

Smoke-free Environments (Tobacco Plain Packaging) Amendment Bill

Government Bill

Explanatory note

General policy statement

This Bill gives effect to the Government's decision of 18 February 2013 to introduce a plain packaging regime for tobacco products in New Zealand.

The specific objectives of the legislation are to—

- reduce the appeal of tobacco products and smoking, particularly for young people:
- further reduce any wider social acceptance and approval of smoking and tobacco products:
- increase the noticeability and effectiveness of mandated health warning messages and images:
- reduce the likelihood that consumers might acquire false perceptions about the harms caused by tobacco products.

Since the implementation of extensive restrictions on traditional forms of advertising for tobacco products (including through the Smoke-free Environments Act 1990), tobacco companies have increasingly sought to modify and diversify the design and appearance of products and packaging as a way to make the products more desirable and to promote their use.

Tobacco packaging has been used as an effective form of tobacco marketing, supported by innovations in tobacco product design and appearance. The legislation seeks to remove what is in effect the last major promotional mechanism available to the tobacco industry.

The design and appearance of cigarettes and other tobacco products, and in particular the way they are packaged, influence people's perceptions about tobacco products and the desirability of smoking.

Brand imagery and other marketing devices used in tobacco product packaging demonstrably increase the appeal of tobacco brands to youth and young adults. This helps attract new smokers and also creates wider perceptions of social approval for tobacco use and smoking behaviour. It also serves to reinforce the appeal of tobacco products to existing smokers, who might otherwise be persuaded to quit by friends, family, or medical practitioners, or as a result of other tobacco control measures, such as tobacco excise increases.

The colouring and wording used on tobacco packaging has been shown to create the misperception that tobacco products are less harmful and easier to stop using than is the case. Evidence also shows that unregulated tobacco packaging colours and imagery counter the deterrent effect of graphic health warnings, because the warnings are perceived by users as less serious than when the same warnings are presented on plain packs.

The intention of the legislation is to prevent the design or appearance of any form of tobacco product packaging (including the design and appearance of the tobacco products themselves) from having any effect, visual or otherwise, that might—

- serve to advertise or in any other way promote the desirability of tobacco products, or the use of tobacco products, or of smoking behaviour in general; or
- be capable of undermining the effectiveness of public health policies and programmes, including any measures taken in pursuit of the goal of making New Zealand an essentially smoke-free nation by 2025.

The harms from tobacco use are well-established. Between 4 500 and 5 000 New Zealanders die each year from smoking or exposure to second-hand smoke. It is estimated that half of all long-term smokers die of a smoking-related illness, losing on average 15 years of life. The broader purpose of the legislation is to improve public health

in New Zealand through its contribution, in combination with the other elements of a comprehensive programme of tobacco control measures, to—

- discouraging people from taking up smoking or using tobacco products:
- encouraging people to give up smoking and to stop using tobacco products:
- discouraging people who have stopped smoking, or no longer use tobacco products, from resuming smoking or tobacco use:
- reducing people's exposure to smoke from tobacco products:
- supporting New Zealand in meeting its international obligations and commitments under the WHO Framework Convention on Tobacco Control.

The key features of the plain packaging regime include—

- prohibiting the use of tobacco company branding imagery and all other marketing devices on any form of tobacco product packaging, or on tobacco products themselves:
- allowing the brand name and certain other manufacturer information to be printed on the pack, but with tight controls (eg, over the typeface or font, size, colour, and position):
- standardising all other design elements of tobacco product packaging, such as the materials, colours, and typefaces or fonts that may be used:
- requiring tobacco product packaging to carry larger, more prominent, and more pertinent warning messages and graphic images:
- controlling the design and appearance of individual cigarettes and other tobacco products.

The main elements of the legislation will—

- ensure that tobacco products are not manufactured, distributed, or sold unless they comply with the requirements set out in the legislation and regulations made pursuant to it:
- enable regulations to be made to set out the detailed requirements for the design and physical appearance of any packaging used or intended for use with tobacco products, and of the tobacco products themselves:

- amend existing regulation-making powers relating to health warnings on tobacco products to broaden their scope to include warnings of wider adverse social and economic effects and also to enable positive health promotion messages:
- create new offences with significant penalties to effectively deter and punish any non-compliance (and increase the penalties for existing offences related to advertising, promoting, or labelling tobacco products to bring these into alignment with the penalties for the new offences):
- not have any effect on intellectual property rights to register, own, and enforce trade marks and copyright in designs (as it is only the use of trade marks and copyrighted designs as promotional devices on tobacco products and packaging that is being controlled).

The model for the legislation is Australia’s legislative package for tobacco plain packaging, modified to fit New Zealand circumstances. The Bill is drafted to be brought into force either by Order in Council or, at the latest, 18 months after receiving Royal assent. This is to allow adequate time to develop and consult on the detailed regulations. The Bill dismantles the existing regulatory framework for tobacco product labelling and health warnings, and replaces it with a new, more wide-ranging tobacco plain packaging regime. Commencement by Order in Council when the new regulations are made will enable a smooth transition.

The Bill includes transitional provisions as a new schedule to the Smoke-free Environments Act 1990. These provide for the new plain packaging requirements and offences to apply to manufacturers, importers, and persons involved in packaging on the date the amendments come into force, but allow a period of 6 weeks for distributors to clear old stocks and a further 6 weeks of “wash-through” before retailers become liable for non-compliance (ie, a total lead-in time of 12 weeks).

Departmental disclosure statement

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

A copy of the statement can be found at <http://legislation.govt.nz/disclosure.aspx?type=bill&subtype=government&year=2013&no=186&>.

Regulatory impact statement

The Ministry of Health produced regulatory impact statements on 28 March 2012 and 24 November 2012 to help inform the main policy decisions taken by the Government relating to the contents of this Bill.

A copy of the regulatory impact statements can be found at—

- <http://www.health.govt.nz/about-ministry/legislation-and-regulation/regulatory-impact-statements/plain-packaging-tobacco-products-regulatory-impact-statement-consultation-phase> and <http://www.health.govt.nz/our-work/preventative-health-wellness/tobacco-control/plain-packaging>
- <http://www.treasury.govt.nz/publications/informationreleases/ris>

Clause by clause analysis

Clause 1 states the Bill's Title.

Clause 2 specifies the commencement date of the Bill. The Bill comes into force on the date appointed by Order in Council, or 18 months after Royal assent (at the latest).

Part 1

Amendments to Smoke-free Environments Act 1990

Clause 3 provides that *Part 1* amends the Smoke-free Environments Act 1990 (the **principal Act**).

Clause 4 amends section 2 by inserting a definition of large retailer for use in the offence provisions.

Clause 5 amends section 3A to update the purpose of the principal Act to reflect the general policy about plain packaging of tobacco products.

Clause 6 amends section 21 to update the purpose of Part 2 of the principal Act (which relates to control of smoking products) to reflect the specific policy about plain packaging of tobacco products.

Clause 7 amends section 24 to remove any suggestion that a trade mark may be used on a tobacco product, package, or container. The use of marks is governed by the new provisions about plain packaging.

Clause 8 replaces the cross-heading above section 29AA so that it fits the amended provisions below it.

Clause 9 repeals section 30A, which has been overtaken by the new provisions about plain packaging. *New section 31A(1)(b)* effectively bans the retail sale of all loose cigarettes. Under *new section 39A(3)*, the related regulations must not permit packages of cigarettes or loose tobacco below the quantities banned by existing section 30A.

Clause 10 inserts *new section 31A*. The new section is the main provision about plain packaging. It requires that a tobacco product comply with regulations and, if sold or offered for sale, that the product be contained in a package and be packaged in a quantity that complies with regulations. It also requires that the package for a tobacco product comply with section 32(1) (which relates to messages and information), allows the restricted display of a brand or company name on the package, and requires that the package comply with regulations in all other respects.

Clause 11 amends section 32. The amended provision applies to packages for tobacco products at all times (not just when the products are sold). It widens the types of messages, pictures, and information that can be required on packages. They may now relate to the harmful health, social, or economic effects, or other harmful effects, of using the product or to the beneficial effects of stopping the use of the product or of not using the product.

Clause 12 amends section 32AA. It widens the types of messages, pictures, and information that can be required on packages containing herbal smoking products in the same way as for tobacco products.

Clause 13 amends section 36 to increase the maximum fines for certain offences and to impose different maximum fines depending on whether the person is—

- a manufacturer, an importer, or a distributor (\$600,000); or
- a large retailer (\$200,000); or
- anyone else (\$50,000).

The clause repeals section 36(7A), which is consequential on the repeal of section 30A. It also repeals section 36(9), which is covered by *new section 36AA*.

Clause 14 inserts *new sections 36AA and 36AAB*.

New section 36AA creates an offence in respect of plain packaging of tobacco products. An offence is committed by—

- a person who manufactures, distributes, sells, offers for sale, or otherwise supplies a tobacco product knowing that the product contravenes the relevant requirements;
- a person who distributes, sells, offers for sale, or otherwise supplies a tobacco product in a package knowing that the package contravenes the relevant requirements;
- a person who does certain things in relation to a package for a tobacco product knowing that the package contravenes the relevant requirements.

The maximum fines are the same as those in the amendments to section 36. There is an exception for certain exports, but the defendant must prove that the exception applies.

New section 36AAB creates a presumption that a defendant (who is not a manufacturer, an importer, or a distributor) is a large retailer. The defendant can rebut the presumption by raising evidence to the contrary.

Clause 15 amends section 38A to include as an infringement offence an offence against *new section 36AA* (which relates to contravening plain packaging requirements). The infringement offence has no mental element. The clause removes the existing section 38A(j), which is consequential on the repeal of section 30A.

Clause 16 amends section 39 to remove from a regulation-making power aspects that relate to packages for tobacco products. Those aspects are now covered by *new section 39A*. The clause also clarifies the regulation-making power relating to photographs and pictures for herbal smoking products. Some redundant subprovisions are also repealed.

Clause 17 inserts *new section 39A*. The new section allows regulations to be made that relate to plain packaging. The regulations can impose requirements or permit options for tobacco products and for packages for tobacco products. Most of the provisions relate to restrictive requirements about the appearance of the products and pack-

ages. Appearance is defined to include anything that may affect a person's senses.

Clause 18 inserts *new section 41BA*. The new section lets an enforcement officer apply for a search warrant. A warrant may be issued if there are reasonable grounds to suspect an offence and to believe that there is evidential material in the relevant place. Most of the provisions of Part 4 of the Search and Surveillance Act 2012 are applied.

Clause 19 inserts *new Part 3*. The new Part contains *new section 42*, which gives effect to the transitional provisions set out in the *new Schedule*. The transitional provisions relate to amendments made to the principal Act on or after 1 January 2013.

Clause 20 inserts the *new Schedule*, which contains the transitional provisions for the Bill's amendments to the principal Act.

Part 2

Amendments to other enactments

Clause 21 amends section 51 of the Designs Act 1953 to ensure that the Commissioner of Designs may register a design even if its use is restricted or prohibited under the principal Act. The amendment is consistent with section 17(3) of the Trade Marks Act 2002.

Clause 22 amends the Schedule of the Search and Surveillance Act 2012. The amendment inserts the new power, under *new section 41BA* of the Smoke-free Environments Act 1990, to obtain and execute a search warrant to search for evidential material in relation to a suspected offence.

Schedule

The Schedule contains the *new Schedule* of the principal Act, which contains transitional provisions.

Hon Tariana Turia

**Smoke-free Environments
(Tobacco Plain Packaging)
Amendment Bill**

Government Bill

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The Parliament of New Zealand enacts as follows:

- 1 Title**
This Act is the Smoke-free Environments (Tobacco Plain Packaging) Amendment Act **2013**.
- 2 Commencement** 5
(1) This Act comes into force on a date appointed by the Governor-General by Order in Council.

- (2) However, if this Act is not in force by the day that is 18 months after the date on which it receives the Royal assent, it comes into force on that day.

Part 1
Amendments to Smoke-free Environments Act 1990 5

3 Principal Act

This Part amends the Smoke-free Environments Act 1990 (the **principal Act**).

4 Section 2 amended (Interpretation) 10

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

“**large retailer**, in relation to a person that is alleged to have committed an offence in a certain accounting period, means a retailer whose total turnover in the prior accounting period exceeded \$50 million (as accounting period and turnover are defined by section 2(1) of the Commerce Act 1986, except that in those definitions body corporate is to be read as any retailer)” 15

5 Section 3A amended (Purposes of this Act)

- (1) Replace section 3A(1)(b) with: 20

“(b) to regulate and control the marketing, advertising, and promotion of tobacco products (whether directly, including through the appearance of tobacco products and packages, or through the sponsoring of other products, services, or events) in order to improve public health by— 25

“(i) discouraging people from taking up smoking or using tobacco products; and

“(ii) encouraging people to give up smoking and to stop using tobacco products; and 30

“(iii) discouraging people who have stopped smoking, or who no longer use tobacco products, from re-summing smoking or tobacco use; and

“(iv) reducing people’s exposure to smoke from tobacco products; and” 35

- (2) Replace section 3A(1)(d) with:
“(d) 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.” 5
- 6 Section 21 amended (Purpose of this Part)**
After section 21(a), insert:
“(aa) to require standardised tobacco products and plain packages (including messages and information) for tobacco products in order to— 10
“(i) reduce the appeal of smoking and tobacco products, particularly for young people; and
“(ii) further reduce any social acceptance and approval of smoking and tobacco products; and
“(iii) make warning messages and images more noticeable and effective; and 15
“(iv) reduce the likelihood of consumers acquiring false perceptions about the harmful effects of tobacco products; and”.
- 7 Section 24 amended (Use of trade marks, etc, on goods other than tobacco products, or in relation to sponsored events) 20**
- (1) Before section 24(1), insert:
“(1AA) In this section, **non-tobacco article** means an article that is not— 25
“(a) a tobacco product; or
“(b) a package or container in which a tobacco product is sold or shipped.”
- (2) Replace section 24(1)(a) with:
“(a) on any non-tobacco article; or”. 30
- (3) Replace section 24(1)(b)(i) with:
“(i) any non-tobacco article; or”.
- (4) Replace section 24(2)(a) with:
“(a) any non-tobacco article; or”.

- (5) In section 24(3), replace “any article, other than a tobacco product or a package or container in which a tobacco product is sold or shipped,” with “any non-tobacco article”.
- 8 Cross-heading above section 29AA replaced**
Replace the cross-heading above section 29AA with: 5
“*Sale and messages and information*”.
- 9 Section 30A repealed (Restrictions on sale of certain tobacco products in small quantities)**
Repeal section 30A.
- 10 New section 31A inserted (Plain packaging of tobacco products)** 10
After section 31, insert:
“31A Plain packaging of tobacco products
“(1) A tobacco product—
“(a) must comply with regulations under this Part; and 15
“(b) if sold or offered for sale,—
“(i) must be contained in a package; and
“(ii) must be packaged in a quantity that complies with regulations under this Part.
“(2) The package for a tobacco product— 20
“(a) must comply with **section 32(1)** (which relates to messages and information); and
“(b) other than part of the package that is wrapping or lining, may display the brand or company name for the product, but only in accordance with regulations under this Part; 25
and
“(c) must comply with regulations under this Part in all other respects.”
- 11 Section 32 amended (Labelling and health messages for tobacco products)** 30
(1) Replace the heading to section 32 with “**Messages and information for tobacco products**”.
(2) Replace section 32(1) with:

- “(1) The package for a tobacco product must comply with the following requirements:
- “(a) the package must display, in accordance with regulations under this Part, as many of the following things as the regulations require: 5
- “(i) a message relating to—
- “(A) the harmful health, social, or economic effects, or other harmful effects, of using the product:
- “(B) the beneficial effects of stopping the use of the product or of not using the product: 10
- “(ii) a list of the harmful constituents of the product:
- “(iii) if the product is intended for smoking, a list of the harmful constituents, and their respective quantities, present in the smoke: 15
- “(iv) whether as part of or in addition to any message about effects, a photograph or picture relating to—
- “(A) the harmful health, social, or economic effects, or other harmful effects, of using the product: 20
- “(B) the beneficial effects of stopping the use of the product or of not using the product; and
- “(b) if required by the regulations, the package must contain a leaflet with— 25
- “(i) information (prescribed by the regulations for tobacco products generally, or tobacco products of a class to which the product belongs) relating to— 30
- “(A) the harmful health, social, or economic effects, or other harmful effects, of using the product:
- “(B) the beneficial effects of stopping the use of the product or of not using the product; and 35
- “(ii) if the product is intended for smoking, as much of the following information (stated, as the regulations may require, by reference to the class of

tobacco product to which the product belongs, or to the product's brand as a tobacco product of any class or variant of a brand of a tobacco product of any class) as the regulations require:

“(A) a list of the harmful constituents, and their respective quantities, present in the product: 5

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

“(C) a list of the harmful constituents, and their respective quantities, present in the smoke.” 10

12 Section 32AA amended (Labelling and health messages for herbal smoking products)

(1) Replace the heading to section 32AA with “**Messages and information for herbal smoking products**”. 15

(2) Replace section 32AA(1) with:

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

“(a) the package containing it displays, in accordance with regulations under this Part, as many of the following things as the regulations require: 20

“(i) a message relating to—

“(A) the harmful health, social, or economic effects, or other harmful effects, of using the product: 25

“(B) the beneficial effects of stopping the use of the product or of not using the product:

“(ii) a list of the harmful constituents, and their respective quantities, present in the product: 30

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

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

“(v) whether as part of or in addition to any message about effects, a photograph or picture relating to— 35

- “(A) the harmful health, social, or economic effects, or other harmful effects, of using the product:
“(B) the beneficial effects of stopping the use of the product or of not using the product; 5
and
“(b) if required by the regulations, the package containing the product contains a leaflet with as much of the following information as the regulations require:
“(i) information relating to— 10
“(A) the harmful health, social, or economic effects, or other harmful effects, of using the product:
“(B) the beneficial effects of stopping the use of the product or of not using the product; 15
and
“(ii) a list of the harmful constituents, and their respective quantities, present in the smoke.”
- 13 Section 36 amended (Offences in respect of tobacco products and herbal smoking products) 20**
- (1) Replace paragraphs (a) and (b) in each of section 36(1), (2), (3), and (3A) with:
“(a) in the case of a manufacturer, an importer, or a distributor, to a fine not exceeding \$600,000; or
“(b) in the case of a large retailer, to a fine not exceeding \$200,000; or 25
“(c) in any other case, to a fine not exceeding \$50,000.”
- (2) Replace section 36(4) with:
“(4) Every manufacturer, importer, distributor, or retailer of tobacco products who distributes or supplies any tobacco product in contravention of section 28(1) commits an offence and is liable,— 30
“(a) in the case of a manufacturer, an importer, or a distributor, to a fine not exceeding \$600,000; or
“(b) in the case of a large retailer, to a fine not exceeding \$200,000; or 35
“(c) in any other case, to a fine not exceeding \$50,000.”
- (3) Repeal section 36(7A) and (9).

14 New sections 36AA and 36AAB inserted

After section 36, insert:

“36AA Offence in respect of plain packaging of tobacco products

- “(1) This section applies to— 5
- “(a) a person who manufactures, distributes, sells, offers for sale, or otherwise supplies a tobacco product knowing that the product contravenes **section 31A(1)**; or
 - “(b) a person who distributes, sells, offers for sale, or otherwise supplies a tobacco product in a package knowing that the package contravenes **section 31A(2)**; or 10
 - “(c) a person who does the following knowing that a package for a tobacco product contravenes **section 31A(2)**:
 - “(i) manufactures, distributes, sells, offers for sale, or otherwise supplies the package; or 15
 - “(ii) packages, or arranges for the packaging of, a tobacco product in the package.
- “(2) The person commits an offence and is liable on conviction,—
- “(a) in the case of a manufacturer, an importer, or a distributor, to a fine not exceeding \$600,000; or 20
 - “(b) in the case of a large retailer, to a fine not exceeding \$200,000; or
 - “(c) in any other case, to a fine not exceeding \$50,000.
- “(3) However, the person does not commit an offence against this section in relation to a tobacco product or a package for a tobacco product if— 25
- “(a) the product or package is intended for export; and
 - “(b) the product or package has not been sold or supplied at retail, or offered for retail sale, in New Zealand.
- “(4) In proceedings for an offence against this section,— 30
- “(a) the prosecutor need not assert in the charging document that the exception in **subsection (3)** does not apply; and
 - “(b) the burden of proving that the exception applies is on the defendant. 35

“36AAB Presumption about large retailer

- “(1) This section applies to proceedings for—

- “(a) an offence against section 36 for which the maximum fine for a large retailer is separately specified:
- “(b) an offence against **section 36AA**.
- “(2) In proceedings for the offence, a defendant who is not a manufacturer, an importer, or a distributor is presumed to be a large retailer unless there is evidence to the contrary. 5
- “(3) Evidence to the contrary must include financial statements of the defendant that are sufficient to determine whether the defendant is a large retailer.”

- 15 Section 38A amended (Infringement offences) 10**

In section 38A, definition of **infringement offence**, replace paragraph (j) with:

 - “(j) **section 36AA(2)** (which relates to contravening **section 31A**, which requires tobacco products and packages to comply with certain plain packaging requirements), except that a person commits the infringement offence if the product or package contravenes **section 31A(1) or (2)** regardless of the person’s knowledge of the contravention—maximum infringement fee amount \$1,000.”. 15 20

- 16 Section 39 amended (Regulations)**
 - (1) Replace section 39(1)(e) with:
 - “(e) prescribing for the purposes of sections 32(3) and 32AA(3)—
 - “(i) the form, size, and content of messages to be displayed on automatic vending machines that dispense tobacco products or on automatic vending machines that dispense herbal smoking products: 25
 - “(ii) the circumstances and manner in which the messages must be displayed: 30
 - “(ea) prescribing for the purposes of **section 32AA(1)**—
 - “(i) the form, size, and content of messages and information to be displayed with, on, or in the package for a herbal smoking product:

- “(ii) the photographs and pictures to be displayed as part of or in addition to messages about effects relating to a herbal smoking product:
 - “(iii) the circumstances and manner in which the messages, information, photographs, and pictures must be displayed.”. 5
- (2) Repeal section 39(7) to (9).
- 17 New section 39A inserted (Regulations for plain packaging (including messages and information))** 10
- After section 39, insert:
- “39A Regulations for plain packaging (including messages and information)**
- “(1) The Governor-General may, by Order in Council, make regulations for all or any of the following purposes:
- “(a) prescribing for the purposes of **section 31A(1)(a)** requirements, or options permitted, for all or any aspects of the appearance of a tobacco product: 15
 - “(b) prescribing for the purposes of **section 31A(1)(b)(ii)** the quantity or quantities in which a tobacco product must be packaged: 20
 - “(c) prescribing for the purposes of **section 32(1)**—
 - “(i) the form, size, and content of messages and information to be displayed with, on, or in the package for a tobacco product:
 - “(ii) the photographs and pictures to be displayed as part of or in addition to messages about effects relating to a tobacco product: 25
 - “(iii) the circumstances and manner in which the messages, information, photographs, and pictures must be displayed: 30
 - “(d) prescribing for the purposes of **section 31A(2)(b)** requirements, or options permitted, for the display of the brand or company name on the package for a tobacco product, including the circumstances and manner in which the name is to be displayed: 35
 - “(e) prescribing for the purposes of **section 31A(2)(c)** requirements, or options permitted, for all or any other

- aspects of the appearance of the package for a tobacco product:
- “(f) providing for any other related matters contemplated by this Act, necessary for its administration, or necessary for giving it full effect. 5
- “(2) Regulations under **subsection (1)(a) or (e)** may (without limitation) do all or any of the following:
- “(a) require a tobacco product, or the package for a tobacco product, to be a prescribed size and shape:
- “(b) prohibit a tobacco product, or the package for a tobacco product, from displaying any words or other marks unless they are permitted by **section 31A(2)(b)** or the regulations: 10
- “(c) specify types of words or other marks that are permitted to be displayed on a tobacco product or the package for a tobacco product (for example, bar codes or marks used to record manufacturing information or to detect legitimate products or packages): 15
- “(d) specify requirements for the display of the permitted words or marks, including the circumstances and manner in which the words or marks are to be displayed (for example, the typeface or font, size, colour, and position of the words or marks): 20
- “(e) prohibit any type of feature from a tobacco product or the package for a tobacco product (for example, any feature designed to promote the product by changing the appearance of the product or package after retail sale or by making a noise or smell). 25
- “(3) Regulations under **subsection (1)(b)**—
- “(a) may, for example, prescribe the number of cigarettes or the weight of loose tobacco that must be contained in a package; but 30
- “(b) must not permit packages of fewer than 20 cigarettes or of less than 30 grams of loose tobacco.
- “(4) Regulations under **subsection (1)** may (without limitation) prescribe— 35
- “(a) requirements or options for all parts of a product or a package (for example, all surfaces of a package must be a consistent drab brown colour with a matt finish):

- “(b) separate requirements or options for different parts of a product or a package (for example, any plastic or other wrapping must be consistently transparent, uncoloured, and unmarked):
- “(c) separate requirements or options for— 5
 - “(i) different classes of tobacco product:
 - “(ii) the packages for different classes of tobacco product.
- “(5) In this section,—
 - “**appearance** includes— 10
 - “(a) anything that may affect a person’s senses; and
 - “(b) any aspect of design, such as shape, size, colour, texture, or material
 - “**cigarette**—
 - “(a) does not include a cigar; but 15
 - “(b) includes the tobacco product commonly known as a cigarillo
 - “**loose tobacco** means—
 - “(a) tobacco prepared for smoking in hand-rolled cigarettes:
 - “(b) pipe tobacco.” 20

18 New section 41BA inserted (Search warrant)

After section 41B, insert:

“41BA Search warrant

- “(1) An enforcement officer may apply for a search warrant in respect of any place. 25
- “(2) The enforcement officer must apply in the manner provided in subpart 3 of Part 4 of the Search and Surveillance Act 2012.
- “(3) An issuing officer may issue a search warrant in respect of the place if satisfied that there are reasonable grounds—
 - “(a) to suspect that an offence has been, is being, or will be committed against this Act; and 30
 - “(b) to believe that there is evidential material in the place.
- “(4) The provisions of Part 4 of the Search and Surveillance Act 2012 (except sections 118 and 119) apply.
- “(5) In this section, **evidential material** and **issuing officer** have the meanings given by section 3(1) of the Search and Surveillance Act 2012.” 35

19	New Part 3 inserted After section 41F, insert: “Part 3 “Transitional provisions for amendments made on or after 1 January 2013	5
“42	Transitional provisions for amendments made on or after 1 January 2013	
“(1)	The transitional provisions set out in the Schedule have effect for the purposes of this Act.	
“(2)	The provisions relate to amendments made to this Act on or after 1 January 2013. ”	10
20	New Schedule inserted After section 42 , insert the Schedule set out in the Schedule of this Act.	
	Part 2 Amendments to other enactments	15
21	Amendment to Designs Act 1953	
(1)	This section amends the Designs Act 1953.	
(2)	In section 51, insert as subsection (2):	
“(2)	However, the Commissioner may register a design even if its use is restricted or prohibited under the Smoke-free Environments Act 1990.”	20
22	Amendment to Search and Surveillance Act 2012	
(1)	This section amends the Search and Surveillance Act 2012.	
(2)	In the Schedule, insert in its appropriate alphabetical order:	25
Smoke-free Environments Act 1990	41BA Enforcement officer may obtain and execute search warrant to search for evidential material in relation to suspected offence against Smoke-free Environments Act 1990	All (except sections 118 and 119)

Schedule

s 20

New Schedule inserted

Schedule

s 42

**Transitional provisions for amendments
made on or after 1 January 2013**

1 Interpretation

In this schedule, **amendment Act** means the Smoke-free
Environments (Tobacco Plain Packaging) Amendment Act
2013. 5

**2 No transitional period for manufacturers, importers, or
persons who package**

To avoid doubt, there is no transitional period for a manufac- 10
turer or an importer or for a person who packages, or arranges
for the packaging of, a tobacco product.

3 Transitional period of 6 weeks for distributors

(1) This clause provides for how this Act, and any regulations 15
made under this Act, apply in relation to a distributor during
the period of 6 weeks starting at the commencement of the
amendment Act.

(2) The Act and regulations apply as they existed immediately 20
before the commencement of the amendment Act (as if they
had not later been amended or replaced by the amendment Act
or by any other enactment).

4 Transitional period of 12 weeks for other relevant persons

(1) This clause provides for how this Act, and any regulations 25
made under this Act, apply in relation to any other relevant per-
son during the period of 12 weeks starting at the commence-
ment of the amendment Act.

(2) The Act and regulations apply as they existed immediately 30
before the commencement of the amendment Act (as if they
had not later been amended or replaced by the amendment Act
or by any other enactment).

(3) In this clause, **other relevant person**—

- (a) means a person who sells, offers for sale, or otherwise supplies a tobacco product or a package for a tobacco product; but
- (b) does not include a manufacturer, an importer, a distributor, or a person who packages, or arranges for the packaging of, a tobacco product. 5