28 October 2021, by section 3 of the Secondary Legislation Act 2021 (2021 No 7).

82 Regulations under section 81

(1) Regulations made under section 81(1)(8), (9), (15), (16), (17), or (18) must come into force no earlier than the day that is 6 months after the date on which they are made.

(2) Regulations made under section 81(1)(5), (6), or (7) may (without limitation) prescribe different requirements for different classes of retailers.

(3) Regulations under all or any of paragraphs (8), (9), (10), (15), (16), (17), and (18) of section 81(1) may (without limitation) prescribe different requirements for all or any of the following:

(a) different classes of people who offer regulated 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.

(4) Regulations under section 81(1)(13) may (without limitation)—

(a) apply to specified classes of regulated products or packages or all regulated products or packages:

(b) prescribe for different classes of people who offer regulated products for sale different acceptable forms of visible delivery of all or any regulated products and packages:

(c) 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.

(5) Regulations under section 81(1)(14) may (without limitation) do either or both of the following:

(a) prescribe for different classes of people who offer regulated products for sale different ways of allowing a regulated product or package to be visible:

(b) prescribe conditions with which 1 or more classes of people of that kind must comply before, or while, allowing a regulated product or package to be visible in a way prescribed.

(6) Regulations under section 81(1)(15) may (without limitation) prescribe requirements relating to all or any of the following matters relating to signs under section 38:

(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, and 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.

(7) Regulations under section 81(1)(16) 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 39:

(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, and other aspects of the format or layout, or of the clarity and legibility, 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.

Information that must be contained in annual returns

(8) Regulations made under section 81(1)(22) may (without limitation)—

(a) require the return to—

(i) show the quantity of each brand, and of each variant of a brand, of regulated product sold during the previous year; and

(ii) show the recommended price of each brand, and of each variant of a brand, of regulated product sold during the previous year; and

(iii) show any other information about the regulated product in respect of the previous year; and

(b) specify different requirements for different kinds or classes of regulated product.

Section 82: inserted, on 11 November 2020, by section 27 of the Smokefree Environments and Regulated Products (Vaping) Amendment Act 2020 (2020 No 62).

Section 82(1): amended, on 28 October 2021, by section 3 of the Secondary Legislation Act 2021 (2021 No 7).

Section 82(2): amended, on 28 October 2021, by section 3 of the Secondary Legislation Act 2021 (2021 No 7).

Section 82(3): amended, on 28 October 2021, by section 3 of the Secondary Legislation Act 2021 (2021 No 7).

Section 82(4): amended, on 28 October 2021, by section 3 of the Secondary Legislation Act 2021 (2021 No 7).

Section 82(5): amended, on 28 October 2021, by section 3 of the Secondary Legislation Act 2021 (2021 No 7).

Section 82(6): amended, on 28 October 2021, by section 3 of the Secondary Legislation Act 2021 (2021 No 7).

Section 82(7): amended, on 28 October 2021, by section 3 of the Secondary Legislation Act 2021 (2021 No 7).

Section 82(8): amended, on 28 October 2021, by section 3 of the Secondary Legislation Act 2021 (2021 No 7).

82A Regulations for sale and distribution of smoked tobacco products

(1) The Governor-General may, by Order in Council made on the recommendation of the Minister, make regulations prescribing requirements for the purposes of sections 20H, 20I, and 20L, which may include setting—

(a) criteria for the approval of—

(i) a person as an approved smoked tobacco retailer; and

(ii) retail premises to which an application for approval applies; and

(b) fit and proper person criteria; and

(c) requirements for business systems; and

(d) criteria for imposing conditions on approvals or classes of approval.

(2) Regulations made under this section are secondary legislation (*see* Part 3 of the Legislation Act 2019 for publication requirements).

Legislation Act 2019 requirements for secondary legislation made under this section		
Publication	PCO must publish it on the legislation website and notify it in the *Gazette*	LA19 s 69(1)(c)
Presentation	The Minister must present it to the House of Representatives	LA19 s 114
Disallowance	It may be disallowed by the House of Representatives	LA19 ss 115, 116

This note is not part of the Act.

Section 82A: inserted, on 1 January 2023, by section 42 of the Smokefree Environments and Regulated Products (Smoked Tobacco) Amendment Act 2022 (2022 No 79).

82B Regulations relating to requirements for smoked tobacco products

(1) The Governor-General may, by Order in Council made on the recommendation of the Minister, make regulations for all or any of the following purposes:

(a) prescribing safety standards for smoked tobacco products:

(b) specifying changes to a smoked tobacco product for the purposes of the definition of significant change in section 57C(6):

(c) for the purposes of section 57F(1),—

(i) prohibiting constituents of smoked tobacco products:

(ii) prescribing limits for the quantities of constituents in smoked tobacco products or their emissions and a method of determining whether those limits have been exceeded:

(d) prescribing standards and requirements for testing for the purposes of section 57G(3) or 57H(3):

(e) prescribing requirements for the method used to determine whether the limit and the prohibition specified in section 57I for the nicotine content in an individual smoked tobacco product has been complied with.

(2) Before preparing regulations under subsection (1)(a), (c), or (e), the Minister must consider—

(a) the risks and benefits to the population (including both users and non-users of smoked tobacco products) of regulating the constituent; and

(b) the risks and benefits to Māori (including both users and non-users of smoked tobacco products) of regulating the constituent; and

(c) whether regulating a constituent of a smoked tobacco product will reduce the use of the product by reducing the appeal or addictiveness of the product, including—

(i) the likelihood that existing users of smoked tobacco products will stop using the product; and

(ii) the likelihood that those who do not use smoked tobacco products will start using the product.

(3) Regulations made under this section are secondary legislation (*see* Part 3 of the Legislation Act 2019 for publication requirements).

Legislation Act 2019 requirements for secondary legislation made under this section		
Publication	PCO must publish it on the legislation website and notify it in the *Gazette*	LA19 s 69(1)(c)
Presentation	The Minister must present it to the House of Representatives	LA19 s 114
Disallowance	It may be disallowed by the House of Representatives	LA19 ss 115, 116

This note is not part of the Act.

Section 82B: inserted, on 1 January 2023, by section 42 of the Smokefree Environments and Regulated Products (Smoked Tobacco) Amendment Act 2022 (2022 No 79).

83 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 50(1)(a) requirements, or options permitted, for all or any aspects of the appearance of a regulated product:

(b) prescribing for the purposes of sections 50(1)(b)(ii) and 53(1)(c) the quantity or quantities in which a regulated product must be packaged:

(c) prescribing for the purposes of section 52—

(i) the form, size, and content of messages and information to be displayed with, on, or in the package for a regulated product:

(ii) the photographs and pictures to be displayed as part of or in addition to messages about effects relating to a regulated product:

(iii) the circumstances and manner in which the messages, information, photographs, and pictures must be displayed:

(iv) the constituents in a smoked tobacco product or its emissions that must be listed:

(d) prescribing for the purposes of section 50(2)(b) requirements, or options permitted, for the display of the brand or company name on the package for a regulated product, including the circumstances and manner in which the name is to be displayed:

(e) prescribing for the purposes of section 50(2)(c) requirements, or options permitted, for all or any other aspects of the appearance of the package for a regulated product.

(2) Regulations under subsection (1)(a) or (e) may (without limitation) do all or any of the following:

(a) require a regulated product, or the package for a regulated product, to be a prescribed size and shape:

(b) prohibit a regulated product, or the package for a regulated product, from displaying any words or other marks unless they are permitted by section 50(2)(b) or the regulations:

(c) specify types of words or other marks that are permitted to be displayed on a regulated product or the package for a regulated 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 forming part of a regulated product or its package (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 regulated product that must be contained in a package; but

(b) must not prescribe a quantity that does not comply with section 50(2).

(4) Regulations under subsection (1) may (without limitation) prescribe—

(a) requirements or options for all parts of a product or a package (for example, that 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, that any plastic or other wrapping must be consistently transparent, uncoloured, and unmarked):

(c) separate requirements or options for—

(i) different classes of regulated product:

(ii) the packages for different classes of regulated product.

(4A) Regulations under this section are secondary legislation (*see* Part 3 of the Legislation Act 2019 for publication requirements).

(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.

Legislation Act 2019 requirements for secondary legislation made under this section

Publication	PCO must publish it on the legislation website and notify it in the *Gazette*	LA19 s 69(1)(c)
Presentation	The Minister must present it to the House of Representatives	LA19 s 114, Sch 1 cl 32(1)(a)
Disallowance	It may be disallowed by the House of Representatives	LA19 ss 115, 116

This note is not part of the Act.

Section 83: inserted, on 11 November 2020, by section 27 of the Smokefree Environments and Regulated Products (Vaping) Amendment Act 2020 (2020 No 62).

Section 83(1)(c)(iv): inserted, on 1 January 2023, by section 43 of the Smokefree Environments and Regulated Products (Smoked Tobacco) Amendment Act 2022 (2022 No 79).

Section 83(4A): inserted, on 28 October 2021, by section 3 of the Secondary Legislation Act 2021 (2021 No 7).

Notifiable products

Heading: inserted, on 11 November 2020, by section 27 of the Smokefree Environments and Regulated Products (Vaping) Amendment Act 2020 (2020 No 62).

84 Regulations relating to notifiable products

(1) The Governor-General may, by Order in Council, make regulations—

(a) prescribing safety requirements for regulated products that are notifiable products:

(b) specifying changes to the parts or components of a notifiable product for the purpose of the definition of significant change in section 67(2):

(ba) prescribing standards and requirements for testing for the purposes of section 69A(3) or 69B(3):

(c) amending Part 1 of Schedule 2 (which lists the classes of flavours that may be contained in notifiable products sold by any retailer):

(d) amending Part 2 of Schedule 2 (which lists the flavours and classes of flavours that must not be contained in any notifiable product):

(e) specifying requirements that apply to retailers in relation to notifiable products that contain a flavour:

(f) specifying how a notifier must describe a product and its parts when notifying it:

(g) declaring a regulated product to be a notifiable product.

(2) Regulations under this section are secondary legislation (*see* Part 3 of the Legislation Act 2019 for publication requirements).

Legislation Act 2019 requirements for secondary legislation made under this section		
Publication	PCO must publish it on the legislation website and notify it in the *Gazette*	LA19 s 69(1)(c)
Presentation	The Minister must present it to the House of Representatives	LA19 s 114, Sch 1 cl 32(1)(a)
Disallowance	It may be disallowed by the House of Representatives	LA19 ss 115, 116

This note is not part of the Act.

Section 84: inserted, on 11 November 2020, by section 27 of the Smokefree Environments and Regulated Products (Vaping) Amendment Act 2020 (2020 No 62).

Section 84(1)(ba): inserted, on 1 January 2023, by section 44(1) of the Smokefree Environments and Regulated Products (Smoked Tobacco) Amendment Act 2022 (2022 No 79).

Section 84(1)(g): inserted, on 1 January 2023, by section 44(2) of the Smokefree Environments and Regulated Products (Smoked Tobacco) Amendment Act 2022 (2022 No 79).

Section 84(2): inserted, on 28 October 2021, by section 3 of the Secondary Legislation Act 2021 (2021 No 7).

85 Regulations imposing fees

(1) The Governor-General may, by Order in Council, make regulations for all or any of the following purposes:

(a) requiring the payment to the Director-General of fees—

(i) by a notifier in respect of products that must be notified under Part 4; and

(ii) by a notifier in connection with the performance or exercise by the Director-General of any function, power, or duty under Part 4; and

(iii) by an applicant in relation to an application for approval as a specialist vape retailer under Part 1B; and

(iv) by a person in respect of the notification of, or the renewal of a notification of, a notifiable product under section 20R; and

(v) by a distributor in respect of the notification of, or the renewal of a notification of, smoked tobacco products under section 20S; and

(vi) by an applicant in relation to an application for approval as an approved smoked tobacco retailer under Part 1B; and

(vii) by an applicant in relation to an application for approval or temporary approval of a smoked tobacco product under Part 3A; and

(b) prescribing the amounts of those fees and charges or the manner in which those fees are to be calculated.

(2) Any Order in Council made under subsection (1) may authorise the Director-General to refund or waive, in whole or in part and on any conditions as may be prescribed, payment of any fee, charge, or cost payable in relation to a notifier or a class of notifier or a retailer or a class of retailer.

(3) Any fee prescribed under this section is recoverable in any court of competent jurisdiction as a debt due to the Crown.

(4) Regulations under this section are secondary legislation (*see* Part 3 of the Legislation Act 2019 for publication requirements).

(5) If the regulations authorise the Director-General to refund or waive, under subsection (2), payment of a fee, charge, or cost payable,—

(a) the instrument effecting the refund or waiver is secondary legislation (*see* Part 3 of the Legislation Act 2019 for publication requirements), unless it applies only to 1 or more named notifiers or retailers; and

(b) the regulations must contain a statement to that effect.

Legislation Act 2019 requirements for secondary legislation referred to in subsection (4A)		
Publication	PCO must publish it on the legislation website and notify it in the *Gazette*	LA19 s 69(1)(c)
Presentation	The Minister must present it to the House of Representatives	LA19 s 114, Sch 1 cl 32(1)(a)
Disallowance	It may be disallowed by the House of Representatives	LA19 ss 115, 116

This note is not part of the Act.

Legislation Act 2019 requirements for secondary legislation referred to in subsection (5)(a)		
Publication	See the relevant publication, presentation, and disallowance table in the secondary legislation referred to in subsection (4A)	LA19 ss 73, 74, Sch 1 cl 14
Presentation	The Minister must present it to the House of Representatives, unless a transitional exemption applies under Schedule 1 of the Legislation Act 2019	LA19 s 114, Sch 1 cl 32
Disallowance	It may be disallowed by the House of Representatives	LA19 ss 115, 116

This note is not part of the Act.

Section 85: inserted, on 11 November 2020, by section 27 of the Smokefree Environments and Regulated Products (Vaping) Amendment Act 2020 (2020 No 62).

Section 85(1)(a)(iii): replaced, on 1 January 2023, by section 45 of the Smokefree Environments and Regulated Products (Smoked Tobacco) Amendment Act 2022 (2022 No 79).

Section 85(1)(a)(iv): inserted, on 1 January 2023, by section 45 of the Smokefree Environments and Regulated Products (Smoked Tobacco) Amendment Act 2022 (2022 No 79).

Section 85(1)(a)(v): inserted, on 1 January 2023, by section 45 of the Smokefree Environments and Regulated Products (Smoked Tobacco) Amendment Act 2022 (2022 No 79).

Section 85(1)(a)(vi): inserted, on 1 January 2023, by section 45 of the Smokefree Environments and Regulated Products (Smoked Tobacco) Amendment Act 2022 (2022 No 79).

Section 85(1)(a)(vii): inserted, on 1 January 2023, by section 45 of the Smokefree Environments and Regulated Products (Smoked Tobacco) Amendment Act 2022 (2022 No 79).

Section 85(4): inserted, on 28 October 2021, by section 3 of the Secondary Legislation Act 2021 (2021 No 7).

Section 85(5): inserted, on 28 October 2021, by section 3 of the Secondary Legislation Act 2021 (2021 No 7).

86 Regulations imposing levies

(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) a notifiable product under Part 4; or

(b) a smoked tobacco product.

(2) Levies may be prescribed on the basis of—

(a) the costs of the Director-General in performing or exercising the Director-General's functions, powers, and duties under Part 4, where the size of the portion to be met by levies under that Part is determined by the Minister; and

(b) the costs of the Director-General in performing or exercising the Director-General's functions, powers, and duties under Parts 1B and 3A, to the extent that the costs are not met by fees imposed by regulations made under section 85; and

(c) the costs of collecting the levy money.

(3) Levies may be prescribed on the basis that any actual cost that could have been, but has not been, recovered as a levy shortfall for a year may be recovered (along with any financing charge) over any period of up to 5 years.

(4) The regulations may—

(a) specify the class or classes of retailer, distributor, importer, or manufacturer that are required to pay a levy:

(b) specify the amount of levies, or method of calculating or ascertaining the amount of levies:

(c) include in levies, or provide for the inclusion in levies of, any shortfall in recovering the actual costs:

(d) provide for refunds of any over-recovery of the actual costs:

(e) provide for the payment and collection of levies:

(f) provide different levies for different classes of retailer, distributor, importer, or manufacturer:

(g) specify the financial year or part financial year to which a levy applies, and apply that levy to that financial year or part financial year and each subsequent financial year until the levy is revoked or replaced:

(h) for the first financial year to which a levy applies, include in a levy amount or method the costs relating to establishing the database and performing or exercising the functions, duties, and powers of the Director-General that relate to Part 4:

(i) require payment of a levy for a financial year or part financial year, irrespective of the fact that the regulations may be made after that financial year has commenced:

(j) provide for waivers or refunds of the whole or any part of a levy for any case or class of cases.

(5) If a person is in 2 or more classes of retailer, distributor, importer, or manufacturer in respect of which different levies have been prescribed, the person must pay each of those levies (unless the regulations provide otherwise).

(6) Any levy prescribed under this section is recoverable in any court of competent jurisdiction as a debt due to the Crown.

(7) Regulations under this section are secondary legislation (*see* Part 3 of the Legislation Act 2019 for publication requirements).

Legislation Act 2019 requirements for secondary legislation made under this section		
Publication	PCO must publish it on the legislation website and notify it in the *Gazette*	LA19 s 69(1)(c)
Presentation	The Minister must present it to the House of Representatives	LA19 s 114, Sch 1 cl 32(1)(a)
Disallowance	It may be disallowed by the House of Representatives	LA19 ss 115, 116

This note is not part of the Act.

Section 86: inserted, on 11 November 2020, by section 27 of the Smokefree Environments and Regulated Products (Vaping) Amendment Act 2020 (2020 No 62).

Section 86(1): replaced, on 1 January 2023, by section 46(1) of the Smokefree Environments and Regulated Products (Smoked Tobacco) Amendment Act 2022 (2022 No 79).

Section 86(2): replaced, on 1 January 2023, by section 46(1) of the Smokefree Environments and Regulated Products (Smoked Tobacco) Amendment Act 2022 (2022 No 79).

Section 86(4)(a): replaced, on 1 January 2023, by section 46(2) of the Smokefree Environments and Regulated Products (Smoked Tobacco) Amendment Act 2022 (2022 No 79).

Section 86(4)(f): replaced, on 1 January 2023, by section 46(3) of the Smokefree Environments and Regulated Products (Smoked Tobacco) Amendment Act 2022 (2022 No 79).

Section 86(5): replaced, on 1 January 2023, by section 46(4) of the Smokefree Environments and Regulated Products (Smoked Tobacco) Amendment Act 2022 (2022 No 79).

Section 86(7): inserted, on 28 October 2021, by section 3 of the Secondary Legislation Act 2021 (2021 No 7).

Subpart 2—Offences

Subpart 2: inserted, on 11 November 2020, by section 27 of the Smokefree Environments and Regulated Products (Vaping) Amendment Act 2020 (2020 No 62).

Subpart 2 heading: replaced, on 1 January 2023, by section 47 of the Smokefree Environments and Regulated Products (Smoked Tobacco) Amendment Act 2022 (2022 No 79).

Infringement offences

Heading: inserted, on 1 January 2023, by section 48 of the Smokefree Environments and Regulated Products (Smoked Tobacco) Amendment Act 2022 (2022 No 79).

87 Infringement offences

In this subpart,—

infringement fee,—

(a) in relation to an infringement offence against any of sections 38(3), 39(3), 42(2), 43(4), 44(4), 47(4), and 53(4) or section 41(2) (to the extent that it relates to regulated products other than tobacco products), means $200; and

(b) in relation to an infringement offence against any of sections 34(4), 36(5), 37(4), 40(2), 46(3), and 54(4) or section 41(2) (to the extent that it relates to tobacco products), means—

(i) $1,000, in the case of a manufacturer, an importer, or a distributor; or

(ii) $500; and

(c) in relation to an infringement offence against section 20R(4) or 20S(4), $500

infringement offence means an offence against any of sections 20R(4), 20S(4), 34(4), 36(5), 37(4), 38(3), 39(3), 40(2), 41(2), 42(2), 43(4), 44(4), 46(3), 47(4), 53(4), and 54(4).

Section 87: inserted, on 11 November 2020, by section 27 of the Smokefree Environments and Regulated Products (Vaping) Amendment Act 2020 (2020 No 62).

Section 87 **infringement fee** paragraph (a): amended, on 1 January 2023, by section 49(1) of the Smokefree Environments and Regulated Products (Smoked Tobacco) Amendment Act 2022 (2022 No 79).

Section 87 **infringement fee** paragraph (b): amended, on 1 January 2023, by section 49(2) of the Smokefree Environments and Regulated Products (Smoked Tobacco) Amendment Act 2022 (2022 No 79).

Section 87 **infringement fee** paragraph (c): inserted, on 1 January 2023, by section 49(3) of the Smokefree Environments and Regulated Products (Smoked Tobacco) Amendment Act 2022 (2022 No 79).

Section 87 **infringement offence**: amended, on 1 January 2023, by section 49(4) of the Smokefree Environments and Regulated Products (Smoked Tobacco) Amendment Act 2022 (2022 No 79).

Section 87 **infringement offence**: amended, on 1 January 2023, by section 49(5) of the Smokefree Environments and Regulated Products (Smoked Tobacco) Amendment Act 2022 (2022 No 79).

88 Commission of infringement offences

(1) A person who is alleged to have committed an infringement offence may—

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

(b) be served with an infringement notice as provided for in section 89.

(2) Proceedings commenced in the way described in subsection (1)(a) do not require the leave of a District Court Judge or Registrar under section 21(1)(a) of the Summary Proceedings Act 1957.

(3) *See* section 21 of the Summary Proceedings Act 1957 for the procedure that applies if an infringement notice is issued.

Section 88: inserted, on 11 November 2020, by section 27 of the Smokefree Environments and Regulated Products (Vaping) Amendment Act 2020 (2020 No 62).

89 Infringement notices

(1) An enforcement officer may issue an infringement notice on a person if the officer believes on reasonable grounds that the person is committing or has committed an infringement offence.

(2) An enforcement officer may deliver the infringement notice (or a copy of it) to the person alleged to have committed the infringement offence—

(a) by delivering it personally or by post addressed to that person's last known place of residence or business; and

(b) regardless of whether the enforcement officer issued the infringement notice.

(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) An 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.

Section 89: inserted, on 11 November 2020, by section 27 of the Smokefree Environments and Regulated Products (Vaping) Amendment Act 2020 (2020 No 62).

90 Payment of infringement fees

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

Section 90: inserted, on 11 November 2020, by section 27 of the Smokefree Environments and Regulated Products (Vaping) Amendment Act 2020 (2020 No 62).

Other offence provisions

Heading: inserted, on 1 January 2023, by section 50 of the Smokefree Environments and Regulated Products (Smoked Tobacco) Amendment Act 2022 (2022 No 79).

90A Liability for action of employee

(1) This section applies to an offence against section 20G(3), 20H(2), 20J(8), 40(2), 40A(2), 40B(2), 43(4), 44(4), 57B(2), 57C(8), 57D(8), 57F(2), 57H(6), or 69B(7).

(2) Anything done by a person (**A**) as the employee of another person (**B**) is, for the purposes of an offence, to be treated as done by B as well as by A, whether or not it was done with B's knowledge or approval.

(3) Anything done by a person (**A**) as the agent of another person (**B**) is, for the purposes of an offence, to be treated as done by B as well as by A, unless it is done without B's express or implied authority, given before or after the action.

Section 90A: inserted, on 1 January 2023, by section 50 of the Smokefree Environments and Regulated Products (Smoked Tobacco) Amendment Act 2022 (2022 No 79).

90B Burden of proof of reasonable excuse

In proceedings for an offence against any of sections 17(3) to (6) and (8C), 20G(3), 20H(2), 20J(8), 20P(5), 20R(4), 20S(4), 23(5), 27(2), 29(2), 30(5), 31(5), 33(6), 34(4), 36(5), 37(4), 38(3), 39(3), 43(4), 44(4), 46(3), 47(4), 48(2)(b), 53(4), 54(4), 55(2), 57(6), 57C(8), 57D(8), 57G(4), 57H(6), 60(3), 63(2), 65(6), 66(2), 69B(7), 73(4), 75(5) and (6), and 101(6),—

(a) the prosecutor need not assert absence of reasonable excuse in the charging document; and

(b) the burden of proving that the defendant had a reasonable excuse lies on the defendant.

Compare: 1990 No 98 s 65AA

Section 90B: inserted, on 1 January 2023, by section 50 of the Smokefree Environments and Regulated Products (Smoked Tobacco) Amendment Act 2022 (2022 No 79).

Subpart 3—Enforcement officers

Subpart 3: inserted, on 11 November 2020, by section 27 of the Smokefree Environments and Regulated Products (Vaping) Amendment Act 2020 (2020 No 62).

91 Appointment of enforcement officers

(1) The Director-General must appoint to enforce this Act people who are—

(a) employees of the Ministry, a local authority under the Local Government Act 2002, or Health New Zealand established by the Pae Ora (Healthy Futures) Act 2022; 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 the person 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 Act:

(b) appoint people to exercise only some of the powers given to enforcement officers under this Act (**enforcement powers**):

(c) appoint people subject to limitations or restrictions on their exercise of enforcement powers.

(6) An instrument of appointment must state—

(a) the provisions of this Act that an enforcement officer is appointed to enforce (whether all or stated provisions); and

(b) enforcement powers that the enforcement officer is appointed to exercise (whether all enforcement powers or stated powers); and

(c) all limitations and restrictions on the enforcement officer's exercise of enforcement powers.

Section 91: inserted, on 11 November 2020, by section 27 of the Smokefree Environments and Regulated Products (Vaping) Amendment Act 2020 (2020 No 62).

Section 91(1)(a): amended, on 1 January 2023, by section 51 of the Smokefree Environments and Regulated Products (Smoked Tobacco) Amendment Act 2022 (2022 No 79).

Section 91(1)(a): amended, on 1 July 2022, by section 104 of the Pae Ora (Healthy Futures) Act 2022 (2022 No 30).

92 Protection of people acting under authority of this Act

No enforcement officer who does an act or omits to do an act when carrying out a duty, performing a function, or exercising a power conferred on that person by or under this Act is under any civil or criminal liability in respect of that act or omission unless the person has acted or omitted to act in bad faith or without reasonable care.

Section 92: inserted, on 11 November 2020, by section 27 of the Smokefree Environments and Regulated Products (Vaping) Amendment Act 2020 (2020 No 62).

93 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) the officer believes on reasonable grounds that it is a place to which this section applies; and

(b) it is not a dwelling house 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) inspect the place, including any regulated products for sale at the place:

(b) take photographs, videos, or other recordings with any device brought by the officer:

(c) take samples of the air in the place with any device that the officer brings for that purpose:

(d) if the officer believes on reasonable grounds that the place is a place where regulated products are sold from time to time,—

(i) exercise the powers given by section 94:

(ii) inspect any advertising or display material relating to regulated 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 dwelling house 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 93: inserted, on 11 November 2020, by section 27 of the Smokefree Environments and Regulated Products (Vaping) Amendment Act 2020 (2020 No 62).

94 Enforcement officer may require identifying information

(1) An enforcement officer may at any time require information under subsection (2) if the officer believes on reasonable grounds that within the previous 14 days—

(a) regulated products have been sold to a person younger than 18 years in and from a place where regulated products are sold; or

(b) regulated products have, after they are sold, been delivered to a person younger than 18 years in and from the place where they are sold; or

(c) regulated products have been delivered to a person younger than 18 years after being sold at that place (where the regulated products were sold) or at another place.

(2) The enforcement officer may—

(a) require the person that the officer believes on reasonable grounds to have sold, delivered, or arranged for the delivery of the regulated product to, while the person is at the place where the regulated product was sold, give the officer their name and address; and

(b) require the person who appears to be in charge of that place, or part of that place, to give the officer—

(i) the name and address of the person described in paragraph (a); or

(ii) if that information is not within the person's knowledge, the name or any other identifying information within the person's knowledge relating to the person described in paragraph (a).

(3) An enforcement officer who suspects that the person described in subsection (2)(a) is younger than 18 years must not require information under subsection (2)(a) unless—

(a) there is no other person in the place who appears to be in charge of the place; or

(b) there is another person in the place who appears to be in charge of it, but the enforcement officer suspects that person is also younger than 18 years.

(4) An enforcement officer who suspects that the person in charge of the place is younger than 18 years must not require the person to provide information under subsection (2)(b) in relation to a person who is at the place and appears to be 18 years old or older.

Section 94: inserted, on 11 November 2020, by section 27 of the Smokefree Environments and Regulated Products (Vaping) Amendment Act 2020 (2020 No 62).

95 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.

Section 95: inserted, on 11 November 2020, by section 27 of the Smokefree Environments and Regulated Products (Vaping) Amendment Act 2020 (2020 No 62).

96 Purposes for which powers may be used

(1) The powers given by section 93 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 97.

(2) The powers given by section 94 must be used only for, and only to the extent necessary for, the purpose of obtaining the information referred to in section 94(2).

(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 93 and 94.

Section 96: inserted, on 11 November 2020, by section 27 of the Smokefree Environments and Regulated Products (Vaping) Amendment Act 2020 (2020 No 62).

97 Duties of enforcement officers

(1) When an enforcement officer exercises any power under section 93 in respect of a place where there is a person in charge, the enforcement officer must—

(a) identify themselves as an enforcement officer to the person in charge; and

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

(2) When an enforcement officer exercises any power under section 94 in respect of a person, the enforcement officer must—

(a) identify themselves as an enforcement officer to the person; and

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

Section 97: inserted, on 11 November 2020, by section 27 of the Smokefree Environments and Regulated Products (Vaping) Amendment Act 2020 (2020 No 62).

98 Offence to obstruct enforcement officers, intentionally fail to comply with section 93, or give false and misleading information

A person commits an offence, and is liable on conviction to a fine not exceeding $10,000, if the person—

(a) intentionally obstructs, hinders, or resists an enforcement officer exercising or attempting to exercise powers under section 93 or 94; or

(b) intentionally fails to comply with a requirement under section 93; or

(c) when required to give information by or under this Act, gives information that the person knows to be false or misleading.

Section 98: inserted, on 11 November 2020, by section 27 of the Smokefree Environments and Regulated Products (Vaping) Amendment Act 2020 (2020 No 62).

99 Enforcement

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

(2) Every prosecution for an offence against this Act 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 Act ends on the date that is 12 months after the date on which the offence was committed.

Section 99: inserted, on 11 November 2020, by section 27 of the Smokefree Environments and Regulated Products (Vaping) Amendment Act 2020 (2020 No 62).

Subpart 4—Annual returns and reports

Subpart 4: inserted, on 11 November 2020, by section 27 of the Smokefree Environments and Regulated Products (Vaping) Amendment Act 2020 (2020 No 62).

100 Annual reporting requirements for manufacturers, importers, distributors, and retailers of regulated products

(1) Each year a person who is a manufacturer of regulated products or an importer of regulated products must, in accordance with regulations,—

(a) prepare—

(i) a return showing sales-related information required by regulations in respect of the regulated products manufactured or imported by the person; and

(ii) a report of the results of all tests (if any) that the person conducted during the previous year for the purposes of section 56, 57, 57G, 57H, 69A, or 69B; and

(b) file the return and the report with the Director-General no later than 31 January.

(2) Each year a retailer of regulated products must, in accordance with regulations,—

(a) prepare a return showing sales-related information required by regulations in respect of the regulated products or class of regulated products sold by the retailer; and

(b) file the return with the Director-General no later than 31 January.

(2A) A distributor of smoked tobacco products must report to the Director-General on their distribution activities in accordance with regulations.

(3) The Director-General—

(a) must take all practicable steps to ensure that all returns and reports received under this section are publicly available on an Internet site 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.

(4) A person who fails to comply with subsection (1), (2), or (2A) commits an offence and is liable,—

(a) in the case of a body corporate, to a fine not exceeding $10,000; or

(b) in any other case, to a fine not exceeding $5,000.

Section 100: inserted, on 11 November 2020, by section 27 of the Smokefree Environments and Regulated Products (Vaping) Amendment Act 2020 (2020 No 62).

Section 100 heading: amended, on 1 January 2023, by section 53(1) of the Smokefree Environments and Regulated Products (Smoked Tobacco) Amendment Act 2022 (2022 No 79).

Section 100(1)(a)(ii): amended, on 1 January 2023, by section 53(2) of the Smokefree Environments and Regulated Products (Smoked Tobacco) Amendment Act 2022 (2022 No 79).

Section 100(2): amended, on 1 January 2023, by section 53(3) of the Smokefree Environments and Regulated Products (Smoked Tobacco) Amendment Act 2022 (2022 No 79).

Section 100(2A): inserted, on 1 January 2023, by section 53(4) of the Smokefree Environments and Regulated Products (Smoked Tobacco) Amendment Act 2022 (2022 No 79).

Section 100(4): amended, on 1 January 2023, by section 53(5) of the Smokefree Environments and Regulated Products (Smoked Tobacco) Amendment Act 2022 (2022 No 79).

101 Record-keeping requirements for regulated products

(1) This section applies to a manufacturer, importer, exporter, distributor, or retailer of a regulated product.

(2) The person must take reasonable steps to keep accurate records of—

(a) all the regulated products that they manufacture, import, export, buy, sell, or supply; and

(b) for a manufacturer, the constituents required by regulations to be recorded that the manufacturer uses or intends to use in the manufacture of each regulated product.

(3) The person must keep the records for 3 years from the date of each transaction.

(4) An enforcement officer may require a person to provide a copy of the records kept under this section by notice in writing.

(5) The person must provide the enforcement officer with a copy of the records, in the format required in the notice, within 10 working days of receiving the notice.

(6) A person who, without reasonable excuse, fails to comply with subsection (2), (3), or (5) commits an offence and is liable on conviction,—

(a) in the case of a body corporate, to a fine not exceeding $10,000; or

(b) in any other case, to a fine not exceeding $5,000.

Section 101: inserted, on 1 January 2023, by section 54 of the Smokefree Environments and Regulated Products (Smoked Tobacco) Amendment Act 2022 (2022 No 79).

Subpart 5—Appeals

Subpart 5: inserted, on 1 January 2023, by section 55 of the Smokefree Environments and Regulated Products (Smoked Tobacco) Amendment Act 2022 (2022 No 79).

102 Appeals against decision to suspend or cancel product approval or notification

(1) If the Director-General decides to suspend or cancel the approval of a smoked tobacco product or a notification of a notifiable product, the following persons may appeal to the appeals committee against the decision:

(a) in the case of an approval of a smoked tobacco product, the holder of the approval:

(b) in the case of a notification of a notifiable product, the notifier.

(2) The holder of the approval or the notifier may lodge the appeal within 60 days after the Director-General's decision or within any further period that the appeals committee may allow.

(3) The decision being appealed against continues in force unless the appeals committee orders otherwise.

(4) An appeal is by way of rehearing.

(5) On hearing the appeal, the appeals committee may—

(a) confirm, reverse, or modify the decision appealed against:

(b) make any other decision that the Director-General could have made.

(6) The appeals committee must not review any decision, or any part of a decision, not appealed against.

(7) A party may appeal to the High Court—

(a) against a determination of the appeals committee on a question of law only; and

(b) in accordance with the rules of court.

Section 102: inserted, on 1 January 2023, by section 55 of the Smokefree Environments and Regulated Products (Smoked Tobacco) Amendment Act 2022 (2022 No 79).

103 Appeals committee

(1) The appeals committee established under section 79 of this Act is continued.

(2) The appeals committee may determine appeals against decisions of the Director-General to cancel or suspend an approval of a smoked tobacco product or a product notification.

(3) The appeals committee must consist of 3 members, each appointed by the Minister on any terms and conditions that the Minister thinks fit.

(4) The appeals committee may, subject to any provision of this Act or regulations, regulate its own procedure.

(5) In performing its functions or exercising its powers under this Act, the appeals committee must—

(a) act independently; and

(b) comply with the principles of natural justice.

Section 103: inserted, on 1 January 2023, by section 55 of the Smokefree Environments and Regulated Products (Smoked Tobacco) Amendment Act 2022 (2022 No 79).

Subpart 6—Direct access to information by government agencies

Subpart 6: inserted, on 1 January 2023, by section 55 of the Smokefree Environments and Regulated Products (Smoked Tobacco) Amendment Act 2022 (2022 No 79).

104 Direct access to information by government agencies

(1) The purpose of this section is to facilitate access by a government agency to information stored in a database for the purpose of assisting the chief executive of that agency to administer and enforce this Act and the Customs and Excise Act 2018.

(2) The Director-General may, for the purposes of this section, allow the chief executive of the New Zealand Customs Service or any other government agency to access 1 or more databases in accordance with a written agreement entered into by the Director-General and the chief executive.

(3) A written agreement must specify—

(a) the database or databases that may be accessed; and

(b) the particular type or class of information that may be accessed; and

(c) the particular purpose or purposes for which the information is accessed; and

(d) the particular function being, or to be, carried out by the government agency for which the information is required; and

(e) the mechanism by which the information is to be accessed; and

(f) how the information accessed is to be used by the government agency to achieve the particular purpose or purposes; and

(g) the positions or designations of the persons in the government agency who may access the database or databases; and

(h) the records to be kept in relation to each occasion a database is accessed; and

(i) the safeguards that are to be applied for protecting personal information, or commercially sensitive information, that is disclosed; and

(j) the requirements relating to storage and disposal of information obtained by the agency from the database or databases; and

(k) the circumstances (if any) in which the information may be disclosed by the government agency to another agency, and how that disclosure may be made; and

(l) the requirements for reviewing the agreement.

(4) In this section,—

chief executive of a government agency includes the Commissioner of Police

government agency means—

(a) a public service agency (as defined in section 5 of the Public Service Act 2020), other than—

(i) the Ministry; and

(ii) the Government Communications Security Bureau; and

(iii) the New Zealand Security Intelligence Service; and

(iv) Statistics New Zealand:

(b) a Crown agent named in Part 1 of Schedule 1 of the Crown Entities Act 2004:

(c) an independent Crown entity named in Part 3 of Schedule 1 of the Crown Entities Act 2004:

(d) the New Zealand Police:

(e) the New Zealand Defence Force.

Compare: 2018 No 4 s 315

Section 104: inserted, on 1 January 2023, by section 55 of the Smokefree Environments and Regulated Products (Smoked Tobacco) Amendment Act 2022 (2022 No 79).

Subpart 7—Review of certain provisions of Act

Subpart 7: inserted, on 1 January 2023, by section 55 of the Smokefree Environments and Regulated Products (Smoked Tobacco) Amendment Act 2022 (2022 No 79).

105 Ministry must review certain provisions of Act

(1) The Ministry must, no later than 1 January 2029,—

(a) conduct a review of the policy and operation of the following:

(i) Part 1B:

(ii) sections 40A and 40B:

(iii) Part 3A; and

(b) prepare and provide to the Minister a report on the review.

(2) As soon as practicable after receiving the report, the Minister must present a copy to the House of Representatives.

Section 105: inserted, on 1 January 2023, by section 55 of the Smokefree Environments and Regulated Products (Smoked Tobacco) Amendment Act 2022 (2022 No 79).

Schedule 1
Transitional, savings, and related provisions

s 3B

Schedule heading: replaced, on 11 November 2020, by section 28(1) of the Smokefree Environments and Regulated Products (Vaping) Amendment Act 2020 (2020 No 62).

Part 1
Provisions relating to Smoke-free Environments (Tobacco Standardised Packaging) Amendment Act 2016

Schedule 1 Part 1 heading: inserted, on 11 November 2020, by section 28(1) of the Smokefree Environments and Regulated Products (Vaping) Amendment Act 2020 (2020 No 62).

1 Interpretation

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

Schedule 1 clause 1: amended, on 11 November 2020, by section 28(2) of the Smokefree Environments and Regulated Products (Vaping) Amendment Act 2020 (2020 No 62).

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.

Part 2
Provisions relating to Smokefree Environments and Regulated Products (Vaping) Amendment Act 2020

Schedule 1 Part 2: inserted, on 11 November 2020, by section 28(3) of the Smokefree Environments and Regulated Products (Vaping) Amendment Act 2020 (2020 No 62).

5 Interpretation

In this Part, unless the context otherwise requires,—

amendment Act means the Smokefree Environments and Regulated Products (Vaping) Amendment Act 2020

commencement date means the date on which the amendment Act comes into force.

Schedule 1 clause 5: inserted, on 11 November 2020, by section 28(3) of the Smokefree Environments and Regulated Products (Vaping) Amendment Act 2020 (2020 No 62).

6 Application of section 7A to schools and early childhood education and care centres

The manager of any school premises or premises to which section 7A(4) applies—

(a) is not required to comply with section 7A(1)(b) until the date that is 6 months after the commencement of the amendment Act; but

(b) until that date, must comply with section 7A(1)(b) (as it was immediately before the commencement of the amendment Act) unless the manager earlier complies with section 7A(1)(b) (as amended by the amendment Act).

Schedule 1 clause 6: inserted, on 11 November 2020, by section 28(3) of the Smokefree Environments and Regulated Products (Vaping) Amendment Act 2020 (2020 No 62).

7 Application for approval as specialist vape retailer

Section 14A (which relates to applications for approval to be a specialist vape retailer) does not apply until the date that is 9 months after the commencement date.

Schedule 1 clause 7: inserted, on 11 November 2020, by section 28(3) of the Smokefree Environments and Regulated Products (Vaping) Amendment Act 2020 (2020 No 62).

8 Retailer may elect to operate as specialist vape retailer during transitional period

(1) A person may, before the expiry date, elect to be a transitional specialist vape retailer if during the transitional period—

(a) the person sells vaping products from retail premises that are a fixed permanent structure; and

(b) at least 50% of the person's total sales are from the sale of vaping products.

(2) A person who elects to be a transitional specialist vape retailer—

(a) must notify the Director-General of their election:

(b) must, on and from the date of notifying the Director-General, operate as an approved specialist vape retailer in accordance with this Act and the regulations:

(c) must maintain compliance with subclause (1) while operating as an approved specialist retailer under this clause:

(d) ceases to be a transitional specialist vape retailer on the expiry date unless—

(i) the person earlier withdraws their status by notifying the Director-General; or

(ii) subclause (5) applies.

(3) However, a person to whom subclause (1) applies who has not notified the Director-General of their election (if any)—

(a) may, for the 2-week period after the commencement date, operate as an approved specialist vape retailer for the purposes of sections 14(1), 24(l), 25(2), 27(3)(c), 33(4), 33(5), 36(4), and 65(3); but

(b) is not required to comply with the requirements of sections 14(2), 14A(3) and (5), and 100 during that period.

(4) For the purposes of this clause, the retail premises of a transitional specialist vape retailer must be treated as approved vaping premises.

(5) At any time before the expiry date, the Director-General may withdraw a person's status as a transitional specialist vape retailer if the Director-General has reasonable grounds to believe that the person is not complying with subclause (2)(b) or (c).

(6) In this clause—

expiry date means the date that is 12 months after the commencement date

to notify means notifying on an Internet site maintained by or on behalf of the Ministry of Health

transitional period means the period of 12 months after the commencement date.

Schedule 1 clause 8: inserted, on 11 November 2020, by section 28(3) of the Smokefree Environments and Regulated Products (Vaping) Amendment Act 2020 (2020 No 62).

9 Visibility of regulated products from place of business and vending machines

(1) The following provisions do not apply until the date that is 6 months after the commencement date:

(a) section 37 (which restricts the visibility of regulated products (other than vaping products) from a place of business):

(b) section 46 (which restricts the visibility of regulated products (other than vaping products) sold by automatic vending machine).

(2) Sections 23A and 36(1A) (as they were immediately before the commencement of the amendment Act) continue to apply in respect of tobacco products, tobacco packages, and tobacco cartons until the date that is 6 months after the commencement date.

Schedule 1 clause 9: inserted, on 11 November 2020, by section 28(3) of the Smokefree Environments and Regulated Products (Vaping) Amendment Act 2020 (2020 No 62).

10 Requirement that substance in notifiable product must not contain colouring substance

Section 68(3) (which prohibits a substance or mixture of substances that is intended to be vaporised or aerosolised by a notifiable product from containing a colouring substance) does not apply until the date that is 6 months after the commencement date.

Schedule 1 clause 10: inserted, on 11 November 2020, by section 28(3) of the Smokefree Environments and Regulated Products (Vaping) Amendment Act 2020 (2020 No 62).

11 Notifiable products

(1) The following provisions (which relate to the notification of vaping products and smokeless tobacco products) do not apply until the date that is 9 months after the commencement date:

(a) sections 61 to 63 (which require a manufacturer or an importer of a notifiable product to notify the product in accordance with Part 4 before sale in New Zealand); and

(b) section 65(2) (which restricts the flavours that may be contained in notifiable products sold by retailers); and

(c) section 65(3) (which relates to the flavours that may be contained in vaping products sold by specialist vape retailers); and

(d) section 77 (which requires the Director-General to establish a database for the purpose of Part 4).

(2) Sections 60 and 65(1) (which prohibit the sale of notifiable products that have not been notified) do not apply until the date that is 15 months after the commencement date.

Schedule 1 clause 11: inserted, on 11 November 2020, by section 28(3) of the Smokefree Environments and Regulated Products (Vaping) Amendment Act 2020 (2020 No 62).

12 Appeals committee

Section 79 (which establishes an appeals committee) does not apply until the date that is 9 months after the commencement date.

Schedule 1 clause 12: inserted, on 11 November 2020, by section 28(3) of the Smokefree Environments and Regulated Products (Vaping) Amendment Act 2020 (2020 No 62).

13 Continued application of Smoke-free Environments Regulations 2017 to tobacco products and herbal smoking products

(1) Until the effective date, the Smoke-free Environments Regulations 2017 apply, with all necessary modifications, in respect of tobacco products and herbal smoking products as if those regulations were made under subpart 1 of Part 5.

(2) In this clause, **effective date** means the date on which the Smoke-free Environments Regulations 2017 are replaced by regulations made under subpart 1 of Part 5.

Schedule 1 clause 13: inserted, on 11 November 2020, by section 28(3) of the Smokefree Environments and Regulated Products (Vaping) Amendment Act 2020 (2020 No 62).

Part 3
Provisions relating to Smokefree Environments and Regulated Products (Smoked Tobacco) Amendment Act 2022

Schedule 1 Part 3: inserted, on 1 January 2023, by section 56 of the Smokefree Environments and Regulated Products (Smoked Tobacco) Amendment Act 2022 (2022 No 79).

14 Interpretation

In this Part, unless the context otherwise requires,—

amendment Act means the Smokefree Environments and Regulated Products (Smoked Tobacco) Amendment Act 2022

commencement date means the date on which section 56 of the amendment Act comes into force.

Schedule 1 clause 14: inserted, on 1 January 2023, by section 56 of the Smokefree Environments and Regulated Products (Smoked Tobacco) Amendment Act 2022 (2022 No 79).

15 Obligation of person selling notifiable products

Section 20R (which relates to the notification requirement of a person who sells notifiable products) does not apply until the date that is 9 months after the commencement date.

Schedule 1 clause 15: inserted, on 1 January 2023, by section 56 of the Smokefree Environments and Regulated Products (Smoked Tobacco) Amendment Act 2022 (2022 No 79).

16 Obligation of distributor in respect of smoked tobacco products

Section 20S (which relates to the notification requirement of a distributor in respect of smoked tobacco products) does not apply until the date that is 9 months after the commencement date.

Schedule 1 clause 16: inserted, on 1 January 2023, by section 56 of the Smokefree Environments and Regulated Products (Smoked Tobacco) Amendment Act 2022 (2022 No 79).

17 Sale of smoked tobacco products other than by approved smoked tobacco retailer

(1) Section 20G (which prohibits the sale of smoked tobacco products other than by an approved smoked tobacco retailer) does not apply until the date that is 18 months after the commencement date.

(2) Section 20H (which provides for applications for approval to be an approved smoked tobacco retailer) does not apply until the earlier of the following:

(a) the date on which regulations made under section 82A commence:

(b) the date that is 18 months after the commencement date.

Schedule 1 clause 17: inserted, on 1 January 2023, by section 56 of the Smokefree Environments and Regulated Products (Smoked Tobacco) Amendment Act 2022 (2022 No 79).

18 Smoked tobacco product approval and constituent requirements

(1) The following provisions do not apply until the date that is 27 months after the commencement date:

(a) section 57B (which prohibits the sale, manufacture, import, or supply of a smoked tobacco product, unless it is approved):

(b) section 57F (which prohibits the sale, manufacture, import, or supply of a smoked tobacco product that contains a prohibited constituent or a constituent in excess of prescribed limits):

(c) section 57I (which sets a limit and a prohibition in respect of the nicotine content in an individual smoked tobacco product).

(2) Section 57C (which provides for applications for approval for sale or import of smoked tobacco products) does not apply until the earlier of the following:

(a) the date on which regulations made under section 81(1)(20) (relating to approval of smoked tobacco products) commence:

(b) the date that is 27 months after the commencement date.

Schedule 1 clause 18: inserted, on 1 January 2023, by section 56 of the Smokefree Environments and Regulated Products (Smoked Tobacco) Amendment Act 2022 (2022 No 79).

19 Notifier must not sell product unless it has been notified

The requirement in section 60 on a notifier of a notifiable product does not apply in respect of a herbal smoking product until the date that is 9 months after the commencement date.

Schedule 1 clause 19: inserted, on 1 January 2023, by section 56 of the Smokefree Environments and Regulated Products (Smoked Tobacco) Amendment Act 2022 (2022 No 79).

Schedule 2
Notifiable product flavours

ss 65, 68, 84

Schedule 2: inserted, on 11 November 2020, by section 29 of the Smokefree Environments and Regulated Products (Vaping) Amendment Act 2020 (2020 No 62).

Part 1
Classes of flavours that may be contained in notifiable products sold by any retailer

Schedule 2 Part 1: inserted, on 11 November 2020, by section 29 of the Smokefree Environments and Regulated Products (Vaping) Amendment Act 2020 (2020 No 62).

Tobacco

Menthol

Mint

Part 2
Flavours and classes of flavours that must not be contained in any notifiable product

Schedule 1 Part 2: inserted, on 11 November 2020, by section 29 of the Smokefree Environments and Regulated Products (Vaping) Amendment Act 2020 (2020 No 62).

Notes

1 General

This is a consolidation of the Smokefree Environments and Regulated Products Act 1990 that incorporates the amendments made to the legislation so that it shows the law as at its stated date.

2 Legal status

A consolidation is taken to correctly state, as at its stated date, the law enacted or made by the legislation consolidated and by the amendments. This presumption applies unless the contrary is shown.

Section 78 of the Legislation Act 2019 provides that this consolidation, published as an electronic version, is an official version. A printed version of legislation that is produced directly from this official electronic version is also an official version.

3 Editorial and format changes

The Parliamentary Counsel Office makes editorial and format changes to consolidations using the powers under subpart 2 of Part 3 of the Legislation Act 2019. See also PCO editorial conventions for consolidations.

4 Amendments incorporated in this consolidation

Smokefree Environments and Regulated Products (Smoked Tobacco) Amendment Act 2022 (2022 No 79)

Pae Ora (Healthy Futures) Act 2022 (2022 No 30): section 104

Secondary Legislation Act 2021 (2021 No 7): section 3

Smokefree Environments and Regulated Products (Vaping) Amendment Act 2020 (2020 No 62): Part 1

Education and Training Act 2020 (2020 No 38): section 668

Smoke-free Environments (Prohibiting Smoking in Motor Vehicles Carrying Children) Amendment Act 2020 (2020 No 19) (as amended by Smokefree Environments and Regulated Products (Vaping) Amendment Act 2020 (2020 No 62))

Land Transport Amendment Act 2017 (2017 No 34): section 110(3)

Smoke-free Environments (Tobacco Standardised Packaging) Amendment Act 2016 (2016 No 43)

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)

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

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

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)

Smoke-free Environments Amendment Act 1997 (1997 No 32)

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

Public Finance Amendment Act 1992 (1992 No 142): section 42

Civil Aviation Act 1990 (1990 No 98): section 101(1)

Wellington, New Zealand:
Published under the authority of the New Zealand Government—2023