

Smoke-free Environments (Controls and Enforcement) Amendment Bill

Government Bill

Explanatory note

General policy statement

A key purpose of this Bill is to amend the Smoke-free Environments Act 1990 (the **Act**) so that it generally prohibits the display of tobacco products in or at the exterior of retail and other sales outlets. The prohibition will come into force 6 months after it becomes law, but people offering tobacco products for sale may be exempted from compliance during a 2-year transition period.

Although the Act currently restricts retail displays to some extent, it allows tobacco companies to display their products prominently in some 10 000 dairies, supermarkets, and petrol stations. This everyday presence of tobacco products—

- sanctions or normalises their availability and use; and
- increases the risks of young people and others experimenting with smoking; and
- can trigger relapses in addicted smokers trying to quit.

Retail displays of tobacco are also a particular focus of public concern and calls for prohibition.

The proposal to generally prohibit sales-outlet displays of tobacco products is consistent with one of the Act's purposes, as stated in

its Title and in section 21(a)(i); to regulate and impose controls on the marketing, advertising, or promotion of tobacco products.

The Bill also contains other amendments to tighten up tobacco controls and enforcement. They include amendments to—

- prohibit the display on the exterior of retail premises of retailers' names or trading names that are or include words, phrases, trade marks, or company names that have the effect of advertising the availability of tobacco:
- facilitate the enforcement of prohibitions on distribution or supply of tobacco products free of charge or at a reduced charge, or with rewards, by providing that a term of an arrangement (for example, of a contract, or a legally binding or other agreement, undertaking, or understanding) has no effect if compliance with the term would prevent or limit compliance with those prohibitions:
- make an infringement notice scheme available to enforce the prohibition on the sale of tobacco products to people under 18 years. Currently it is an offence, punishable by a fine not exceeding \$2,000, to sell tobacco products to people under 18 years. But prosecutions for this offence have been cumbersome and costly. The infringement notice scheme is a proportionate response, particularly to first-time offending. It is also an efficient and cost-effective way to encourage compliance with the Act by imposing a set financial penalty while holding the defendant accountable:
- ensure that regulations may be made, after consultation and with adequate time frames for compliance, to facilitate the transition to the general prohibition on the display of tobacco products, and to ensure a consistent approach is taken to requirements for signs or for the display and provision of price lists and health warnings. Transitional exemption regulations, for example, are intended to provide flexibility over options and time frames for compliance with the general prohibition on display of tobacco products, in order to avoid unnecessary compliance costs and impacts on small retail businesses.

Overall, the Bill aims, over time, to reduce tobacco uptake, particularly among young people, and to help smokers to quit. The proposed amendments are also consistent with the World

Health Organization's Framework Convention on Tobacco Control (the **WHO FCTC**). New Zealand ratified the WHO FCTC on 27 January 2004, and it entered into force for New Zealand on 27 February 2005. All parties to it have agreed to ban comprehensively all forms of tobacco advertising, promotion, and sponsorship.

Regulatory impact statement

The Ministry of Health produced a regulatory impact statement on 12 October 2010 to help inform the main policy decisions taken by the Government relating to the contents of this Bill.

A copy of this regulatory impact statement can be found at—

- <http://www.moh.govt.nz/publications/compliance>
- <http://www.treasury.govt.nz/publications/informationreleases/ris>

Clause by clause analysis

Clause 1 is the Title clause.

Clause 2 relates to commencement. Amendments relating to promotion and advertising, display of tobacco products, and sales-outlet signs and notices, are to come into force 6 months after Royal assent. But people offering tobacco products for sale may be exempted from complying with the product display prohibition during a 2-year transition period (*see* the analysis below of *new section 23A* substituted by *clause 7*). The rest of the Bill is to come into force on the day after Royal assent.

Clause 3 identifies the principal Act amended: the Smoke-free Environments Act 1990. A reference in this analysis to a provision is, unless the context otherwise requires, a reference to a provision of that Act.

Part 1

Amendments relating to controls on tobacco products

Purpose of Part

Clause 4 states the Part's purpose.

Preliminary provisions

Clause 5 amends section 2(1) by repealing the definitions of children's product, face, pouch pack, tobacconist's shop, and tobacco packages in a visible stack. The amendment is consequential on the repeal of section 23A by *clause 7*.

Promotion and advertising, and display of tobacco products

Clause 6 amends section 22, which prohibits any person from publishing, or arranging for any other person to publish, any tobacco product advertisement in New Zealand. The amendment inserts *new subsections (1A) and (1B)*. They ensure (without limiting the generality of that advertising ban) that a notice or sign is a tobacco product advertisement if the notice or sign—

- communicates information that is or includes tobacco product health or purchase age information or warnings; and
- is displayed inside or at the exterior of the place of business of a person who offers tobacco products for sale (whether by retail or wholesale); and
- is not required or permitted by or under the principal Act.

Clause 7 repeals sections 23 to 23B and substitutes *new sections 23 to 23B*.

New section 23, like section 23, specifies exceptions to the section 22 prohibition on any person publishing, or arranging for any other person to publish, any tobacco product advertisement in New Zealand. Section 23(1)(b) enables a retailer of tobacco products to display, inside that retailer's place of business, a notice identifying the tobacco products that are available for purchase in that place and indicating their price. But the notice must comply with the size, background and lettering, contents, and area requirements specified in section 23(3) and (4).

New section 23(1)(a) replaces section 23(1)(b) but, by contrast, enables a retailer of tobacco products to display inside that retailer's place of business a notice for the public that—

- does no more than identify the tobacco products that are available for purchase in that place and indicate their price; and
- complies with any regulations for the time being in force under *new section 39(1)(ia)* (substituted by *clause 14(2)*).

Section 23(1)(c) enables a retailer of tobacco products to display the retailer's name or trade name on the exterior of the retailer's place of business, in accordance with regulations made under Part 2, even though the name contains any word or expression signifying that any tobacco product is available in that place for purchase, so long as the name does not include the trade mark of a tobacco product or the company name of a tobacco products manufacturer. (Regulation 30 of the Smoke-free Environments Regulations 2007 ensures that a retailer's name or trade name containing a word or expression signifying that a tobacco product is available in the retailer's place of business for purchase cannot be displayed on the exterior of that place more than twice, or without being accompanied by a warning message immediately underneath it in lettering not less than half the size of the name or trade name. *See also* the analysis below of *clause 15*.) *New section 23(1)(b)*, by contrast, enables a retailer of tobacco products to display the retailer's name or trade name at the exterior of the retailer's place of business so long as the name is not and does not include either or both of the following:

- any word or expression signifying that any tobacco product is available in that place for purchase;
- the trade mark of a tobacco product or the company name of a tobacco products manufacturer.

Section 23(2) enables a person who offers any tobacco product for sale by way of an automatic vending machine to display, on the exterior of the vending machine, a notice identifying that tobacco product and indicating its price. But the notice must comply with the size, background and lettering, contents, and area requirements specified in section 23(3) and (4).

New section 23(2), by contrast, enables a person who offers a tobacco product for sale (whether by retail or wholesale) by way of an automatic vending machine to display, on the exterior of the vending machine, a notice for the public that—

- does no more than identify the tobacco product and indicate its price; and
- complies with any regulations for the time being in force under *new section 39(1)(ib)* (substituted by *clause 14(2)*).

(*See also* the analysis below of *clauses 14(1) and 15*.)

Section 23A(1) prohibits a retailer of tobacco products from exposing a tobacco product for sale (within the meaning of section 23B) inside the retailer's place of business otherwise than in compliance with section 23A and regulations under section 39(1)(ia). Section 23A(2) specifies, in paragraphs (a) to (k), detailed requirements (relating to visibility, display, and signage) for exposure of tobacco products for sale inside a retailer's place of business. Section 23A(3) to (6) specify requirements for the sign that section 23A(2)(k) requires to be displayed at each point of sale where tobacco products are exposed for sale. (*See also new section 29AA inserted by clause 9.*)

New section 23A, by contrast, prohibits most display of tobacco products by people who offer tobacco products for sale and by people offering tobacco products for sale by way of an automatic vending machine.

New section 23A(1) prohibits a person who offers tobacco products for sale (whether by retail or wholesale) from allowing any part of a tobacco product, tobacco package, or tobacco carton at the exterior of or inside the person's place of business to be for any reason visible—

- from outside the place; or
- from an area inside the place to which members of the public are allowed access.

New section 23A(2) prohibits a person who offers any tobacco product for sale (whether by retail or wholesale) by way of an automatic vending machine from allowing any part of a tobacco product, tobacco package, or tobacco carton to be for any reason visible from outside the machine.

New sections 23A(1) and (2) do not, however, apply to a tobacco product, tobacco package, or tobacco carton that is visible only to the extent that is necessary for it to be delivered—

- to the person at the place or, as the case requires, to the machine; or
- to its purchaser at or from the place or, as the case requires, from the machine.

New sections 23A(1) and (2) also do not, however, apply to a tobacco product, tobacco package, or tobacco carton that is visible in accordance with any relevant temporary transitional exemption regulations for the time being in force under *new section 39(1)(ic)* (substituted by *clause 14(2)*).

New section 23B ensures that the following enactments expire (and are repealed or, as the case requires, revoked) at the end of the 2-year transition period that starts when *new section 23A* comes into force:

- *new sections 23A(5) and 39(1)(ic) and (6A)* (as substituted and inserted by *clauses 7 and 14(2) and (5)* respectively);
- all temporary transitional exemption regulations under *new section 39(1)(ic)* that are in force immediately before the end of that period.

Arrangements conflicting with Act have no effect

Clause 8 inserts a *new section 28A*, which is related to section 28(1) and (2).

Section 28(1) prevents a manufacturer, distributor, importer, or retailer of tobacco products from distributing a tobacco product, supplying a tobacco product to a person for subsequent distribution, or in the case of a retailer supplying a tobacco product to a person for the purpose of that retailer's business, free of charge, or at a reduced charge. Section 36(4) makes distribution or supply of a tobacco product in contravention of section 28(1) an offence punishable by a fine not exceeding \$50,000. However, section 36(4A) provides that it is a defence to a charge in respect of a contravention of section 28(1) if the person charged proves that he or she was merely giving a normal trade discount or normal trade rebate.

Section 28(2) prevents a person from—

- offering a gift or cash rebate, or the right to participate in a contest, lottery, or game, to the purchaser of a tobacco product in consideration for the purchase of that product, or to a person in consideration for the provision of evidence of such a purchase; or
- offering to a retailer a gift or cash rebate, or the right to participate in a contest, lottery, or game, as an inducement or reward in relation to the purchase or sale of tobacco products by that retailer, the advertising of tobacco products inside that retailer's place of business, or the location of tobacco products in a particular part of that retailer's place of business.

Section 36(5) makes offering a gift, cash rebate, or right of participation in contravention of section 28(2) an offence punishable—

- in the case of a manufacturer, an importer, or a distributor, by a fine not exceeding \$10,000; or
- in any other case, by a fine not exceeding \$5,000.

New section 28A(1) facilitates the enforcement of sections 28(1) and (2) by ensuring that a term has no effect if—

- it is expressed or implied in an arrangement of any kind and in any form; and
- compliance with it would limit or prevent compliance with section 28(1) or (2).

New section 28A(2) and (3) make it clear that the arrangement may, but is not required to, be a contract, or a legally binding or other agreement, undertaking, or understanding.

New section 28A(4) ensures that a person who is, or is claiming through or under, a party to the arrangement may (regardless of whether it is a contract) seek relief under the Illegal Contracts Act 1970 (which applies with the necessary modifications) as if compliance with the term were performance, in a way that gives rise to illegality, of a provision of a contract.

Sales-outlet signs and notices

Clause 9 inserts a *new section 29AA*. *New section 29AA* relates to point-of-sale tobacco product health information or warning signs, and re-enacts in a modified form provisions like those in section 23A. It requires every person who offers for sale (by retail or wholesale) a tobacco product, at all times when regulations under *new section 39(1)(id)* (substituted by *clause 14(2)*) are in force, to display clearly at each point of sale at the exterior of or inside the person's place of business a sign for the public that—

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

Clause 10 amends consequentially section 30. The amendment substitutes a *new subsection (6)*. *New section 30(6)* follows closely section 30(6) in requiring a person who offers for sale by retail a tobacco product or herbal smoking product to display clearly at each point of sale at the exterior of or inside the person's place of business a notice for the public to the effect that the sale of tobacco products and herbal smoking products to people who are younger than 18 years is prohibited. But *new section 30(6)* differs significantly from section 30(6) by requiring the notice for the public to—

- be displayed only at all times when regulations under *new section 39(1)(ie)* (substituted by *clause 14(2)*) are in force; and
- comply with any regulations of that kind for the time being in force.

Part 2

Amendments relating to offences, regulations, and purposes

Purpose of Part

Clause 11 states the Part's purpose.

Offences

Clause 12 amends section 36, which creates offences in respect of smoking products, by substituting a *new subsection (1A)*. The amendment relates to a person who, without reasonable excuse, allows a tobacco product, tobacco package, or tobacco carton to be visible in contravention of *new section 23A(1) or (2)* (substituted by *clause 7*). *New section 36(1A)* ensures that such a person—

- commits an offence; and
- is liable to a fine not exceeding \$10,000.

Infringement offences

Clause 13 inserts *new sections 38A to 38D*, which relate to infringement offences. Section 30(1) prohibits selling tobacco products and herbal smoking products to people younger than 18 years. Contravening section 30(1) is an offence against section 36(6)(a). *New sec-*

tions 38A to 38D ensure that a person who is alleged to have committed an offence against section 36(6)(a) may—

- be proceeded against for the alleged offence by the laying of an information under the Summary Proceedings Act 1957; or
- be served with an infringement notice as provided for in *new section 38C*.

If an infringement notice is issued under *new section 38C*,—

- the infringement notice must be in the form prescribed by regulations (made under *new section 39(1)(ig)* inserted by *clause 14(4)*) and must contain—
 - the amount of the infringement fee, which is an amount not exceeding \$400, prescribed for the purposes of *new section 38A* in regulations (made under *new section 39(1)(if)* inserted by *clause 14(4)*); and
 - all the other particulars specified in *new section 38C(4)*, including any other particulars that may be prescribed by regulations made under *new section 39(1)(ig)* inserted by *clause 14(4)*; and
- 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.

Regulations

Clause 14(1) amends section 39(1) by repealing paragraph (c). Section 39(1)(c) is a power to make regulations prescribing the form and manner in which tobacco products may be identified and depicted on the exterior of vending machines. Tobacco products are no longer to be able to be depicted on the exterior of vending machines, and are to be able to be identified on the exterior of vending machines only by a tobacco product and price notice under *new section 23(2)* (substituted by *clause 7*). Section 39(1)(c) is therefore no longer required. *See also* the analysis below of *clause 15*.

Clause 14(2) amends section 39(1) by repealing paragraph (ia) and substituting *new paragraphs (ia) to (ie)*. *New paragraphs (ia), (ib),*

(*id*), and (*ie*) enable the making of regulations prescribing requirements for the following notices or signs:

- a tobacco product and price notice under *new section 23(1)(a)* (substituted by *clause 7*):
- a tobacco product and price notice under *new section 23(2)* (substituted by *clause 7*):
- point-of-sale tobacco product health information or warning signs under *new section 29AA* (inserted by *clause 9*, and the prescribed requirements for which may relate to all or any of the matters specified in *new section 39(6B)* inserted by *clause 14(5)*):
- a notice for the public (to the effect that the sale of tobacco products and herbal smoking products to people who are younger than 18 years is prohibited) under *new section 30(6)* (substituted by *clause 10*).

New paragraph (ic) enables the making of temporary transitional exemption regulations prescribing for the purposes of *new section 23A(5)* (substituted by *clause 7*) ways in which specified classes of people who offer tobacco products for sale may allow a tobacco product, tobacco package, or tobacco carton to be visible. These regulations may do either or both of the things specified in *new section 39(6A)* inserted by *clause 14(5)*.

Clause 14(3) amends consequentially section 39. One amendment repeals section 39(3), which is related to the section 23A repealed by *clause 7*. The other amends section 39(4) to (6) to ensure that regulations under *new section 39(1)(ia), (ib), (ic), (id), and (ie)*—

- must be made on the recommendation of the Minister of Health; and
- may be recommended by the Minister only after consultation with the industry organisations in section 39(5); and
- must (unless they are temporary transitional exemption regulations under *new section 39(1)(ic)*) come into force no earlier than the day 6 months after the date on which they are made.

Clause 14(4) amends section 39(1) by inserting *new paragraphs (if) and (ig)*. The amendment enables the making of regulations prescribing—

- the infringement fee payable in respect of infringement offences, for the purposes of *new section 38A* (inserted by *clause 13*);
- the form of infringement notices and reminder notices for infringement offences, and any other particulars to be contained in infringement notices and reminder notices, as contemplated by *new section 38C(4)* (inserted by *clause 13*).

Clause 14(5) amends section 39 by inserting *new subsections (6A) and (6B)*.

New section 39(6A) makes it clear that temporary transitional exemption regulations under *new section 39(1)(ic)* may—

- prescribe for different classes of people who offer tobacco products for sale different ways of allowing a tobacco product, tobacco package, or tobacco carton to be visible;
- prescribe conditions with which 1 or more classes of people of that kind must comply before, or while, allowing a tobacco product, tobacco package, or tobacco carton to be visible in a way prescribed.

New section 39(6B) makes it clear that regulations under *new section 39(1)(id)* may (without limitation) prescribe requirements relating to all or any of a number of specified matters relating to point-of-sale tobacco product health information or warning signs under *new section 29AA* (inserted by *clause 9*).

Clause 15 revokes regulations 30 and 31 of the Smoke-free Environments Regulations 2007 consequential on (respectively) the repeal of section 23(1)(c) by *clause 7*, and the repeal of section 39(1)(c) by *clause 14(1)*.

Purposes of Amendment Act

Clause 16 inserts a *new section 4IAA* which ensures that the purposes of the Amendment Act are stated in the principal Act's provisions relating to amendments.

Hon Tariana Turia

**Smoke-free Environments
(Controls and Enforcement)
Amendment Bill**

Government Bill

Contents

	Page
1 Title	3
2 Commencement	3
3 Principal Act amended	3
Part 1	
Amendments relating to controls on tobacco products	
<i>Purpose of Part</i>	
4 Purpose of this Part	3
<i>Preliminary provisions</i>	
5 Interpretation	4
<i>Promotion and advertising, and display of tobacco products</i>	
6 Advertising of tobacco products	4
7 New sections 23 to 23B substituted	4
23 Exemptions from advertising prohibition for retailers and vending machines	5
23A Display of tobacco products in or from sales outlets or vending machines generally prohibited	5
23B Transitional exemption regulations expire 2 years after section 23A comes into force	6

**Smoke-free Environments (Controls and
Enforcement) Amendment Bill**

	<i>Arrangements conflicting with Act have no effect</i>	
8	New section 28A inserted	6
	28A Arrangements conflicting with Act have no effect	6
	<i>Sales-outlet signs and notices</i>	
9	New section 29AA inserted	7
	29AA Point-of-sale tobacco product health information or warning signs	7
10	Sale of tobacco products and herbal smoking products to people under 18 prohibited	7
	Part 2	
	Amendments relating to offences, regulations, and purposes	
	<i>Purpose of Part</i>	
11	Purpose of this Part	8
	<i>Offences</i>	
12	Offences in respect of smoking products	8
	<i>Infringement offences</i>	
13	New sections 38A to 38D inserted	8
	38A Infringement offences	8
	38B Commission of infringement offences	9
	38C Infringement notices	9
	38D Payment of infringement fees	10
	<i>Regulations</i>	
14	Regulations	10
15	Smoke-free Environments Regulations 2007 amended	12
	<i>Purposes of Amendment Act</i>	
16	New section 41AA inserted	12
	41AA Purposes of Smoke-free Environments (Controls and Enforcement) Amendment Act 2010	12

The Parliament of New Zealand enacts as follows:

- 1 Title**
This Act is the Smoke-free Environments (Controls and Enforcement) Amendment Act **2010**.
- 2 Commencement** 5
(1) **Sections 5 to 7, 9, 10, 12, 14(1) to (3) and (5), and 15**
(which contain amendments relating to promotion and advertising, display of tobacco products, and sales-outlet signs and notices) come into force at the end of the period of 6 months that starts on the day after the date on which this Act receives the Royal assent. 10
(2) The rest of this Act comes into force on the day after the date on which this Act receives the Royal assent.
- 3 Principal Act amended** 15
This Act amends the Smoke-free Environments Act 1990.

Part 1
Amendments relating to
controls on tobacco products

Purpose of Part

- 4 Purpose of this Part** 20
The purpose of this Part is to amend the principal Act so that it—
- (a) generally prohibits the display of tobacco products in or at the exterior of retail and other sales outlets, but also provides for temporary transitional exemptions from compliance during a 2-year transition period: 25
- (b) prohibits the display, on the exterior of retail premises, of retailers' names or trading names that are or include words, phrases, trade marks, or company names that have the effect of advertising the availability of tobacco: 30
- (c) treats sales-outlet notices or signs that are or include tobacco product health or purchase age information or

	warnings as prohibited advertisements unless those notices or signs are ones that it requires or permits:	
	(d) facilitates the enforcement of prohibitions on distribution or supply of tobacco products free of charge or at a reduced charge, or with rewards, by providing that a term of an arrangement has no effect if compliance with the term would prevent or limit compliance with those prohibitions:	5
	(e) is adjusted by related amendments and repeals.	
	<i>Preliminary provisions</i>	10
5	Interpretation Section 2(1) is consequentially amended by repealing the definitions of children’s product, face, pouch pack, tobacco- conist’s shop, and tobacco packages in a visible stack.	
	<i>Promotion and advertising, and display of tobacco products</i>	15
6	Advertising of tobacco products Section 22 is amended by inserting the following subsections after subsection (1):	
	“(1A) A notice or sign is a tobacco product advertisement if the notice or sign—	20
	“(a) communicates information that is or includes tobacco product health information or warnings, tobacco product purchase age information or warnings, or both; and	
	“(b) is displayed inside or at the exterior of the place of business of a person who offers tobacco products for sale (whether by retail or wholesale); and	25
	“(c) is not required or permitted by this Act, regulations under this Act, or both.	
	“(1B) Subsection (1A) does not limit the generality of subsection (1).”	30
7	New sections 23 to 23B substituted Sections 23 to 23B are repealed and the following sections substituted:	

“23 Exemptions from advertising prohibition for retailers and vending machines

“(1) A retailer of tobacco products may (notwithstanding section 22) do either or both of the following things:

“(a) display inside that retailer’s place of business any notice for the public that— 5

“(i) does no more than identify the tobacco products that are available for purchase in that place and indicate their price; and

“(ii) complies with any regulations for the time being in force under **section 39(1)(ia)**: 10

“(b) display the retailer’s name or trade name at the exterior of the retailer’s place of business so long as the name is not and does not include either or both of the following:

“(i) any word or expression signifying that any tobacco product is available in that place for purchase: 15

“(ii) the trade mark of a tobacco product or the company name of a tobacco products manufacturer.

“(2) Any person who offers any tobacco product for sale (whether by retail or wholesale) by way of an automatic vending machine may (notwithstanding section 22) display, on the exterior of the vending machine, any notice for the public that— 20

“(a) does no more than identify the tobacco product and indicate its price; and 25

“(b) complies with any regulations for the time being in force under **section 39(1)(ib)**.

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

“(1) A person who offers tobacco products for sale (whether by retail or wholesale) must not allow any part of a tobacco product, tobacco package, or tobacco carton at the exterior of or inside the person’s place of business to be for any reason visible— 30

“(a) from outside the place; or

“(b) from an area inside the place to which members of the public are allowed access. 35

“(2) A person who offers any tobacco product for sale (whether by retail or wholesale) by way of an automatic vending machine

must not allow any part of a tobacco product, tobacco package, or tobacco carton to be for any reason visible from outside the machine.

- “(3) **Subsection (1)** does not limit or affect, and is not limited or affected by, **subsection (2)**. 5
- “(4) **Subsections (1) and (2)** do not, however, apply to a tobacco product, tobacco package, or tobacco carton that is visible only to the extent that is necessary for it to be delivered—
- “(a) to the person at the place or, as the case requires, to the machine; or 10
 - “(b) to its purchaser at or from the place or, as the case requires, from the machine.
- “(5) **Subsections (1) and (2)** do not, however, apply to a tobacco product, tobacco package, or tobacco carton that is visible in a way that complies with any relevant temporary transitional exemption regulations for the time being in force under **section 39(1)(ic)**. 15
- “**23B Transitional exemption regulations expire 2 years after section 23A comes into force**
- “(1) The following enactments expire at the end of the 2-year transition period: 20
- “(a) **sections 23A(5) and 39(1)(ic) and (6A)**; and
 - “(b) all regulations under **section 39(1)(ic)** that are in force immediately before the end of that period.
- “(2) The 2-year transition period ends on the 2nd anniversary of the day on which **section 23A** (as substituted by **section 7** of the **Smoke-free Environments (Controls and Enforcement) Amendment Act 2010**) comes into force. 25
- “(3) On their expiry those enactments are repealed or, as the case requires, revoked.” 30

Arrangements conflicting with Act have no effect

8 New section 28A inserted

The following section is inserted after section 28:

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

- “(1) A term has no effect if— 35

- “(a) it is expressed or implied in an arrangement of any kind in any form; and
 - “(b) compliance with it would limit or prevent compliance with section 28(1) or (2).
- “(2) The arrangement may be a contract, or a legally binding or other agreement, undertaking, or understanding. 5
- “(3) **Subsection (2)** does not limit **subsection (1)**.
- “(4) A person who is, or is claiming through or under, a party to the arrangement may (regardless of whether it is a contract) seek relief under the Illegal Contracts Act 1970 (which applies with the necessary modifications) as if compliance with the term were performance, in a way that gives rise to illegality, of a provision of a contract.” 10

Sales-outlet signs and notices

- 9 New section 29AA inserted** 15
The following section is inserted before section 29A:
- “29AA Point-of-sale tobacco product health information or warning signs**
- Every person who offers for sale (by retail or wholesale) a tobacco product must, at all times when regulations under **section 39(1)(id)** are in force, display clearly at each point of sale at the exterior of or inside the person’s place of business a sign for the public that— 20
- “(a) does no more than communicate tobacco product health information or warnings (which may, without limitation, be or include the message ‘SMOKING KILLS Ka mate koe i te kai hikareti’); and 25
 - “(b) complies with any regulations for the time being in force under **section 39(1)(id)**.”
- 10 Sale of tobacco products and herbal smoking products to people under 18 prohibited** 30
Section 30 is consequentially amended by repealing subsection (6) and substituting the following subsection:
- “(6) Every person who offers for sale by retail a tobacco product or herbal smoking product must, at all times when regulations under **section 39(1)(ie)** are in force, display clearly at each 35

point of sale at the exterior of or inside the person’s place of business a notice for the public that—

- “(a) does no more than communicate information or warnings to the effect that the sale of tobacco products and herbal smoking products to people who are younger than 18 years is prohibited; and 5
- “(b) complies with any regulations for the time being in force under **section 39(1)(ie)**.”

Part 2
Amendments relating to 10
offences, regulations, and purposes

Purpose of Part

11 Purpose of this Part

The purpose of this Part is to amend the principal Act so that—

- (a) it makes an infringement notice scheme available to enforce the prohibition on the sale of tobacco products to people under 18 years: 15
- (b) its provisions relating to offences, regulations, and amendments are adjusted in the light of the amendments made to it by this Act. 20

Offences

12 Offences in respect of smoking products

Section 36 is amended by repealing subsection (1A) and substituting the following subsection:

- “(1A) A person who, without reasonable excuse, allows a tobacco product, tobacco package, or tobacco carton to be visible in contravention of **section 23A(1) or (2)** commits an offence and is liable to a fine not exceeding \$10,000.” 25

Infringement offences

13 New sections 38A to 38D inserted 30

The following sections are inserted after section 38:

“38A Infringement offences

In **sections 38A** to 39,—

“**infringement fee**, in relation to an infringement offence, means an amount not exceeding \$400, prescribed for the purposes of this section in regulations made under **section 39(1)(if)**

“**infringement offence** means an offence against section 36(6)(a) (which relates to contravening section 30(1), which prohibits selling tobacco products and herbal smoking products to people younger than 18 years).

“Compare: 1989 No 63 s 162A

“**38B Commission of infringement offences** 10

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

“(a) be proceeded against for the alleged offence by the laying of an information under the Summary Proceedings Act 1957; or 15

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

“Compare: 1989 No 63 s 162B

“**38C Infringement notices**

“(1) If an enforcement officer observes a person committing an infringement offence, or he or she has reasonable cause to believe that such an offence is being or has been committed by that person, an infringement notice in respect of that offence may be served on that person. 20

“(2) Any enforcement officer (not necessarily the person who issued the notice) may deliver the infringement notice (or a copy of it) to the person alleged to have committed an infringement offence personally or by post addressed to that person’s last known place of residence. 25

“(3) For the purposes of the Summary Proceedings Act 1957, 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. 30

“(4) Every infringement notice must be in the prescribed form and must contain the following particulars: 35

- “(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 5
 - “(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 10
 - “(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 15
 - “(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. 20
- “Compare: 1989 No 63 s 162C

“**38D Payment of infringement fees**

All infringement fees paid in respect of infringement offences must be paid into a Crown Bank Account. 25

“Compare: 1989 No 63 s 162D”.

Regulations

14 Regulations

- (1) Section 39(1) is amended by repealing paragraph (c).
- (2) Section 39(1) is amended by repealing paragraph (ia) and substituting the following paragraphs: 30
 - “(ia) prescribing for the purposes of **section 23(1)(a)(ii)** requirements with which a tobacco product and price notice under **section 23(1)(a)** must comply:

- “(ib) prescribing for the purposes of **section 23(2)(b)** requirements with which a tobacco product and price notice under **section 23(2)** must comply:
- “(ic) prescribing for the purposes of **section 23A(5)** ways in which a class or classes of people who offer tobacco products for sale may allow a tobacco product, tobacco package, or tobacco carton to be visible: 5
- “(id) prescribing for the purposes of **section 29AA** requirements with which point-of-sale tobacco product health information or warning signs under that section must comply: 10
- “(ie) prescribing for the purposes of **section 30(6)(b)** requirements with which a notice for the public (to the effect that the sale of tobacco products and herbal smoking products to people who are younger than 18 years is prohibited) under **section 30(6)** must comply:” 15
- (3) Section 39 is amended consequentially—
 - (a) by repealing subsection (3); and
 - (b) by inserting “, **(ib), (ic), (id), or (ie)**” after “subsection (1)(ia)” in each place where it appears in subsections (4) and (5); and 20
 - (c) by inserting “, **(ib), (id), or (ie)**” after “subsection (1)(ia)” in subsection (6).
- (4) Section 39(1) is amended by inserting the following paragraphs after paragraph (ia): 25
 - “(if) prescribing the infringement fee payable in respect of infringement offences:
 - “(ig) prescribing the form of infringement notices and reminder notices for infringement offences, and any other particulars to be contained in infringement notices and reminder notices:” 30
- (5) Section 39 is amended by inserting the following subsections after subsection (6):
 - “(6A) Regulations under **subsection (1)(ic)** may (without limitation) do either or both of the following: 35
 - “(a) prescribe for different classes of people who offer tobacco products for sale different ways of allowing a tobacco product, tobacco package, or tobacco carton to be visible:

- “(b) prescribe conditions with which 1 or more classes of people of that kind must comply before, or while, allowing a tobacco product, tobacco package, or tobacco carton to be visible in a way prescribed.
- “(6B) Regulations under **subsection (1)(id)** may (without limitation) prescribe requirements relating to all or any of the following matters relating to signs under **section 29AA**:
 - “(a) the health information or warnings to be communicated by them:
 - “(b) the shape and lengths of their sides: 10
 - “(c) the width, and other aspects of, the borders around their edges:
 - “(d) the typeface or font, point size, other aspects of the format or layout, or of the clarity, legibility, and weight, of the printing on them of the health information or warnings to be communicated by them: 15
 - “(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.” 20

15 Smoke-free Environments Regulations 2007 amended
Regulations 30 and 31 of the Smoke-free Environments Regulations 2007 are consequentially revoked. 25

Purposes of Amendment Act

- 16 New section 41AA inserted**
The following section is inserted after section 41:
- “41AA Purposes of Smoke-free Environments (Controls and Enforcement) Amendment Act 2010 30**
- “(1) The purpose of **Part 1** of the **Smoke-free Environments (Controls and Enforcement) Amendment Act 2010** is to amend this Act so that it—
- “(a) generally prohibits the display of tobacco products in or at the exterior of retail and other sales outlets, but also 35

- provides for temporary transitional exemptions from compliance during a 2-year transition period:
- “(b) prohibits the display, on the exterior of retail premises, of retailers’ names or trading names that are or include words, phrases, trade marks, or company names that have the effect of advertising the availability of tobacco: 5
 - “(c) treats sales-outlet notices or signs that are or include tobacco product health or purchase age information or warnings as prohibited advertisements unless those notices or signs are ones that it requires or permits: 10
 - “(d) facilitates the enforcement of prohibitions on distribution or supply of tobacco products free of charge or at a reduced charge, or with rewards, by providing that a term of an arrangement has no effect if compliance with the term would prevent or limit compliance with those prohibitions: 15
 - “(e) is adjusted by related amendments and repeals.
- “(2) The purpose of **Part 2** of the **Smoke-free Environments (Controls and Enforcement) Amendment Act 2010** is to amend this Act so that— 20
- “(a) it makes an infringement notice scheme available to enforce the prohibition on the sale of tobacco products to people under 18 years:
 - “(b) its provisions relating to offences, regulations, and amendments are adjusted in the light of the amendments made to it by that Amendment Act.” 25
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