

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

Government Bill

As reported from the committee of the whole House

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Key to symbols used in reprinted bill

As reported from the committee of the whole House

text inserted

~~text deleted~~

Hon Dr Ayesha Verrall

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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), 20 to 24, 39(1) and (2), and ~~49(3)~~ 49(3), and 58 to 60** 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)**: 5
- (b) **subpart 1 of Part 2**.
- (2) The rest of this Act comes into force on the later of the following:
- (a) **1 January 2023**:
- (b) the day after the date on which it receives the Royal assent.
- 3 Principal Act** 10
- This Act amends the Smokefree Environments and Regulated Products Act 1990.

Part 1 Amendments to principal Act

- 4 Section 2 amended (Interpretation)** 15
- (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** 20
- 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: 25
- (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: 30
- (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 35

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 5

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 10
- (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 15

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 20

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 25

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”. 30

(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: 35

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	5
(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	10
(v)	to restrict all forms of advertising and promotion; and	
(b)	to provide for the regulation of notifiable products in a way that seeks to minimise harm, especially harm to young people and children; and	
(c)	to give effect to certain obligations and commitments that New Zealand has as a party to the WHO Framework Convention on Tobacco Control, done at Geneva on 21 May 2003.	15

6 New sections 3AA and 3AB inserted

After section 3A, insert:

3AA	Guide to this Act	20
(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.	25
(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.	30
(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	35
(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—	5
(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	10
(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	15
	(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	20
(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	25
(d)	requires the Minister, before preparing regulations in relation to the sale and distribution of relating to requirements for smoked tobacco products, to consider the risks and benefits to Māori of regulating a constituent (including both users and non-users of smoked tobacco products).	
7	Section 4 repealed (Purposes of this Part)	30
	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. 5
- 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)** 10
Repeal section 20B.
- 13 New Part 1B inserted**
After section 20F, insert:

Part 1B		
Regulation of entry into smoked tobacco and vaping products markets		15
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 a smoked tobacco product unless the person is an approved smoked tobacco retailer.		20
(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		25
(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		30
(1) A person may apply to the Director-General, in accordance with the application process determined under section 20L , to be an approved smoked tobacco retailer in relation to—		

- (a) specified retail premises; and
 - (b) if applicable, a specified Internet site that is or will be operated together with the specified retail premises.
- (2) A person who, without reasonable excuse, provides false or misleading information in an application for approval to be an approved smoked tobacco retailer commits an offence and is liable on conviction to a fine not exceeding \$10,000. 5
- 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,— 10
- (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 15
 - (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 20
 - (ii) appropriate premises from which to operate; 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— 25
 - (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 30
 - (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)**. 35

- (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. 5
- (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. 10
- (5) An approval expires on the date specified in the approval unless it is earlier cancelled.
- (6) An approval is not transferable. 15
- 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. 20
- (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: 25
- (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 30
- (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. 35
- (8) A person who, without reasonable excuse, contravenes **subsection (7)** commits an offence and is liable on conviction to a fine not exceeding \$400,000.

20K Director-General may cancel approval

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

- (a) a condition of the approval: 5
- (b) a requirement in this Act or regulations.

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

(3) The Director-General must tell the holder of the approval in writing of the cancellation and give reasons. 10

20L Director-General to determine and publish application process

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

- (a) ensures that any maximum number of approved smoked tobacco retail premises declared for the relevant area under **section 20M** is not exceeded; and 15
- (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— 20

- (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. 25

(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 retail premises 30

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

(1A) The maximum number of approved smoked tobacco retail premises in New Zealand must not exceed 600. 35

(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**. 5
- (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 10
 - (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)**. 15
- (5) A notice made under this section is secondary legislation (*see* Part 3 of the Legislation Act 2019 for publication requirements). 15
- 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 20
 - (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 25
 - (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)**. 30
- (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 retail premises not exceeded

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

5

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.

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(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

15

(ii) appropriate premises from which to operate; and

(b) at least—

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

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

20

(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—

25

(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.

30

(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.

35

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. 5
- (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. 10
- (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. 15

Subpart 3—Notification obligations

20R Obligation of person selling notifiable products

- (1) A person who sells notifiable products in New Zealand must notify the Director-General that they are selling the products. 20
- (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. 25
- (3) A person who, without reasonable excuse, fails to notify the Director-General that they are selling a notifiable product or fails to renew a notification commits an offence and is liable to a fine not exceeding \$5,000.

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. 30
- (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. 35
- (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)

5

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 vaping products that are available for sale within the retail premises or on the Internet site of the retailer”.

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

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(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).

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(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—

25

(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

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(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

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(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	5
(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:	10
(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)	15
(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”.	20
(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.	25
(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—	30
(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.	35

- (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)** 5
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. 10
- (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 15
- (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. 20
- (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**”. 25
- (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)** 30
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 35
- (b) permit a regulated product to be sold by way of an automatic vending machine in a public place.

- (2) **Subsection (1)** does not apply to an automatic vending machine if—
- (a) no individual sale can occur unless the machine is activated by the person who would otherwise be in breach of that subsection (or an employee or agent of that person); and
 - (b) the device used to activate the machine is permanently located—
 - (i) in a place that provides the person using it with a direct line of sight to the person to whom the sale is to be made; and
 - (ii) close to the machine.
- (3) For the purposes of this Act, a person who activates an automatic vending machine so that the sale of a regulated product to another person occurs is a party to that sale. 10
- (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. 15

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)** 20
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 or its emissions: 25
 - (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)** 30
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		
	<i>Smoked tobacco products must be approved</i>	5
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		10
(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		15
(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—	20
	(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	25
(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.	30
(3)	However, the Director-General may grant a specified smoked tobacco product that does not meet 1 or more of the requirements listed in subsection (2) temporary approval for sale, manufacture, import, or supply in New Zealand if the Director-General is satisfied—	
(a)	that—	35

- (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 5
 - (iii) any other criteria specified in regulations are met; or
 - (b) that—
 - (i) the specified product will be manufactured in, or imported into, New Zealand for research purposes only and will not be offered for sale or supply; and 10
 - (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 15
 - (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 20
 - (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: 25
 - (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. 30
- 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— 35
- (a) any condition of the approval is not being complied with; or

- (b) an applicable requirement under this Act or regulations is not being complied with.
- (2) Before suspending an approval or a temporary approval, the Director-General must give the holder of the approval or temporary approval a reasonable opportunity to be heard. 5
- (3) The Director-General may extend the period of suspension—
- (a) for a further month;
- (b) more than once.
- (4) The Director-General must tell the holder of the approval or temporary approval in writing of the suspension and give reasons. 10
- (5) Before the period of suspension ends, the Director-General must—
- (a) decide whether to cancel or reinstate the approval or temporary approval; and
- (b) tell the holder of the approval or temporary approval in writing of the decision and give reasons. 15
- (6) A cancellation or reinstatement takes effect immediately after the end of the period of suspension.
- (7) A person must not sell, offer for sale, manufacture, import, or supply a smoked tobacco product whose approval is suspended during the period of suspension.
- (8) A person who, without reasonable excuse, contravenes **subsection (7)** commits an offence and is liable on conviction to a fine not exceeding \$400,000. 20

57D Director-General may cancel approval or temporary approval

- (1) The Director-General may cancel an approval or a temporary approval without any prior suspension if the Director-General is satisfied that—
- (a) any condition of the approval is not being complied with; or 25
- (b) an applicable requirement under this Act or regulations is not being complied with.
- (2) Before cancelling an approval or a temporary approval without prior suspension, the Director-General must give the holder of the approval or temporary approval a reasonable opportunity to be heard. 30
- (3) The Director-General must tell the holder of the approval or temporary approval in writing of the cancellation and give reasons.

Constituents of smoked tobacco products

57E Limits on constituents of smoked tobacco products

- (1) A person must not sell, offer for sale, manufacture, import, or supply a smoked tobacco product that contains, or generates in its emissions, a constituent that is— 35

- (a) prohibited by 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. 5
- 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. 10
- (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. 15
- 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. 20
- (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. 25
- (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. 30
- (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 35
 - (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.

57H	Limits on nicotine for smoked tobacco products	
(1)	The limit for the nicotine content in the tobacco in an individual smoked tobacco product is 0.8 mg/g.	
(2)	Nicotine must not be present in any other constituent of an individual smoked tobacco product, unless it is derived from the tobacco in the product.	5
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)	10
(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”.	15
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.	20
(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:	25
(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,—	30
(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	35

	(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.	5
(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.	10
(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.	15
(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.	20
(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,—	25
	(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.	30
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.	35

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: 5
- (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”. 10
- (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)**: 15
- (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: 20
- (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* 25
- (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: 30
- (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: 35
- (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** 5
- (1) The Governor-General may, by Order in Council made on the recommendation of the Minister, make regulations prescribing requirements for the purposes of **sections 20H, 20I, and 20L**, which may include setting—
- (b) criteria for the approval of—
- (i) a person as an approved smoked tobacco retailer; and 10
- (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). 15
- 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: 20
- (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: 25
- (d) prescribing standards and requirements for testing for the purposes of **section 57F(3) or 57G(3)**:
- (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. 30
- (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 35

- (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— 5
- (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). 10
- 41 Section 83 amended (Regulations for standardised packaging (including messages and information))**
- After section 83(1)(c)(iii), insert:
- (iv) the constituents in a smoked tobacco product or its emissions that must be listed: 15
- 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)**: 20
- (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 25
- (iv) by a person in respect of the notification of, or the renewal of a notification of, a notifiable product under **section 20R**; and
- (v) by a distributor in respect of the notification of, or the renewal of a notification of, smoked tobacco products under **section 20S**; and 30
- (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 35
- 44 Section 86 amended (Regulations imposing levies)**
- (1) Replace section 86(1) and (2) with:

- | | |
|---|--|
| <p>(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—</p> <p style="margin-left: 20px;">(a) a notifiable product under Part 4; or</p> <p style="margin-left: 20px;">(b) a smoked tobacco product.</p> <p>(2) Levies may be prescribed on the basis of—</p> <p style="margin-left: 20px;">(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</p> <p style="margin-left: 20px;">(b) the costs of the Director-General in performing or exercising the Director-General’s functions, powers, and duties under Parts 1B and 3A, to the extent that the costs are not met by fees imposed by regulations made under section 85; and</p> <p style="margin-left: 20px;">(c) the costs of collecting the levy money.</p> <p>(2) Replace section 86(4)(a) with:</p> <p style="margin-left: 20px;">(a) specify the class or classes of retailer, distributor, importer, or manufacturer that are required to pay a levy:</p> <p>(3) Replace section 86(4)(f) with:</p> <p style="margin-left: 20px;">(f) provide different levies for different classes of retailer, distributor, importer, or manufacturer:</p> <p>(4) Replace section 86(5) with:</p> <p>(5) If a person is in 2 or more classes of retailer, distributor, importer, or manufacturer in respect of which different levies have been prescribed, the person must pay each of those levies (unless the regulations provide otherwise).</p> <p>45 Subpart 2 heading in Part 5 amended</p> <p>In Part 5, in the subpart 2 heading, replace “Infringement offences” with “Offences”.</p> <p>46 New cross-heading above section 87 inserted</p> <p>Before section 87, insert:</p> <p style="text-align: center; margin-left: 40px;"><i>Infringement offences</i></p> <p>47 Section 87 amended (Infringement offences)</p> <p>(1) In section 87, definition of infringement fee, paragraph (a), replace “43(3)” with “43(4)”.</p> <p>(2) In section 87, definition of infringement fee, paragraph (b), delete “53(4),”.</p> <p>(3) In section 87, definition of infringement fee, after paragraph (b), insert:</p> | <p>5</p> <p>10</p> <p>15</p> <p>20</p> <p>25</p> <p>30</p> <p>35</p> |
|---|--|

- (c) in relation to an infringement offence against **section 20R(3) or 20S(3)**, \$500.
- (4) In section 87, definition of **infringement offence**, replace “sections 34(4),” with “**sections 20R(3), 20S(3)**, 34(4),”.
- (5) In section 87, definition of **infringement offence**, replace “43(3)” with “**43(4)**”. 5
- 48 New sections 90A, 90B, and cross-heading inserted**
- After section 90, insert:
- Other offence provisions*
- 90A Liability for action of employee** 10
- (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. 15
- (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** 20
- 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)**,— 25
- (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 30
- 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) After section 94(1)(c), insert: 35

- (d) smoked tobacco products have been sold or offered for sale by a person who is not an approved smoked tobacco retailer.
- (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. 5
- (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 10
- (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 15
- (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 20
- (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 25
- (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) 30**
- (1) In the heading to section 100, replace “**and specialist vape retailers**” with “**distributors, and retailers of regulated products**”.
- (2) In section 100(1)(a)(ii), replace “section 56 or 57” with “section 56, 57, **57F, 57G, 69A, or 69B**”. 35
- (3) In section 100(2), replace “specialist vape retailer” with “retailer of regulated products”.
- (4) After section 100(2), insert:

- (2A) A distributor of smoked tobacco products must report to the Director-General on their distribution 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) 5

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. 10
- (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. 15
- (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. 20
- (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 25
- (b) in any other case, to a fine not exceeding \$5,000.

52 New subparts 5 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 30**
- (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: 35

- (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. 5
- (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. 10
- (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 15
- (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. 20
- (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. 25
- (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 30
- 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. 35
- (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 5
 - (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 10
 - (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 15
 - (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 20
 - (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,— 25
- 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— 30
 - (i) the Ministry; and
 - (ii) the Government Communications Security Bureau; and
 - (iii) the New Zealand Security Intelligence Service; and
 - (iv) Statistics New Zealand;
 - (b) a Crown agent named in Part 1 of Schedule 1 of the Crown Entities Act 2004; 35
 - (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,— 5
- (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. 10
- (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 15
- (b) make all necessary consequential amendments.

Part 2

Amendments to other enactments

Subpart 1—Amendments to Customs and Excise Act 2018

54 Principal Act 20

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: 25
- (a) chewing tobacco:
- (b) snuff:
- (c) snus.
- (2) Replace section 95A(3) with:
- (3) The prohibition in subsection (1) does not apply if— 30
- (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 5
- (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,— 10
 - (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. 15
- (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. 20

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— 25
 - (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 30
 - (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 35
 - (iii) has provided evidence that the goods have been approved by the Director-General of Health for sale, supply, or import in New Zea-

land under the Smokefree Environments and Regulated Products Act 1990.

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

57	Principal regulations	5
	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”.	10
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)	15
	In regulation 58(5), replace “persons under the age of 18” with “persons born on or after 1 January 2009”.	
61	Regulation 62 replaced (Manufactured cigarettes to be tested)	
	Replace regulation 62 with:	20
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.	25
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).	30
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		5
14	Interpretation	
	In this Part, unless the context otherwise requires,—	
	amendment Act means the Smokefree Environments and Regulated Products (Smoked Tobacco) Amendment Act 2022	10
	commencement date means the date on which section 53 of the amendment Act comes into force.	
15	Obligation of general vape retailer in respect of notifiable products	
	Section 20R (which relates to the notification requirement of a general vape retailer in respect of notifiable products) does not apply until the date that is 9 months after the commencement date.	15
15	Obligation of person selling notifiable products	
	<u>Section 20R (which relates to the notification requirement of a person who sells notifiable products) does not apply until the date that is 9 months after the commencement date.</u>	20
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	25
	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.	
17	Sale of smoked tobacco products other than by approved smoked tobacco retailer	30
(1)	<u>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.</u>	

(2)	Section 20H (which provides for applications for approval to be an approved smoked tobacco retailer) does not apply until the earlier of the following:	
(a)	the date on which regulations made under section 82A commence:	
(b)	the date that is 18 months after the commencement date.	
18	Smoked tobacco product approval and constituent requirements	5
(1)	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):	10
(c)	section 57H (which sets a limit and a prohibition in respect of the nicotine content in an individual smoked tobacco product).	
(2)	Section 57B (which provides for applications for approval for sale or import of smoked tobacco products) does not apply until the earlier of the following:	15
(a)	the date on which regulations made under section 81(1)(20) (relating to approval of smoked tobacco products) commence:	
(b)	the date that is 27 months after the commencement date.	
19	Notifier must not sell product unless it has been notified	20
	The requirement in section 60 on a notifier of a notifiable product does not apply in respect of a herbal smoking product until the date that is 9 months after the commencement date.	

Legislative history

21 June 2022	Introduction (Bill 143–1)
26 July 2022	First reading and referral to Health Committee
28 November 2022	Reported from Health Committee (Bill 143–2)
6 December 2022	Second reading
8 December 2022	Committee of the whole House (Bill 143–3)