

Smokefree Environments and Regulated Products (Smoked Tobacco) Amendment Bill

Government Bill

Explanatory note

General policy statement

The Government has the goal of reducing daily smoking rates to less than 5% across all population groups by 2025 (the **Smokefree 2025 goal**). While smoking rates have declined overall, Māori, Pacific people, and those living in the most deprived areas of New Zealand continue to have disproportionately higher smoking rates, and experience greater health inequities from smoking.

The Smokefree Aotearoa 2025 Action Plan sets out several measures that focus less on influencing consumer behaviour and more on changing the smoking environment. Legislative change is required to achieve the Smokefree 2025 goal and address the gaps remaining in New Zealand's comprehensive regulation of tobacco products.

This Bill amends the Smokefree Environments and Regulated Products Act 1990 and the Customs and Excise Act 2018 as follows:

- *Reducing retail availability:* new provisions restrict the sale of smoked tobacco products to retailers approved by the Director-General of Health, set out the application process and criteria to be an approved retailer, and provide for the Director-General of Health to set a maximum number of retail premises allowed in a certain area. The intent of these provisions is to significantly limit the number of retailers able to sell smoked tobacco products:
- *Amending the age limits for sale of smoked tobacco products:* new provisions allow for the introduction of a smokefree generation policy by prohibiting the sale of smoked tobacco products to anyone born on or after 1 January 2009. The intent of the policy is to prevent young people, and successive generations, from ever taking up smoking:
- *Reducing the appeal and addictiveness of smoked tobacco products:* new provisions require that only smoked tobacco products that meet requirements for

constituents will be able to be manufactured, imported, or offered for sale or supply, and provide that it will be an offence for any smoked tobacco product to contain constituents exceeding any limits prescribed in, or prohibited by, regulations. A specific provision provides for a regulation-making power to set limits on the quantity of nicotine levels and other constituents of smoked tobacco products. The intent of these provisions is to increase the number of people who successfully stop smoking, and support tamariki/young people to remain smokefree, by making smoked tobacco products less appealing and addictive.

These legislative changes are mutually reinforcing, and together are expected to deliver the substantial changes needed to achieve the Smokefree 2025 goal and improve health outcomes for all New Zealanders.

This Bill is an omnibus Bill introduced in accordance with Standing Order 267(1)(a). That Standing Order provides that an omnibus Bill to amend more than 1 Act may be introduced if the amendments deal with an interrelated topic that can be regarded as implementing a single broad policy. The single broad policy implemented by the amendments in this Bill is to achieve the Smokefree 2025 goal.

Departmental disclosure statement

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

A copy of the statement can be found at <http://legislation.govt.nz/disclosure.aspx?type=bill&subtype=government&year=2022&no=143>

Regulatory impact statement

The Ministry of Health produced a regulatory impact statement on 3 November 2021 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—

- <https://www.health.govt.nz/about-ministry/information-releases/regulatory-impact-statements/regulatory-impact-statement-smokefree-aotearoa-2025-action-plan#:~:text=This%20Regulatory%20Impact%20Statement%20has,for%20the%20tobacco%20control%20portfolio>
- <https://treasury.govt.nz/publications/informationreleases/ris>

Clause by clause analysis

Clause 1 is the Title clause.

Clause 2 is the commencement clause. *Clauses 18, 19(1) and (3), 20 to 24, 39(1) and (2), and 48* come into force on **1 January 2027**. The rest of the Bill comes into force on the day after the date on which it receives the Royal assent.

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

Part 1

Amendments to principal Act

Clause 4 amends section 2 of the principal Act, which defines terms used in the Act.

Clause 5 amends section 3A of the principal Act, which provides the purposes of the Act. The description of the purposes of the Act has been simplified into 3 parts, addressing the purposes of regulation of smoked tobacco products, the purposes of regulation of notifiable products, and the requirement to give effect to New Zealand's obligations and commitments under international law. The purposes now include the matters dealt with in this Bill.

Clause 6 inserts new *sections 3AA and 3AB* into the principal Act. *New section 3AA* provides an outline of the principal Act, as amended by this Bill. *New section 3AB* describes how the principal Act, as amended by this Bill, provides for the Crown's intention to give effect to the principles of te Tiriti o Waitangi/the Treaty of Waitangi.

Clause 7 repeals section 4.

Clause 8 amends section 6 to remove duplication of the requirement to provide a dedicated vaping room in certain workplaces.

Clause 9 amends section 14 to provide that section 5 does not apply to a person who vapes in any approved vaping premises of a specialist vape retailer or to the specialist vape retailer who allows the person to vape in those premises.

Clause 10 repeals section 14A.

Clause 11 amends section 16 to correct a cross-reference.

Clause 12 repeals section 20B.

Clause 13 inserts *new Part 1B* into the principal Act. *New Part 1B* sets out in 1 place the requirements for entry into both the smoked tobacco and vaping products retail markets. The requirements include provision for the Director-General of Health (the **Director-General**) to set the maximum numbers of approved smoked tobacco retailers in defined areas (*new section 20M*), and obligations on general vape retailers and distributors of smoked tobacco products to notify the Director-General that they are selling or distributing products (*new sections 20R and 20S*).

Clauses 14 and 15 repeal sections 21 and 22.

Clause 16 amends section 25 to provide separate signage exceptions for specialist vaping retailers and retailers of other regulated products from the prohibition on advertising of regulated products.

Clause 17 amends section 33 to limit the permitted exception in that section for a specialist vape retailer to supply free or reduced charge vaping products from their approved vaping premises or approved Internet site.

Clauses 18 to 24 make amendments to the principal Act to provide for the prohibition of the sale or supply of smoked tobacco products to persons born on or after 1 January 2009. The prohibition of the sale or supply of other regulated products to persons under the age of 18 years remains.

Clause 25 replaces section 47. *New section 47* now relates to vending machines placed in a public place as defined in the Summary Offences Act 1981 and limits the use of vending machines to those requiring a person to be close to the machine to activate it.

Clauses 26 to 30 amend Part 3 of the principal Act to remove provisions that regulate the constituents of regulated products. These provisions are now found in *new Part 3A* and *new sections 69A and 69B*.

Clause 31 inserts *new Part 3A* into the principal Act. *New Part 3A* sets out approval requirements for smoked tobacco products, limits on the constituents of smoked tobacco products, and testing requirements for smoked tobacco products. *New section 57H* requires the Minister of Health to recommend the making of regulations within 21 months of the commencement of this Bill prescribing limits on the quantities of nicotine in smoked tobacco products and a method of determining whether those limits have been exceeded.

Clauses 32 and 33 repeal sections 58 and 59.

Clause 34 amends section 65 to apply requirements relating to flavour only to vaping products and smokeless tobacco products.

Clause 35 inserts *new sections 69A and 69B*, which set out testing requirements for notifiable products.

Clause 36 repeals section 76.

Clause 37 amends section 77 to provide for the protection of the confidentiality of all information entered on the database established under that section.

Clause 38 repeals section 79.

Clause 39 amends section 81 to provide regulation-making powers required to implement other provisions inserted by this Bill into the principal Act.

Clause 40 inserts *new sections 82A and 82B* to provide regulation-making powers to support the regulation of the sale and distribution of smoked tobacco products and other requirements relating to smoked tobacco products.

Clause 41 amends section 83 to provide for regulations that specify the constituents of a smoked tobacco product that must be listed on packaging.

Clause 42 amends section 84 to provide for regulations that prescribe standards and requirement for testing under *new sections 69A and 69B*, and for regulations that

declare a regulated product to be a notifiable product for the purposes of the principal Act.

Clause 43 amends section 85 to provide a regulation-making power for the setting of fees in relation to new services provided under this Bill.

Clause 44 amends section 86 to provide a regulation-making power for the setting of levies in relation to new functions, powers, and duties of the Director-General under this Bill.

Clause 45 amends the subpart 2 heading in Part 5.

Clause 46 inserts a new cross-heading.

Clause 47 amends the definition of infringement fee and infringement offence in section 87 to include new infringement offences for provisions introduced by this Bill.

Clause 48 inserts a new cross-heading and *new section 90A*, which deals with employer liability for the actions of employees in specified new sections.

Clause 49 amends section 94 to provide for the change from a prohibited age for sale or supply of smoked tobacco products to the smokefree generation prohibition.

Clause 50 amends section 100 to update the reporting requirements in line with the changes made under this Bill.

Clause 51 inserts *new section 101*, which sets out the record-keeping requirements for a manufacturer, importer, exporter, distributor, or retailer of regulated products.

Clause 52 inserts *new subparts 5 and 6* into Part 5 of the principal Act. *New subpart 5* contains provisions dealing with appeals against decisions of the Director-General in respect of approvals of smoked tobacco products or notifications of notifiable products. *New subpart 6* provides for agreements between the Director-General and the chief executive of a government agency for access to information in a database for the purpose of assisting the chief executive to administer and enforce the principal Act and the Customs and Excise Act 2018.

Clause 53 inserts into Schedule 1 of the principal Act transitional, savings, and related provisions, which have effect according to their terms. The provisions are set out in the *Schedule* of this Bill.

Part 2

Amendments to other enactments

Subpart 1—Amendments to Customs and Excise Act 2018

Clauses 54 to 56 amend section 95A and Schedule 3A of the Customs and Excise Act 2018. The amendments align the provisions of the Customs and Excise Act 2018 with the amendments made under *Part 1*.

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

Clauses 57 to 64 amend the Smokefree Environments and Regulated Products Regulations 2021 to align the regulations with the amendments made under *Part 1*.

Hon Dr Ayesha Verrall

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Part 2

Amendments to other enactments

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New Part 3 inserted into Schedule 1

The Parliament of New Zealand enacts as follows:

1 Title

This Act is the Smokefree Environments and Regulated Products (Smoked Tobacco) Amendment Act **2022**.

2 Commencement

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(1) **Sections 18, 19(1) and (3), 20 to 24, 39(1) and (2), and 48** come into force on **1 January 2027**.

(2) The rest of this Act comes into force on the day after the date on which it receives the Royal assent.

3 Principal Act

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

Part 1

Amendments to principal Act

4 Section 2 amended (Interpretation)

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

approved smoked tobacco retailer means a person who is approved by the Director-General as an approved smoked tobacco retailer under **section 20H** 5

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

database means the database established under section 77

entity includes— 10

(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: 15

(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 20

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

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

iwi-Māori partnership board has the same meaning as in section 4 of the Pae Ora (Healthy Futures) Act 2022 25

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

notifiable product means—

(a) a vaping product; or

(b) a smokeless tobacco product; or 30

(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

product safety requirements means safety requirements prescribed in regulations for a notifiable product 35

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

responsible person, in relation to an entity, means— 5

- (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

smoked tobacco product means a tobacco product that is intended to be used in a way that involves ignition or the combustion process 10

- (2) In section 2(1), definition of **automatic vending machine**, delete “self-service”.
- (3) In section 2(1), repeal the definition of **harmful constituent**.
- (4) In section 2(1), definition of **specialist vape retailer**, replace “section 14A” with “**section 20P**”. 15

5 Section 3A amended (Purposes of this Act)

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

The purposes of this Act are—

- (a) to provide for the regulation of smoked tobacco products— 20
 - (i) to prevent the harmful effect of other people’s smoking on the health of others, and especially on young people and children; and
 - (ii) to significantly reduce the retail availability of smoked tobacco products; and
 - (iii) to prevent young people, and successive generations, from ever taking up smoking; and 25
 - (iv) to reduce the appeal and addictiveness of smoked tobacco products; and
 - (v) to restrict all forms of advertising and promotion; and
 - (vi) to reduce disparities in smoking rates and smoking-related illnesses between New Zealand population groups, and in particular between Māori and other groups; and 30
- (b) to provide for the regulation of notifiable products in a way that seeks to minimise harm; 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. 35

6 New sections 3AA and 3AB inserted

After section 3A, insert:

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. | 5 |
| (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. | 10 |
| (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— | 15 |
| | (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. | 20 |
| (9) | This section is intended as a guide only. | |

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— | 25 |
| | (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 | 30 |
| (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 | 35 |

	(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	5
	(ii) consult the Māori Health Authority before determining the iwi or other Māori to consult; and	
	(d) requires the Minister, before preparing regulations in relation to the sale and distribution of 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).	10
7	Section 4 repealed (Purposes of this Part)	
	Repeal section 4.	
8	Section 6 amended (Dedicated rooms in hospital care institutions, residential disability care institutions, and rest homes)	15
	In section 6(1)(a), delete “or vaping” in each place.	
9	Section 14 amended (Specialist vape retailers and vaping in approved vaping premises exempt)	
	In section 14(1), replace “This Part” with “Section 5”.	20
10	Section 14A repealed (Application for approval as specialist vape retailer)	
	Repeal section 14A.	
11	Section 16 amended (Complaints to Director-General)	
	In section 16(3), replace “section 14” with “section 91”.	
12	Section 20B repealed (Purpose of this Part)	25
	Repeal section 20B.	
13	New Part 1B inserted	
	After section 20F, insert:	

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

Subpart 1—Approval as smoked tobacco retailer

- 20G Sale of smoked tobacco products other than by approved smoked tobacco retailer prohibited** 5
- (1) A person must not sell or offer for sale at retail a smoked tobacco product unless the person is an approved smoked tobacco retailer.
- (2) A person who, without reasonable excuse, contravenes **subsection (1)** commits an offence and is liable on conviction to a fine not exceeding \$400,000. 10
- 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 15
- (b) if applicable, specified Internet sites directly connected to 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. 20
- 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— 25
- (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— 30
- (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 a stand-alone business; and 35

- (d) the applicant's security, training, sales, delivery, and other business systems meet any requirements in regulations; and
- (e) any other requirements in regulations have been met.
- (2) 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. 5
- (3) It is a condition of an approval that the criteria in **subsection (1)(a) to (e)** continue to be complied with.
- (4) 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. 10
- (5) An approval expires on the date specified in the approval unless it is earlier cancelled.
- 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— 15
 - (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. 20
- (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. 25
- (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. 30
- (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 knowingly or recklessly contravenes **subsection (7)** commits an offence and is liable on conviction to a fine not exceeding \$400,000. 35

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: 5
 - (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. 10

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 retailers declared for the relevant area under **section 20M** is not exceeded; and 15
 - (b) 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 20
 - (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 of Health.

20M Director-General must set maximum numbers of approved smoked tobacco retailers 25

- (1) The Director-General must, by written notice, declare the maximum number of approved smoked tobacco retailers permitted in 1 or more areas described in the notice (which may include all of New Zealand).
- (2) The maximum number may be a single current maximum or a series of reducing maximum numbers over time. 30
- (3) 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**. 35
- (4) 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 (3) .	5
(5)	A notice under this section is secondary legislation (<i>see</i> Part 3 of the Legislation Act 2019 for publication requirements).	
20N	Consultation with Māori	
(1)	For the purposes of section 20L(2) , the Director-General must consult—	
(a)	the Māori Health Authority; and	10
(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(3) , the Director-General must consult—	
(a)	the Māori Health Authority; and	15
(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) .	20
(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) .	25
20O	Director-General to ensure maximum numbers of approved smoked tobacco retailers 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 retailers declared for the relevant area under section 20M is not exceeded.	30
	Subpart 2—Approval as specialist vape retailer	
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.	35

- (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 a stand-alone business; and 5
 - (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 10
 - (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— 15
- (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. 20
- (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. 25
- 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 30
 - (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. 35
- (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.

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Subpart 3—Notification obligations

20R Obligation of general vape retailer in respect of vaping products

- (1) A general vape retailer who sells vaping products in New Zealand must notify the Director-General that they are selling the products.
- (2) A notification must be made on the database in accordance with requirements in regulations.
- (3) A general vape retailer who, without reasonable excuse, fails to notify the Director-General that they are selling a vaping product commits an offence and is liable to a fine not exceeding \$5,000.

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20S Obligation of distributor in respect of smoked tobacco products

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- (1) A distributor of smoked tobacco products in New Zealand must notify the Director-General that they are distributing the products.
- (2) A notification must be made on the database in accordance with requirements in regulations.
- (3) 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 commits an offence and is liable to a fine not exceeding \$5,000.

20

14 Section 21 repealed (Outline of this Part)

Repeal section 21.

25

15 Section 22 repealed (Purposes of this Part)

Repeal section 22.

16 Section 25 amended (Retailers, vending machines, and Internet sellers exempt from advertising prohibition in certain circumstances)

- (1) Replace section 25(1)(c) with:
- (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) Repeal section 25(2).
- (3) After section 25(5), insert:
- (6) In this section, **reserved name** means,—

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- (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 5
 - (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 10
 - (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— 15
- (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. 20

17 Section 33 amended (Free distribution of regulated product prohibited)

Replace section 33(4) with:

- (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. 25

18 Subpart 7 heading in Part 2 amended

In Part 2, in the subpart 7 heading, delete “to people under 18 years”.

19 Section 40 amended (Sale and delivery of regulated product to people younger than 18 years prohibited)

- (1) In the heading to section 40, replace “regulated product” with “notifiable product”. 30
- (2) In section 40(1)(a) and (b), replace “regulated product” with “notifiable product”.
- (3) After section 40(4), insert:
- (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. 35

(4) Repeal section 40(7) and (8).

20 New sections 40A and 40B inserted

After section 40, insert:

40A Sale and delivery of smoked tobacco product to smokefree generation

- (1) A person— 5
- (a) must not sell a smoked tobacco product to a person born on or after 1 January 2009; or
 - (b) having sold a smoked tobacco product to a person of any age, must not deliver it, or arrange for it to be delivered, to a person born on or after 1 January 2009. 10
- (2) A person who knowingly or recklessly contravenes **subsection (1)(a) or (b)** commits an offence and is liable on conviction to a fine not exceeding \$150,000.

40B Supplying smoked tobacco product to smokefree generation prohibited

- (1) A person must not, in a public place,— 15
- (a) supply a smoked tobacco product to a person born on or after 1 January 2009; or
 - (b) supply a smoked tobacco product to a person with the intention that it be supplied (directly or indirectly) to a person born on or after 1 January 2009. 20
- (2) A person who knowingly or recklessly contravenes **subsection (1)** commits an offence and is liable on conviction to a fine not exceeding \$50,000.
- (3) In this section, **public place** has the same meaning as in section 2(1) of the Summary Offences Act 1981.

21 Section 41 amended (Supplying regulated product to people younger than 18 years prohibited) 25

- (1) In the heading to section 41, replace “**regulated product**” with “**notifiable product**”.
- (2) In section 41(1)(a) and (b), replace “regulated product” with “notifiable product”. 30

22 Section 43 replaced (Point-of-sale purchase age information)

Replace section 43 with:

43 Point-of-sale purchase prohibition information or warnings

- (1) This section applies if regulations made under **section 81(1)(17)** requiring point-of-sale prohibition information or warnings are in force. 35

- (2) A person to whom those regulations apply who offers a notifiable 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 notifiable products to people who are younger than 18 years is prohibited; and 5
- (b) complies with any requirements of those regulations.
- (3) A person to whom those regulations apply who offers a smoked tobacco 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— 10
- (a) does no more than communicate information or warnings to the effect that the sale of smoked tobacco products to a person born on or after 1 January 2009 is prohibited; and
- (b) complies with any requirements of those regulations.
- (4) A person who, without reasonable excuse, contravenes **subsection (2) or (3)** commits an offence and is liable to a fine not exceeding \$2,000. 15

23 Section 44 replaced (Internet-sales purchase age information or warnings)

Replace section 44 with:

- 44 Internet purchase prohibition information or warnings**
- (1) This section applies if regulations made under section 81(1)(18) are in force requiring prohibition information or warnings to be visible on a person's Internet site when people access it. 20
- (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,— 25
- (a) for the sale of notifiable products, do no more than communicate information or warnings to the effect that the sale of those products to people who are younger than 18 years is prohibited; and
- (b) for the sale of smoked tobacco products, do no more than communicate information or warnings to the effect that the sale of those products to a person born on or after 1 January 2009 is prohibited; and 30
- (c) comply with any 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. 35

24 Section 45 amended (Court may order certain repeat offenders not to sell regulated product)

- (1) In the heading to section 45, replace “regulated product” with “notifiable product”.
- (2) In section 45(2)(a)(i) and (ii), (b)(i) and (ii), and (c)(i) and (ii), replace “regulated products” with “notifiable products”. 5

25 Section 47 replaced (Automatic vending machines must not be located where public have access)

Replace section 47 with:

47 Automatic vending machines must not be located in public place 10

- (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. 15
- (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— 20
 - (i) in a place from which any person using it can see 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. 25
- (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. 30

26 Part 3 heading replaced

Replace the Part 3 heading with:

Part 3
Packaging and labelling of regulated products

27	Section 49 repealed (Purposes of this Part)	
	Repeal section 49.	
28	Section 52 amended (Messages and information required for regulated product package)	
(1)	Replace section 52(1)(b) with:	5
	(b) for a smoked tobacco product, the constituents required by regulations to be listed, and their respective quantities, that are present in the product's emissions:	
(2)	In section 52(2)(b)(i) and (iii), delete "harmful".	
29	Section 54 amended (Restrictions on advertising, labelling, and sale of oral use products)	10
	In section 54(3), replace "oral nicotine product" with "regulated product suitable for chewing or for any other oral use".	
30	Subpart 2 of Part 3 repealed	
	Repeal subpart 2 of Part 3.	15
31	New Part 3A inserted	
	After Part 3, insert:	
	Part 3A	
	Requirements for smoked tobacco products	
	<i>Smoked tobacco products must be approved</i>	20
57A	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.	25
57B	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—	30
	(a) the product has been tested in accordance with regulations; and	
	(b) the product does not contain a constituent—	
	(i) prohibited by regulations; or	

- (ii) in a quantity that exceeds any limits in regulations; and
 - (c) 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 specified product is not a cigarette, and the Director-General is satisfied—
 - (a) that—
 - (i) no similar compliant product can be sourced; and
 - (ii) 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
 - (iii) any other criteria specified in regulations are met; or
 - (b) that the specified product will not be offered for sale or supply in New Zealand.
 - (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.
 - (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.
- 57C Director-General may suspend approval or temporary approval**
- (1) The Director-General may suspend an approval or a temporary approval granted under **section 57B** 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. 5
- (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. 10
- (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. 15
- (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 knowingly or recklessly contravenes **subsection (7)** commits an offence and is liable on conviction to a fine not exceeding \$400,000. 20

57D 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 25
- (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. 30
- (3) The Director-General must tell the holder of the approval or temporary approval in writing of the cancellation and give reasons.

Constituents of smoked tobacco products

57E 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— 35

- (a) prohibited by regulations; or
 - (b) in a quantity that exceeds any limits in 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. 5
- (3) In this section, **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.
- 57F 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. 10
- (2) Every manufacturer and every importer of a smoked tobacco product must conduct a test to ensure that the constituents of the product, and their respective quantities, comply with any limits or prohibitions prescribed in regulations.
- (3) The tests must be conducted each year by 31 December in accordance with any requirements in regulations. 15
- (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 \$10,000.
- (5) In this section, **manufacturer** does not include a person who makes 1 or more smoked tobacco products for their personal use if the total annual mass of manufactured product is less than 5 kilograms. 20
- 57G 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. 25
- (2) Any tests required under this section may be in addition to any tests required under **section 57F**.
- (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. 30
- (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. 35
- (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 \$10,000.	5
57H Limits on nicotine to be prescribed for smoked tobacco products		
	The Minister must, within 21 months of the commencement of section 31 of the Smokefree Environments and Regulated Products (Smoked Tobacco) Amendment Act 2022 , recommend that regulations be made prescribing the limits for the quantity of nicotine in any smoked tobacco product, and a method of determining whether those limits have been exceeded.	10
32 Section 58 repealed (Purpose of this Part)		
	Repeal section 58.	
33 Section 59 repealed (Defined terms)		
	Repeal section 59.	15
34 Section 65 amended (Obligations of retailers)		
(1)	In section 65(2), replace “notifiable product” with “vaping product or smokeless tobacco product”.	
(2)	In section 65(4), replace “notifiable products” with “vaping products or smokeless tobacco products”.	20
35 New sections 69A and 69B inserted		
	After section 69, insert:	
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.	25
(2)	Every manufacturer and every importer of a notifiable product must 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.	30
(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.	

- 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**. 5
 - (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— 10
 - (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. 15
 - (6) However, **subsection (5)** does not apply to vaping products.
 - (7) A person commits an offence if the person, without reasonable excuse,— 20
 - (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 25
 - (b) in any other case, to a fine not exceeding \$5,000.
- 36 Section 76 repealed (Appeals against decision to suspend or cancel product notification)**
Repeal section 76.
- 37 Section 77 amended (Establishment of database and confidentiality of certain information)** 30
In section 77(3)(a), delete “by a notifier”.
- 38 Section 79 repealed (Appeals committee)**
Repeal section 79.
- 39 Section 81 amended (Regulations)** 35
- (1) Replace section 81(1)(17) with:

- (17) prescribing, for the purposes of **section 43(2)(b) and (3)(b)**, requirements with which the following notices for the public must comply:
- (i) a notice to the effect that the sale of notifiable products to people who are younger than 18 years is prohibited:
 - (ii) a notice to the effect that the sale of smoked tobacco products to a person born on or after 1 January 2009 is prohibited:
- (2) In section 81(1)(18), replace “purchase age information” with “purchase prohibition information”.
- (3) Replace section 81(1)(20) and the heading above section 81(1)(20) with:
- Approval of smoked tobacco products*
- (20) prescribing requirements for the purposes of **section 57B(1)**:
- (20A) prescribing criteria that the Director-General must have regard to for the purpose of **section 57B(2)(c) 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 57B(3)**:
- (20C) prescribing the circumstances in which a temporary approval granted under **section 57B(3)** may be reviewed or revoked:
- (4) After section 81(1)(21), insert:
- Testing requirements*
- (21A) prescribing standards and requirements for testing for the purpose of **section 57B(2)(a)**:
- (5) In the heading above section 81(1)(22), replace “and reports” with “, reports, and records”.
- (6) Replace section 81(1)(22)(i) with:
- (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:
- (7) After section 81(1)(22), insert:
- (22A) prescribing for the purposes of **section 101** the constituents of a regulated product that the manufacturer must record:
- (8) In section 81(1)(25), replace “section 14A(4)” with “**section 20P(4)**”.
- (9) In section 81(1)(26), replace “section 14A(4)” with “**section 20P(4)**”.
- 40 New sections 82A and 82B inserted**
- After section 82, insert:

82A Regulations for sale and distribution of smoked tobacco products

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 and 20I**, which may include setting—

- (a) a competitive process for applying for approvals; and 5
- (b) 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
- (c) fit and proper person criteria; and
- (d) requirements for business systems; and 10
- (e) criteria for imposing conditions on approvals or classes of approval.

82B Regulations relating to requirements for smoked tobacco products

(1) The Governor-General may, by Order in Council, make regulations for all or any of the following purposes:

- (a) prescribing safety standards for smoked tobacco products: 15
- (b) specifying changes to a smoked tobacco product for the purposes of the definition of significant change in **section 57B(6)**:
- (c) for the purposes of **section 57E(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: 20
- (d) prescribing standards and requirements for testing for the purposes of **section 57F(3) or 57G(3)**:
- (e) prescribing limits for the quantity of nicotine and a method of determining whether those limits have been exceeded for the purposes of **section 57H**. 25

(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 30
- (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— 35
 - (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.
- 41 Section 83 amended (Regulations for standardised packaging (including messages and information))**
- After section 83(1)(c)(iii), insert: 5
- (iv) the constituents in the emissions of a smoked tobacco product that must be listed:
- 42 Section 84 amended (Regulations relating to notifiable products)**
- (1) After section 84(1)(b), insert: 10
- (ba) prescribing standards and requirements for testing for the purposes of **section 69A(3) or 69B(3)**:
- (2) After section 84(1)(f), insert:
- (g) declaring a regulated product to be a notifiable product.
- 43 Section 85 amended (Regulations imposing fees)**
- Replace section 85(1)(a)(iii) with: 15
- (iii) by an applicant in relation to an application for approval as a specialist vape retailer under **Part 1B**; and
- (iv) by a general vape retailer in respect of vaping products notified under **section 20R**; and
- (v) by a distributor in respect of smoked tobacco products notified under **section 20S**; and 20
- (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 25
- 44 Section 86 amended (Regulations imposing levies)**
- (1) Replace section 86(1) and (2) with:
- (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— 30
- (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 35

<p style="margin-left: 40px;">size of the portion to be met by levies under that Part is determined by the Minister; and</p> <p>(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</p> <p>(c) the costs of collecting the levy money.</p> <p>(2) Replace section 86(4)(a) with:</p> <p style="margin-left: 40px;">(a) specify the class or classes of retailer, distributor, importer, or manufacturer that are required to pay a levy:</p> <p>(3) Replace section 86(4)(f) with:</p> <p style="margin-left: 40px;">(f) provide different levies for different classes of retailer, distributor, importer, or manufacturer:</p> <p>(4) Replace section 86(5) with:</p> <p>(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).</p> <p>45 Subpart 2 heading in Part 5 amended</p> <p style="margin-left: 40px;">In Part 5, in the subpart 2 heading, replace “Infringement offences” with “Offences”.</p> <p>46 New cross-heading above section 87 inserted</p> <p style="margin-left: 40px;">Before section 87, insert:</p> <div style="text-align: center; background-color: #f2f2f2; padding: 5px; margin: 10px 0;"> <p><i>Infringement offences</i></p> </div> <p>47 Section 87 amended (Infringement offences)</p> <p>(1) In section 87, definition of infringement fee, paragraph (a), replace “43(3)” with “43(4)”.</p> <p>(2) In section 87, definition of infringement fee, paragraph (b), delete “53(4),”.</p> <p>(3) In section 87, definition of infringement fee, after paragraph (b), insert:</p> <p style="margin-left: 40px;">(c) in relation to an infringement offence against section 20R(2) or 20S(2), \$500.</p> <p>(4) In section 87, definition of infringement offence, replace “sections 34(4),” with “sections 20R(2), 20S(2), 34(4),”.</p> <p>(5) In section 87, definition of infringement offence, replace “43(3)” with “43(4)”.</p> <p>48 New section 90A and cross-heading inserted</p> <p style="margin-left: 40px;">After section 90, insert:</p>	<p></p> <p>5</p> <p>10</p> <p></p> <p>15</p> <p>20</p> <p></p> <p></p> <p>25</p> <p></p> <p>30</p> <p></p> <p></p> <p>35</p>
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*Other offence provision***90A Liability for action of employee**

- (1) This section applies to an offence against **section 20G(2), 20H(2), 20J(8), 40(2), 40A(2), 40B(2), 43(4), 44(4), 57A(2), 57B(8), 57C(8), 57E(2), 57G(6), or 69B(7)**. 5
- (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. 10

49 Section 94 amended (Enforcement officer may require identifying information)

Replace section 94(1) with:

- (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— 15
- (a) notifiable products have been sold to a person younger than 18 years in and from a place where those products are sold; or
- (b) smoked tobacco products have been sold to a person born on or after 1 January 2009 in and from a place where those products are sold; or 20
- (c) notifiable products have, after they are sold, been delivered to a person younger than 18 years in and from a place where those products are sold; or
- (d) smoked tobacco products have, after they are sold, been delivered to a person born on or after 1 January 2009 in and from a place where those products are sold; or 25
- (e) notifiable products have been delivered to a person younger than 18 years after being sold at that place (where the products were sold) or at another place; or 30
- (f) smoked tobacco products have been delivered to a person born on or after 1 January 2009 after being sold at that place (where the products were sold) or at another place; or
- (g) smoked tobacco products have been sold or offered for sale at retail by a person who is not an approved smoked tobacco retailer; or 35
- (h) smoked tobacco products that are not currently approved by the Director-General have been sold or offered for sale at retail.

- 50 Section 100 amended (Annual reporting requirements for manufacturers, importers, and specialist vape retailers)**
- (1) In the heading to section 100, replace “**and specialist vape retailers**” with “**distributors, approved smoked tobacco retailers, and vape retailers**”.
 - (2) In section 100(1)(a)(ii), replace “section 56 or 57” with “section 56, 57, **57F, 57G, 69A, or 69B**”. 5
 - (3) In section 100(2), after “specialist vape retailer”, insert “and an approved smoked tobacco retailer”.
 - (4) After section 100(2), insert:
 - (2A) A distributor of smoked tobacco products and a general vape retailer must report to the Director-General on their distribution and retail activities in accordance with regulations. 10
 - (5) In section 100(4), replace “subsection (1) or (2)” with “subsection (1), (2), or **(2A)**”.
- 51 New section 101 inserted (Record-keeping requirements for regulated products)** 15
- After section 100, insert:
- 101 Record-keeping requirements for regulated products**
- (1) This section applies to a manufacturer, importer, exporter, distributor, or retailer of a regulated product. 20
 - (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. 25
 - (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. 30
 - (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 35
 - (b) in any other case, to a fine not exceeding \$5,000.

52 New subparts 5 and 6 of Part 5 inserted

In Part 5, after **section 101** (as inserted by **section 51**), insert:

Subpart 5—Appeals

- 102 Appeals against decision to suspend or cancel product approval or notification** 5
- (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: 10
- (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. 15
- (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. 20
- (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 25
- (b) in accordance with the rules of court.
- 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. 30
- (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. 35
- (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.

Subpart 6—Direct access to information by government agencies

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. 5
- (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. 10
- (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 15
 - (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 20
 - (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 25
 - (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 30
 - (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,— 35
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 of Health; and
 - (ii) the Government Communications Security Bureau; and 5
 - (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 10
Crown Entities Act 2004:
- (d) the New Zealand Police:
- (e) the New Zealand Defence Force.

Compare: 2018 No 4 s 315

53 Schedule 1 amended 15

In Schedule 1,—

- (a) insert the Part set out in the **Schedule** of this Act as the last Part; and
- (b) make all necessary consequential amendments.

Part 2**Amendments to other enactments** 20

Subpart 1—Amendments to Customs and Excise Act 2018

54 Principal Act**Sections 55 and 56** amend the Customs and Excise Act 2018.**55 Section 95A amended (Prohibition on importation of tobacco and certain tobacco products)** 25

- (1) Replace section 95A(2) with:
- (2) The prohibition in subsection (1) does not apply to the following goods:
 - (a) chewing tobacco:
 - (b) snuff:
 - (c) snus. 30
- (2) Replace section 95A(3) with:
- (3) The prohibition in subsection (1) does not apply if—
 - (a) the person importing the goods (whether or not the goods are intended for commercial or personal use)—

- (i) has a permit granted by the chief executive under Schedule 3A, allowing the goods to be imported; and
 - (ii) complies with any conditions of the permit; and
 - (iii) completes a declaration that they understand and will comply with the approval requirements for smoked tobacco products under the Smokefree Environments and Regulated Products Act 1990; and
 - (b) for manufactured tobacco, the goods have been approved by the Director-General of Health for sale, supply, or import into New Zealand under the Smokefree Environments and Regulated Products Act 1990.
- (4) The prohibition in subsection (1) does not apply if the goods are in the possession or under the control of a person specified in section 30(1)(a), and the goods,—
- (a) in the case of cigarettes, do not exceed 250 cigarettes; and
 - (b) in the case of loose tobacco, cigars, cigarillos, water-pipe tobacco, or other smoked tobacco items, do not exceed 200 grams.
- (5) The prohibition in subsection (1) does not apply if the goods—
- (a) are not unloaded in New Zealand and are destined for a point outside New Zealand; or
 - (b) are to be, or are being, transhipped internationally, and are covered by a transhipment request made under section 87(2) and granted by the chief executive.

56 Schedule 3A amended

In Schedule 3A, replace clause 3(2) with:

- (2) The chief executive must not grant a permit to import the goods unless the chief executive is satisfied—
- (a) that the applicant—
 - (i) holds a current licence to use an area as a Customs-controlled area for one of the purposes specified in subclause (3); or
 - (ii) intends to use the goods for a legitimate purpose unrelated to the manufacture of tobacco for smoking; or
 - (b) that the applicant—
 - (i) intends to import manufactured tobacco only, either for commercial resale or personal use; and
 - (ii) has provided the declaration required by **section 95A(3)(a)(iii)**; and
 - (iii) has provided evidence that the goods have been approved by the Director-General of Health for sale, supply, or import in New Zealand under the Smokefree Environments and Regulated Products Act 1990.

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

- 57 Principal regulations**
Sections 58 to 64 amend the Smokefree Environments and Regulated Products Regulations 2021. 5
- 58 Regulation 56 amended (Notice indicating availability of tobacco products)**
In regulation 56(2)(b), replace “persons under the age of 18” with “persons born on or after 1 January 2009”.
- 59 Regulation 57 amended (How information about tobacco products offered for Internet sale must be provided)** 10
In regulation 57(6), replace “persons under the age of 18” with “persons born on or after 1 January 2009”.
- 60 Regulation 58 amended (Information that must be provided inside retailer’s place of business in response to request)** 15
In regulation 58(5), replace “persons under the age of 18” with “persons born on or after 1 January 2009”.
- 61 Regulation 62 replaced (Manufactured cigarettes to be tested)**
Replace regulation 62 with:
- 62 Manufactured cigarettes to be tested** 20
- (1) Manufactured cigarettes are specified as a smoked tobacco product to which **section 57F** of the Act applies.
- (2) Manufactured cigarettes that are a herbal smoking product are specified as a notifiable product to which **section 69A** of the Act applies.
- 62 Regulation 63 amended (Conduct of tests of manufactured cigarettes)** 25
In regulation 63, delete “harmful”.
- 63 Regulation 66 amended (Prohibited features of smokeless tobacco package)**
Revoke regulation 66(1)(d)(ii).
- 64 Schedule 10 amended** 30
In Schedule 10, form 2, replace “Harmful constituent” with “Constituent”.

Schedule
New Part 3 inserted into Schedule 1

s 53

Part 3		
	Provisions relating to Smokefree Environments and Regulated Products Amendment Act 2022	5
14	Interpretation	
	In this Part, unless the context otherwise requires,—	
	amendment Act means the Smokefree Environments and Regulated Products (Smoked Tobacco) Amendment Act 2022	10
	commencement date means the date on which section 53 of the amendment Act comes into force.	
15	Obligation of general vape retailer in respect of notifiable products	
	Section 20R (which relates to the notification requirement of a general vape retailer in respect of notifiable products) does not apply until the date that is 9 months after the commencement date.	15
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.	20
17	Sale of smoked tobacco products other than by approved smoked tobacco retailer prohibited	
	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.	25
18	Smoked tobacco product approval and constituent requirements	
	The following provisions do not apply until the date that is 27 months after the commencement date:	
	(a) section 57A (which prohibits the sale, manufacture, import, or supply of a smoked tobacco product, unless it is approved):	30
	(b) section 57E (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).	

**Smokefree Environments and Regulated Products
(Smoked Tobacco) Amendment Bill**

Wellington, New Zealand:

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