

SMOKE-FREE ENVIRONMENTS AMENDMENT BILL (NO. 2)

EXPLANATORY NOTE

THIS Bill amends the Smoke-free Environments Act 1990.

The principal amendment relates to the provisions of the Act that restrict the extent to which sponsorship, by tobacco companies, of cultural, educational, sporting, or recreational activities or events may be acknowledged in the name of the activity or event, and in the advertising of the activity or event.

The Act does not prohibit sponsorship of sporting and other activities and events by tobacco companies. However, with certain very narrow exceptions, section 25 does prohibit the organisation, promotion, or sponsorship, by tobacco companies, of such activities or events, if the activity or event involves the use, in the name of the activity or event or on any article other than a tobacco product, of a tobacco product trade mark or a company name, or part of a company name, that is included in a tobacco product trade mark. Further, sections 22 and 24 prohibit the use of tobacco product trade marks, or the company names of tobacco companies, in advertising any sporting or other activity or event.

Clause 2 of the Bill (which inserts new *sections 26A and 26B* into the principal Act) relaxes these restrictions in relation to sporting and cultural events. Such events will be permitted to have a name that includes a tobacco product trade mark or a company name, or part of a company name, of a tobacco company. In addition, the advertising of sporting and cultural events which have such a name, and of the fact that an event is sponsored by a tobacco company, will be permitted. Further, tobacco product trade marks and tobacco company names may be applied to articles in order to advertise or promote or identify to the public an event, or the fact that an event is sponsored by a tobacco company.

This relaxation of the prohibitions in the Act is subject to certain restrictions and requirements. With 1 exception, these restrictions and requirements reflect the provisions of the Code for the Marketing of Tobacco Products, which formed part of the agreement entered into on 16 December 1987 between the Minister of Health and Rothmans of Pall Mall (New Zealand) Limited and W.D. and H.O. Wills (New Zealand) Limited. That agreement expired on 16 December 1990. The restrictions and requirements are as follows:

- (a) Tobacco companies may not sponsor any sporting or cultural event (these events are referred to in this explanatory note and in the Bill as “specified events”) where—

No. 65—1

Price
incl. GST \$2.30

- (i) That event is designed specifically for, or the holding of that event is conditional on, a television, radio, or cinema audience; or
 - (ii) The audience for that event is likely to be predominantly under the age of 18 years; or
 - (iii) The event is a modern music concert principally for persons under the age of 20 years; or
 - (iv) The event is part of the activities of any school:
- (b) Tobacco companies may not purchase radio, television, or cinema advertising to advertise the fact that a specified event is sponsored by them:
- (c) Where advertising relating to any specified event is included, on behalf of a tobacco company, in any newspaper, magazine, or other publication, the total space occupied by that advertising in each edition of that newspaper, magazine, or publication must not exceed 903 square centimetres:
- (d) Advertising acknowledging the fact that any specified event is sponsored by a tobacco company must not—
- (i) Be included in any printed matter that is published later than 1 week after the date on which the event concludes; or
 - (ii) Be included in any radio or television transmission that is broadcast later than 1 week after that date.
- This restriction was not contained in the Code for the Marketing of Tobacco Products:
- (e) Signs advertising sponsorship of a specified event by a tobacco company may be displayed at any venue for that event only until that event has concluded:
- (f) Hoardings displayed at any venue at which a specified event is held or is to be held and featuring only a tobacco product trade mark or the company name, or any part of the company name, of any tobacco company must include a health message. There are certain requirements relating to the form in which the health message is to appear:
- (g) In no case may any advertisement depict—
- (i) A tobacco product; or
 - (ii) Any package in which tobacco products are customarily sold at retail; or
 - (iii) The smoking of any tobacco product; or
 - (iv) Any claim relating to any particular brand of tobacco product.

Clause 3 amends section 37 of the principal Act. Subsection (1) of that section imposes the duty to enforce the provisions of Part II of the Act on the Director-General of Health. The amendment permits the Director-General to delegate that duty to area health boards.

Clause 4 contemplates the consequential repeal of the amendment to the principal Act relating to the World Cup Cricket series.

Hon. Simon Upton

SMOKE-FREE ENVIRONMENTS AMENDMENT (NO. 2)

ANALYSIS

Title	2. New sections inserted
1. Short Title	26A. Exemptions for sponsorship and advertising of certain sporting and cultural events
	26B. Restrictions on application of section 26A
	3. Enforcement
	4. Repeal

A BILL INTITULED

An Act to amend the Smoke-free Environments Act 1990

BE IT ENACTED by the Parliament of New Zealand as follows:

5 **1. Short Title**—This Act may be cited as the Smoke-free Environments Amendment Act (No. 2) 1991, and shall be read together with and deemed part of the Smoke-free Environments Act 1990* (hereinafter referred to as the principal Act).

10 **2. New sections inserted**—The principal Act is hereby amended by repealing section 26A (as inserted by section 2 of the **Smoke-free Environments Amendment Act 1991**), and substituting the following sections:

15 “**26A. Exemptions for sponsorship and advertising of certain sporting and cultural events**—(1) In this section and in **section 26B** of this Act, unless the context otherwise requires,—

“ ‘Event’ includes a series of events:

“ ‘School’ means—

20 “(a) A State school within the meaning of the Education Act 1964; and

*1990, No. 108

Amendment: 1990, No. 131

- “(b) A school for the time being established as an integrated school under the Private Schools Conditional Integration Act 1975; and
- “(c) A school for the time being registered under section 35A of the Education Act 1964: 5
- “‘Specified event’ means any sporting or cultural event:
- “‘Sponsor’, in relation to a specified event, means—
- “(a) To organise or promote that event; or
- “(b) To make a financial contribution towards that event; or 10
- “(c) To make a financial contribution to any person in respect of—
- “(i) The organisation or promotion, by that person, of; or
- “(ii) The participation, by that person, in,— 15
- the event;—
- and “sponsorship” has a corresponding meaning.
- “(2) Subject to **section 26b** of this Act, nothing in section 22 or section 24 or section 25 of this Act applies in respect of—
- “(a) The use, in the name of a specified event, of— 20
- “(i) A tobacco product trade mark; or
- “(ii) A company name, or any part of a company name, of any manufacturer, importer, or distributor of tobacco products; or
- “(b) The advertisement of— 25
- “(i) A specified event; or
- “(ii) The fact that a specified event is sponsored, in whole or in part, by any manufacturer, importer, or distributor of tobacco products; or
- “(c) The use, on any article, of— 30
- “(i) A tobacco product trade mark; or
- “(ii) A company name, or any part of a company name, of any manufacturer, importer, or distributor of tobacco products—
- for the purpose of advertising or promoting or 35
- identifying to the public—
- “(iii) A specified event; or
- “(iv) The fact that a specified event is sponsored, in whole or in part, by any manufacturer, importer, or distributor of tobacco products. 40
- “(3) For the purposes of **subsection (2) (b)** of this section, the display, at the venue at which a specified event sponsored by any manufacturer, importer, or distributor of tobacco products is held or is to be held, of a hoarding featuring only a tobacco

product trade mark or the company name, or any part of the company name, of that manufacturer, importer, or distributor, together with the health message required by **section 26B (6)** of this Act, shall be deemed to be an advertisement of the fact that that event is so sponsored.

5 “(4) For the avoidance of doubt, it is hereby declared that nothing in this section or **section 26B** of this Act permits the depiction, in any advertisement, of—

“(a) Any tobacco product; or

10 “(b) Any package in which tobacco products are customarily sold at retail; or

“(c) The smoking of any tobacco product; or

“(d) Any claim relating to any particular brand of tobacco product.

15 “(5) Nothing in this section or **section 26B** of this Act applies in respect of any contract to which section 40 (2) of this Act applies.

“**26B. Restrictions on application of section 26A—**

20 (1) Nothing in **section 26A** of this Act permits any manufacturer, importer, or distributor of tobacco products to sponsor any specified event where—

“(a) That event is designed specifically for, or the holding of that event is conditional on, a television, radio, or cinema audience; or

25 “(b) The audience for that event is likely to be predominantly under the age of 18 years; or

“(c) The event is a modern music concert principally for persons under the age of 20 years; or

“(d) The event is part of the activities of any school.

30 “(2) Nothing in **section 26A** of this Act permits the advertising, in any radio or television transmission, or in any cinema, of the fact that a specified event is sponsored by any manufacturer, importer, or distributor of tobacco products if that advertising is purchased by that manufacturer, importer, or distributor.

35 “(3) Where advertising relating to any specified event is included, on behalf of any manufacturer, importer, or distributor of tobacco products, in any newspaper, magazine, or other publication, the total space occupied by that advertising in each edition of that newspaper, magazine, or publication shall not exceed 903 square centimetres.

40 “(4) Advertising acknowledging the fact that any specified event is sponsored by any manufacturer, importer, or distributor of tobacco products shall not—

“(a) Be included in any printed matter that is published later than 1 week after the date on which the event concludes; or

“(b) Be included in any radio or television transmission that is broadcast later than 1 week after that date. 5

“(5) Signs advertising sponsorship of a specified event by any manufacturer, importer, or distributor of tobacco products may be displayed at any venue for that event only until that event has concluded.

“(6) Every hoarding displayed at any venue at which a specified event is held or is to be held and featuring only a tobacco product trade mark or the company name, or any part of the company name, of any manufacturer, importer, or distributor of tobacco products shall include a health message consisting of— 10 15

“(a) One of the following warnings:

“(i) Smoking causes lung cancer:

“(ii) Smoking causes heart disease:

“(iii) Smoking damages your lungs:

“(iv) Smoking causes fatal diseases; and 20

“(b) The attribution ‘Health Dept Warning’.

“(7) The health message required by **subsection (6)** of this section to be displayed on a hoarding—

“(a) Shall be applied so as to ensure as equal as possible a distribution of each warning among the hoardings displayed at any venue for a specified event; and 25

“(b) Shall occupy at least 20 percent of the aggregate area of the hoarding; and

“(c) Shall occupy an area across the base of the hoarding or on one side of the hoarding, and shall be centred in that area; and 30

“(d) Shall be printed in letters of such a size, and be displayed in such a layout, that the legibility of the health message is maximised when viewed from a distance; and 35

“(e) Shall be displayed in Times New Roman typeface, with the warning printed in upper case, and the attribution printed in upper case and lower case on a separate line below the warning; and

“(f) Shall be printed in a colour (which may be a colour already used on the hoarding) that affords a distinct colour contrast to the background on which it appears; and 40

“(g) Shall be outlined with a rectangular line of the same colour as the lettering of the message itself.

“(8) No words or material except the warning, and the attribution shall appear in the health message area.”

5 **3. Enforcement**—Section 37 of the principal Act is hereby amended by adding the following subsections:

“(4) The Director-General may from time to time, by notice in the *Gazette*, delegate to an area health board, in respect of the district of that area health board, the duty imposed on the

10 Director-General by **subsection (1)** of this section.

“(5) Any delegation under **subsection (4)** of this section may be expressed to be made on and subject to such terms and conditions as may be specified in the notice.”

15 **4. Repeal**—The **Smoke-free Environments Amendment Act 1991** is hereby consequentially repealed.