Smokefree Environments and Regulated Products (Smoked Tobacco) Amendment Bill

Government Bill

As reported from the Health Committee

Commentary

Recommendation

The Health Committee has examined the Smokefree Environments and Regulated Products (Smoked Tobacco) Amendment Bill and recommends by majority that it be passed. We recommend all amendments by majority.

About the bill as introduced

New Zealand has the goal of reducing daily smoking rates to less than 5 percent across all population groups by 2025. This is known as the Smokefree 2025 goal. The bill would make legislative amendments aimed at achieving the Smokefree 2025 goal.

Part 1 of the bill would amend the Smokefree Environments and Regulated Products Act 1990. The amendments seek to:

- reduce retail availability by significantly limiting the number of retailers able to sell smoked tobacco products
- reduce the appeal and addictiveness of smoked tobacco products by enabling limits or prohibitions to be set on the quantity of nicotine and other constituents
- prevent young people, and future generations, from ever taking up smoking by prohibiting the sale of smoked tobacco products to anyone born on or after 1 January 2009.

Part 2 would amend the Customs and Excise Act 2018. It would extend the existing prohibition on the import of smoked tobacco products to include all classes of smoked tobacco products. Importers would need a permit to import smoked tobacco products. These import permits would only be granted if the new product requirements, such as low nicotine levels, were met.

Legislative scrutiny

As part of our consideration of the bill, we have examined its consistency with principles of legislative quality. We have no issues regarding the legislation's design to bring to the attention of the House.

Proposed amendments

This commentary covers the main amendments we recommend to the bill as introduced. We do not discuss minor, technical, or consequential amendments.

Commencement

Clause 2 sets out the commencement provisions in the bill. Several clauses would come into force on 1 January 2027, with the remaining provisions coming into force on the day after the date on which they received the Royal assent. We propose several adjustments.

We recommend specifying that clause 19(2), rather than clause 19(3), come into force on 1 January 2027. This would ensure that the prohibition on sales to under 18-year-olds would remain until the smokefree generation provisions began on 1 January 2027.

We note that the amendments to the Customs and Excise Act would commence after Royal assent, but the bill as introduced contains no transitional provisions for these amendments. Consequently, the changes to the import scheme would apply before the changes to the Smokefree Act relating to product approval and constituent requirements. Those provisions have a transitional period of 27 months. Given that these provisions should align, we recommend amending clause 2 so that the Customs and Excise Act amendments (Subpart 1 of Part 2) would come into force 27 months after the legislation commenced.

Clause 49 would amend section 94, which would enable enforcement officers to require identifying information if they believed that certain provisions had been breached. We note that the provisions relating to approved tobacco retailers, the smokefree generation policy, and smoked tobacco approval and constituent requirements have staggered commencement dates. Therefore, we recommend amending clause 2 so that the commencement dates for the enforcement powers in section 94 align with the commencement dates for the corresponding provisions.

Purposes of the legislation

Clause 5 would amend section 3A, which sets out the purposes of the Act. The bill would consolidate and condense the description of the purposes and specify the new measures that the bill introduces.

Proposed new section 3A(a)(vi) states that a purpose is to reduce disparities in smoking rates and smoking-related illnesses between New Zealand population groups, and particularly between Māori and other groups. We recommend shifting this provision

so that it is listed first in the purpose statement. We consider that this shift would help to emphasise the equity focus of the Smokefree Aotearoa 2025 Action Plan.

Proposed new section 3A(b) specifies that a purpose is to provide for the regulation of notifiable products in a way that seeks to minimise harm.[1] We believe this provision, as introduced, could appear to weaken the Act's existing protections from vaping for children and young people. We therefore recommend amending section 3A(b) to include a reference to minimising harm to children and young people.

Approval as a smoked tobacco retailer

Clause 13 would insert new Part 1B (new sections 20G to 20S) into the Act. New Part 1B sets out the requirements for a person to enter the retail markets for smoked tobacco and vaping products.

Online sales

Clause 13, proposed new section 20H, would enable a person to apply to the Director-General of Health to be an approved retailer of smoked tobacco. The approval would relate to specified retail premises and, if applicable, specified Internet sites directly connected to those retail premises. Proposed new section 20I sets out the conditions that the Director-General would need to be satisfied of before granting an approval.

We were advised that online sales are only intended to be allowed in limited circumstances. The Director-General would need to be satisfied that an area of the country would otherwise have no retail availability, or a specific population of people who smoked would be unable to access the products otherwise. Further, the ability to sell online could only be granted to an applicant who had received approval to sell from specified retail premises—an applicant could not operate in an online capacity only. We recommend several amendments to make this intent clearer. Our proposed amendments would specify that the ability to provide an online sales service would only be possible if the Internet site was operated together with the specified retail premises for which approval was sought. The Director-General would also need to be satisfied that there was no reasonable access in one of the two limited circumstances listed above (proposed section 20I(1)(ca)(ii)). Additionally, our proposed amendments would allow the Director-General to decline to give a person the ability to operate in an online capacity if this would be inconsistent with the purpose of significantly reducing the retail availability of smoked tobacco products (proposed section 20I(1A)).

We noted that the bill, as introduced, would not restrict the number of online outlets that an applicant could have or the geographic area the approval could cover. We recommend adding proposed section 20I(3A) to set two requirements as a condition of

[1] The bill defines "notifiable product" as a vaping product, a smokeless tobacco product, a herbal smoking product, or any other regulated product (other than a smoked tobacco product) declared by regulations to be a notifiable product.

the Director-General's approval of an Internet site. The ability to sell online would be confined to one online presence only, and the applicant could only supply to the geographic area indicated in the approval.

Approving a smoked tobacco retailer

Clause 13, proposed new section 20I(1), provides that, for an individual applicant, the Director-General would need to be satisfied that the applicant was a fit and proper person and a New Zealand resident. For an entity, the Director-General would need to be satisfied that each responsible person was a fit and proper person. They would also need to be satisfied that the applicant was carrying out business in New Zealand or was incorporated or registered under New Zealand law.

We note that there may be situations where the ownership of an approved smoked tobacco retail business changed. In these circumstances, we would expect the new individual to be assessed as a fit and proper person or the entity to be reassessed if a responsible person changed. We therefore recommend inserting new section 20I(6) to make it clear that an approval would not automatically transfer.

Proposed new section 20I(1)(c)(ii) provides that the Director-General must be satisfied that any retail premises in which the products are or will be sold are appropriate premises from which to operate a stand-alone business. We consider that the reference to "stand-alone business" could cause uncertainty. Therefore, we recommend deleting this part of the clause and the reference to "stand-alone business" in proposed new section 20P(2)(a)(ii) (Application for approval as specialist vape retailer).

Determining and publishing the applications process

Clause 13, proposed new section 20L(1) would require the Director-General to determine an application process that ensured that the maximum number of approved smoked tobacco retailers was not exceeded. The application process would also need to meet any requirements set out in regulations.

We believe the application process should inform applicants about how their application will be assessed against other applicants who have met the minimum criteria in new section 20I. Possible examples include ranking criteria and the relative weighting given to each. We acknowledge that the application process and any additional criteria to be specified in regulations would be consulted on when the regulations were made. However, for clarity and transparency, we consider that the bill should state that the published application process would need to set out any additional criteria the Director-General would assess applications against. It should also specify the relative weighting that would be given to different criteria and how applicants would be ranked. We recommend amending section 20L accordingly.

Setting maximum numbers of smoked tobacco retailers

Under clause 13, proposed new section 20M, the Director-General would need to declare the maximum number of approved smoked tobacco retailers permitted in one or more areas. They would need to take into account the population size, estimated number of people and geographic nature of the area, and the views of people consul-

ted. Proposed new section 20M(2) specifies that the maximum number may be a single current maximum or a series of reducing maximum numbers over time.

Several submitters suggested that the bill should specify a maximum number of retailers. They considered that this would give more certainty to the outcome of decisions made by the Director-General. Also, the maximum number of retailers could be legally challenged if the Director-General was entirely responsible for setting the total. This could delay or prevent the implementation of important measures.

We agree that specifying a total in the primary legislation would reduce the risk of legal challenge and set clear boundaries for the Director-General's decisions. It would also provide clarity for the courts. We discussed possible numbers, noting that the number of smoked tobacco retailers in New Zealand is estimated at 5,000 to 6,000. We consider that a cap would allow more flexibility than having a fixed number of retail premises that must be approved. We believe the number should be should be capped at 600—about 10 percent of the estimated number of current retailers.

Accordingly, we recommend inserting section 20M(1A) to set a cap of 600 on the number of retail premises that the Director-General could approve across New Zealand. This would enable the Director-General to approve up to, but no more than, 600 retail premises. Within that total, the Director-General could still set maximum numbers for specific areas of the country or a reducing set of maximum numbers over time.

We also recommend amending section 20M to clarify that the Director-General could declare a different set of maximum numbers at any time, provided the overall total did not exceed 600.

Notification obligations

Clause 13, proposed new sections 20R and 20S, would require general vape retailers and distributors of smoked tobacco products to notify the Director-General that they were selling or distributing those products. We understand that these new requirements are intended to improve compliance and enable more effective enforcement by providing a complete view of the retail environment.

We consider that the notification requirements, as introduced, would create a gap in regulation between the various regulated products. This is because they apply only to vaping and smoked tobacco products. We also believe that the provisions could create confusion about which products the requirement to notify would apply to. Therefore, we recommend amending section 20R by extending the notification requirement to all notifiable products.

Managing the database for notifiable products

Clause 13, proposed new sections 20R(2) and 20S(2) would require the notifications to be made on the database established under section 77 of the Act. Clause 43 would amend section 85 to provide for regulations that imposed fees related to the new approval and notification requirements.

We understand that annual re-notification would be necessary to keep the database up to date and current. Therefore, we recommend inserting sections 20R(1A) and 20S(1A) to require any seller of notifiable products or distributor of smoked tobacco products to renew their notification annually. We also recommend amending clause 43, section 85(1)(a)(iv), to enable a fee to be charged for this re-notification.

Automatic vending machines

Clause 25 would replace section 47 of the Act regarding automatic vending machines located in a public place as defined in the Summary Offences Act 1981. It would limit the use of vending machines to those that require a person (acting on behalf of the seller) to be close to the machine to activate it. New section 47(2)(b) specifies where the device used to activate the machine would need to be permanently located. As well as being close to the machine, the device for activating it would need to be in a place from which any person using it could see the person buying the regulated products.

We believe the use of vending machines should only be permitted under close supervision. They should also only be operated by a person located in the same place as the machine and not be able to be activated remotely. We therefore recommend amending section 47(2)(b)(i) to make it clear that the person operating the machine would need a direct line of sight to the person making the purchase.

Information required for the package of a smoked tobacco product

Clause 28 would amend section 52 of the Act, which relates to the messages and information required for a regulated product package. New section 52(1)(b) specifies that a package for a smoked tobacco product would need to display the constituents present in the product's emissions that are required by regulations to be listed, and their respective quantities.

As introduced, this provision only refers to the quantities in the product's emissions and not the contents of the product. We recommend amending section 52(1)(b) to make it clear that display requirements would apply to the constituents of both the product and its emissions.

Requirements for smoked tobacco products

Requirement for smoked tobacco products to be approved

Clause 31 would insert new Part 3A (proposed new sections 57A to 57H), setting out the requirements for smoked tobacco products. New section 57A would prohibit a person from selling, offering for sale, manufacturing, importing, or supplying a smoked tobacco product unless the product had been approved by the Director-General.

Under new section 57B(1), a person could apply to the Director-General for approval of a smoked tobacco product intended for sale, manufacture, import, or supply in New Zealand. New section 57B(2) sets out the conditions that the Director-General

would need be satisfied of before granting approval. However, new section 57B(3) would enable the Director-General to grant temporary approval to a specified product that was not a cigarette and did not meet one or more of these requirements. The Director-General would need to be satisfied of all of the following:

- no similar compliant product could be sourced
- the sale and supply of the specified product would not result in a significant increase in the appeal and addictiveness of smoked tobacco products
- any other criteria specified in regulations were met.

Alternatively, they would need to be satisfied that the specified product would not be offered for sale or supply in New Zealand.

We understand that section 57B(3) is intended to allow for the temporary approval of non-compliant products in particular circumstances. Examples include a product that:

- would only be used for research and testing and would not be offered for sale or supply in New Zealand, or
- is of a niche nature (that is, not a cigarette), not of mass appeal, and would otherwise not be available if a temporary approval was not given and no similar compliant products could be sourced.

We recommend amending section 57B(3) to reflect these circumstances.

We also consider that any other criteria should be able to be included in regulations for temporary approvals, and recommend inserting section 57B(3)(b)(ii) to this effect.

New section 57B(4)(c) provides that a temporary approval would expire 12 months after it was granted, unless revoked sooner. We do not believe that any non-compliant smoked tobacco products should be approved on a permanent basis. This is because these types of products have the potential to circumvent the purpose of the temporary approval process. For example, a product could claim to be niche but be sold on a mass-market basis, or could be particularly appealing or addictive. We consider that there should, however, be discretion for temporary approvals to be renewed for a further 12-month period. We recommend amending section 57B(4) accordingly.

New section 57B(8) would make it an offence for a person to provide false or misleading information in an application for approval or temporary approval, without reasonable excuse. As introduced, new section 57B(1) provides that any person could apply for a smoked tobacco product to be approved. To help with enforcement, we recommend inserting section 57B(2)(aaa). This amendment is similar to the provision in clause 13, new section 20I(1), of the bill as introduced. It would require a person applying for product approval to be a New Zealand resident. An entity would need to be carrying out business in New Zealand or be incorporated or registered under New Zealand legislation.

Testing for constituents of smoked tobacco products

The bill would introduce several testing requirements. Clause 31, proposed new section 57F, provides for annual testing for the constituents of smoked tobacco products.

Proposed section 57G would enable the Director-General to require a manufacturer or an importer of a smoked tobacco product to conduct tests of the product. Similarly, under proposed section 69B, the Director-General could require a manufacturer or an importer of a notifiable product to conduct tests of the product.

We recommend amending section 57F to make it clear that the required testing would be at the expense of the manufacturer or importer. However, this would not prevent the Director-General from undertaking additional testing for compliance and monitoring purposes, and meeting the associated costs.

Limits on nicotine to be prescribed for smoked tobacco products

Clause 31, proposed new section 57H, would require the Minister to recommend that regulations be made within 21 months of this provision commencing. The regulations would need to prescribe the limit for the quantity of nicotine in any smoked tobacco product and a method of determining whether that limit had been exceeded.

Many submitters suggested that the nicotine level should be specified in the legislation rather than being left to regulations. Their reasons included seeking certainty about future regulations, and that the matter was too important to delegate to regulations. They suggested levels of nicotine ranging from 0.4mg/g (milligrams per gram) of tobacco to 2.4mg/g of tobacco.

We agree that including a maximum level of nicotine in the legislation would provide certainty. We received advice that a maximum level of 0.8mg/g of nicotine in all smoked tobacco products would be appropriate. It could also achieve the objective of reducing the appeal and addictiveness of smoked tobacco products. The proposed amount is based on the available evidence of the effectiveness of different nicotine levels, statements from existing manufacturers of low-nicotine products, and possible testing uncertainties.

Consequently, we recommend amending section 57H to specify a maximum limit of 0.8mg/g of nicotine in any smoked tobacco product. We propose that this limit should apply 27 months after the legislation commenced. Regulations prescribing a method of determining whether the nicotine limit had been complied with are provided for in new section 82B.

We also want to ensure that nicotine is not present in any other constituent of a smoked tobacco product and recommend amending section 57H to this effect.

Offence provisions

Strict liability offences, with burden of proof on the defendant

The bill would create a range of new offences and penalties. Some of the new offences would be strict liability offences—that is, offences for which the Crown would not be required to prove the presence of a mental element to the offending, such as intent, knowledge, or recklessness. The following offences would be strict liability offences, with the burden of proving a reasonable excuse resting on the defendant:

- clause 13, new section 20G(2)—(Sale of smoked tobacco products other than by approved smoked tobacco retailer prohibited)
- clause 13, new section 20H(2)—(Application for approval as smoked tobacco retailer)
- clause 13, new section 20P(5)—(Application for approval as specialist vape retailer)
- clause 31, new section 57B(8)—(Application for approval for sale or import of smoked tobacco products)
- clause 31, new section 57F(4)—(Annual testing for constituents of smoked tobacco products)
- clause 31, new section 57G(6)—(Director-General may require testing or further testing)
- clause 35, new section 69B—(Director-General may require testing or further testing of notifiable product)
- clause 51, new section 101(6)—(Record-keeping requirements for regulated products).

We believe a person should be entitled to know whether they could be liable for an offence where a mental element does not need to be proven. We recommend amending clause 48 to insert section 90B. Our proposed new section 90B would explicitly state that the burden for proving a reasonable excuse for the above offences would lie with the defendant. Our proposed amendments would replicate the provisions in section 65AA of the Civil Aviation Act 1990.

We considered that, on balance, the commercial intent necessary to engage in these kinds of actions warrants a stricter approach. We note that all of these offences are civil, not criminal.

Other offences

As introduced, some of the new offences in the bill would be *mens rea* offences. That is, the Crown would be required to prove the presence of a mental element to the offending—intent or recklessness—as well as the physical fact of the offence. We recommend amending two of them, proposed sections 20J(8) and 57C(8), to make them strict liability offences like the above, with the burden for proving a reasonable excuse resting with the defendant.

Proposed section 20J(8) (clause 13) would make it an offence for a smoked tobacco retailer to continue to sell a smoked tobacco product after their approval was suspended. Proposed section 57C(8) (clause 31) would make it an offence for a person to continue to sell, offer for sale, manufacture, import, or supply a smoked tobacco product after the approval was suspended.

We consider that the bill as introduced would place an unnecessary burden on the prosecution in these instances, and that the defendant would be better placed to establish an absence of fault. This is because the offence would relate to matters within

their knowledge: they continued to do something despite a suspension from doing so. We therefore recommend removing the *mens rea* element.

Fines for failing to conduct certain tests

Clause 31, proposed new sections 57F(4) and 57G(7) would require manufacturers and importers of smoked tobacco products to conduct tests on the constituents of the products. A person who failed to do so, without reasonable excuse, would commit an offence and be liable to a maximum fine of $10,000 if convicted. We note that the penalties for these offences are the same as the fines for failing to conduct the required testing of regulated products under sections 55 to 57 of the Act. The Act defines a regulated product as a tobacco product, vaping product, or herbal smoking product.

We believe it would be appropriate to increase the fines for failing to test smoked tobacco products, given the far greater harm that they cause. We also note that testing is a significant part of ensuring the effectiveness of the new requirements for smoked tobacco products to be approved and meet any constituent requirements. We therefore recommend amending section 57F(4) and 57G(7) by increasing the penalty for failing to test smoked tobacco products to a fine of no more than $50,000.

Offence for failing to conduct annual testing

Clause 35, proposed new section 69A, would require manufacturers and importers of notifiable products to conduct annual tests for the constituents of notifiable products. As introduced, the bill contains no offence for failing to conduct these tests. We recommend amending section 69A to create an offence for failing to conduct any of the required tests or failing to conduct them in accordance with regulations, without reasonable excuse. If convicted, the penalty would be a fine of up to $10,000 for a body corporate, or $5,000 for any other case.

Review of certain provisions in the legislation

We note that the bill would introduce several novel measures. We therefore think it would be desirable to include a requirement to review how the new measures were operating. We recommend amending clause 52 to insert such a requirement as new section 105. Under our proposed amendment, the Ministry of Health would need to review certain provisions no earlier than 6 years after the legislation commenced. The provisions are the regulation of entry into the markets for smoked tobacco and vaping products, the smokefree generation policy, and the requirements for smoked tobacco products. We were advised that the last of the three measures to begin, the smokefree generation policy, would have been operating for two years.

Cigarette filters

The bill at clause 4, section 2, inserts a definition into the legislation of "constituent". We heard from submitters that cigarette filters are a constituent that many consumers and members of the public think reduces the harm of smoking, but it in fact does not.

We also heard that cigarette filters largely exist to increase the palatability of smoked tobacco products.

We asked officials why this was in the initial Smokefree Action Plan proposal but is not in the final legislation and were told it was a policy decision. Given the amount of pollution caused by these filters and the public's misconception of their improving cigarette safety, the Greens remain of the view these too should be phased out.

Officials advised that under the legislation, as introduced, regulations could be made for any constituent of a smoked tobacco product, including cigarette filters.

Vaping

We heard from many submitters who wanted faster action on vaping and were concerned particularly about youth uptake. We agree that more work is needed in this area.

New Zealand National Party differing view

The National Party supports a smokefree agenda and is proud to have established the 2025 smokefree target and, while we agree with the intent of the bill, we do not believe its current format will achieve that endpoint with wide support and least harm. In this context then the National Party opposes this bill and will present an alternative proposal.

We have several concerns with the bill in its current form.

We understand the significant harms caused by smoking but we are also concerned that reducing the number of retailers to 600 will unnecessarily harm the livelihood of many small businesses. This is especially so in the context of modelling showing only a small overall impact of retail reduction and retail reduction being the first of the three main initiatives. The timing has been put to us as one more of convenience rather than science.

Small businesses reported to us that they would require two years to adjust their business models to accommodate any proposed retail reduction. The timing is important given the uncertainty of effectiveness of the other initiatives in widely deployed country-wide environments. Put simply, if denicotinisation and smokefree generation are not as effective as modelled, then it will be too late for the many small retailers who will have already borne the impact. The National Party is of a view that, in progress towards a smokefree agenda, no unnecessary harms should be imposed on small business.

Our alternative proposal takes this into account.

We are concerned that the smokefree generation has not been widely deployed internationally and is modelled as having minimal impact. More time is required to observe the limited data from jurisdictions where it has been deployed and for conclusions to be drawn. The National Party is of a view that in progress towards a smokefree agenda minimal intrusion should be made on personal freedoms and choices of this type.

Our alternative proposal takes this into account.

The National Party has weighed the evidence that shows denicotinisation as being by far and away the most effective and in general preferentially supports this initiative.

The National Party will introduce a proposal that fundamentally changes the timing of the three initiatives, potentially deploying them instead in the order of denicotinisation, retail reduction, and smokefree generation. It is important to note that each successive initiative following denicotinisation is dependent on prior stages being effective towards smokefree goals and at the same time causing no unnecessary harms.

The expectation is that deployment of denicotinisation will provide the two year transition period requested by small businesses should further initiatives be required. At the end of two years, all three initiatives, including any further rollout of both retail reduction and smokefree generation, will be reviewed on the latest available data.

In the context of bipartisan politics towards an agreed common smokefree goal, the National Party records that it did ask the Government if it would entertain a change in timing to commence denicotinisation first. This was rebuffed.

The National Party recognises the significant contribution that vaping is making to adult smoking rates. We support the tightening up of vaping legislation in this bill, however we are concerned that it does not go far enough. In this matter, we join schools, parents, and communities who are very concerned with the increase in underage vaping especially.

National will introduce two vaping proposals to address this. The first proposal requires the issuing of future vape store licences to take into account the proximity of current licence holders. The second proposal specifically requires increased monitoring and compliance around underage vaping.

ACT New Zealand differing view

The ACT Party does not agree to this bill being passed. We believe the limits on the quantity of nicotine levels within cigarettes will increase illegal importation and lead to an increase in organised crime. We also do not believe the Director-General of Health should be able to pick and choose which retailers are able to sell or not sell cigarettes.

Appendix

Committee process

The Smokefree Environments and Regulated Products (Smoked Tobacco) Amendment Bill was referred to the committee on 26 July 2022. We invited the Associate Minister of Health, Hon Dr Ayesha Verrall, to provide an initial briefing on the bill. She did so on 28 September 2022.

We called for submissions on the bill with a closing date of 24 August 2022. We received and considered submissions from 1,927 interested groups and individuals. We heard oral evidence from 84 submitters at hearings in Auckland and Wellington and by videoconference.

We received advice on the bill from the Ministry of Health. The Office of the Clerk provided advice on the bill's legislative quality. The Parliamentary Counsel Office assisted with legal drafting. The Regulations Review Committee reported to us on the powers contained in clauses 40 and 44.

Committee membership

Tangi Utikere (Chairperson)

Matt Doocey

Dr Elizabeth Kerekere

Dr Anae Neru Leavasa

Dr Tracey McLellan

Debbie Ngarewa-Packer

Sarah Pallett

Dr Shane Reti

Toni Severin

Lemauga Lydia Sosene

Chlöe Swarbrick also took part in the consideration of this item of business.

Key to symbols used in reprinted bill

As reported from a select committee

text inserted by a majority

~~text deleted by a majority~~

Hon Dr Ayesha Verrall

Smokefree Environments and Regulated Products (Smoked Tobacco) Amendment Bill

Government Bill

Contents

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

(1) **Sections 18, 19(1) and (2) ~~(3)~~, 20 to 24, 39(1) and (2), and 49(3) ~~48~~** come into force on **1 January 2027**.

(1A) **Section 49(1)** comes into force 18 months after the commencement of the rest of this Act under **subsection (2)**.

(1B) The following provisions come into force 27 months after the commencement of the rest of this Act under **subsection (2)**:

(a) **section 49(2)**:

(b) **subpart 1 of Part 2**.

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

(a) **1 January 2023**:

(b) the day after the date on which it receives the Royal assent.

3 Principal Act

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

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

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—

(a) a body corporate:

(b) a corporation sole:

(c) in the case of a trust that has—

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

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

(d) an unincorporated body (including a partnership)

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

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

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

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

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

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

notifiable product means—

(a) a vaping product; or

(b) a smokeless tobacco product; or

(c) a herbal smoking product; or

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

notifier means the manufacturer or importer of a notifiable product

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

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

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

responsible person, in relation to an entity, means—

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

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

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

(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**".

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—

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

(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

(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~~

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

(c) to give effect to certain obligations and commitments that New Zealand has as a party to the WHO Framework Convention on Tobacco Control, done at Geneva on 21 May 2003.

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.

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

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

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

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

(6) **Part 3A** provides for—

(a) the approval of smoked tobacco products; and

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

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

(8) Part 5—

(a) empowers the making of secondary legislation; and

(b) contains provisions relating to—

(i) the enforcement of this Act; and

(ii) reporting requirements relating to regulated products; and

(iii) appeals against product approval and notification decisions.

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

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

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

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

(i) the Māori Health Authority; and

(ii) each iwi-Māori partnership board; and

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

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

(i) the Māori Health Authority; and

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

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

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

(c) requires the Director-General to—

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

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

(d) requires the Minister, before preparing regulations 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).

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)

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".

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".

11A Section 18 repealed (Prosecution of offences)

Repeal section 18.

12 Section 20B repealed (Purpose of this Part)

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

(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.

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

(a) for export; or

(b) to an approved smoked tobacco retailer; or

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

(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.

20H Application for approval as smoked tobacco retailer

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

(a) specified retail premises; and

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

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

20I Grant of approval as smoked tobacco retailer

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

(a) for an individual, the applicant is—

(i) a fit and proper person; and

(ii) a New Zealand resident; and

(b) for an entity,—

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

(ii) the applicant is—

(A) carrying on business in New Zealand; or

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

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

(i) a fixed permanent structure; and

(ii) appropriate premises from which to operate ~~a stand-alone business~~; and

(ca) for a specified Internet site,—

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

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

(A) in an identifiable geographic area; or

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

(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.

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

(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.

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

(3A) It is a condition of an approval in respect of a specified Internet site that the holder must not sell or offer for sale at retail smoked tobacco products—

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

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

(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.

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

(6) An approval is not transferable.

20J Director-General may suspend approval

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

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

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

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

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

(a) for a further month:

(b) more than once.

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

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

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

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

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

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

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

20K Director-General may cancel approval

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

(a) a condition of the approval:

(b) a requirement in this Act or regulations.

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

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

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~~ retail premises declared for the relevant area under **section 20M** is not exceeded; and

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

(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

(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~~.

(4) The published application process must include—

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

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

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

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

(1A) The maximum number of approved smoked tobacco retail premises in New Zealand must not exceed 600.

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

(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**.

(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)**.

(4A) The Director-General may amend or replace a notice made under this section in accordance with **subsections (1) to (4)**.

(5) A notice made under this section is secondary legislation (*see* 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

(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

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

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

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

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

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

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

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

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

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

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.

(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

(b) at least—

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

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

(c) any requirements in regulations have been met.

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

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

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

(c) any criteria prescribed in regulations.

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

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

20Q Conditions of approval granted under section 20P

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

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

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

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

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

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

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

Subpart 3—Notification obligations

20R Obligation of person selling notifiable products ~~general vape retailer in respect of vaping products~~

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

(1A) A person who sells notifiable products in New Zealand must renew their notification each year before the anniversary of their previous notification.

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

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

20S Obligation of distributor in respect of smoked tobacco products

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

(1A) A distributor of smoked tobacco products in New Zealand must renew their notification each year before the anniversary of their previous notification.

(2) A notification (including a renewal of 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 or fails to renew a notification commits an offence and is liable to a fine not exceeding $5,000.

14 Section 21 repealed (Outline of this Part)

Repeal section 21.

15 Section 22 repealed (Purposes of this Part)

Repeal section 22.

15A Section 24 amended (Specified publications exempt from advertising prohibition)

In section 24(g)(i), replace "vaping products within any retail premises or on any Internet site of a retailer" with "vaping products that are available for sale within the retail premises or on an Internet site of a retailer".

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,—

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

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

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

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

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

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

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

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

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

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

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.

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**".

(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.

(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—

(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.

(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,—

(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.

(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)

(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".

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.

(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

(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—

(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.

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.

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

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

(a) 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

(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.

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".

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

(1) A person must not—

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

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

(2) **Subsection (1)** does not apply to an automatic vending machine if—

(a) no individual sale can occur unless the machine is activated by the person who would otherwise be in breach of that subsection (or an employee or agent of that person); and

(b) the device used to activate the machine is permanently located—

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

(ii) close to the machine.

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

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

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

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:

(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~~ product or its 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)

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.

31 New Part 3A inserted

After Part 3, insert:

Part 3A
Requirements for smoked tobacco products

Smoked tobacco products must be approved

57AAA Interpretation

In this Part, **manufacture** does not include the making of 1 or more smoked tobacco products by a person for their personal use if the total annual mass of manufactured product is less than 5 kilograms.

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.

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—

(aaa) the applicant is—

(i) for an individual, a New Zealand resident:

(ii) for an entity,—

(A) carrying on business in New Zealand; or

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

(a) the product has been tested in accordance with regulations; and

(b) the product does not contain a constituent—

(i) prohibited by this Act or regulations; or

(ii) in a quantity that exceeds any limits in this Act or regulations; and

(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—

(iaaa) the specified product is not a cigarette; and

(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.~~

(i) the specified product will be manufactured in, or imported into, New Zealand for research purposes only and will not be offered for sale or supply; and

(ii) any other criteria specified in regulations are met.

(4) A temporary approval granted under **subsection (3)**—

(a) is subject to review by the Director-General in accordance with any requirements in regulations; and

(b) may be revoked following a review under **paragraph (a)**; and

(c) expires on the date that is 12 months after the date on which it is granted unless earlier revoked~~.~~; and

(d) may be renewed for a further period of up to 12 months.

(5) It is a condition of any approval granted under **subsection (2)** that—

(a) the product continues to meet the requirements in **subsection (2)**; and

(b) there is no significant change to the product.

(6) In this section, **significant change** means any of the following changes (as applicable):

(a) a change that produces different results in any testing of the product required by this Act or regulations made under this Act:

(b) any other change to the product that is specified in regulations.

(7) The Director-General may, in accordance with regulations, impose any other conditions on an approval or a temporary approval.

(8) A person who, without reasonable excuse, provides false or misleading information in an application for approval or temporary approval under this section commits an offence and is liable on conviction to a fine not exceeding $50,000.

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.

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

(a) for a further month:

(b) more than once.

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

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

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

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

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

(7) A person must not sell, offer for sale, manufacture, import, or supply a smoked tobacco product whose approval is suspended during the period of suspension.

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

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

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

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

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

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—

(a) prohibited by this Act or regulations; or

(b) in a quantity that exceeds any limits in this Act or regulations, as determined in accordance with any prescribed tests.

(2) A person who knowingly or recklessly contravenes **subsection (1)** commits an offence and is liable on conviction to a fine not exceeding $400,000.

~~(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.

(2) Every manufacturer and every importer of a smoked tobacco product must, at their own expense, conduct a test to ensure that the constituents of the product, and their respective quantities, comply with any limits or prohibitions prescribed in this Act or regulations.

(3) The tests must be conducted each year by 31 December in accordance with any requirements in regulations.

(4) A manufacturer or an importer who, without reasonable excuse, fails to comply with **subsection (2) or (3)** commits an offence and is liable on conviction to a fine not exceeding $50,000 ~~$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.~~

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.

(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.

(4) The manufacturer or importer must, if required by the Director-General in the notice in writing, provide, at their own cost, a sample of the product required to be tested—

(a) to the Director-General; and

(b) in the quantity specified in the notice.

(5) In any year, the Director-General must not require tests to be conducted under this section in respect of more than 1 of the brands of smoked tobacco products sold by a particular manufacturer or importer.

(6) A person commits an offence if the person, without reasonable excuse,—

(a) fails to conduct any tests required under this section; or

(b) fails to conduct those tests in accordance with regulations.

(7) A person who commits an offence under **subsection (6)** is liable on conviction to a fine not exceeding $50,000 ~~$10,000~~.

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.~~

(1) The limit for the nicotine content in the tobacco in an individual smoked tobacco product is 0.8 mg/g.

(2) Nicotine must not be present in any other constituent of an individual smoked tobacco product, unless it is derived from the tobacco in the product.

32 Section 58 repealed (Purpose of this Part)

Repeal section 58.

33 Section 59 repealed (Defined terms)

Repeal section 59.

34 Section 65 amended (Obligations of retailers)

(1AAA) In section 65(1), after "sell", insert "or supply".

(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".

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.

(2) Every manufacturer and every importer of a notifiable product must, at their own expense, conduct either or both of the following tests (as regulations require):

(a) a test for the constituents of each brand of the product sold by the manufacturer or importer, and the respective quantities of those constituents:

(b) a test for the constituents of any emissions.

(3) The tests must be conducted each year by 31 December in accordance with any requirements in regulations.

(4) If regulations require it, each variant of the brand must be tested separately.

(5) A person commits an offence if the person, without reasonable excuse,—

(a) fails to conduct any tests required under this section; or

(b) fails to conduct those tests in accordance with regulations.

(6) A person who commits an offence under **subsection (5)** is liable on conviction,—

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

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

69B Director-General may require testing or further testing of notifiable product

(1) The Director-General may, by written notice, require a manufacturer or an importer of a notifiable product to conduct tests of the product.

(2) Any tests required under this section may be in addition to any tests required under **section 69A**.

(3) The tests must be conducted—

(a) in accordance with regulations; and

(b) at the expense in all respects of the manufacturer or importer.

(4) The manufacturer or importer must, if required by the Director-General in the written notice, provide, at their own cost, a sample of the product required to be tested—

(a) to the Director-General; and

(b) in the quantity specified in the notice.

(5) In any year, the Director-General must not require tests to be conducted under this section in respect of more than 1 of the brands of prescribed notifiable

products to which **section 69A** applies that are sold by a particular manufacturer or importer.

(6) However, **subsection (5)** does not apply to vaping products.

(7) A person commits an offence if the person, without reasonable excuse,—

(a) fails to conduct any tests required under this section; or

(b) fails to conduct those tests in accordance with regulations.

(8) A person who commits an offence under **subsection (7)** is liable on conviction,—

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

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

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)

In section 77(3)(a), delete "by a notifier".

38 Section 79 repealed (Appeals committee)

Repeal section 79.

39 Section 81 amended (Regulations)

(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:

(20D) providing conditions that may be imposed by the Director-General when granting an approval or a temporary approval under **section 57B** or criteria that apply when imposing a condition:

(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

(1) The Governor-General may, by Order in Council made on the recommendation of the Minister, make regulations prescribing requirements for the purposes of **sections 20H, 20I, and 20L ~~and 20I~~**, which may include setting—

~~(a) a competitive process for applying for approvals; and~~

(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

(e) criteria for imposing conditions on approvals or classes of approval.

(2) Regulations made under this section are secondary legislation (*see* Part 3 of the Legislation Act 2019 for publication requirements).

82B Regulations relating to requirements for smoked tobacco products

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

(a) prescribing safety standards for smoked tobacco products:

(b) specifying changes to a smoked tobacco product for the purposes of the definition of significant change in **section 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:

(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**.~~

(e) prescribing requirements for the method used to determine whether the limit and the prohibition specified in **section 57H** for the nicotine content in an individual smoked tobacco product has been complied with.

(2) Before preparing regulations under **subsection (1)(a), (c), or (e)**, the Minister must consider—

(a) the risks and benefits to the population (including both users and non-users of smoked tobacco products) of regulating the constituent; and

(b) the risks and benefits to Māori (including both users and non-users of smoked tobacco products) of regulating the constituent; and

(c) whether regulating a constituent of a smoked tobacco product will reduce the use of the product by reducing the appeal or addictiveness of the product, including—

(i) the likelihood that existing users of smoked tobacco products will stop using the product; and

(ii) the likelihood that those who do not use smoked tobacco products will start using the product.

(3) Regulations made under this section are secondary legislation (*see* Part 3 of the Legislation Act 2019 for publication requirements).

41 Section 83 amended (Regulations for standardised packaging (including messages and information))

After section 83(1)(c)(iii), insert:

(iv) the constituents in ~~the emissions of~~ a smoked tobacco product or its emissions that must be listed:

42 Section 84 amended (Regulations relating to notifiable products)

(1) After section 84(1)(b), insert:

(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:

(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~~ person in respect of the notification of, or the renewal of a notification of, a notifiable product under **section 20R**; and

(v) by a distributor in respect of the notification of, or the renewal of a notification of, smoked tobacco products ~~notified~~ under **section 20S**; and

(vi) by an applicant in relation to an application for approval as an approved smoked tobacco retailer under **Part 1B**; and

(vii) by an applicant in relation to an application for approval or temporary approval of a smoked tobacco product under **Part 3A**; and

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—

(a) a notifiable product under Part 4; or

(b) a smoked tobacco product.

(2) Levies may be prescribed on the basis of—

(a) the costs of the Director-General in performing or exercising the Director-General's functions, powers, and duties under Part 4, where the size of the portion to be met by levies under that Part is determined by the Minister; and

(b) the costs of the Director-General in performing or exercising the Director-General's functions, powers, and duties under **Parts 1B and 3A**, to the extent that the costs are not met by fees imposed by regulations made under section 85; and

(c) the costs of collecting the levy money.

(2) Replace section 86(4)(a) with:

(a) specify the class or classes of retailer, distributor, importer, or manufacturer that are required to pay a levy:

(3) Replace section 86(4)(f) with:

(f) provide different levies for different classes of retailer, distributor, importer, or manufacturer:

(4) Replace section 86(5) with:

(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).

45 Subpart 2 heading in Part 5 amended

In Part 5, in the subpart 2 heading, replace "**Infringement offences**" with "**Offences**".

46 New cross-heading above section 87 inserted

Before section 87, insert:

Infringement offences

47 Section 87 amended (Infringement offences)

(1) In section 87, definition of **infringement fee**, paragraph (a), replace "43(3)" with "**43(4)**".

(2) In section 87, definition of **infringement fee**, paragraph (b), delete "53(4),".

(3) In section 87, definition of **infringement fee**, after paragraph (b), insert:

(c) in relation to an infringement offence against **section 20R~~(2)~~(3) or 20S~~(2)~~(3)**, $500.

(4) In section 87, definition of **infringement offence**, replace "sections 34(4)," with "**sections 20R~~(2)~~(3), 20S~~(2)~~(3)**, 34(4),".

(5) In section 87, definition of **infringement offence**, replace "43(3)" with "**43(4)**".

48 New sections 90A, 90B, and cross-heading inserted

After section 90, insert:

Other offence provisions

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)**.

(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.

90B Burden of proof of reasonable excuse

In proceedings for an offence against any of sections 17(3) to (6) and (8C), **20G(2), 20H(2), 20J(8), 20P(5), 20R(3), 20S(3)**, 23(5), 27(2), 29(2), 30(5), 31(5), 33(6), 34(4), 36(5), 37(4), 38(3), 39(3), **43(4), 44(4)**, 46(3), **47(4)**, 48(2)(b), 53(4), 54(4), 55(2), 57(6), **57B(8), 57C(8), 57F(4), 57G(6)**, 60(3), 63(2), 65(6), 66(2), **69B(7)**, 73(4), 75(5) and (6), and **101(6)**,—

(a) the prosecutor need not assert absence of reasonable excuse in the charging document; and

(b) the burden of proving that the defendant had a reasonable excuse lies on the defendant.

Compare: 1990 No 98 s 65AA

48A Section 91 amended (Appointment of enforcement officers)

In section 91(1)(a), replace "Ministry of Health" with "Ministry".

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

(1) ~~Replace section 94(1) with~~After section 94(1)(c), insert:

(d) smoked tobacco products have been sold or offered for sale by a person who is not an approved smoked tobacco retailer.

~~(1) An enforcement officer may at any time require information under subsection (2) if the officer believes on reasonable grounds that within the previous 14 days—~~

~~(a) 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~~

~~(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~~

~~(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~~

~~(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~~

~~(h) smoked tobacco products that are not currently approved by the Director-General have been sold or offered for sale at retail.~~

(2) After section 94(1)(d), insert:

(e) smoked tobacco products that are not currently approved by the Director-General have been sold or offered for sale at retail.

(3) 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—

(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

(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

(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

(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 by a person who is not an approved smoked tobacco retailer; or

(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, and retailers of regulated products~~ 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**".

(3) In section 100(2), ~~after~~ replace "specialist vape retailer"~~, insert~~ with "retailer of regulated products~~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.

(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)

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.

(2) The person must take reasonable steps to keep accurate records of—

(a) all the regulated products that they manufacture, import, export, buy, sell, or supply; and

(b) for a manufacturer, the constituents required by regulations to be recorded that the manufacturer uses or intends to use in the manufacture of each regulated product.

(3) The person must keep the records for 3 years from the date of each transaction.

(4) An enforcement officer may require a person to provide a copy of the records kept under this section by notice in writing.

(5) The person must provide the enforcement officer with a copy of the records, in the format required in the notice, within 10 working days of receiving the notice.

(6) A person who, without reasonable excuse, fails to comply with **subsection (2), (3), or (5)** commits an offence and is liable on conviction,—

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

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

52 New subparts 5 ~~and 6~~ to 7 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

(1) If the Director-General decides to suspend or cancel the approval of a smoked tobacco product or a notification of a notifiable product, the following persons may appeal to the appeals committee against the decision:

(a) in the case of an approval of a smoked tobacco product, the holder of the approval:

(b) in the case of a notification of a notifiable product, the notifier.

(2) The holder of the approval or the notifier may lodge the appeal within 60 days after the Director-General's decision or within any further period that the appeals committee may allow.

(3) The decision being appealed against continues in force unless the appeals committee orders otherwise.

(4) An appeal is by way of rehearing.

(5) On hearing the appeal, the appeals committee may—

(a) confirm, reverse, or modify the decision appealed against:

(b) make any other decision that the Director-General could have made.

(6) The appeals committee must not review any decision, or any part of a decision, not appealed against.

(7) A party may appeal to the High Court—

(a) against a determination of the appeals committee on a question of law only; and

(b) in accordance with the rules of court.

103 Appeals committee

(1) The appeals committee established under section 79 of this Act is continued.

(2) The appeals committee may determine appeals against decisions of the Director-General to cancel or suspend an approval of a smoked tobacco product or a product notification.

(3) The appeals committee must consist of 3 members, each appointed by the Minister on any terms and conditions that the Minister thinks fit.

(4) The appeals committee may, subject to any provision of this Act or regulations, regulate its own procedure.

(5) In performing its functions or exercising its powers under this Act, the appeals committee must—

(a) act independently; and

(b) comply with the principles of natural justice.

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.

(2) The Director-General may, for the purposes of this section, allow the chief executive of the New Zealand Customs Service or any other government agency to access 1 or more databases in accordance with a written agreement entered into by the Director-General and the chief executive.

(3) A written agreement must specify—

(a) the database or databases that may be accessed; and

(b) the particular type or class of information that may be accessed; and

(c) the particular purpose or purposes for which the information is accessed; and

(d) the particular function being, or to be, carried out by the government agency for which the information is required; and

(e) the mechanism by which the information is to be accessed; and

(f) how the information accessed is to be used by the government agency to achieve the particular purpose or purposes; and

(g) the positions or designations of the persons in the government agency who may access the database or databases; and

(h) the records to be kept in relation to each occasion a database is accessed; and

(i) the safeguards that are to be applied for protecting personal information, or commercially sensitive information, that is disclosed; and

(j) the requirements relating to storage and disposal of information obtained by the agency from the database or databases; and

(k) the circumstances (if any) in which the information may be disclosed by the government agency to another agency, and how that disclosure may be made; and

(l) the requirements for reviewing the agreement.

(4) In this section,—

chief executive of a government agency includes the Commissioner of Police

government agency means—

(a) a public service agency (as defined in section 5 of the Public Service Act 2020), other than—

(i) the Ministry~~ of Health~~; and

(ii) the Government Communications Security Bureau; and

(iii) the New Zealand Security Intelligence Service; and

(iv) Statistics New Zealand:

(b) a Crown agent named in Part 1 of Schedule 1 of the Crown Entities Act 2004:

(c) an independent Crown entity named in Part 3 of Schedule 1 of the Crown Entities Act 2004:

(d) the New Zealand Police:

(e) the New Zealand Defence Force.

Compare: 2018 No 4 s 315

Subpart 7—Review of certain provisions of Act

105 Ministry must review certain provisions of Act

(1) The Ministry must, no later than 1 January 2029,—

(a) conduct a review of the policy and operation of the following:

(i) **Part 1B**:

(ii) **sections 40A and 40B**:

(iii) **Part 3A**; and

(b) prepare and provide to the Minister a report on the review.

(2) As soon as practicable after receiving the report, the Minister must present a copy to the House of Representatives.

53 Schedule 1 amended

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

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)

(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.

(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 has provided the declaration required by **section 95A(3)(a)(iii)** and—

(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.

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)

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)

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

(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)

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

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 (Smoked Tobacco) Amendment Act 2022

14 Interpretation

In this Part, unless the context otherwise requires,—

amendment Act means the Smokefree Environments and Regulated Products (Smoked Tobacco) Amendment Act **2022**

commencement date means the date on which **section 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.

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.

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.

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):

(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)~~.~~:

(c) **section 57H** (which sets a limit and a prohibition in respect of the nicotine content in an individual smoked tobacco product).

Legislative history

21 June 2022	Introduction (Bill 143–1)
26 July 2022	First reading and referral to Health Committee

Wellington, New Zealand:

Published under the authority of the House of Representatives—2022