

Smoke-free Environments Amendment Act 2003

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The Parliament of New Zealand enacts as follows:

1 Title

- (1) This Act is the Smoke-free Environments Amendment Act 2003.
- (2) In this Act, the Smoke-free Environments Act 1990 is called “the principal Act”.

Part 1 Preliminary

2 Commencement

- (1) Sections 9, 22, 26(6), and 29 come into force on the day 3 months after the date on which this Act receives the Royal assent.
- (2) Section 6 comes into force on 1 January 2004.
- (3) Sections 3(2), 5, 7, 8, 10, 12, 16, 17, 19(1), 20, 24, 26(4), 26(7), 26(8), and 28 come into force on the day 12 months after the date on which this Act receives the Royal assent.
- (4) Section 25 comes into force on 1 February 2004.
- (5) Section 23 comes into force on 1 February 2005.
- (6) The rest of this Act comes into force on the day after the date on which it receives the Royal assent.

3 Interpretation

- (1) Section 2 of the principal Act is amended by repealing the definitions of **distributor**, **employer**, **gaming**, gaming area, **hospital**, **package**, **permitted smoking area**, **prison**, **retailer**, **to smoke**, and **workplace**, and inserting, in their appropriate alphabetical order, the following definitions:

“**additive**,—

- “(a) in relation to a tobacco product, means a substance forming part of the product that is not cured tobacco leaf; and includes—
 - “(i) a substance forming part of the product that has been derived or refined from tobacco leaf (whether cured or not); and
 - “(ii) any wrapping forming part of the product that is not itself cured tobacco leaf; and
- “(b) in relation to a herbal smoking product, means a substance forming part of the product that is not dried, or dried and cured, vegetable matter; and includes—
 - “(i) a substance forming part of the product that has been derived or refined from vegetable matter; and
 - “(ii) any wrapping forming part of the product that is not itself dried, or dried and cured, vegetable matter

“**children’s product**—

“(a) means a product (such as comics, games, and toys) marketed primarily for children; and

“(b) includes confectionery, ice-cream, soft drinks, and other similar products

“**class 4 gambling venue licence** means a class 4 venue licence within the meaning of section 4(1) of the Gambling Act 2003

“**coastal cargo** has the meaning given to it by section 198(6) of the Maritime Transport Act 1994

“**dedicated smoking room** means an internal area in a hospital care institution, a residential disability care institution, or a rest home that is used solely to enable patients or residents who smoke to smoke, or to socialise with each other in a place where smoking is permitted

“**distributor** means a person engaged in the business of selling tobacco products, or (as the case may be) herbal smoking products, otherwise than at retail only

“**early childhood centre** has the meaning given to it by section 308(1) of the Education Act 1989

“**employer**—

“(a) means a person who employs one or more employees; and

“(b) includes a person who arranges for volunteers to undertake work

“**enforcement officer** means a person for the time being appointed under section 14 to enforce Parts 1 and 2, or provisions of Parts 1 and 2

“**face**, in relation to a tobacco carton or tobacco package,—

“(a) means a more or less flat area of the surface of the carton or package that is bounded by edges of the package; and

“(b) in the case of a tobacco package that is a pouch pack, includes a curved area of the surface of the package that is between 2 faces

“**foreign ship** means a ship that is not a New Zealand ship

“**herbal smoking product** means a product that—

“(a) is or contains vegetable matter; and

“(b) is intended to be smoked; but

“(c) contains no tobacco

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

“**internal area**, in relation to any premises or vehicle, means an area within or on the premises or vehicle that, when all its doors, windows, and other closeable openings are closed, is completely or substantially enclosed by—

- “(a) a ceiling, roof, or similar overhead surface; and
- “(b) walls, sides, screens, or other similar surfaces; and
- “(c) those openings

“**managers**, in relation to a school, or premises to which section 7A(4) applies, means all the people who control and manage the school or premises, whether or not they have a proprietary interest in the school or premises

“**New Zealand continental waters** has the meaning given to it by section 222(1) of the Maritime Transport Act 1994

“**New Zealand ship** has the meaning given to it by section 2(1) of the Ship Registration Act 1992

“**of the same kind** means not differing in a manner stated in subsection (2)

“**open area**, in relation to any premises, means a part of the premises that is not an internal area

“**operating taxi** means a taxi at a time when—

- “(a) it is carrying a passenger; or
- “(b) its driver is—
 - “(i) travelling to begin plying for hire; or
 - “(ii) plying for hire; or
 - “(iii) travelling to pick up a passenger; or
 - “(iv) returning from carrying a passenger (otherwise than at the end of a shift); or
 - “(v) resting, eating, or drinking before beginning or resuming plying for hire

“**package** means a pack, carton, wrapping, or other container in which tobacco products, or (as the case may be) herbal smoking products, are customarily sold at retail

“**point of sale** —

- “(a) means a checkout where tobacco products may be bought; and
- “(b) includes a till or cashbox, where tobacco products may be bought, even if it is not at or part of a checkout

“**prescribed petroleum operations** means petroleum operations prescribed for the purposes of the Health and Safety in Employment Act 1992 by regulations made under that Act

“**prison** —

“(a) means a penal institution within the meaning of the Penal Institutions Act 1954; and

“(b) includes a facility attached to a prison

“**pouch pack** means a package made, from flexible material, in the form of a rectangular pocket with a flap covering the opening

“**registered school** has the meaning given to it by section 2(1) of the Education Act 1989

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

“**retailer** means a person engaged in any business that includes the sale of tobacco products, or (as the case may be) herbal smoking products, at retail

“**school premises** means premises that are—

“(a) a registered school; or

“(b) facilities, grounds, structures, or other premises, controlled and managed by the managers of a registered school, and used principally for—

“(i) the enjoyment, recreation, or relaxation of the young people attending the school; or

“(ii) cultural or sporting activities (or both) involving, or undertaken for the benefit of, the young people attending the school

“**ship** has the meaning given to it by section 2(1) of the Ship Registration Act 1992

“**ship on demise charter to a New Zealand-based operator** has the meaning given to it by section 4 of the Ship Registration Act 1992

“**to smoke** —

“(a) means to smoke, hold, or otherwise have control over an ignited tobacco product, weed, or plant; and

“(b) includes to smoke, hold, or otherwise have control over an ignited product or thing whose customary use is or includes the inhalation from it of the smoke produced from its combustion or the combustion of any part of it; but

“(c) does not include to hold or have control over an ignited product or thing customarily used as incense

“**taxi** means a small passenger service vehicle for which a passenger service licence (within the meaning of section 2(1) of the Transport Services Licensing Act 1989) is held

“**tobacco carton** means a box, carton, pack, packet, pouch, tin, wrapping, or other package containing 2 or more tobacco packages

“**tobacconist’s shop** —

“(a) means a retail shop that—

“(i) is held out as a specialist retail seller of tobacco products (even if it is also held out as a specialist retail seller of other products such as newspapers and magazines, or it also provides services such as hairdressing, or both); and

“(ii) obtains from the retail sale of tobacco products at least 60% of the gross revenue it obtains from retail sales; but

“(b) does not include any retail shop within premises in which petroleum products are sold to motorists

“**tobacco package** means a box, carton, pack, packet, pouch, tin, wrapping, or other package that—

“(a) contains a tobacco product or products; but

“(b) does not contain other tobacco packages within it

“**tobacco packages in a visible stack** means 2 or more tobacco packages so arranged that—

“(a) one is in front of, but does not completely obscure, the other or others; but

“(b) at least 88% of the total surface area of every package behind the front package is obscured

“**toy tobacco product** means an object that—

“(a) looks like a tobacco product or a smoker’s pipe, and can be used to simulate smoking; but

“(b) cannot be smoked, is not confectionery, and has a primary purpose other than to help people stop smoking

“**variant** means sold in tobacco packages, or (as the case may be) packages of a herbal smoking product, that are not of the same kind

“**volunteer** means a person of any age who—

“(a) performs for an employer, otherwise than for hire or reward, any work arranged by or on behalf of the employer; or

- “(b) performs for the master of a ship, otherwise than for hire or reward, any work arranged by or on behalf of the owner or master of the ship
- “**workplace**, in relation to an employer,—
- “(a) means an area that is—
- “(i) an internal area, within or on a building or structure occupied by the employer, usually frequented by employees or volunteers during the course of their employment; or
 - “(ii) an internal area, within or on a ship (being a ship to which section 10 applies), an aircraft, or a train, owned, leased, or otherwise operated by the employer, usually frequented by employees or volunteers during the course of their employment; and
- “(b) includes a cafeteria, corridor, lift, lobby, stairwell, toilet, washroom, or other common internal area attached to, forming part of, or used in conjunction with a work place within the meaning of paragraph (a); and
- “(c) includes an internal area within or on a vehicle that—
- “(i) is not an aircraft, a ship, or a train; but
 - “(ii) is provided by the employer and normally used by employees or volunteers; and
- “(d) includes an operating taxi; but
- “(e) does not include—
- “(i) a motel, or a bedroom or suite in a hotel; or
 - “(ii) a cabin or suite, for the time being assigned to a passenger or passengers, on a ship; or
 - “(iii) a sleeping compartment, for the time being assigned to a passenger or passengers, on a train; or
 - “(iv) a cabin, for the time being assigned to only one employee or volunteer, or to the master or owner, on a ship; or
 - “(v) a sleeping compartment, for the time being assigned to only one employee or volunteer, on a train; or
 - “(vi) a prison cell; or
 - “(vii) a dwellinghouse occupied by the employer.”
- (2) Section 2 of the principal Act is amended by repealing the definition of **licensed premises**, and substituting the following definition:

“**licensed premises** means any premises, or any part of any premises, on which liquor may be sold pursuant to a licence under the Sale of Liquor Act 1989”.

(3) Section 2 of the principal Act is amended by adding, as subsections (2) and (3), the following subsections:

“(2) For the purposes of the definition of **of the same kind** in subsection (1),—

“(a) tobacco packages, tobacco cartons, or packages of a herbal smoking product differ if they bear different brand names:

“(b) tobacco packages, tobacco cartons, or packages of a herbal smoking product differ if they bear the same brand name, but the products they contain differ in 1 or more of the following ways:

“(i) containing or not containing menthol:

“(ii) being otherwise differently flavoured:

“(iii) producing different quantities of tar:

“(iv) allegedly differing in ‘mildness’:

“(v) having or not having filter tips or cork tips:

“(vi) containing different numbers of pieces:

“(vii) containing pieces of different length or mass:

“(c) tobacco cartons differ if they are sold under the same brand name, but they contain different numbers of tobacco packages.

“(3) For the purposes of paragraph (e)(vii) of the definition of **workplace** in subsection (1), no part of a ship is capable of being a dwellinghouse occupied by an employer.”

Part 2

Amendments to Part 2 of principal Act

4 New section 4 substituted

The principal Act is amended by repealing section 4 and the heading before it, and substituting the following heading and section:

“Part 1

“Smoke-free workplaces and public areas

“4 Purposes of this Part

The purposes of this Part are—

- “(a) to prevent the detrimental effect of other people’s smoking on the health of people in workplaces, or in certain public enclosed areas, who do not smoke or do not wish to smoke there; and
- “(b) to prevent young people who are being taught or cared for in registered schools or early childhood centres from being influenced by seeing other people smoke there; and
- “(c) to prevent the detrimental effect of other people’s smoking on the health of young people who are being taught or cared for in registered schools or early childhood centres.”

5 New sections 5 to 6A substituted

The principal Act is amended by repealing sections 5 to 7, and substituting the following sections:

“5 Smoking in workplaces prohibited

- “(1) An employer must take all reasonably practicable steps to ensure that no person smokes at any time in a workplace that is not—
 - “(a) a vehicle in which smoking is permitted under section 5A; or
 - “(b) a dedicated smoking room in which smoking is permitted under section 6.
- “(2) No employee or volunteer may smoke at any time in a workplace that is not a vehicle in which smoking is permitted under section 5A.

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

An employer may permit smoking in a vehicle provided by the employer and normally used by employees or volunteers if—

- “(a) the public does not normally have access to any part of it; and
- “(b) all the employees and volunteers who use it regularly or from time to time have jointly or individually given the employer written notice—
 - “(i) asking the employer to permit smoking in it; or

- “(ii) stating that they do not object to other employees and volunteers smoking in it; and
 - “(c) since last giving the employer notice to that effect, none of the employees and volunteers who use it regularly or from time to time has given the employer written notice that he or she—
 - “(i) no longer wishes the employer to permit smoking in it; or
 - “(ii) now objects to other employees and volunteers smoking in it.
- “6 **Dedicated smoking rooms in hospital care institutions, residential disability care institutions, and rest homes**
- “(1) An employer may permit smoking by patients or residents of a workplace that is, or is part of, a hospital care institution, a residential disability care institution, or a rest home if—
 - “(a) the smoking takes place only in one or more dedicated smoking rooms; and
 - “(b) each dedicated smoking room is equipped with or connected to a mechanical ventilation system to which subsection (2) applies; and
 - “(c) the employer has taken all reasonably practicable steps to minimise the escape of smoke from the dedicated smoking rooms into any part of the workplace that is not a dedicated smoking room; and
 - “(d) for each dedicated smoking room, there is available for patients or residents who wish to socialise in a smoke-free atmosphere an adequate equivalent room.
 - “(2) This subsection applies to a mechanical ventilation system with which a dedicated smoking room in a workplace is equipped if, and only if,—
 - “(a) the system is so designed, installed, and operating that it takes air from the room to a place outside the workplace where any smoke the air may contain will not enter any part of the workplace, either—
 - “(i) directly; or
 - “(ii) through one or more other dedicated smoking rooms; and

- “(b) no part of the workplace that is not a dedicated smoking room is equipped with or connected to the system.
- “(3) Subsection (1)—
 - “(a) does not authorise an employer to permit a person who is not a patient or resident of the institution or home concerned to smoke in a dedicated smoking room; and
 - “(b) does not authorise a person who is not a patient or resident of the institution or home concerned to smoke in a dedicated smoking room.

“6A Smoking in prison cells

- “(1) The superintendent of a prison must ensure that there is a written policy on smoking in the prison’s cells, prepared for the protection of the health of employees and inmates.
- “(2) The policy—
 - “(a) must be based on the principles that—
 - “(i) as far as is reasonably practicable, an employee or inmate who does not smoke, or does not wish to smoke in the prison, must be protected from smoke arising from smoking in the prison’s cells:
 - “(ii) unless it is not reasonably practicable to do otherwise, an inmate who does not wish to smoke in his or her cell must not be required to share it with an inmate who does wish to smoke in it; and
 - “(b) must state the procedure for making complaints under this Part.
- “(3) The superintendent—
 - “(a) must ensure that the policy complies with subsection (2); and
 - “(b) must take all reasonably practicable steps to ensure that the policy is complied with.”

6 New section 7A inserted

- (1) The principal Act is amended by inserting, before section 8, the following section:

“7A Smoking prohibited at schools and early childhood centres

- “(1) The managers of school premises or premises to which subsection (4) applies must take all reasonably practicable steps to ensure that—
- “(a) no person smokes in any part of the premises (whether an internal area or an open area) at any time on any day; and
 - “(b) a notice stating that smoking within the premises is forbidden at all times is prominently displayed at or immediately inside—
 - “(i) every entrance to the premises; and
 - “(ii) every outer entrance to every building or enclosed area forming part of the premises.
- “(2) Subsection (1)(b)(ii) does not apply to—
- “(a) a building or enclosed area not usually or from time to time used by young people attending the school or centre concerned or members of the public; or
 - “(b) an outer entrance used by young people attending the school or centre concerned or members of the public only temporarily or in emergencies.
- “(3) The occupier of premises that are neither school premises nor premises to which subsection (4) applies must take all reasonably practicable steps to ensure that no person smokes within any area of the premises (whether an internal area or an open area) that—
- “(a) is being used as an early childhood centre; or
 - “(b) is so situated and ventilated that smoke from people smoking in it is likely to enter another area of the premises that is being used as an early childhood centre.
- “(4) This subsection applies to premises—
- “(a) that are used exclusively or primarily as an early childhood centre; or
 - “(b) that are facilities, grounds, structures, or other premises, controlled and managed by the managers of premises that are used exclusively or primarily as an early childhood centre, and used exclusively or primarily for—

- “(i) the enjoyment, recreation, or relaxation of the children attending the centre; or
- “(ii) cultural or sporting activities (or both) involving, or undertaken for the benefit of, the children attending the centre.”

(2) Section 17 of the principal Act is consequentially amended by inserting, after subsection (2), the following subsections:

“(2A) The managers of any premises who fail to comply with section 7A(1) commit an offence, and are liable,—

- “(a) in the case of managers who are a body corporate, to a fine not exceeding \$4,000; and
- “(b) in the case of managers who are not a body corporate, to a fine not exceeding \$400 each.

“(2B) The occupier of any premises who fails to comply with section 7A(3) commits an offence, and is liable,—

- “(a) in the case of an occupier who is a body corporate, to a fine not exceeding \$4,000; and
- “(b) in the case of an occupier who is not a body corporate, to a fine not exceeding \$400.”

7 Smoking restricted in passenger service vehicles

(1) Section 9 of the principal Act is amended by inserting, after subsection (1), the following subsections:

“(1A) The operator of an operating taxi must not permit any person to smoke in it.

“(1B) No person may smoke in an operating taxi, whether or not it is carrying passengers.”

(2) Section 9(3) of the principal Act is amended by inserting, after the words “service vehicle”, the words “(other than an operating taxi)”.

8 New sections 10 to 13B substituted

The principal Act is amended by repealing sections 10 to 13A, and substituting the following sections:

“10 Application of Act to ships

This Act applies to a ship if, and only if, it is—

- “(a) a New Zealand ship that is within New Zealand; or
- “(b) a foreign ship that—

- “(i) is a ship on demise charter to a New Zealand-based operator; and
- “(ii) is carrying coastal cargo within New Zealand; or
- “(c) a foreign ship that is carrying out prescribed petroleum operations in New Zealand continental waters.

“11 Smoking prohibited in certain travel premises

- “(1) This section applies to any area that—
 - “(a) is located within an enclosed travel terminal; and
 - “(b) is a booking area, passenger queuing area, passenger waitingroom, or passenger lounge.
- “(2) The owner or occupier of an area to which this section applies must not permit any person to smoke in it.
- “(3) No person may smoke in an area to which this section applies.

“12 Smoking on licensed premises

- “(1) The licensee of any licensed premises must take all reasonably practicable steps to ensure that no person smokes at any time in a part of the premises that is not an open area.
- “(2) Subsection (1) does not prevent the licensee of any licensed premises from prohibiting smoking in a part of the premises that is an open area.
- “(3) No person may smoke at any time in a part of any licensed premises that is not an open area.

“13 Smoking in restaurants

- “(1) The operator of a restaurant must take all reasonably practicable steps to ensure that no person smokes at any time in any part of the restaurant that is not an open area.
- “(2) Subsection (1) does not prevent the operator of a restaurant from prohibiting smoking in a part of the restaurant that is an open area.
- “(3) No person may smoke at any time in any part of a restaurant that is not an open area.

“13A Smoking in casinos

- “(1) The holder of the casino operator’s licence in respect of a casino must take all reasonably practicable steps to ensure that

no person smokes at any time in any part of the casino that is not an open area.

- “(2) Subsection (1) does not prevent the holder of the casino operator’s licence in respect of a casino from prohibiting smoking in a part of the casino that is an open area.
- “(3) No person may smoke at any time in any part of a casino that is not an open area.

“13B Smoking in certain gaming machine venues

- “(1) The holder of a class 4 gambling venue licence in respect of a place must take all reasonably practicable steps to ensure that no person smokes at any time in any part of the place that is not an open area.
- “(2) Subsection (1) does not prevent the holder of a class 4 gambling venue licence in respect of a place from prohibiting smoking in a part of the place that is an open area.
- “(3) No person may smoke at any time in any part of a place in respect of which a class 4 gambling venue licence is held that is not an open area.”

9 New section 14 substituted

The principal Act is amended by repealing section 14, and substituting the following section:

“14 Enforcement officers

- “(1) The Director-General must appoint to enforce this Part and Part 2 people who are—
- “(a) employees of the Ministry of Health, a local authority under the Local Government Act 1974, or a District Health Board under the New Zealand Public Health and Disability Act 2000; or
 - “(b) employees or officers of some other person or body; or
 - “(c) officers designated under section 7A of the Health Act 1956; or
 - “(d) inspectors appointed under the Health and Safety in Employment Act 1992.
- “(2) A person may be appointed by name, or as the holder for the time being of a particular position.

- “(3) The Director-General must not appoint a person under subsection (1)(b) unless satisfied,—
- “(a) in the case of a named person, that he or she is suitably qualified and trained:
 - “(b) in the case of the holder for the time being of a particular position, that holders of the position are likely to be suitably qualified and trained.
- “(4) Every enforcement officer must have an instrument of appointment identifying the holder as an enforcement officer appointed under this section.
- “(5) The Director-General may do any or all of the following:
- “(a) appoint people to enforce only some of the provisions of this Part and Part 2:
 - “(b) appoint people to exercise only some of the powers given to enforcement officers by Part 2A (**enforcement powers**):
 - “(c) appoint people subject to limitations or restrictions on their exercise of enforcement powers.
- “(6) An enforcement officer’s instrument of appointment must state—
- “(a) that he or she is appointed to enforce—
 - “(i) all the provisions of this Part and Part 2; or
 - “(ii) only stated provisions of this Part and Part 2; or
 - “(iii) all the provisions of this Part and Part 2 other than certain stated provisions; and
 - “(b) that he or she is appointed to exercise—
 - “(i) all enforcement powers; or
 - “(ii) only stated enforcement powers; or
 - “(iii) all enforcement powers other than certain stated powers; and
 - “(c) all limitations and restrictions on his or her exercise of enforcement powers imposed under subsection (5)(c).”

10 Complaints relating to workplace smoking policies

- (1) Section 15 of the principal Act is amended by omitting from the heading the word “**policies**”.
- (2) Section 15(4) of the principal Act is amended by inserting, after the word “employee” in both places where it occurs, the words “or volunteer”.

(3) Section 15 of the principal Act is amended by repealing subsection (6), and substituting the following subsection:

“(6) If within 40 working days after receiving the complaint the employer is unable to investigate it and resolve it by agreement, the employer must refer it, in writing, to the Director-General.”

11 Complaints to Director-General

Section 16(2)(a)(ii) of the principal Act is amended by inserting, after the word “employee”, the words “or volunteer”.

12 New sections 17 and 17A substituted

The principal Act is amended by repealing section 17 (as amended by section 6(2) of this Act), and substituting the following sections:

“17 Offences in respect of smoking

“(1) An employer who fails to comply with section 5(1) commits an offence.

“(2A) The managers of any premises who fail to comply with section 7A(1) commit an offence.

“(2B) The occupier of any premises who fails to comply with section 7A(3) commits an offence.

“(3) The operator of an aircraft who, without reasonable excuse, permits a person to smoke in contravention of section 8(1) commits an offence.

“(4) The operator of a passenger service vehicle who, without reasonable excuse, permits a person to smoke in contravention of subsection (1) or subsection (1 A) of section 9 commits an offence.

“(6) The owner or occupier of an area to which section 11 applies who, without reasonable excuse, permits any person to smoke in the area commits an offence.

“(7) A licensee who fails to comply with section 12(1) commits an offence.

“(8) The operator of a restaurant who fails to comply with section 13(1) commits an offence.

“(8A) The holder of a casino operator’s licence who fails to comply with section 13A(1) commits an offence.

- “(8B) The holder of a class 4 gambling venue licence who fails to comply with section 13B(1) commits an offence.
- “(8C) An employer who, without reasonable excuse, fails to comply with section 15(6) commits an offence.
- “(9) A person who smokes in contravention of section 8(2) commits an offence.

“17A Penalties

- “(1) The managers of any premises who commit an offence against section 17(2A) are liable,—
 - “(a) in the case of managers who are a body corporate, to a fine not exceeding \$4,000; and
 - “(b) in the case of managers who are not a body corporate, to a fine not exceeding \$400 each.
- “(2) A person who commits an offence against a provision of section 17 other than subsection (2A), subsection (8C), subsection (9), or subsection (10) is liable,—
 - “(a) in the case of a person who is a body corporate, to a fine not exceeding \$4,000; and
 - “(b) in the case of a person who is not a body corporate, to a fine not exceeding \$400.
- “(3) An employer who commits an offence against section 17(8C) is liable,—
 - “(a) in the case of an employer who is a body corporate, to a fine not exceeding \$1,000; and
 - “(b) in the case of an employer who is not a body corporate, to a fine not exceeding \$100.
- “(4) A person who commits an offence against section 17(9) is liable to a fine not exceeding \$400.”

13 New section 20A inserted

The principal Act is amended by inserting, after section 20, the following section:

“20A Health and Safety in Employment Act 1992 not affected

Nothing in this Part, and no steps taken in compliance or purported compliance with this Part, limits or affects—

- “(a) the Health and Safety in Employment Act 1992; or
- “(b) the obligations of any person under that Act.”

Part 3

Other amendments

14 Heading to Part 2 amended

The heading to Part 2 of the principal Act is amended by omitting the words “Tobacco Products Control”, and substituting the words “Control of smoking products”.

15 Purpose of this Part

Section 21(a) of the principal Act is amended by adding the following subparagraph:

“(iii) prohibiting the sale of toy tobacco products to people younger than 18 years; and”.

16 Exemptions for retailers and vending machines

Section 23(1) of the principal Act is amended by—

- (a) omitting the words “all or any”, and substituting the words “either or both” ; and
- (b) repealing paragraph (a).

17 New section 23A inserted

The principal Act is amended by inserting, after section 23, the following section:

“23A Compliant product display

“(1) A retailer of tobacco products must not expose a tobacco product for sale inside the retailer’s place of business unless its exposure—

- “(i) complies with this section; and
- “(ii) complies with any regulations for the time being in force under section 39(1)(ia).

“(2) The exposure of tobacco products for sale inside a retailer’s place of business complies with this section if, and only if,—

- “(a) no tobacco product exposed for sale is visible from outside the place; and
- “(b) unless the place of business is a tobacconist’s shop, not more than 100 tobacco packages are exposed for sale at any point of sale; and

- “(c) unless the place of business is a tobacconist’s shop, not more than 40 tobacco cartons are exposed for sale at any point of sale; and
- “(d) not more than 2 tobacco packages of the same kind are exposed for sale at any point of sale; and
- “(e) not more than 2 tobacco cartons of the same kind are exposed for sale at any point of sale; and
- “(f) no tobacco package (other than a pouch pack of loose tobacco) with a face that has an area greater than 66 cm² is exposed for sale; and
- “(g) no pouch pack of loose tobacco with a face that has an area greater than 105 cm² is exposed for sale; and
- “(h) no tobacco carton with a face that has an area greater than 266 cm² is exposed for sale; and
- “(i) either—
 - “(i) no tobacco product is exposed for sale within 1 metre of any children’s product exposed for sale; or
 - “(ii) if, because of the size of the place, it is not reasonably practicable to keep all tobacco products exposed for sale at least 1 metre from any children’s product exposed for sale, the retailer has taken all reasonably practicable steps to ensure that every tobacco product exposed for sale that is within 1 metre of any children’s product exposed for sale is as far away from the children’s product as possible; and
- “(j) no tobacco product is exposed for sale on any counter top or similar surface; and
- “(k) there is displayed at each point of sale where tobacco products are exposed for sale a rectangular sign, with its longer sides horizontal and its shorter sides vertical, and the message ‘SMOKING KILLS Ka mate koe i to kai hikareti’ printed in black across it—
 - “(i) within a black rectangular border that is no wider than an upper case letter ‘i’ in the point size used for the words ‘SMOKING KILLS’; and
 - “(ii) on a white background within that border; and
 - “(iii) in the type face known as Helvetica; and

- “(iv) in roman font; and
 - “(v) with the words ‘SMOKING KILLS’ printed centred, in upper case letters, in one line; and
 - “(vi) with the words ‘Ka mate koe i to kai hikareti’ printed centred, in upper case and lower case letters (as it is printed in this subparagraph) in one line—
 - “(A) beneath the words ‘SMOKING KILLS’; and
 - “(B) in a point size such that its risers are two-thirds the height of the words ‘SMOKING KILLS’; and
 - “(vii) in a type that is clear and legible, of normal weight, and of such a point size that the words ‘Ka mate koe i to kai hikareti’ do not touch the vertical elements of the border, but as nearly as possible take up the full width of the sign between them.
- “(3) The sign must have at least the lesser of the following areas:
- “(a) 1 square metre;
 - “(b) 10% of the area of the display in which the tobacco products are exposed for sale.
- “(4) The sign may include the attribution ‘*Ministry of Health Warning*’, printed centred, in one line beneath the words ‘Ka mate koe i to kai hikareti’,—
- “(a) in upper case and lower case letters (as it is set out above); and
 - “(b) in an italic font in the type face known as Helvetica; and
 - “(c) in a point size such that its risers are no more than half the height of the words ‘SMOKING KILLS’; and
 - “(d) otherwise in accordance with subsection (2)(k).
- “(5) The sign must not include anything that is not—
- “(a) required by subsection (2)(k); or
 - “(b) authorised by subsection (4).
- “(6) For the purposes of subsection (2)(k), tobacco products are exposed for sale at a point of sale if they are exposed for sale—
- “(a) in a display that forms part of a unit or counter of which that point of sale forms part; or
 - “(b) at a place that—

- “(i) is within 2 metres of that point of sale; and
- “(ii) is not closer to some other point of sale than to that point of sale.”

18 New section 23B inserted

The principal Act is amended by inserting, before section 24, the following section:

“23B Exposure for sale

- “(1) For the purposes of sections 23(1) and 23A,—
 - “(a) a tobacco product is exposed for sale if the tobacco package or tobacco carton it is in is exposed for sale; and
 - “(b) a tobacco package or tobacco carton is exposed for sale inside a retailer’s place of business if it is for sale, and any part of it is visible—
 - “(i) from outside the place; or
 - “(ii) from an area inside the place to which members of the public are allowed access.
- “(2) In determining for the purposes of section 23(1) how many tobacco packages in a visible stack are exposed for sale, the front package must be counted; but
 - “(a) if there are 4 or fewer other packages behind it that are exposed for sale, the other packages must not be counted; and
 - “(b) if there are 5 or more other packages behind it that are exposed for sale, the first 4 of the other packages must not be counted.”

19 Free distribution and rewards prohibited

- (1) Section 28 of the principal Act is amended by inserting, after subsection (1), the following subsection:

- “(1A) For the purposes of subsection (1), a tobacco product is distributed or supplied at a reduced charge—
 - “(a) if the charge for the product itself is reduced; or
 - “(b) if—
 - “(i) the product is distributed or supplied at a charge that is not or purports not to be reduced; but
 - “(ii) some other item is supplied, free or at a reduced charge, together with the product.”

- (2) Section 28(3) of the principal Act is repealed.

20 New sections 29A and 29B inserted

The principal Act is amended by inserting, before section 30, the following sections:

“29A Sale of tobacco products with other products prohibited

- “(1) This subsection applies to a tobacco product if it is—
- “(a) packed together with a product that is not a tobacco product; or
 - “(b) distributed or supplied, together with a product that is not a tobacco product, at a single price.
- “(2) No manufacturer, distributor, importer, or retailer of tobacco products may,—
- “(a) distribute a tobacco product to which subsection (1) applies; or
 - “(b) supply a tobacco product to which subsection (1) applies to another person for later distribution; or
 - “(c) in the case of a retailer, supply a tobacco product to which subsection (1) applies to another person for the purpose of that retailer’s business.

“29B Restriction on use of automatic vending machines

- “(1) No person may—
- “(a) permit an automatic vending machine that dispenses or is capable of dispensing tobacco products or herbal smoking products to be located in a place to which members of the public have access; or
 - “(b) permit a tobacco product or herbal smoking product to be sold by way of an automatic vending machine in a place to which members of the public have access.
- “(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 in a place from which any person using it can see the person to whom the sale is to be made.

“(3) For the purposes of this Act, a person who activates an automatic vending machine so that a sale of a tobacco product or herbal smoking product to another person occurs is a party to the sale of that product to the other person.”

21 New sections 30 and 30AA substituted

The principal Act is amended by repealing section 30, and substituting the following sections:

“30 Sale of tobacco products and herbal smoking products to people under 18 prohibited

“(1) No person may sell a tobacco product or herbal smoking product to a person younger than 18 years.

“(2) It is a defence to a charge in respect of a contravention of subsection (1) if the person charged proves that the contravention occurred without his or her knowledge and that he or she took reasonable precautions and exercised due diligence to prevent the contravention of that subsection.

“(2A) For the purposes of subsection (2), a person charged in respect of a contravention of subsection (1) who proves that he or she sighted an evidence of age document (within the meaning of section 2A of the Sale of Liquor Act 1989) of the person to whom the product concerned was sold, indicating that the person was of or over the age of 18 years, proves that the contravention occurred without his or her knowledge and that he or she took reasonable precautions and exercised due diligence to prevent the contravention of that subsection.

“(2B) Subsection (2A) does not affect the generality of subsection (2).

“(3) It is not a defence to a charge in respect of a contravention of subsection (1)—

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

“(b) that the person charged believed on reasonable grounds that the person to whom the product concerned was sold was buying it for or on behalf of, or as agent for, a person of or over the age of 18 years.

“(6) Every person who sells by retail a tobacco product or herbal smoking product must display clearly for the public a notice to the effect that the sale of tobacco products and herbal smoking products to people who are younger than 18 years is prohibited.

“30AA Supplying tobacco products or herbal smoking products to people under 18 prohibited

“(1) No person may, in a public place (within the meaning of section 2 of the Summary Offences Act 1981),—

“(a) supply a tobacco product or herbal smoking product to a person younger than 18 years; or

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

“(2) It is a defence to a charge in respect of a contravention of subsection (1) if the person charged proves that he or she had no reasonable grounds to suspect that the person supplied was younger than 18 years.

“(3) For the purposes of subsection (2), a person charged in respect of a contravention of subsection (1) who proves that he or she sighted an evidence of age document (within the meaning of section 2A of the Sale of Liquor Act 1989) of the person to whom the product concerned was supplied, indicating that the person was of or over the age of 18 years, proves that he or she had no reasonable grounds to suspect that the person supplied was younger than 18 years.

“(4) It is not a defence to a charge in respect of a contravention of subsection (1)—

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

“(b) that the person charged believed on reasonable grounds that the person younger than 18 years was acquiring the product concerned for or on behalf of, or as agent for, a person of or over the age of 18 years.

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

22 New section 30AB inserted

The principal Act is amended by inserting, before section 30A, the following section:

“30AB Certain repeat offenders may be ordered not to sell tobacco products

“(1) This section applies—

“(a) if a person—

“(i) has been convicted of and is to be sentenced in respect of an offence against section 30(1) committed after the commencement of section 21 of the Smoke-free Environments Amendment Act 2003 (the **repeat offence**); and

“(ii) within the 2 years before the conviction for the repeat offence was entered, had been convicted of an offence against section 30(1) (whether committed before or after that commencement); or

“(b) if a person has been convicted of and is to be sentenced in respect of an offence against section 36(7AA) (a **non-compliance offence**).

“(2) When sentencing a person for a repeat offence or a non-compliance offence, the court may (in addition to any sentence it might impose and any other order in the nature of a penalty it might make) make an order—

“(a) prohibiting either or both of the following:

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

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

“(b) prohibiting either or both of the following:

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

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

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

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

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

- “(3) The order must state—
- “(a) the date it takes effect (which may be the date on which it is made or a later date); and
 - “(b) the date it expires (which must be a date at least 4 weeks and no more than 3 months after the date it takes effect).”

23 Limits on harmful constituents

Section 31 of the principal Act is amended by inserting, after the words “tobacco product”, the words “or herbal smoking product”.

24 New sections 32 to 34 substituted

The principal Act is amended by repealing sections 32 to 34, and substituting the following sections:

“32 Labelling and health messages for tobacco products

- “(1) A manufacturer, importer, distributor, or retailer must not sell a tobacco product or offer a tobacco product for sale unless—
- “(a) the package containing it displays, in accordance with regulations under this Part, as many of the following things as the regulations require:
 - “(i) a message relating to the effects of its use on health:
 - “(ii) a list of the harmful constituents of the product:
 - “(iii) if the tobacco product is intended for smoking, a list of the harmful constituents, and their respective quantities, present in the smoke:
 - “(iv) whether as part of or in addition to any message relating to the effects of its use on health, a photograph or picture intended to have effect as a warning relating to the effects of its use on health; and
 - “(b) if the regulations so require, there is placed inside the package with the product a leaflet containing—
 - “(i) information (prescribed by the regulations for tobacco products generally, or tobacco products of a class to which the product belongs) relating to the effects of the use of the product on health; and
 - “(ii) if the tobacco product is intended for smoking, as much of the following information (stated, as

the regulations may require, by reference to the class of tobacco product to which it belongs, or its brand as a tobacco product of any class or variant of a brand of a tobacco product of any class) as the regulations require:

“(A) a list of the harmful constituents, and their respective quantities, present in the product:

“(B) a list of the additives, and their respective quantities, present in the product:

“(C) a list of the harmful constituents, and their respective quantities, present in the smoke.

“(2) In subsection (1), **harmful constituent** means a substance declared by the regulations to be a harmful constituent for the purposes of that subsection.

“(3) A person who sells a tobacco product from an automatic vending machine that can be seen from a place to which members of the public have access must display on the machine, in accordance with regulations under this Act, any health message required by or under this Act (even if the machine is accessible only by the person or his or her employees or agents).

“(4) Subsection (3) does not authorise or excuse a contravention of section 29B.

“32AA Labelling and health messages for herbal smoking products

“(1) No manufacturer, importer, distributor, or retailer may sell or offer for sale a herbal smoking product unless—

“(a) the package containing it displays, in accordance with regulations under this Part, as many of the following things as the regulations require:

“(i) a message relating to the effects of the use of herbal smoking products on health:

“(ii) a list of the harmful constituents, and their respective quantities, present in the product:

“(iii) a list of the constituents, and their respective quantities, present in the product:

- “(iv) a list of the harmful constituents, and their respective quantities, present in the smoke:
- “(v) whether as part of or in addition to any message relating to the effects of the use of herbal smoking products on health, a photograph or picture intended to have effect as a warning relating to the effects of the use of the herbal smoking products on health; and
- “(b) if the regulations so require, a leaflet containing either or both of the following (as the regulations may require) is placed inside the package with the herbal smoking products:
 - “(i) information relating to the effects of the use of herbal smoking products on health:
 - “(ii) a list of the harmful constituents, and their respective quantities, present in the smoke.
- “(2) In subsection (1), **harmful constituent** means a substance declared by the regulations to be a harmful constituent for the purposes of that subsection.
- “(3) A person who sells a herbal smoking product from an automatic vending machine that can be seen from a place to which members of the public have access must display on the machine, in accordance with regulations under this Act, any health message required by or under this Act (even if the machine is accessible only by the person or his or her employees or agents).
- “(4) Subsection (3) does not authorise or excuse a contravention of section 29B.
- “**33 Annual testing for constituents**
- “(1) This section applies to each product prescribed for the purposes of this section by regulations under this Part.
- “(2) Every manufacturer and every importer of a product to which this section applies must in each year conduct, in accordance with the regulations, either or both of the following (as the 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) if the product is intended to be smoked, a test for the constituents of the smoke of each brand of the product sold by the manufacturer or importer, and the respective quantities of those constituents.
- “(3) If the regulations require it, each variant of the brand must be tested separately.
- “(4) In this section and section 34, product means anything that is—
 - “(a) a tobacco product of any kind; or
 - “(b) herbal smoking products generally; or
 - “(c) herbal smoking products of any kind.

“34 Director-General may require further testing

- “(1) In addition to the annual test or tests required by section 33, the Director-General may, by notice in writing to the manufacturer or importer of a product to which that section applies, require a further test or tests to be conducted.
- “(2) The further test or tests must be conducted, in accordance with the regulations referred to in section 33,—
 - “(a) in a laboratory nominated by the Director-General; but
 - “(b) at the expense in all respects of the manufacturer or importer.
- “(3) In any year, the Director-General must not require tests under this section in respect of more than 10% of the brands of products to which section 33 applies sold by a particular manufacturer or importer.”

25 New section 35 substituted

The principal Act is amended by repealing section 35, and substituting the following section:

“35 Returns and reports

- “(1) Every manufacturer and every importer of tobacco products must, not later than 31 January in each year, file with the Director-General, in the form and manner prescribed by regulations under this Part,—
 - “(a) a return showing—
 - “(i) by class of tobacco product, or brand of tobacco product of any class, or variant of a brand of

- tobacco product of any class, (as the regulations may require) the weight of tobacco and of each additive used in the manufacture of the tobacco products sold by the manufacturer or importer during the previous year; and
- “(ii) the quantity of each brand, and of each variant of a brand, of tobacco product sold by the manufacturer or importer during the previous year; and
- “(iii) the recommended price of each brand, and of each variant of a brand, of tobacco product sold by the manufacturer or importer during the previous year; and
- “(b) a report of the results of all tests that the manufacturer or importer conducted during the previous year for the purposes of section 33 or section 34.
- “(2) The Director-General—
- “(a) must take all practicable steps to ensure that all returns and reports received under subsection (1) are publicly available on a website under the Director-General’s control; and
- “(b) may publish or make publicly available in any other way all or any part of any such return or report.”

26 Offences in respect of tobacco products

- (1) The heading to section 36 of the principal Act is amended by omitting the word “tobacco”, and substituting the word “smoking”.
- (2) Section 36 of the principal Act is amended by inserting, after subsection (1), the following subsection:
- “(1A) A retailer of tobacco products who, without reasonable excuse, exposes a tobacco product for sale inside the retailer’s place of business otherwise than in compliance with section 23A commits an offence and is liable to a fine not exceeding \$10,000.”
- (3) Section 36 of the principal Act is amended by inserting, after subsection (4), the following subsection:
- “(4A) 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.”

- (4) Section 36 of the principal Act is amended by inserting, after subsection (5), the following subsections:
- “(5A) Every person who, in contravention of section 29A(2), distributes a tobacco product to which section 29A(1) applies, or supplies a tobacco product to which section 29A(1) applies to another person for later distribution, or, in the case of a retailer, supplies a tobacco product to which section 29A(1) applies to another person for the purpose of that retailer’s business commits an offence, and is liable,—
- “(a) in the case of a manufacturer, an importer, or, a distributor, to a fine not exceeding \$10,000; and
 - “(b) in any other case, to a fine not exceeding \$5,000.
- “(5B) Every person commits an offence and is liable to a fine not exceeding \$2,000 who, in contravention of section 29B,—
- “(a) permits an automatic vending machine that dispenses or is capable of dispensing tobacco products or herbal smoking products to be located in a place to which members of the public have access; or
 - “(b) permits a tobacco product or herbal smoking product to be sold by way of an automatic vending machine in a place to which members of the public have access.”
- (5) Section 36 of the principal Act is amended by repealing subsection (6), and substituting the following subsection:
- “(6) Every person commits an offence and is liable to a fine not exceeding \$2,000 who—
- “(a) sells a tobacco product or herbal smoking product in contravention of section 30(1); or
 - “(b) supplies a tobacco product or herbal smoking product in a public place in contravention of section 30AA(1).”
- (6) Section 36 of the principal Act is amended by inserting, before subsection (7A), the following subsection:
- “(7AA) Every person commits an offence who fails to comply with an order under section 30AB(2); and is liable,—
- “(a) in the case of a person who is a body corporate, to a fine not exceeding \$10,000; and
 - “(b) in the case of a person who is a not a body corporate, to a fine not exceeding \$4,000.”
- (7) Section 36 of the principal Act is amended by inserting, after subsection (9), the following subsection:

- “(9A) Every manufacturer, importer, distributor, or retailer of herbal smoking products who sells or offers for sale a herbal smoking product knowing that it contravenes section 32AA(1) commits an offence and is liable,—
- “(a) in the case of a manufacturer, an importer, or a distributor, to a fine not exceeding \$10,000; and
 - “(b) in the case of a retailer, to a fine not exceeding \$4,000.”
- (8) Section 36(10) of the principal Act is amended by omitting the words “section 32(3) of this Act”, and substituting the words “section 32(3) or section 32AA(3)”.

27 New section 36A inserted

The principal Act is amended by inserting, after section 36, the following section:

“36A Toy tobacco products

- “(1) No person may sell a toy tobacco product to a person younger than 18 years.
- “(2) Every person who sells a toy tobacco product to a person younger than 18 years in contravention of subsection (1) commits an offence, and is liable to a fine not exceeding \$2000.
- “(3) It is a defence to a charge in respect of a contravention of subsection (1) if the person charged proves that the contravention occurred without his or her knowledge and that he or she took reasonable precautions and exercised due diligence to prevent the contravention of that subsection.
- “(4) For the purposes of subsection (3), a person charged in respect of a contravention of subsection (1) who proves that he or she sighted an evidence of age document (within the meaning of section 2A of the Sale of Liquor Act 1989) of the person to whom the product concerned was sold, indicating that the person was of or over the age of 18 years, proves that the contravention occurred without his or her knowledge and that he or she took reasonable precautions and exercised due diligence to prevent the contravention of that subsection.
- “(5) Subsection (4) does not affect the generality of subsection (3).
- “(6) It is not a defence to a charge in respect of a contravention of subsection (1)—

- “(a) that the person to whom the product concerned was sold was buying it for or on behalf of, or as agent for, a person of or over the age of 18 years; or
- “(b) that the person charged believed on reasonable grounds that the person to whom the product concerned was sold was buying it for or on behalf of, or as agent for, a person of or over the age of 18 years.”

28 Regulations

- (1) Section 39(1) of the principal Act is amended by—
 - (a) inserting in paragraph (e), after the words “tobacco products” where they first occur, the words “or herbal smoking products,”
 - (b) inserting in paragraph (f), after the words “tobacco products”, the words “or herbal smoking products”:
 - (c) inserting in paragraph (g), after the words “tobacco products”, the words “or herbal smoking products”:
 - (d) inserting in paragraph (ga), after the words “tobacco products”, the words “or herbal smoking products”:
 - (e) inserting in paragraph (h), after the words “tobacco products”, the words “or herbal smoking products,”.
- (2) Section 39(1) of the principal Act is amended by inserting, after paragraph (i), the following paragraph:
 - “(ia) prescribing for the purposes of section 23(1)(a)(ii) requirements with which the exposure of tobacco products for sale in a retailer’s place of business must comply.”
- (3) Section 39 of the principal Act is amended by adding the following subsections:
 - “(3) Regulations under subsection (1)(ia) may prescribe requirements of either or both of the following kinds:
 - “(a) requirements that are not of the same kind as those in section 23A:
 - “(b) requirements that are of the same kind as, but are more stringent than, those in section 23A.
 - “(4) Regulations under subsection (1)(ia) must be made on the recommendation of the Minister.
 - “(5) The Minister must not recommend the making of regulations under subsection (1)(ia) without having first consulted—

- “(a) organisations that, in the Minister’s opinion, represent the interests of retailers of a kind who customarily sell tobacco products; and
 - “(b) every organisation (if any) that is known to the Minister to represent the interests of manufacturers, importers, or wholesalers of tobacco products; and
 - “(c) every manufacturer, importer, or wholesaler of tobacco products that is known to the Minister—
 - “(i) to be likely to be substantially affected by the regulations; and
 - “(ii) not to be represented by an organisation consulted under paragraph (b).
- “(6) Regulations made under subsection (1)(ia) must come into force no earlier than the day 6 months after the date on which they are made.
- “(7) This subsection applies to regulations under this section if they are the first regulations made after the commencement of section 28 of the Smoke-free Environments Amendment Act 2003 that (substantively, or by amending existing regulations)—
- “(a) require tobacco products sold or offered for sale to display a photograph or picture intended to have effect as a warning relating to the effects of their use on health; or
 - “(b) require a leaflet to be placed inside packages of tobacco products sold or offered for sale; or
 - “(c) require herbal smoking products sold or offered for sale to display a message or list; or
 - “(d) require herbal smoking products sold or offered for sale to display a photograph or picture intended to have effect as a warning relating to the effects of their use on health; or
 - “(e) require a leaflet to be placed inside packages of herbal smoking products sold or offered for sale, or a warning relating to the effects of their use on health; or
 - “(f) require manufacturers and importers of herbal smoking products to conduct either or both of the following:
 - “(i) a test for the constituents of each brand of the product sold by the manufacturers or im-

- porters, and the respective quantities of those constituents:
- “(ii) a test for the constituents of the smoke of each brand of the product sold by the manufacturers or importers that is intended to be smoked, and the respective quantities of those constituents; or
 - “(g) require manufacturers and importers of tobacco products or herbal smoking products conducting tests for the constituents of each brand sold by the manufacturers or importers, and the respective quantities of those constituents, to test each variant of the brand separately; or
 - “(h) require manufacturers and importers of tobacco products or herbal smoking products conducting tests for the constituents of the smoke of each brand of the product sold by the manufacturers or importers that is intended to be smoked, and the respective quantities of those constituents, to test each variant of the brand separately; or
 - “(i) require manufacturers and importers of tobacco products to file with the Director-General returns showing all additives used in the manufacture of the tobacco products sold by the manufacturer or importer; or
 - “(j) require manufacturers and importers of tobacco products to file with the Director-General returns showing by brand variant—
 - “(i) the weight of tobacco (or the weight of tobacco and of each additive) used in the manufacture of the tobacco products sold by the manufacturer or importer; and
 - “(ii) the quantity of each variant of a brand of tobacco product sold by the manufacturer or importer; and
 - “(iii) the recommended price of each variant of a brand of tobacco product sold by the manufacturer or importer during the previous year.
- “(8) If regulations to which subsection (7) applies are made after 31 January and before 1 July in any year, they must come into force no sooner than 1 February in the next year.
- “(9) If regulations to which subsection (7) applies are made after 30 June in any year and before 1 February in the next year,

they must come into force no sooner than 1 February in the year after that next year.”

29 New part 2A inserted

The principal Act is amended by inserting, after section 41, the following Part:

“Part2A

“Powers of enforcement officers

“41A Powers of entry and inspection

- “(1) This section applies to a place if—
- “(a) this Act imposes duties, restrictions, or prohibitions in respect of places of a kind to which it belongs; or
 - “(b) there is carried out in it, regularly or from time to time, an activity in respect of which this Act imposes duties, restrictions, or prohibitions.
- “(2) An enforcement officer may at any reasonable time enter a place if—
- “(a) he or she believes on reasonable grounds that it is a place to which this section applies; and
 - “(b) it is not a dwellinghouse or other residential accommodation.
- “(3) An enforcement officer who enters a place under subsection (2) may do any or all of the following things:
- “(a) bring a still or video camera, a device for taking samples of air, or both, with him or her:
 - “(b) inspect the place:
 - “(c) take photographs or videos with any camera he or she brings with him or her:
 - “(d) take samples of the air in the place with any device for that purpose he or she brings with him or her:
 - “(e) if the enforcement officer believes on reasonable grounds that the place is a place where tobacco products or herbal smoking products are sold from time to time,—
 - “(i) exercise the powers given by section 41B:
 - “(ii) inspect any advertising or display material relating to tobacco products on display in the place, or on the outside of a building containing the place.

- “(4) An enforcement officer exercising powers under this section may be accompanied by a member of the police.
- “(5) Subsection (2) does not prevent an enforcement officer from entering a dwellinghouse or other residential accommodation—
 - “(a) under authority given by or under an enactment other than this section; or
 - “(b) with the consent of an occupier.

“41B Requirement to give identifying information

- “(1) An enforcement officer who at any time believes on reasonable grounds that within the previous 14 days tobacco products or herbal smoking products have been sold to a person younger than 18 years in a place where tobacco products or herbal smoking products are sold from time to time—
 - “(a) may, while the person the officer believes on reasonable grounds to have sold the products is in the place, require the person to give the officer his or her name and address; and
 - “(b) may require a person in the place who appears to be in charge of the place or any part of it to give the officer the name and address of (or, if the address is not within the person’s knowledge, the name and any other identifying information within the person’s knowledge relating to) any person the officer believes on reasonable grounds to have sold the products other than a person in charge of the place.
- “(2) An enforcement officer who suspects that a person is younger than 17 years must not under subsection (1)(a) require the person to give the officer his or her name and address unless—
 - “(a) there is no other person in the place concerned who appears to be in charge of it; or
 - “(b) there is another person in the place who appears to be in charge of it, but the enforcement officer suspects that that person is also younger than 17 years.
- “(3) An enforcement officer who suspects that a person is younger than 17 years must not under subsection (1)(b) require the person to give the officer the name and address of (or name and other identifying information relating to) any other person if

the other person is in the place concerned and appears to be 17 years old or older.

“41C Purposes for which powers may be used

- “(1) The powers given by section 41A must be used only for, and only to the extent necessary for, the following purposes:
- “(a) finding out whether this Act is being complied with in and in respect of the place entered:
 - “(b) finding out the extent to which this Act is not being complied with in or in respect of the place entered:
 - “(c) exercising the powers given by section 41B.
- “(2) The powers given by section 41B must be used only for, and only to the extent necessary for, finding out the name and address of (or, if the address is not within the knowledge of the person asked, the name and any other identifying information within the person’s knowledge relating to) a person the enforcement officer concerned believes to have sold tobacco products or herbal smoking products to a person younger than 18 years in a place where tobacco products or herbal smoking products are sold from time to time.
- “(3) This section does not prevent an enforcement officer from using in proceedings for an offence against this Act evidence obtained during the lawful exercise of any of the powers given by sections 41A and 41B.

“41D Duties of enforcement officers

- “(1) An enforcement officer exercising powers under section 41A in respect of or in a place,—
- “(a) if a person in charge of the place is present on initial entry, must identify himself or herself to the person in charge as an enforcement officer; and
 - “(b) if asked by a person in charge to do so, must produce to the person evidence of identity, his or her instrument of appointment as an enforcement officer, or both.
- “(2) An enforcement officer exercising powers under section 41B in respect of a person,—
- “(a) must identify himself or herself to the person as an enforcement officer; and

“(b) if asked by the person to do so, must produce to the person evidence of identity, his or her instrument of appointment as an enforcement officer, or both.

“41E Offences in respect of enforcement officers

Every person commits an offence, and is liable on summary conviction to a fine not exceeding \$1,000, who—

- “(a) intentionally obstructs, hinders, or resists an enforcement officer exercising or attempting to exercise powers under section 41A or section 41B; or
- “(b) intentionally fails to comply with a requirement under section 41B; or
- “(c) when required under section 41B to give information, gives information the person knows to be false or misleading.

“41F Enforcement

- “(1) It is the Director-General’s duty to enforce this Part.
- “(2) An information in respect of an offence against this Part must be laid by the Director-General or a person authorised by the Director-General.
- “(3) An information in respect of an offence against this Part may be laid at any time within 1 year after the time the matter it relates to arose.
- “(4) Subsection (3) overrides section 14 of the Summary Proceedings Act 1957.”

Legislative history

1 July 1999	Introduction (Bill 310-1)
10 May 2000	First reading and referral to Health Committee
18 March 2003	Reported from Health Committee (Bill 310-2)
30 July 2003	Second reading
13 August, 17 September, 15 October, 12 November 2003	Committee of the whole House (Bill 310-3)
3 December 2003	Third reading
