# Smokefree Environments and Regulated Products (Vaping) Amendment Bill

Government Bill

As reported from the Health Committee

## Commentary

### Recommendation

The Health Committee has examined the Smokefree Environments and Regulated Products (Vaping) Amendment Bill and recommends that it be passed with the amendments shown.

### Introduction

This bill would broaden the scope of products regulated under the Smoke-free Environments Act 1990 to include vaping products and heated tobacco products.[1] It would also allow flexibility for the addition of new regulated products which may become available in the future.

The bill acknowledges that vaping products and heated tobacco products have lower health risks than smoking, and aims to support smokers to switch to these less harmful products. It proposes different advertising and marketing restrictions for vaping products than for tobacco. It would also allow for retailers approved by the Director-General of Health to become specialist vape retailers. Specialist vape retailers would be able to sell the full range of flavours, and allow people over 18 to vape in their retail premises. Regulations would be able to prescribe different requirements for specialist and generic vape retailers, for example regarding the display of products and provision of information to customers.

These aspects of the bill are balanced by regulations which seek to improve the safety of regulated products and limit children and young people's access and attraction to

[1] The bill would also change the title of the 1990 Act by removing the hyphen in Smoke-free.

them. The bill would also restrict to three classes the vape flavours a generic (not specialist) retailer may sell.

The bill would require manufacturers and importers of regulated products to notify the Ministry of Health of new products entering New Zealand and to meet safety requirements for those products. It would also provide the Director-General of Health with a number of powers around regulated products and their ingredients, which aim to protect public health.

## Proposed amendments

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

## Commencement

The commencement date for the bill would be the day after it receives the Royal assent, as stated in clause 2.

Some exceptions to this are specified, such as restrictions on the visibility of regulated products (new section 36), which would come into force 1 month after the date on which the legislation received Royal assent.

The following three provisions would come into force six months after the date of Royal assent:

- requirements for a manufacturer or importer of a vaping product or smokeless tobacco product to notify the product (new sections 59 to 62)
- restrictions on the flavours of vaping products sold by generic retailers (new section 63(2))
- requirements for the Director-General of Health to establish a database for the purpose of regulating the safety of products that must be notified (new section 73).

We recommend removing these exemptions from clause 2 and moving them to Schedule 1, which includes transitional, savings, and related provisions. We recommend that the notification requirements (for importers and manufacturers as well as retailers only selling a notified product) commence 12 months after the date of Royal assent (new sections 59 and 63(1)). We also recommend the addition of two further exemptions as clauses 5A and 5B of Schedule 1. Clause 5A would allow schools, early childhood education, and care centres 6 months to change signage to include information on vaping. Clause 5B provides for a transitional period for existing vape retailers to operate as a specialist vape retailer.

## Interpretation

Clause 5 of the bill would amend section 2 of the Act by repealing and inserting a number of definitions. We recommend repealing a further four definitions (“internal area”, “of the same kind”, “retailer”, and “variant”), and adding the following definitions:

- approved Internet site
- distributor
- of the same kind
- variant.

We believe these changes would provide more clarity and more strongly align the bill with the policy intent. We also recommend amending the definition of "vaping substance" to make it clear that it does not include a medicinal cannabis product (as defined in the Misuse of Drugs (Medicinal Cannabis) Regulations 2019) or CBD product (as defined in section 2A of the Misuse of Drugs Act 1975).

## Purposes of the Act

Clause 6 of the bill would replace section 3A of the Act, which explains the Act's purposes. We recommend inserting clause 3A(1)(ca) to show more clearly the balance the bill seeks between preventing young people and non-smokers from taking up vaping, and supporting people to switch to less harmful products. New paragraph (ca) specifies the additional purpose of the bill to support people to switch from tobacco to significantly less harmful regulated products.

## Specialist vape retailers

The bill would allow people who sell vaping products from retail premises to apply to the Director-General of Health to become a specialist vape retailer under clause 21, new section 14A. Specialist vape retailers would be exempt from some of the restrictions on advertising that would be inserted by clause 26, new section 23. They would also not be covered by the restrictions on:

- displaying a trade name outside the premises if it includes the word "vape" or similar (clause 26, new section 25(2))
- distributing regulated products free of charge or at a reduced charge from their approved vaping premises or approved Internet site (clause 26, new section 32(4))
- offering a purchaser a gift or cash rebate, or the right to participate in a contest, lottery, or game (clause 26, new section 34(4))
- selling a vaping product that contains any flavour except a prohibited flavour, from its approved premises or internet site (clause 26, new section 63(2A)).

Under proposed section 14(1), specialist vape retailers would also be exempt from the provisions in Part 1 of the principal Act (Smoke-free workplaces and public areas), so people could vape in the retailer's approved premises.

The bill as introduced provides that, for a person to apply to become a specialist vape retailer, at least 85% of their total sales from the retail premises should be from the sale of vaping products. We heard from many submitters, including vape retailers, that 85% is not attainable. We recommend amending the necessary percentage of total sales to 70%. We believe this is a more attainable percentage for vape retailers.

We acknowledge that some existing retailers may need time to adjust their business model to meet the 70% threshold. As noted above, we recommend adding section 5B in Schedule 1 to allow existing vape retailers which have more than 50% of their total sales from vaping products to continue trading for a transitional period of 12 months.

### Vape retailers operating only as online stores

Under the bill as introduced, online-only vape retailers (without any retail premises) would not be able to apply to become a specialist vape retailer. As a generic vape retailer, an online-only store would be limited to the flavours outlined in section 63(2A)(a).

We considered amending new section 14A to provide that online-only retailers could apply to the Director-General for approval to be a specialist vape retailer. We recognise that online retail will likely become more common in New Zealand (particularly as a result of COVID-19), and that it is important for legislation to acknowledge this. However, we were concerned that such amendments could lead to a large increase in the number of online retailers. We believe this would go against some of the bill's aims, namely preventing the normalisation of vaping and improving public health (new section 3A(1)(b) and (c)). We do not recommend amendments to allow for online-only retailers to apply to become specialist vape retailers.

We wish to highlight that, when considering this amendment (and amendments about vaping flavours), balancing the policy intentions of the bill became a point of tension for us. We sought to make decisions which both support smokers switching from smoking to less harmful regulated products (new section 3A(1)(ca)) and which prevent the normalisation of vaping and discourage uptake by children and young people.

## Vaping flavours sold by generic retailers

Section 63(2) of the bill specifies that a generic retailer (that is, not a specialist vape retailer), must not sell a vaping product containing a flavour that is not listed in Part 1 of Schedule 2. As introduced, these flavours are tobacco, menthol, and mint.

We received submissions noting many people buy flavours other than typical tobacco flavours to help them switch from smoking. These submitters were concerned that less variety at generic retailers could stop people from switching to less harmful products.

We note that, under new section 78(c), the Governor-General, by Order in Council, could make regulations to amend the list of vaping product flavours in Part 1 of Schedule 2. We believe the flavours already listed are sufficient, and that new section 78(c) provides flexibility for the addition of flavours in the future. We do not recommend any amendments to the flavours listed in Part 1 of Schedule 2.

We do, however, believe regulation of these flavours is necessary. We recommend adding regulation-making powers in section 78(d) to allow the Governor-General, by Order in Council, to make regulations specifying requirements for retailers about vaping products that contain a flavour.

## Exemptions from advertising prohibition

New section 23 would prohibit all forms of advertisement of regulated products, including notices, signs, and certain messages. This broad prohibition aims to reduce the social approval of smoking, and to ensure that vaping is not normalised. These restrictions are also intended to discourage non-smokers, children, and young people from vaping or using tobacco products.

New section 24 would acknowledge that some forms of advertising may help smokers change to less harmful regulated products by exempting some advertising from these prohibitions. We recommend some amendments in new section 24, and adding some new exemptions specified in paragraphs (j), (k), (l), and (m).

### Public health messages

Clause 26, new section 24(1)(f), would allow public health messages approved by the Director-General of Health, such as in smoking cessation campaigns. We recommend amending this section to specify that these messages would be actively issued by the Director-General, not approved through an application process. We also recommend making it clear that the messages could only be published and disseminated by a State service, or an individual or organisation funded by a State service. We recommend the addition of new section 24(2) to clarify the meaning of State service in this section.

### Advice and recommendations from retailers on vaping products

New section 24(1)(g) would allow the display of vaping products, and the provision of information about them on a retailer's premises or internet site, in accordance with any regulations. The following paragraph (h) would allow specialist vape retailers to give advice and recommendations about vaping products to customers on their premises.

We believe the ability of specialist vape retailers to give advice and recommendations should be regulated. We recommend removing proposed new section 24(1)(h) so that specialist vape retailers would also be regulated under paragraph (g). We also recommend strengthening the phrase "any regulations" in paragraph (g) to "regulations". We recommend adding the corresponding regulation-making powers in clause 26, new section 75(ca) and (cb).

### Advice or messages given by qualified health workers

New section 24(1)(i) would allow qualified health workers to give advice or messages to individuals for the purpose of supporting that person to switch from smoking to vaping. We recommend clarifying this section to extend the ability of qualified health professionals to give advice or messages to groups of people as well as individuals.

### Additional exemptions

Some submitters expressed concern that the restrictions in clause 26, new section 23, could limit the publication of research or non-sponsored media articles or commentary about regulated products, or ways of switching to less harmful products. We

acknowledge that these resources have the potential to encourage people towards reduced-harm alternatives to smoking, and do not seek to limit this. We recommend inserting new paragraphs (j) and (k) to allow for these publications and discussions about them.

We also agree with submitters about the need for manufacturers, importers, and specialist vape retailers to be able to communicate with their customers. We believe this is particularly relevant given the wide range of vaping products available, and the need for access to information on how to use them safely and correctly. We recommend the addition of two new paragraphs to address this (in both cases the communications would need to be in accordance with regulations):

- section 24(1)(l), to allow manufacturers and importers to provide information to retailers about the use of vaping and smokeless tobacco products
- section 24(1)(m), to allow specialist vape retailers to communicate about vaping products with existing customers.

## Report of the Attorney-General under the Bill of Rights Act

The Attorney-General has issued a report on the bill under section 7 of the New Zealand Bill of Rights Act 1990. It concludes that the bill's provisions prohibiting the advertising, promotion, or sponsorship of vaping products and smokeless tobacco devices in Part 2, subparts 1 and 2, are inconsistent with the right to freedom of expression affirmed in section 14 of the Bill of Rights Act. That section affirms that everyone has the right to freedom of expression, including the freedom to seek, receive, and impart information and opinions of any kind in any form. This applies to all forms of communication, including commercial speech such as advertising.

The Attorney-General noted that a number of clauses in the bill contain provisions which would engage the right to freedom of expression. Some of these clauses prohibit the advertising of regulated products, restrictions on the use of trademarks and company names, and requirements for standardised packaging.

The Attorney-General stated that his conclusion is based on the low evidence of harm associated with vaping. He noted that the Regulatory Impact Statement (RIS) accompanying the bill acknowledges inconclusive evidence about the benefits or harm caused by vaping products. The Attorney-General also highlighted that the RIS gives evidence that vaping is significantly less harmful than smoking, and that the few studies on youth uptake of vaping are inconclusive about its effect as a "gateway" towards smoking. Considering these points, the Attorney-General concluded that the approaches taken in the bill are not the only option to reduce uptake of vaping, and that the prohibitions in the bill are disproportionate given the lack of evidence of harm.

We have considered the issues raised in the section 7 report. We note that, because many of these products are relatively new to the market, evidence on many of the issues raised in the report is still emerging. However, based on these products being highly addictive, and the current research available, we believe that the advertising restrictions in the bill are justified.

## Powers of the Director-General of Health

The bill as introduced would give the Director-General of Health a number of powers around ingredients and the safety of regulated products, through new sections 67 to 72. New sections 24(1)(f) and 24(1)(i), discussed earlier, also involve powers of the Director-General.

We received a number of submissions concerned about the extent of the powers given to the Director-General. Some submitters suggested this could be balanced with greater transparency.

We also heard concerns about the technical knowledge needed to make some of the decisions the Director-General will be responsible for. Some submitters suggested there should be provision for consultation with experts and other communities such as end-users or suppliers.

We note that, while these powers are provided to the Director-General, some of the regulatory powers are likely to be delegated to Ministry of Health staff. Nevertheless, we agree with some of the concerns raised, and recommend the following amendments to increase transparency and allow for greater consultation.

### Recall of regulated products

New section 70 would allow the Director-General to recall, or issue a warning about, a vaping or smokeless tobacco product if they were satisfied that it posed an unacceptable risk of harm to people.

We recommend amending this section to specify that the Director-General must be satisfied on reasonable grounds that the product posed an unacceptable risk to people's safety. We believe this would be a clear and transparent reason for recalling a product.

### Providing a notifier an opportunity to be heard

New section 71(1) would allow the Director-General to suspend notification (that is, the ability to sell) of a vaping or smokeless tobacco product for 1 month if they had reasonable grounds to believe that:

- its continued availability posed an unacceptable risk of harm to people
- the notifier (that is, the manufacturer or importer) had provided false, misleading, or incomplete information about the product and its safety
- the product contained a prohibited ingredient, a prohibited flavour, or a colouring substance
- new information raised concern about the safety of the product.

New section 72 would allow the Director-General to cancel notification without any prior suspension if any of the criteria above were satisfied.

We believe these powers are necessary to allow the Director-General to act quickly to protect the public if a product or ingredient may be causing harm.

However, we have also considered the effect the suspension or cancellation of a product notification may have on the business of the notifier (the manufacturer or importer). As a result, we recommend inserting new sections 71(1A) and 72(1A) to require the Director-General to give the notifier a reasonable opportunity to be heard before suspending or cancelling a product notification.

### Notifiers could appeal against the suspension or cancellation of a product notification

As introduced, the bill would not provide notifiers with the right to appeal against decisions to suspend or cancel a product notification in new sections 71 and 72. We considered the effect a suspension or cancellation of product notification would have on a small business, and the ability of a small business to apply to the High Court to judicially review a cancellation. A small business may experience difficulty in such situations, and we believe a notifier should be provided the right of appeal for decisions to suspend or cancel a product notification. We recommend this be added as new section 72A, which specifies the conditions and process for an appeal.

A decision on an appeal would be determined by an appeals committee. We recommend that details of the establishment, membership, procedure, and performance of the appeals committee be added as new section 74A.

We also recommend inserting new section 72B to specify that an appeal against a determination of the appeals committee on a question of law could be made to the High Court.

### The Director-General could establish technical advisory committees

We recommend inserting clause 73A to allow the Director-General more ability to consult and receive advice on the technical details of vaping products. It would allow the Director-General to establish 1 or more advisory committees. Members of the committee would be appointed on terms and conditions decided by the Director-General.

The Director-General would need to consider the breadth of relevant experience and expertise when appointing members of the committee. Our intention is that the committee would have knowledge and expertise about:

- the risks and benefits associated with alternative tobacco and nicotine-delivery products
- the way such products are regulated internationally
- the manufacture, importation, and retail sale of alternative tobacco and nicotine-delivery products.

## Recommendations from the Regulations Review Committee

We received a letter from the Regulations Review Committee on its consideration of matters relating to regulations in the bill. The committee expressed its concern that the bill would provide for a significant policy matter to be determined by secondary legislation.

In particular, the committee is concerned that clause 26, new section 75(p), of the bill provides that the Governor-General may, by Order in Council, make regulations for the purpose of regulating harmful constituents of tobacco products or herbal smoking products. Clause 5 of the bill specifies that "harmful constituent" means a substance declared by regulations to be a harmful constituent in a regulated product of a specified class or description.

The Regulations Review Committee believes the meaning of "harmful constituent" is a matter of significant policy, and that its meaning should be established in the bill itself. It recommended that we consider establishing the meaning of "harmful constituent" in the bill itself, or provide guidance in the bill about Parliament's intention about the threshold for a "harmful constituent".

We note that the Act provides for "harmful constituents" to be controlled through legislation, and that these regulation-making powers are also in the bill (new section 75(p)). Under these regulations, the Ministry of Health must be able to demonstrate to the Minister that a "harmful constituent" is harmful.

We consider that this oversight of the regulations around "harmful constituents" is sufficient. We also believe it allows for the swift control of any constituent found to be harmful, which may be necessary to protect public health. We do not recommend including a definition of "harmful constituent".

## Maximum limits on substances in notifiable products

New section 66 would specify that a notifiable product must not contain a prohibited ingredient or flavour. It also provides that vaping substances cannot contain any colouring.

In addition to prohibiting certain substances, some submitters also raised the possibility of maximum limits for some ingredients. We recommend adding new section 66A, to specify that the Director-General of Health may declare maximum limits for any substance if they are satisfied that the product would become unsafe. This declaration must be in writing and published on a Ministry of Health website.

## Oral nicotine products

Clause 26, new section 53, provides that a person must not publish advertising indirectly stating or suggesting that a regulated product is suitable for chewing or other use. They must also not import for sale (or sell, pack, or distribute) any regulated product labelled or described as suitable for chewing.

We consider that all products containing nicotine for oral use should be regulated. We recommend clarifying this through the addition of new section 53(2A). This provision would specify that a person must not import for sale, sell, pack, or distribute any oral nicotine product.

We note that this would also require a consequential amendment to the Medicines Regulations to specify that all products containing nicotine not for oral use (for example, topically applied gels) are medicines. We recommend this change also.

# Appendix

## Committee process

The Smokefree Environments and Regulated Products (Vaping) Amendment Bill was referred to the committee on 11 March 2020. The closing date for submissions was 1 April 2020. We received and considered 1,271 submissions from interested groups and individuals. We heard oral evidence from 84 submitters at hearings held by videoconference.

We received advice from the Ministry of Health. The Regulations Review Committee reported to us on the powers contained in clause 26, new section 75(p).

The Attorney-General issued a report on the bill under section 7 of the New Zealand Bill of Rights Act 1990. We considered the bill alongside the Report of the Attorney-General on the Smokefree Environments and Regulated Products (Vaping) Amendment Bill.

## Committee membership

Louisa Wall (Chairperson)

Hon Maggie Barry

Dr Liz Craig

Matt Doocey

Hon Ruth Dyson

Jenny Marcroft

Dr Shane Reti

Hon Michael Woodhouse

# Key to symbols used in reprinted bill

## As reported from a select committee

<u>text inserted unanimously</u>

~~text deleted unanimously~~

*Hon Jenny Salesa*

# Smokefree Environments and Regulated Products (Vaping) Amendment Bill

Government Bill

## Contents

**The Parliament of New Zealand enacts as follows:**

### 1 Title

This Act is the Smokefree Environments and Regulated Products (Vaping) Amendment Act **2020**.

### 2 Commencement

(1) This Act~~, except as provided in **subsections (2) and (3)**~~, comes into force on the day after the date on which it receives the Royal assent.

~~(2) **New section 36** (which restricts the visibility of regulated products from the place of business) as inserted by **section 26** comes into force 1 month after the date on which this Act receives the Royal assent.~~

~~(3) The following provisions inserted by **section 26** come into force 6~~12~~ months after the date on which this Act receives the Royal assent:~~

~~(a) **new sections 59 to 62** (which requires a manufacturer or an importer of a vaping product or smokeless tobacco product to notify the product in accordance with **new Part 4** before sale in New Zealand); and~~

~~(b) **new section 63(2)** (which restricts the flavours that may be contained in vaping products sold by retailers (other than specialist vape retailers)); and~~

~~(c) **new section 73** (which requires the Director-General to establish a database for the purpose of **new Part 4**).~~

## Part 1
## Amendments to Smoke-free Environments Act 1990

### 3 Principal Act

This Part amends the Act that was previously called the Smoke-free Environments Act 1990 (the **principal Act**).

## 4 Title of principal Act changed

Replace section 1(1) with:

(1) This Act is the Smokefree Environments and Regulated Products Act 1990.

## 5 Section 2 amended (Interpretation)

(1) In section 2(1), repeal the definitions of **dedicated smoking room**, **enforcement officer**, **internal area, of the same kind**, **open area**, **organised activity**, **package**, **point of sale**, ~~and~~ **retailer**, **tobacco product advertisement**, and **variant**.

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

**approved vaping premises** means premises to which a person's approval as a specialist vape retailer applies

**approved Internet site** means an Internet site to which a person's approval as a specialist vape retailer applies

**dedicated room** means an internal area in a hospital care institution, a residential disability care institution, or a rest home that is used solely to—

(a) enable patients or residents who smoke to smoke, or to socialise with each other in a place where smoking is permitted; or

(b) enable patients or residents who vape to vape, or to socialise with each other in a place where vaping is permitted

**distributor** means a person engaged in the business of selling regulated products otherwise than at retail only

**emissions** means the smoke or aerosolised vaping substance produced by the use of a regulated product, whether inhaled, exhaled, or otherwise

**enforcement officer** means a person appointed under **section 85**

**harmful constituent** means a substance declared by regulations to be a harmful constituent in a regulated product of a specified class or description

**heated tobacco product** means a smokeless tobacco product that has a device that uses or facilitates the use of heat to aerosolise nicotine from tobacco leaf directly

**of the same kind**,—

(a) in relation to tobacco products and herbal smoking products, means not differing in a manner stated in subsection (2):

(b) in relation to vaping products means not differing in a manner stated in **subsection (2A)**

**open area**, in relation to any premises, means a part of the premises that is not an internal area as determined in accordance with any criteria or means prescribed in regulations

**package** means a pack, carton, wrapping, or other container in which a regulated product is sold at retail

**point of sale** means a checkout, till, or cashbox where regulated products may be bought

**regulated product** means a tobacco product, vaping product, or herbal smoking product

**regulated product advertisement**—

(a) means any words, whether written, printed, or spoken (including on film, video recording, or other medium, or broadcast or telecast), and any pictorial representation, design, or device, used to—

(i) encourage the use of a regulated product; or

(ii) notify the availability of a regulated product; or

(iii) promote the sale of a regulated product; or

(iv) promote smoking or vaping behaviour; and

(b) includes—

(i) any trade circular, any label, and any advertisement in any trade journal; and

(ii) any depiction of a regulated product or a regulated product trade mark in a film, video recording, telecast, or other visual medium where in return for that depiction any money is paid, or any valuable thing is given, to any person; and

(iii) the use of the company name of a regulated product manufacturer in any advertisement or promotion to the public where the company name or any part of it is used as, or is included in, a regulated product trade mark,—

and **advertise** has a corresponding meaning

**regulations** means regulations made under this Act

**retailer** means a person engaged in any business that includes the sale of regulated products at retail

**smokeless tobacco product** means a tobacco product that is intended to be used in a way that does not involve ignition or the combustion process

**specialist vape retailer** means a person who is approved by the Director-General as a specialist vape retailer under **section 14A**

**to vape** means to inhale using a vaping device or a heated tobacco product, and **vaping** has a corresponding meaning

**toy regulated product** means—

(a) a toy tobacco product; or

(b) an object that—

(i) looks like a vaping product or a heated tobacco product and can be used to simulate vaping; but

(ii) cannot be used for vaping and has a primary purpose other than to help people to stop vaping

**vaping device** means a device that—

(a) aerosolises a substance or a mixture of substances by heating it for the purpose of inhalation through a mouthpiece; and

(b) is sold as a complete unit or to be assembled from individual components

**vaping product** means any of the following:

(a) a vaping device:

(b) a vaping substance:

(c) any 1 or more components of a vaping device:

(d) a package containing 2 or more items described in any of **paragraphs (a) to (c)**

~~**vaping substance** means a substance or mixture of substances that is intended to be aerosolised with a vaping device~~

**vaping substance**—

(a) means a substance or mixture of substances that is intended to be aerosolised with a vaping device; but

(b) does not include a medicinal cannabis product within the meaning of regulation 4 of the Misuse of Drugs (Medicinal Cannabis) Regulations 2019 or a CBD product within the meaning of section 2A of the Misuse of Drugs Act 1975

**variant** means, as applicable,—

(a) sold in tobacco packages that are not of the same kind; or

(b) sold in packages of herbal smoking product that are not of the same kind; or

(c) sold in packages of vaping products that are not of the same kind

(2A) In section 2(1), definition of **automatic vending machine**, paragraph (a), replace "tobacco" with "regulated".

(3) In section 2(1), definition of **Internet sale**, replace "tobacco product or herbal smoking product" with "regulated product".

(3A) In section 2(2), after "purposes of", insert "paragraph (a)".

(3B) After section 2(2), insert:

(2A) For the purposes of paragraph (b) of the definition of **of the same kind** in subsection (1), vaping products or packages of vaping products differ if they bear

the same brand name, but the products they contain differ in 1 or more of the following ways:

(a) containing differing levels of nicotine:

(b) being otherwise differently flavoured:

(c) having a different size, shape, or capacity:

(d) containing different numbers of pieces:

(e) being different in a way prescribed in regulations.

(4) After section 2(3), insert:

(4) For the purposes of this Act,—

(a) a vaping product that contains tobacco is not a tobacco product:

(b) a vaping device is not a medical device within the meaning of the Medicines Act 1981:

(c) a vaping substance is not a medicine within the meaning of the Medicines Act 1981.

**6 Section 3A replaced (Purposes of this Act)**

Replace section 3A with:

**3A Purposes of this Act**

(1) The purposes of this Act are, in general, as follows:

(a) to reduce the exposure of people who do not themselves smoke to any detrimental effect on their health caused by smoking by others; and

(b) to prevent the normalisation of vaping; and

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

(i) discouraging people, especially children and young people, from taking up smoking; and

(ii) discouraging non-smokers, especially children and young people, from taking up vaping or using smokeless tobacco products; and

(iii) encouraging people to stop smoking, vaping, or otherwise using regulated products; and

(iv) discouraging people who have stopped smoking, vaping, or otherwise using regulated products from resuming smoking, vaping, or using regulated products; and

(ca) to support smokers to switch to regulated products that are significantly less harmful than smoking; and

(d) to regulate the safety of vaping products and smokeless tobacco products; and

(e) to monitor and regulate the presence of harmful constituents found in regulated products and their emissions; and

(f) 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.

(2) **Subsection (1)** does not limit or affect the particular purposes of Parts 1, **2**, **3**, and **4**.

**7 New section 3B inserted (Transitional, savings, and related provisions)**

After section 3A, insert:

**3B Transitional, savings, and related provisions**

The transitional, savings, and related provisions set out in **Schedule 1** have effect according to their terms.

**8 Part 1 heading replaced**

Replace the Part 1 heading with:

## Part 1
## Smoking and vaping prohibited in workplaces and public areas

**9 Section 4 amended (Purposes of this Part)**

(1) After section 4(a), insert:

(aa) to prevent the normalisation of vaping; and

(2) In section 4(b), after "smoke", insert "or vape".

**10 Section 5 amended (Smoking in workplaces prohibited)**

(1) In the heading to section 5, after "**Smoking**", insert "**and vaping**".

(2) In section 5(1), after "smokes", insert "or vapes".

(3) In section 5(1)(a) and (2), after "smoking", insert "or vaping".

(4) In section 5(1)(b), replace "smoking room in which smoking" with "room in which smoking or vaping".

(5) In section 5(2), after "smoke", insert "or vape".

**11 Section 5A amended (Employer may permit smoking in vehicle with consent of users)**

(1) In the heading to section 5A, after "**smoking**", insert "**or vaping**".

(2) In section 5A, after "smoking", insert "or vaping" in each place.

### 12 Section 6 amended (Dedicated smoking rooms in hospital care institutions, residential disability care institutions, and rest homes)

(1) In the heading to section 6, delete "**smoking**".

(2) In section 6, replace "dedicated smoking room" with "dedicated room" in each place.

(3) Replace section 6(1)(a) with:

(a) the smoking takes only place in 1 or more dedicated rooms for smoking; and

(aa) the vaping takes place only in 1 or more dedicated rooms for vaping; and

(4) In section 6(1), after "smoking", insert "or vaping" in each place.

(5) In section 6(1)(c) and (2)(a), replace "smoke" with "emissions".

(6) In section 6(1)(c), replace "dedicated smoking rooms" with "dedicated rooms".

(7) Replace section 6(1)(d) with:

(d) for each dedicated room, an adequate equivalent room is available for patients or residents who wish to socialise in an atmosphere without emissions.

(8) In section 6(2)(a)(ii), replace "dedicated smoking rooms" with "dedicated rooms".

(9) In section 6(3)(a) and (b), after "smoke", insert "or vape".

### 13 Section 7A amended (Smoking prohibited at schools and early childhood education and care centres)

(1) In the heading to section 7A, after "**Smoking**", insert "**and vaping**".

(2) In section 7A(1)(a), after "smokes", insert "or vapes".

(3) In section 7A(1)(b) and (3)(b), after "smoking", insert "and vaping".

(4) In section 7A(3), after "smokes", insert "or vapes".

(5) In section 7A(3)(b), replace "smoke" with "emissions".

### 14 Section 8 amended (Smoking prohibition on aircraft)

(1) In the heading to section 8, replace "**prohibition**" with "**and vaping prohibited**".

(2) In section 8(1), replace" shall not permit any person to smoke" with "must not permit any person to smoke or vape".

### 15 Section 9 amended (Smoking restricted in passenger service vehicles)

(1) In the heading to section 9, after "**Smoking**", insert "**and vaping**".

(2) In section 9(2) and (3), after "smoke", insert "or vape".

**16 Section 11 amended (Smoking prohibited in certain travel premises**

(1) In the heading to section 11, after "**Smoking**", insert "**and vaping**".

(2) In section 11(2) and (3), after "smoke", insert "or vape".

**17 Section 12 amended (Smoking on licensed premises)**

(1) In the heading to section 12, after "**Smoking**", insert "**and vaping**".

(2) In section 12(1), after "smokes", insert "or vapes".

(3) In section 12(2), after "smoking", insert "or vaping".

(4) In section 12(3), after "smoke", insert "or vape".

**18 Section 13 amended (Smoking in restaurants)**

(1) In the heading to section 13, after "**Smoking**", insert "**and vaping**".

(2) In section 13(1), after "smokes", insert "or vapes".

(3) In section 13(2), after "smoking", insert "or vaping".

(4) In section 13(3), after "smoke", insert "or vape".

**19 Section 13A amended (Smoking in casinos)**

(1) In the heading to section 13A, after "**Smoking**", insert "**and vaping**".

(2) In section 13A(1), after "smokes", insert "or vapes".

(3) In section 13A(2), after "smoking", insert "or vaping".

(4) In section 13A(3), after "smoke", insert "or vape".

**20 Section 13B amended (Smoking in certain gaming machine venues)**

(1) In the heading to section 13B, after "**Smoking**", insert "**and vaping**".

(2) In section 13B(1), after "smokes", insert "or vapes".

(3) In section 13B(2), after "smoking", insert "or vaping".

(4) In section 13B(3), after "smoke", insert "or vape".

**21 Section 14 replaced (Enforcement officers)**

Replace section 14 with:

**14 Specialist vape retailers and vaping in approved vaping premises exempt**

(1) This Part does not apply to—

(a) a person who vapes in any approved vaping premises of a specialist vape retailer; and

(b) the specialist vape retailer who allows the person to vape in those premises.

(2) A specialist vape retailer must take all practicable steps to prevent a person under the age of 18 years from entering the retailer's approved vaping premises.

(3) A specialist vape retailer who contravenes **subsection (2)** commits an offence and is liable,—

(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.

(4) In **subsection (1)**, **to vape** means to inhale using a vaping device only.

**14A Application for approval as specialist vape retailer**

(1) A person who sells vaping products from retail premises may apply to the Director-General for approval to be a specialist vape retailer in relation to specified retail premises and, if applicable, specified Internet sites.

(2) The Director-General must not give a person approval to be a specialist vape retailer unless satisfied that—

(a) the retail premises in which the vaping products are or will be sold are a fixed permanent structure; and

(b) at least ~~85%~~ 70% of the person's total sales from the retail premises are or will be from the sale of vaping products; and

(c) any requirements in regulations have been met.

(3) It is a condition of an approval that the criteria in **subsection (2)(a) and (c)** continue to be complied with.

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

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

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

(7) A person who provides false or misleading information in an application for approval to be a specialist vape retailer commits an offence and is liable to a fine not exceeding $10,000.

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

**22 Section 15 amended (Complaints relating to workplace smoking)**

In the heading to section 15, replace "**workplace smoking**" with "**smoking or vaping in workplace**".

**23 Section 17 amended (Offences in respect of smoking)**

(1) In the heading to section 17, after "**smoking**", insert "**and vaping**".

(2) In section 17(3), (4), and (6), replace "smoke" with "smoke or vape".

(3) Repeal section 17(9).

**24 Section 17A amended (Penalties)**

(1) In section 17A(2), replace "subsection (2A), subsection (8C), subsection (9), ~~and~~or subsection (10)" with "~~and~~ subsection~~s~~ (2A) ~~and~~or (8C)".

(2) Repeal section 17A(4).

**25 Section 18 amended (Prosecution of offences)**

In section 18(1), replace "section 14" with "**section 85**".

**25A Section 19 repealed (Protection of persons acting under authority of Act)**

Repeal section 19.

**26 Parts 2 to 3 replaced**

Replace Parts 2 to 3 with:

## Part 2
## Restrictions on advertising, promotion, sale, and distribution of regulated products

**21 Outline of this Part**

(1) **Subpart 1** contains restrictions on the advertising of regulated products.

(2) **Subpart 2** contains restrictions on sponsorship and related activities involving the use of a regulated product trade mark or a related company name.

(3) **Subpart 3** contains prohibitions relating to the supply and distribution of regulated products.

(4) **Subpart 4** contains prohibitions relating to inducements and rewards involving regulated products.

(5) **Subpart 5** restricts the visibility of a regulated product from the place from which it is sold.

(6) **Subpart 6** contains requirements relating to point-of-sale health information or warnings.

(7) **Subpart 7** prohibits the sale, delivery, and supply of regulated products and toy regulated products to people younger than 18 years.

(8) **Subpart 8** contains provisions relating to the sale of regulated products by way of automatic vending machines.

**22 Purposes of this Part**

(1) The purposes of this Part are—

(a) to reduce the social approval of smoking, particularly among children and young people; and

(b) to discourage non-smokers, particularly children and young people, from vaping and using tobacco products.

(2) To achieve those purposes, this Part—

(a) imposes controls on the marketing, advertising, and promotion of regulated products and their association through sponsorship with other products and events; and

(b) requires health messages and other information to be displayed on automatic vending machines; and

(c) prohibits the sale of regulated products and toy regulated products to people younger than 18 years.

## Subpart 1—Restrictions on advertising of regulated products

**23 Publishing regulated product advertisement prohibited**

(1) A person must not publish a regulated product advertisement in New Zealand, or arrange for another person to publish it in New Zealand, unless the person is authorised by or under this subpart or **subpart 2**.

(2) A notice or sign must be treated as a regulated product advertisement if the notice or sign—

(a) communicates information that is or includes product health information or warnings, product purchase age information or warnings, or both; and

(b) is displayed inside or at the outside of the place of business of a person who offers the products for sale (whether by retail or wholesale); and

(c) is not required or permitted by this Act or regulations.

(3) A message must be treated as a regulated product advertisement if the message—

(a) communicates information that is or includes product health information or warnings, product purchase age information or warnings, or both; and

(b) is an Internet-sales message; and

(c) is not required or permitted by this Act or regulations.

(4) **Subsections (2) and (3)** do not limit the generality of **subsection (1)** or of the definition of regulated product advertisement in section 2(1).

(5) A person who, without reasonable excuse, contravenes **subsection (1)** commits an offence and is liable,—

(a) in the case of a manufacturer, an importer, or a distributor,—

(i) to a fine not exceeding $600,000; but

(ii) if the contravention relates to a vaping product or a smokeless tobacco product, to a fine not exceeding $200,000; and

(b) in the case of a large retailer,—

(i) to a fine not exceeding $200,000; but

(ii) if the contravention relates to a vaping product or a smokeless tobacco product, to a fine not exceeding $70,000; and

(c) in any other case,—

(i) to a fine not exceeding $50,000; but

(ii) if the contravention relates to a vaping product or a smokeless tobacco product, to a fine not exceeding $15,000.

**24 Specified publications exempt from advertising prohibition**

(1) **Section 23** does not apply to—

(a) any price list given to retailers of regulated products if the price list—

(i) complies with regulations; and

(ii) includes the health messages required by or under **Part 3**:

(b) any advertisement included in any book, magazine, or newspaper printed outside New Zealand, or in any radio or television transmission originating outside New Zealand, or in any film or video recording made outside New Zealand, unless—

(i) the main purpose of the book, magazine, newspaper, transmission, film, or video recording is the promotion of the use of regulated products; or

(ii) the book, magazine, newspaper, film, or video recording is intended for sale, distribution, or exhibition primarily in New Zealand; or

(iii) in the case of an advertisement in any radio or television transmission, the advertisement is targeted primarily at a New Zealand audience:

(c) any regulated product advertisement published by a regulated products manufacturer in a magazine intended for distribution only to the manufacturer's employees:

(d) the exhibition, in any museum or art gallery, of any work or artifact:

(e) the dissemination, broadcasting, or exhibition of any film, video recording, or sound recording where—

(i) that film, video recording, or sound recording was made before 16 December 1990; and

(ii) the regulated product advertisement included in that film, video recording, or sound recording is in the form of a reference to, or a depiction of, a tobacco product trade mark that is only an incidental part of that film, video recording, or sound recording:

(f) a public health message ~~approved~~ issued by the Director-General for the purposes of this Act or any of its Parts that is published by a State service or an individual or organisation that is funded (whether wholly or partly and whether directly or indirectly) by a State service:

(g) the following activities:

(i) the display, in accordance with any regulations, of vaping products within any retail premises or on any Internet site of a retailer; and

(ii) if regulations made under **section 75(ca)(ii)** are in force and apply to the retailer, the provision, in accordance with ~~any~~ regulations, of information (in any medium) relating to vaping products within those premises or on that Internet site:

~~(h) the giving of advice and recommendations by a specialist vape retailer about vaping products to customers who are inside the retailer's approved vaping premises:~~

(i) any advice or message given by a suitably qualified health worker to an individual or to groups for the purpose of supporting ~~the individual~~ them to switch from smoking to vaping~~.~~:

(j) the following activities:

(i) the publication and dissemination of research about vaping products, smokeless tobacco products, and their use:

(ii) the publication and dissemination of research about encouraging smokers to switch to a product that is less harmful than smoking:

(k) the publication of media articles, commentary, and opinion that—

(i) encourage people to switch to a regulated product that is significantly less harmful than smoking; and

(ii) are not sponsored by the manufacturer, importer, retailer, or distributor of that product:

(l) information provided by manufacturers and importers, in accordance with any regulations, to retailers about the use of vaping products and smokeless tobacco products:

(m) communications about vaping products made, in accordance with any regulations, by specialist vape retailers to their existing customers.

~~(2) In **subsection (1)(i)**, **suitably qualified health worker** means—~~

~~(a) a registered health practitioner; or~~

~~(b) a person specified by the Director-General by notice in the *Gazette* for the purpose of **subsection (1)(i)**.~~

(2) In this section,—

**State service** has the meaning given in section 2 of the State Sector Act 1988

**suitably qualified health worker** means—

(a) a registered health practitioner; or

(b) a person specified by the Director-General by notice in the *Gazette* for the purpose of **subsection (1)(i)**.

**25 Retailers, vending machines, and Internet sellers exempt from advertising prohibition in certain circumstances**

*Retailer exemption*

(1) A retailer of regulated products may do all or any of the following things:

(a) in response to a product request, provide, inside that retailer's place of business, information (in any medium) that—

(i) is in the form of printed, written, or spoken words; and

(ii) does no more than identify the regulated products available for purchase in that place and indicate their price; and

(iii) complies with any requirements in regulations:

(b) display inside that retailer's place of business any notice for the public that—

(i) does no more than indicate, using only printed or written words, the fact that regulated products in general are available for purchase in that place and the location or locations where they may be purchased; and

(ii) complies with any requirements in regulations:

(c) display the retailer's name or trade name at the outside of the retailer's place of business so long as the name is not and does not include—

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

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

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

(2) **Subsection (1)(c)(i)** does not apply to a specialist vape retailer whose name or trade name includes the word "vape", "vaping", or any name derived from the word "vape".

*Vending machine exemption*

(3) A person who offers regulated products for sale (whether by retail or wholesale) by way of an automatic vending machine may display, on the outside of the vending machine, any notice for the public that—

(a) does no more than—

(i) identify (using only printed or written words) the regulated products; and

(ii) indicate (using only printed or written words) their prices; and

(b) complies with any requirements in regulations.

*Internet seller exemption*

(4) A person who offers regulated products for Internet sale (whether by retail or wholesale) may, in response to a product request, allow to be visible on the person's Internet site when people browse, enter, or otherwise access the site, information that—

(a) is in the form of printed or written words; and

(b) does no more than identify the regulated product and indicate its price; and

(c) complies with any requirements in regulations.

(5) **Subsections (1)(a) and (b) and (4)** do not limit the exemption in **section 24(1)(g)** relating to the display of, and provision of information relating to, vaping products.

(6) In this section, **product request** means a request (however expressed) made for the purpose by another person who has asked to purchase a specified, or any available, regulated product.

**26 Liability of employees, employers, agents, and principals**

For the purposes of this Act, every person is deemed to publish a regulated product advertisement whether the person does so on the person's own account or as the agent or employee of any other person.

## Subpart 2—Restrictions on sponsorship and related activities

**27 Defined terms in this subpart**

In this subpart, unless the context otherwise requires,—

**organised activity** means a cultural, educational, sporting, or recreational activity or event that is to take place, is taking place, or has taken place, in whole or in part, in New Zealand

**sponsor**, in relation to an organised activity, means to do all or any of the following:

(a) to organise or promote, before the activity is to take place, or during the time that it takes place, some or all of the activity:

(b) to make, before the activity is to take place, or during or after the time that it takes place, a financial or non-financial contribution towards some or all of the activity:

(c) to make, before the activity is to take place, or during or after the time that it takes place, a financial or non-financial contribution to a person—

(i) in respect of that person's organisation or promotion of some or all of the activity; or

(ii) in respect of that person's participation in some or all or the activity.

**28 Sponsoring activity involving use of trade mark, etc, of regulated products**

(1) A manufacturer, importer, distributor, or retailer of regulated products must not sponsor an organised activity that involves the use, in the name of that activity, or on or through any thing other than a regulated product, of all or any of the following:

(a) a regulated product trade mark:

(b) all or any part of a company name included in a regulated product trade mark:

(c) 1 or more words, logos, colours, shapes, sounds, smells, or other elements of a regulated product trade mark that, as those 1 or more elements are used in the name, or on or through the thing, are likely to cause a person exposed to the name or thing to believe that the 1 or more elements are used in, on, or through it only or mainly for the purpose of advertising the product.

(2) A person who, without reasonable excuse, contravenes **subsection (1)** commits an offence and is liable,—

(a) in the case of a manufacturer, an importer, or a distributor,—

(i) to a fine not exceeding $600,000; but

(ii) if the contravention relates to a vaping product or a smokeless tobacco product, to a fine not exceeding $200,000; and

(b) in the case of a large retailer,—

(i) to a fine not exceeding $200,000; but

(ii) if the contravention relates to a vaping product or a smokeless tobacco product, to a fine not exceeding $70,000; and

(c) in any other case,—

(i) to a fine not exceeding $50,000; but

(ii) if the contravention relates to a vaping product or a smokeless tobacco product, to a fine not exceeding $15,000.

**29 Sponsoring activity involving exclusive supply arrangement**

(1) A manufacturer, importer, distributor, or retailer of regulated products must not sponsor an organised activity that involves an arrangement for the person to be the only person supplying regulated products at, or for the purposes of, some or all of the activity.

(2) The arrangement may be a contract or a legally binding or other agreement, undertaking, or understanding.

(3) **Subsection (2)** does not limit **subsection (1)**.

(4) This section is not subject to, and does not override, the Commerce Act 1986.

(5) A person who, without reasonable excuse, contravenes **subsection (1)** commits an offence and is liable,—

(a) in the case of a manufacturer, an importer, or a distributor,—

(i) to a fine not exceeding $600,000; but

(ii) if the contravention relates to a vaping product or a smokeless tobacco product, to a fine not exceeding $200,000; and

(b) in the case of a large retailer,—

(i) to a fine not exceeding $200,000; but

(ii) if the contravention relates to a vaping product or a smokeless tobacco product, to a fine not exceeding $70,000; and

(c) in any other case,—

(i) to a fine not exceeding $50,000; but

(ii) if the contravention relates to a vaping product or a smokeless tobacco product, to a fine not exceeding $15,000.

**30 Use of trade marks, etc, on goods other than regulated products or in relation to sponsored events**

(1) A person must not use a regulated product trade mark—

(a) on a non-regulated article; or

(b) for the purpose of advertising or identifying to the public—

(i) any non-regulated article; or

(ii) any service, activity, or event; or

(iii) any scholarship, fellowship, or other educational benefit,—

even though that person would be, but for this Act, entitled to use the trade mark on that article or for that purpose.

(2) If a trade mark includes the company name, or part of the company name, of a manufacturer, importer, or distributor in New Zealand of any regulated product,

no person may use that company name for the purpose of advertising or identifying to the public—

(a) any non-regulated article; or

(b) any service, activity, or event; or

(c) any scholarship, fellowship, or other educational benefit,—

even though that person would be, but for this Act, entitled to use that trade mark or company name for that purpose.

(3) A person must not distribute, sell, or offer or expose for sale any non-regulated article that bears a trade mark of a regulated product that is sold in New Zealand.

(4) In this section, **non-regulated article** means an article that is not—

(a) a regulated product; or

(b) a package in which a regulated product is sold or shipped.

(5) A person who, without reasonable excuse, contravenes **subsection (1), (2), or (3)** commits an offence and is liable,—

(a) in the case of a manufacturer, an importer, or a distributor,—

(i) to a fine not exceeding $600,000; but

(ii) if the contravention relates to a vaping product or a smokeless tobacco product, to a fine not exceeding $200,000; and

(b) in the case of a large retailer,—

(i) to a fine not exceeding $200,000; but

(ii) if the contravention relates to a vaping product or a smokeless tobacco product, to a fine not exceeding $70,000; and

(c) in any other case,—

(i) to a fine not exceeding $50,000; but

(ii) if the contravention relates to a vaping product or a smokeless tobacco product, to a fine not exceeding $15,000.

### 31 Exemption for craft in emergencies

(1) In this section, **craft with a prohibited display** means a craft on which is displayed the trade mark of a regulated product or the company name of a regulated product manufacturer.

(2) If a craft with a prohibited display is compelled to enter New Zealand by reason of health or safety, or for the preservation of life or property, nothing in **sections 23, 29, and 30** applies to that craft as long as it is in New Zealand for any of those reasons.

## Subpart 3—Prohibited ways of supplying and distributing regulated products

### 32 Free distribution of regulated product prohibited

(1) A manufacturer, distributor, importer, or retailer of regulated products must not do either of the following free of charge or at a reduced charge:

(a) distribute any regulated product:

(b) supply any regulated product to any person for subsequent distribution.

(2) A retailer of regulated products must not supply free of charge, or at a reduced charge, any regulated product to any person for the purpose of that retailer's business.

(3) For the purposes of this section, a regulated product is distributed or supplied **at a reduced charge** if—

(a) the charge for the product itself is reduced; or

(b) the charge for distribution or supply of the product is not reduced or purports not to be reduced, but some other item is supplied free of charge or at a reduced charge, together with the product.

(4) **Subsection (1)(a)** does not apply to the distribution of vaping products by a specialist vape retailer from their approved retail premises or approved Internet site.

(5) A person who, without reasonable excuse, distributes or supplies any regulated product in contravention of **subsection (1) or (2)** commits an offence and is liable,—

(a) in the case of a manufacturer, an importer, or a distributor,—

(i) to a fine not exceeding $600,000; but

(ii) if the contravention relates to a vaping product or a smokeless tobacco product, to a fine not exceeding $200,000; and

(b) in the case of a large retailer,—

(i) to a fine not exceeding $200,000; but

(ii) if the contravention relates to a vaping product or a smokeless tobacco product, to a fine not exceeding $70,000; and

(c) in any other case,—

(i) to a fine not exceeding $50,000; but

(ii) if the contravention relates to a vaping product or a smokeless tobacco product, to a fine not exceeding $15,000.

(6) It is a defence to a charge in respect of a contravention of **subsection (1)** if the person charged proves that they were merely giving a normal trade discount or normal trade rebate.

**33 Distribution and supply of regulated products with other products prohibited**

(1) A manufacturer, distributor, importer, or retailer of regulated products must not—

(a) distribute an accompanied regulated product; or

(b) supply an accompanied regulated product to another person for later distribution.

(2) A retailer of a regulated product must not supply an accompanied regulated product to another person for the purpose of that retailer's business.

(3) In this section, **accompanied regulated product** means a regulated product that is—

(a) packed together with a product that is not a regulated product; or

(b) distributed or supplied, together with a product that is not a regulated product, at a single price.

(4) A person who, without reasonable excuse, contravenes **subsection (1) or (2)** commits an offence and is liable,—

(a) in the case of a manufacturer, an importer, or a distributor, to a fine not exceeding $10,000; and

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

## Subpart 4—Inducements and rewards involving regulated products prohibited

**34 Rewards involving regulated product prohibited**

(1) A person must not offer any gift or cash rebate, or the right to participate in any contest, lottery, or game, to—

(a) the purchaser of a regulated product in consideration for the purchase of that product; or

(b) any person in consideration for the provision of evidence of the purchase of a regulated product.

(2) A person must not offer to any retailer any gift or cash rebate, or the right to participate in any contest, lottery, or game, as an inducement or reward in relation to—

(a) the purchase or sale of regulated products by that retailer; or

(b) the advertising of regulated products inside that retailer's place of business; or

(c) the location of regulated products in a particular part of that retailer's place of business.

(3) **Subsections (1) and (2)** do not apply in respect of any payment or reward to a person who—

(a) purchases or attempts to purchase a regulated product for the purpose of monitoring compliance with this Part; and

(b) is authorised—

(i) by the Director-General for that purpose; or

(ii) by a person authorised by the Director-General for that purpose.

(4) **Subsection (1)** does not apply a specialist vape retailer who offers any gift or cash rebate, or the right to participate in any contest, lottery, or game in the manner described in **subsection (1)** with respect to vaping products.

(5) A person who, without reasonable excuse, contravenes **subsection (1) or (2)** commits an offence and is liable,—

(a) in the case of a manufacturer, an importer, or a distributor, to a fine not exceeding $10,000; or

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

**35 Arrangements conflicting with Act have no effect**

(1) A term has no effect if—

(a) it is expressed or implied in an arrangement of any kind in any form; and

(b) compliance with it would limit or prevent compliance with **section 32 or 33**.

(2) The arrangement may be a contract or a legally binding or other agreement, undertaking, or understanding.

(3) **Subsection (2)** does not limit **subsection (1)**.

(4) A party to the arrangement (or a person who is claiming through or under that party) may seek relief under subpart 5 of Part 2 of the Contract and Commercial Law Act 2017 (which applies with all necessary modifications),—

(a) regardless of whether the arrangement is a contract:

(b) as if compliance with the term were performance, in a way that gives rise to illegality, of a provision of a contract.

## Subpart 5—Visibility of regulated products

**36 Regulated product (other than vaping product) must not be visible from place of business**

(1) A person who offers a regulated product other than a vaping product for sale (whether by retail or wholesale) must not allow any part of the regulated product or its package—

(a) to be visible from outside the person's place of business; or

(b) to be visible from an area inside the person's place of business to which members of the public are allowed access.

(2) **Subsection (1)** does not apply to a regulated product or package that is being delivered if—

(a) the product or package is visible only to the extent that is necessary for it to be delivered—

(i) to the person at the place; or

(ii) to its purchaser at or from the place; and

(b) the form of its delivery complies with any regulations made under **section 75(h)** that are in force.

(3) **Subsection (1)** does not apply to a regulated product or package that is visible in a way that complies with any relevant temporary transitional exemption regulations in force under **section 75(i)**.

(4) A person who, without reasonable excuse, contravenes **subsection (1)** commits an offence and is liable to a fine not exceeding $10,000.

## Subpart 6—Information and warnings at point of sale and on Internet

### 37 Point-of-sale health information or warning signs

(1) This section applies if regulations made under **section 75(j)** requiring point-of-sale health information or warnings are in force.

(2) A person to whom those regulations apply who offers a regulated product for sale (by retail or wholesale) must—

(a) display a sign for the public that—

(i) does no more than communicate health information or warnings; and

(ii) complies with those regulations; and

(b) display the sign clearly at each point of sale at the outside of or inside the person's place of business.

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

### 38 Internet-sales health information or warnings

(1) This section applies if regulations made under **section 75(k)** are in force requiring sales health 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 a regulated product for Internet sale (by retail or wholesale) must comply with those regulations.

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

## Subpart 7—Sale of regulated products and toy regulated products to people under 18 years

### 39 Sale and delivery of regulated product to people younger than 18 years prohibited

(1) A person—

(a) must not sell a regulated product to a person younger than 18 years; or

(b) having sold a regulated product to a person of any age, must not deliver it, or arrange for it to be delivered, to a person younger than 18 years.

(2) A person who contravenes **subsection (1)(a) or (b)** commits an offence and is liable,—

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

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

(3) It is a defence to a charge under **subsection (2)** if the person charged proves that—

(a) the contravention occurred without the person's knowledge; and

(b) the person took reasonable precautions and exercised due diligence to prevent the contravention.

(4) A person charged with contravening **subsection (1)(a)** satisfies the requirements of **subsection (3)(a) and (b)** if the person proves that they have sighted an evidence of age document of the person to whom the product was sold that indicated that the person was of or over the age of 18 years.

(5) **Subsection (4)** does not affect the generality of **subsection (3)**.

(6) It is not a defence to a charge under **subsection (2)**—

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

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

(7) Anything done by a person (**A**) as the employee of another person (**B**) is, for the purposes of an offence against **subsection (2)**, to be treated as done by B as well as by A, whether or not it was done with B's knowledge or approval.

(8) Anything done by a person (**A**) as the agent of another person (**B**) is, for the purposes of an offence against **subsection (2)**, to be treated as done by B as well as by A, unless it is done without B's express or implied authority, precedent or subsequent.

### 40 Supplying regulated product to people younger than 18 years prohibited

(1) A person must not, in a public place,—

(a) supply a regulated product to a person younger than 18 years; or

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

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

(3) It is a defence to a charge under **subsection (2)** if the person charged proves that—

(a) the contravention occurred without the person's knowledge; and

(b) the person took reasonable precautions and exercised due diligence to prevent the contravention.

(4) A person charged with contravening **subsection (1)(a)** satisfies the requirements of **subsection (3)(a) and (b)** if the person proves that they have sighted an evidence of age document of the person to whom the product was supplied that indicated that the person was of or over the age of 18 years.

(5) It is not a defence to a charge under **subsection (2)**—

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

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

(6) **Subsection (1)** applies irrespective of any liability that may attach to a person who has sold the product to any other person.

(7) In this section, **public place** has the meaning given to it in section 2(1) of the Summary Offences Act 1981.

**41 Sale of toy regulated products to people younger than 18 years prohibited**

(1) A person must not sell a toy regulated product to a person younger than 18 years.

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

(3) It is a defence to a charge under **subsection (2)** if the person charged proves that—

(a) the contravention occurred without the person's knowledge; and

(b) the person took reasonable precautions and exercised due diligence to prevent the contravention.

(4) The person charged satisfies the requirements of **subsection (3)(a) and (b)** if the person proves that they have sighted an evidence of age document of the person to whom the product was sold that indicated that the person was of or over the age of 18 years.

(5) **Subsection (4)** does not affect the generality of **subsection (3)**.

(6) It is not a defence to a charge under **subsection (2)** that—

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

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

**42 Point-of-sale purchase age information**

(1) This section applies if regulations made under **section 75(l)** requiring point-of-sale purchase age information or warnings are in force.

(2) A person to whom those regulations apply who offers a regulated 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 regulated products to people who are younger than 18 years is prohibited; and

(b) complies with any requirements of those regulations.

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

**43 Internet-sales purchase age information or warnings**

(1) This section applies if regulations made under ~~**section 75(g)**~~**section 75(m)** are in force requiring purchase age information or warnings to be visible on a person's Internet site when people access it.

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

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

(a) do no more than communicate information or warnings to the effect that the sale of regulated products to people who are younger than 18 years is prohibited; and

(b) comply with the applicable requirements of those regulations.

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

**44 Court may order certain repeat offenders not to sell regulated product**

(1) In this section, a **repeat offence** means an offence against **section 39(2)** that a person has committed within 2 years of being convicted of—

(a) another offence against **section 39(2)**; or

(b) an offence against section 30(1) of this Act before it was amended by the Smokefree Environments and Regulated Products (Vaping) Amendment Act **2020**.

(2) When sentencing a person for a repeat offence or an offence against **subsection (4)**, the court may (in addition to any sentence it might impose and any other order in the nature of a penalty it might make) make an order—

(a) prohibiting either or both of the following:

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

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

(b) prohibiting either or both of the following:

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

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

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

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

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

(3) The order must state—

(a) the date on which it takes effect (which may be the date on which it is made or a later date); and

(b) the date on which it expires (which must be a date at least 4 weeks and no more than 3 months after the date on which it takes effect).

(4) A person who fails to comply with an order under **subsection (2)** commits an offence and is liable,—

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

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

## Subpart 8—Sale of regulated products by way of automatic vending machines

### 45 Regulated products (other than vaping product) must not be visible from outside automatic vending machines

(1) A person who offers a regulated product other than a vaping product for sale by way of an automatic vending machine must not allow any part of ~~a~~ the regulated product or its package to be visible from outside the machine.

(2) However, **subsection (1)** does not apply to a regulated product or package that is being delivered if—

(a) the product or package is visible only to the extent that is necessary for it to be delivered to or from the machine; and

(b) the form of its delivery complies with regulations made under **section 75(h)** that are in force.

(3) A person who, without reasonable excuse, contravenes **subsection (1)** commits an offence and is liable to a fine not exceeding $10,000.

(4) **Subsection (1)** does not apply to a regulated product or package that is visible in a way that complies with any relevant temporary transitional exemption regulations in force under **section 75(i)**.

**46 Automatic vending machines must not be located where public have access**

(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 place to which members of the public have access; or

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

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

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

(b) the device used to activate the machine is permanently located in a place from which any person using it can see the person to whom the sale is to be made.

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

(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.

**47 Automatic vending machines must display health messages required by or under this Act**

(1) A person who sells a regulated product from an automatic vending machine that can be seen from a place to which members of the public have access—

(a) must display on the machine any health message required by or under this Act (even if the machine is accessible only by the person or their employees or agent); and

(b) must display the health message in accordance with regulations.

(2) A person commits an offence if the person—

(a) offers for sale a regulated product by way of an automatic vending machine; and

(b) fails, without reasonable excuse, to display on that machine any health message required by or under this Act.

(3) A person who commits an offence against **subsection (2)** is liable to a fine not exceeding $5,000.

(4) **Subsection (1)** does not authorise or excuse a contravention of **section 46**.

## Part 3
## Packaging, labelling, and constituents of regulated products

### 48 Purposes of this Part

The purposes of this Part are—

(a) to reduce the social approval of smoking, particularly among children and young people:

(b) to reduce the appeal of vaping and the use of heated tobacco products for non-smokers, particularly children and young people:

(c) to require the standardised appearance of regulated products and their packages (including messages and information) in order to—

(i) reduce the appeal of smoking, particularly for young people; and

(ii) further reduce any social and cultural acceptance and approval of smoking; and

(iii) reduce the appeal of vaping and use of heated tobacco products for non-smokers, particularly for children and young people; and

(iv) make warning messages and images more noticeable and effective; and

(v) reduce the likelihood of consumers acquiring false perceptions about the harmful effects of smoked tobacco products, vaping products, and heated tobacco products:

(d) to discourage non-smokers, particularly children and young people, from vaping and using heated tobacco products:

(e) to reduce some of the harmful effects of tobacco products on the health of users by monitoring and regulating the presence of harmful substances in the products and in tobacco emissions:

(f) to facilitate the harmonisation of the laws of New Zealand and Australia relating to the labelling of smoked tobacco products (including, without limitation, requirements relating to the display of health messages).

## Subpart 1—Packaging and labelling requirements

### 49 Standardised packaging of regulated products

(1) A regulated product—

(a) must comply with the requirements in regulations that apply to that product; and

(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.

(2) The package for a regulated product—

(a) must comply with **section 51** (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; and

(c) must comply with regulations in all other respects.

### 50 Offence in respect of standardised packaging of regulated products

(1) This section applies to—

(a) a person who manufactures, distributes, sells, offers for sale, or otherwise supplies a regulated product knowing that the product contravenes **section 49(1)**; or

(b) a person who distributes, sells, offers for sale, or otherwise supplies a regulated product in a package knowing that the package contravenes **section 49(2)**; or

(c) a person who does the following knowing that a package for a regulated product contravenes **section 49(2)**:

(i) manufactures, distributes, sells, offers for sale, or otherwise supplies the package; or

(ii) packages, or arranges for the packaging of, a regulated 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,—

(i) to a fine not exceeding $600,000; but

(ii) if the contravention relates to a vaping product or a smokeless tobacco product, to a fine not exceeding $200,000; and

(b) in the case of a large retailer,—

(i) to a fine not exceeding $200,000; but

(ii) if the contravention relates to a vaping product or a smokeless tobacco product, to a fine not exceeding $70,000; and

(c) in any other case,—

(i) to a fine not exceeding $50,000; but

(ii) if the contravention relates to a vaping product or smokeless tobacco product, to a fine not exceeding $15,000.

(3) However, the person does not commit an offence against this section in relation to a regulated product or a package if—

(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.

**51 Messages and information required for regulated product package**

(1) A package must display, in accordance with regulations, as many of the following things as regulations require:

(a) a message relating to—

(i) the harmful health, social, cultural, or economic effects, or other harmful effects, of using the regulated product:

(ii) the beneficial effects of stopping the use of the product or of not using the regulated product:

(b) if the product is intended for smoking, a list of the harmful constituents, and their respective quantities, present in its emissions:

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

(i) the harmful health, social, cultural, or economic effects, or other harmful effects, of using the regulated product:

(ii) the beneficial effects of stopping the use of the product or of not using the regulated product.

(2) A package must, if required by regulations, contain a leaflet with—

(a) information (prescribed by regulations for regulated products generally, or regulated products of a class to which the product belongs) relating to—

(i) the harmful health, social, cultural, or economic effects, or other harmful effects, of using the product:

(ii) the beneficial effects of stopping the use of the product or of not using the product; and

(b) if the regulated product is intended for smoking, as much of the following information (stated, as regulations may require, by reference to the class of regulated product to which the product belongs, or to the pro-

duct's brand as a regulated product of any class or variant of a brand of a regulated product of any class) as regulations require:

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

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

(iii) a list of the harmful constituents, and their respective quantities, present in the product's emissions.

**52 Restrictions on sale of certain regulated products in small quantities**

(1) A manufacturer, importer, distributor, or retailer must not sell or offer for sale—

(a) cigarettes in a package that contains fewer than 20 cigarettes; or

(b) loose tobacco in a package that contains less than 30 grams of loose tobacco; or

(c) any other regulated product in a package that contains fewer than the number (if any) prescribed in regulations for that product.

(2) In this section, unless the context otherwise requires,—

**cigarette** includes the tobacco product commonly known as a cigarillo

**loose tobacco** means—

(a) tobacco prepared for smoking in hand-rolled cigarettes:

(b) pipe tobacco.

(3) Nothing in **subsection (1)(a)** applies in respect of cigars (other than cigarillos).

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

**53 ~~Regulated product not to be advertised or labelled as suitable for chewing, etc~~ Restrictions on advertising, labelling, and sale of oral use products**

(1) A person must not publish a regulated product advertisement that directly or indirectly states or suggests that a regulated product is suitable for chewing or for any other oral use.

(2) A person must not import for sale, sell, pack, or distribute any regulated product labelled or otherwise described as suitable for chewing, or for any other oral use.

(2A) A person must not import for sale, sell, pack, or distribute any oral nicotine product unless the Minister of Health has given consent or provisional consent to the distribution of the product under the Medicines Act 1981.

(3) A person who, without reasonable excuse, contravenes **subsection (1), ~~or~~ (2), or (2A)** commits an offence and is liable,—

(a) in the case of a manufacturer, an importer, or a distributor, to a fine not exceeding $10,000; or

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

(4) In this section, **oral use**, in relation to a product, means the absorption of the product primarily through the oral mucosa.

## Subpart 2—Constituents of regulated products

### 54 Limits on harmful constituents of tobacco products and herbal smoking products

(1) A manufacturer or an importer must not offer for sale or export any tobacco product or herbal smoking product that—

(a) contains, or generates in its emissions, a harmful constituent prohibited by regulations; or

(b) contains, or generates in its emissions, harmful constituents in excess of any limits prescribed by regulations, as determined in accordance with any tests so prescribed.

(2) A person who, without reasonable excuse, contravenes **subsection (1)** commits an offence and is liable to a fine not exceeding $10,000.

### 55 Annual testing for constituents of prescribed regulated products

(1) This section applies to a regulated product specified in regulations as a product to which this section applies.

(2) Every manufacturer and every importer of the regulated product must conduct, either or both of the following tests (as regulations require):

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

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

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

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

### 56 Director-General may require testing or further testing

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

(2) Any tests required under this section may be in addition to any tests required under **section 55**.

(3) The tests must be conducted—

(a) in accordance with regulations; and

(b) in a laboratory nominated by the Director-General; but

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

(4) In any year, the Director-General must not require tests to be conducted under this section in respect of more than one of the brands of regulated products to which **section 55** applies sold by a particular manufacturer or importer.

(5) However, **subsection (4)** does not apply to vaping products.

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

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

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

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

(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.

## Part 4
## Regulated products that must be notified

### 57 Purpose of this Part

The purpose of this Part is to regulate the safety of notifiable products.

### 58 Defined terms

In this Part, unless the context otherwise requires,—

**database** means the database established under **section 73**

**flavour**, in relation to a notifiable product, means a clearly noticeable smell or taste resulting from an additive or a combination of additives which is noticeable before or during use of the product

**notifiable product** means a—

(a) vaping product; or

(b) smokeless tobacco product

**notifier** means the manufacturer or importer of a notifiable product

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

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

**prohibited ~~ingredient~~ substance** means a substance declared under **section 67**.

### 59 Notifier must not sell product unless it has been notified

(1) A notifier of a notifiable product must not sell the product in New Zealand unless it—

(a) has been notified in accordance with this Part; and

(b) complies with product safety requirements.

(2) A person who, without reasonable excuse, contravenes **subsection (1)** commits an offence and is liable to a fine not exceeding $400,000.

**60 Notifier must be New Zealand resident or company registered in New Zealand**

A notifier of a notifiable product must be a New Zealand resident or a company registered in New Zealand.

**61 Pre-notification requirements**

Before notifying a notifiable product that is intended for sale in New Zealand, the notifier must ensure that the product complies with—

(a) product safety requirements; and

(b) **sections** 66 and 66A; and

(c) any applicable requirements in regulations.

**62 How to notify product**

(1) A notifier must notify the notifiable product by entering on the database—

(a) the notifier's contact details; and

(b) a description of the product and its parts (including its ~~ingredients~~ substances) in accordance with regulations; and

(c) a declaration by the notifier that the product complies with the requirements referred to in **section 61**.

(2) A person who, without reasonable excuse, provides false or misleading information in notifying a notifiable product commits an offence and is liable to a fine not exceeding $50,000.

**63 Obligations of retailers**

(1) A retailer must not—

(a) sell a notifiable product in New Zealand unless it has been notified in accordance with this Part; or

(b) sell a notifiable product that does not comply with product safety requirements; or

(c) sell a notifiable product for which notification has been cancelled or suspended.

(2) A retailer must not, unless **subsection (3)** applies, sell a vaping product that contains a flavour that is not listed in **Part 1 of Schedule 2**.

(3) A specialist vape retailer—

(a) may sell a vaping product that contains any flavour except a prohibited flavour; but

(b) if the vaping product contains a flavour that is not from a class of flavour listed in **Part 1 of Schedule 2**, must sell the product only from the retailer's approved vaping premises or the retailer's approved Internet site.

(3A) A retailer must comply with any requirements in regulations (if any) relating to the sale of vaping products that contain a flavour.

(4) A person who, without reasonable excuse, contravenes **subsection (1), (2), ~~or (3)~~ (3), or (3A)** commits an offence and is liable to a fine not exceeding $400,000 in the case of a large retailer, or $50,000 in any other case.

**64 Obligation to notify adverse reaction**

(1) A notifier must advise the Director-General as soon as practicable after the notifier becomes aware of any adverse reaction to the notifiable product.

(2) A person who, without reasonable excuse, contravenes **subsection (1)** commits an offence and is liable to a fine not exceeding $400,000.

(3) In this section, **adverse reaction** means an unwanted or harmful reaction—

(a) that is experienced by an individual who has used the product; and

(b) that is suspected to have been caused (wholly or partly) by the use of the product.

**65 When notifiable product must be renotified**

(1) If, after a notifiable product has been notified, the product or any part of the product undergoes a significant change, the notifier must, as soon as practicable,—

(a) withdraw the product notification for the product; and

(b) complete a new product notification that accurately reflects the change to the product.

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

(a) a change to the composition or ~~strength of the~~ nicotine level of the product's vaping substance:

(b) a change to the composition or strength of the product's tobacco component:

(c) a change to the product's atomiser:

(d) a change to any other part or component of the product that is specified in regulations.

**66 ~~Substances that notifiable~~ Notifiable product must not contain prohibited substance, prohibited flavour, or colouring substance**

(1) A notifiable product must not contain a prohibited ~~ingredient.~~ substance.

(2) A notifiable product must not contain a prohibited flavour.

(3) A notifiable product that is a vaping substance, or any part of the product that is vaping substance, must not contain a colouring substance.

**66A Substances in notifiable product must not exceed maximum limits**

(1) A notifiable product must not contain a substance in excess of any maximum limit declared under this section.

(2) The Director-General may declare a maximum limit for a substance contained in a notifiable product if satisfied, on reasonable grounds, that exceeding the limit causes the product to become unsafe.

(3) A declaration must be in writing and published on an Internet site maintained by or on behalf of the Ministry of Health.

**67 Declaration of prohibited ~~ingredient~~ substance**

(1) The Director-General may declare a substance to be a prohibited ~~ingredient~~ substance if satisfied that the substance is unsafe for use in a notifiable product.

(2) A declaration must be in writing and published on an Internet site maintained by or on behalf of the Ministry of Health.

**68 Director-General may require notifier to provide information about safety of notifiable product**

(1) The Director-General may, by written notice, require a notifier of a notifiable product to provide information relating to the safety of the notifiable product.

(2) The notifier must provide the information within the period specified in the notice.

(3) A notifier who knowingly provides false or misleading information in response to the notice commits an offence and is liable to a fine not exceeding $50,000.

(4) A notifier who fails to comply with **subsection (2)** commits an offence and is liable to a fine not exceeding $1,000.

**69 Director-General may issue warning**

(1) If the Director-General has reasonable grounds to believe that the continued availability of a notifiable product poses a risk of harm to people, the Director-General may issue a public warning to that effect.

(2) A public warning issued under **subsection (1)** is protected by qualified privilege.

**70 Recall**

(1) If the Director-General is satisfied, on reasonable grounds, that the continued availability of a notifiable product poses an unacceptable risk to people's safety ~~of harm to people~~, the Director-General may—

(a) issue a public statement to that effect; and

(b) by written notice, require the notifier to arrange for the recall of the product.

(2) The notice may specify when and how the notifier must comply with the notice.

(3) The notifier must advise the Director-General as soon as practicable when the notice has been complied with.

(4) A notifier who, without reasonable excuse, fails to comply with the notice commits an offence and is liable to a fine not exceeding $400,000.

(5) A public statement issued under **subsection (1)** is protected by qualified privilege.

**71 Director-General may suspend product notification**

(1) The Director-General may suspend a product notification of a notifiable product for 1 month if—

(a) the Director-General has reasonable grounds to believe that the continued availability of a notifiable product poses an unacceptable risk of harm to people; or

(b) the Director-General has reasonable grounds to believe the notifier has provided false, misleading, or incomplete information in the product notification or in response to a requirement under **section 68**; or

(c) the Director-General has reasonable grounds for concern because of new information about the safety of the product; or

(d) the Director-General has reasonable grounds to believe that the product contains a prohibited ~~ingredient~~ substance, a prohibited flavour, or a colouring substance, or contains a substance that exceeds any maximum limit.

(1A) Before suspending a product notification of a notifiable product, the Director-General must give the notifier a reasonable opportunity to be heard.

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

(a) for a further month:

(b) more than once.

(3) The Director-General must tell the notifier in writing of the suspension and give reasons.

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

(a) decide whether to cancel or reinstate the product notification for the product; and

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

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

(6) If a product notification of a notifiable product is cancelled, the notifier must comply with **section 72(3)**.

**72 Cancellation of product notification**

(1) The Director-General may cancel a product notification of a notifiable product without any prior suspension if—

(a) the Director-General has reasonable grounds to believe that the continued availability of the product poses an unacceptable risk of harm to people; or

(b) the Director-General has reasonable grounds to believe the notifier has provided false, misleading, or incomplete information in the product notification or in response to a requirement under **section 68**; or

(c) the Director-General has reasonable grounds for concern because of new information about the safety of the product; or

(d) the Director-General has reasonable grounds to believe that the product contains a prohibited ~~ingredient~~ substance, a prohibited flavour, or a colouring substance, or contains a substance that exceeds any maximum limit.

(1A) Before cancelling a product notification of a notifiable product, the Director-General must give the notifier a reasonable opportunity to be heard.

(2) The Director-General must tell the notifier in writing of the cancellation and give reasons.

(3) If a product notification of a notifiable product is cancelled under this section or **section 71**, the notifier—

(a) must ensure that the product is not sold by any person on and from the date on which the cancellation takes effect; and

(b) must not complete another product notification for the product unless the Director-General is satisfied, on application by the product notifier, that—

(i) the grounds for cancellation no longer apply; or

(ii) any concerns of the Director-General leading to the cancellation have been addressed appropriately.

(4) A person who, without reasonable excuse, contravenes **subsection (3)(a)** commits an offence and is liable to a fine not exceeding $400,000.

(5) A person who, without reasonable excuse, contravenes **subsection (3)(b)** commits an offence and is liable to a fine not exceeding $10,000, in the case of a body corporate, or to a fine not exceeding $5,000, in any other case.

**72A Appeals against decision to suspend or cancel product notification**

(1) If the Director-General decides to suspend or cancel a product notification of a notifiable product, the notifier of that product may appeal to the appeals committee against the decision.

(2) 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 continues in force unless the appeals committee orders otherwise.

(4) An appeal is by way of rehearing.

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

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

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

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

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

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

(b) in accordance with the rules of court.

**73 Establishment of database and confidentiality of certain information**

(1) The Director-General must establish and maintain a database for the purpose of this Part.

(2) The database may be in any form that the Director-General thinks fit.

(3) The Director-General must protect the confidentiality of any information that—

(a) is entered by a notifier on the database; and

(b) may reasonably be regarded as confidential or commercially sensitive.

**73A Technical advisory committee**

(1) The Director-General may establish 1 or more advisory committees to advise the Director-General on the exercise and performance of the Director-General's powers and functions under this Part.

(2) The Director-General may—

(a) appoint members of the advisory committee on any terms and conditions that the Director-General thinks fit; and

(b) specify terms of reference for the committee's work.

(3) In appointing members of the advisory committee, the Director-General—

(a) must take into account the need for members to collectively have knowledge and expertise relating to—

(i) the risks and benefits associated with alternative tobacco and nicotine-delivery products; and

(ii) how alternative tobacco and nicotine-delivery products are regulated internationally; and

(iii) the manufacture, importation, and retail sale of alternative tobacco and nicotine-delivery products; and

(b) may take into account any other knowledge or expertise that the Director-General considers relevant.

(4) An advisory committee may, subject to any provision in this Act, the regulations, and any terms of reference, determine its own procedure.

**73B Appeals committee**

(1) An appeals committee is established to determine appeals against decisions of the Director-General to cancel or suspend a product notification.

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

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

(4) 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.

# Part 5
# Regulations, enforcement, and other matters

**74 Outline**

(1) **Subpart 1** provides for regulations that may be made for the purposes of this Act.

(2) **Subpart 2** provides for infringement offences.

(3) **Subpart 3** relates to the appointment and powers of enforcement officers.

(4) **Subpart 4** relates to annual returns and reports that must be supplied by a manufacturers and importers of regulated products and specialist vape retailers.

## Subpart 1—Regulations

**75 Regulations**

The Governor-General may from time to time, by Order in Council, make regulations for all or any of the following purposes:

*Forms, registers, and other documents*

(a) prescribing forms, certificates, notices, leaflets, signs, particulars, and notifications, and the persons by whom and the persons to whom any of them must be supplied:

(b) prescribing records and registers for the purposes of this Act or any of its Parts, including—

(i) prescribing the manner in which and the period during which any such records and registers must be kept; and

(ii) prescribing the persons to whom, and the conditions on which, any such records and registers may be available for searching, inspection, and copying:

*Health messages on automatic vending machines*

(c) prescribing for the purposes of **section 47**—

(i) the form, size, and content of messages to be displayed on automatic vending machines that dispense regulated products:

(ii) the circumstances and manner in which the messages must be displayed:

*Section 24 exemptions*

(ca) for the purposes of the exemption in **section 24(1)(g)**, prescribing—

(i) vaping products that may be displayed in retail premises or on a retailer's Internet site and how those products may be displayed:

(ii) information relating to vaping products that may be provided in retail premises or on a retailer's Internet site and how that information may be provided:

(cb) prescribing—

(i) for the purposes of the exemption in **section 24(1)(l)**, the information that manufacturers and importers may provide to retailers about the use of vaping and smokeless tobacco and how that information may be provided:

(ii) for the purposes of the exemption in **section 24(1)(m)**, the communications about vaping products that may be made by specialist vape retailers to their existing customers and how those communications may be made:

~~*Exemptions*~~ *Section 25 exemptions*

(d) prescribing for the purposes of the exemption in **section 25(1)(a)(ii)** (relating to retailers) requirements with which regulated product and price information under **section 25(1)(a)** must comply:

(e) prescribing for the purposes of the exemption in **section 25(1)(b)(ii)** (relating to retailers) requirements with which a regulated product availability and locations notice under **section 25(1)(b)** must comply:

(f) prescribing for the purposes of the exemption in **section 25(3)(b)** (relating to vending machines) requirements with which a regulated product and price notice under **section 25(3)** must comply:

(g) prescribing for the purposes of the exemption in **section 25(4)(c)** (relating to Internet sales) requirements with which a regulated product and price information under **section 25(4)** must comply:

*Acceptable forms of delivery and visibility*

(h) prescribing for the purposes of **section 36(2) or 45(2)(b)** acceptable forms of visible delivery in relation to a regulated product or package:

(i) prescribing for the purposes of **section 36(3) or 45(4)** ways in which a class or classes of people who offer regulated products for sale may allow a regulated product or package to be visible:

*Health information and warnings at point-of-sale and on Internet*

(j) prescribing for the purposes of **section 37** requirements relating to point-of-sale health information or warnings:

(k) requiring sales health information or warnings to be visible on an Internet site of a person who offers regulated products for Internet sale (by retail or wholesale), including—

(i) prescribing information or warnings that must be made visible; and

(ii) prescribing the requirements with which the information or warnings must comply:

(l) prescribing for the purposes of **section 42(2)(b)** requirements with which a notice for the public (to the effect that the sale of regulated products to people who are younger than 18 years is prohibited) under **section 42(2)** must comply:

(m) requiring purchase age information or warnings to be visible on an Internet site of a person who offers regulated products for Internet sale (by retail or wholesale), including—

(i) prescribing information or warnings that must be made visible; and

(ii) prescribing the requirements with which the information or warnings must comply:

(n) prescribing for the purposes of **section 81** the infringement fee or infringement fees payable in respect of different kinds of infringement offences:

(o) prescribing for the purposes of **section 83** (and for the purposes of the procedure in section 21 of the Summary Proceedings Act 1957 as modified and applied by **section 83**) the form of infringement notices and reminder notices for infringement offences, and any other particulars to be contained in infringement notices and reminder notices:

(p) for the purpose of regulating harmful constituents of tobacco products or herbal smoking products,—

(i) specifying what those harmful constituents are:

(ii) prohibiting harmful constituents for the purposes of **section 54(1)(a)**:

(iii) prescribing limits for harmful constituents in those products or their emissions and a method of determining whether those limits have been exceeded:

(q) specifying the class or classes of regulated products to which **section 55** is to apply:

(r) prescribing for the purposes of **section 93**—

(i) sales-related information that manufacturers, importers, and specialist vape retailers must provide in the annual return required under that section:

(ii) the form and manner in which returns and reports required under that section must be prepared and filed:

(ra) prescribing, for the purposes of **section 2(2A)**, the way in which vaping products or packages of vaping products that bear the same brand name may differ in the products they contain:

(rb) providing, in relation to applications for approval to be a specialist vape retailer,—

(i) for the manner in which the application must be made; and

(ii) requirements that must be met before approval may be given; and

(iii) conditions that may be imposed by the Director-General when granting an approval or criteria that apply when imposing a condition:

(s) providing for any other related matters contemplated by this Act, necessary for its administration, or necessary for giving it full effect.

**76 Regulations under section 75**

(1) Regulations made under **section 75(d), (e), (j), (k), (l), or (m)** must come into force no earlier than the day that is 6 months after the date on which they are made.

(1A) Regulations made under **section 75(ca) or (cb)** may (without limitation) prescribe different requirements for different classes of retailers.

(2) Regulations under all or any of **paragraphs (d), (e), (f), (j), (k), (l), and (m) of section 75** may (without limitation) prescribe different requirements for all or any of the following:

(a) different classes of people who offer regulated products for sale:

(b) different classes of place of business:

(c) different classes of points of sale:

(d) different circumstances of the sales for which requirements are prescribed.

(3) Regulations under **section 75(h)** may (without limitation)—

(a) apply to specified classes of regulated products or packages or all regulated products or packages:

(b) prescribe for different classes of people who offer regulated products for sale different acceptable forms of visible delivery of all or any of regulated products and packages:

(c) prescribe conditions with which 1 or more classes of people of that kind must comply before, or while, using a prescribed acceptable form of visible delivery.

(4) Regulations under **section 75(i)** may (without limitation) do either or both of the following:

(a) prescribe for different classes of people who offer regulated products for sale different ways of allowing a regulated product or package to be visible:

(b) prescribe conditions with which 1 or more classes of people of that kind must comply before, or while, allowing a regulated product or package to be visible in a way prescribed.

(5) Regulations under **section 75(j)** may (without limitation) prescribe requirements relating to all or any of the following matters relating to signs under **section 37**:

(a) the health information or warnings to be communicated by them:

(b) the shape and lengths of their sides:

(c) the width, and other aspects of, the borders around their edges:

(d) the typeface or font, point size, and other aspects of the format or layout, or of the clarity, legibility, and weight, of the printing on them of the health information or warnings to be communicated by them:

(e) the minimum area that they must have for printing across:

(f) any official attribution (which may, without limitation, be or include "Ministry of Health Warning") that they are to contain, and the way in which that attribution is to be communicated by them.

(6) Regulations under **section 75(k)** may (without limitation) prescribe requirements relating to all or any of the following matters relating to the health information or warnings to be made visible under **section 38**:

(a) the shape, and lengths, of the sides of that information or those warnings:

(b) the width, and other aspects, of the borders around the edges of that information or those warnings:

(c) the typeface or font, point size, and other aspects of the format or layout, or of the clarity and legibility, of all or any of the text of that information or those warnings:

(d) the minimum area of that information or those warnings:

(e) any official attribution (which may, without limitation, be or include "Ministry of Health Warning") that that information is, or that those warnings are, to contain.

*Information that must be contained in annual returns*

(7) Regulations made under **section 75(r)** may (without limitation)—

(a) require the return to—

(i) show the quantity of each brand, and of each variant of a brand, of regulated product sold during the previous year; and

(ii) show the recommended price of each brand, and of each variant of a brand, of regulated product sold during the previous year; and

(iii) show any other information about the regulated product in respect of the previous year; and

(b) specify different requirements for different kinds or classes of regulated product.

**77 Regulations for standardised 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 49(1)(a)** requirements, or options permitted, for all or any aspects of the appearance of a regulated product:

(b) prescribing for the purposes of **section 49(1)(b)(ii)** the quantity or quantities in which a regulated product must be packaged:

(c) prescribing for the purposes of **section 51(1)**—

(i) the form, size, and content of messages and information to be displayed with, on, or in the package for a regulated product:

(ii) the photographs and pictures to be displayed as part of or in addition to messages about effects relating to a regulated product:

(iii) the circumstances and manner in which the messages, information, photographs, and pictures must be displayed:

(d) prescribing for the purposes of **section 49(2)(b)** requirements, or options permitted, for the display of the brand or company name on the package for a regulated product, including the circumstances and manner in which the name is to be displayed:

(e) prescribing for the purposes of **section 49(2)(c)** requirements, or options permitted, for all or any other aspects of the appearance of the package for a regulated product:

(f) providing for any other related matters contemplated by this Act, necessary for its administration, or necessary for giving it full effect.

(2) Regulations under **subsection (1)(a) or (e)** may (without limitation) do all or any of the following:

(a) require a regulated product, or the package for a regulated product, to be a prescribed size and shape:

(b) prohibit a regulated product, or the package for a regulated product, from displaying any words or other marks unless they are permitted by **section 49(2)(b)** or the regulations:

(c) specify types of words or other marks that are permitted to be displayed on a regulated product or the package for a regulated product (for example, bar codes or marks used to record manufacturing information or to detect legitimate products or packages):

(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):

(e) prohibit any type of feature from forming part of a regulated product or its package (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).

(3) Regulations under **subsection (1)(b)**—

(a) may, for example, prescribe the number of cigarettes or the weight of loose regulated product that must be contained in a package; but

(b) must not prescribe a quantity that does not comply with **section 49(2)**.

(4) Regulations under **subsection (1)** may (without limitation) prescribe—

(a) requirements or options for all parts of a product or a package (for example, that 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, that any plastic or other wrapping must be consistently transparent, uncoloured, and unmarked):

(c) separate requirements or options for—

(i) different classes of regulated product:

(ii) the packages for different classes of regulated product.

(5) In this section, **appearance** includes—

(a) anything that may affect a person's senses; and

(b) any aspect of design, such as shape, size, colour, texture, or material.

*Notifiable products*

**78 Regulations relating to notifiable products**

The Governor-General may, by Order in Council, make regulations—

(a) prescribing safety requirements for regulated products that are notifiable products:

(b) specifying changes to the parts or components of a notifiable product for the purpose of the definition of significant change in **section 65(2)**:

(c) amending the list of vaping product flavours in **Part 1 or 2 of Schedule 2**~~.~~:

(d) specifying requirements that apply to retailers in relation to vaping products that contain a flavour.

**79 Regulations imposing fees**

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

(a) requiring the payment to the Director-General of fees—

(i) by a notifier in respect of products that must be notified under **Part 4**; and

(ii) by a notifier in connection with the performance or exercise by the Director-General of any function, power, or duty under **Part 4**; and

(iii) by an applicant in relation to an application for approval as a specialist vape retailer under **Part 1**; and

(b) prescribing the amounts of those fees and charges or the manner in which those fees are to be calculated.

(2) Any Order in Council made under **subsection (1)** may authorise the Director-General to refund or waive, in whole or in part and on any conditions as may be prescribed, payment of any fee, charge, or cost payable in relation to a notifier or a class of notifier.

(3) Any fee prescribed under this section is recoverable in any court of competent jurisdiction as a debt due to the Crown.

**80 Regulations imposing levies**

(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 notifier under **Part 4**.

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

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

(b) the costs of collecting the levy money.

(3) Levies may be prescribed on the basis that any actual cost that could have been, but has not been, recovered as a levy shortfall for a year may be recovered (along with any financing charge) over any period of up to 5 years.

(4) The regulations may—

(a) specify the class or classes of notifiers that are required to pay a levy:

(b) specify the amount of levies, or method of calculating or ascertaining the amount of levies:

(c) include in levies, or provide for the inclusion in levies of, any shortfall in recovering the actual costs:

(d) provide for refunds of any over-recovery of the actual costs:

(e) provide for the payment and collection of levies:

(f) provide different levies for different classes of notifiers:

(g) specify the financial year or part financial year to which a levy applies, and apply that levy to that financial year or part financial year and each subsequent financial year until the levy is revoked or replaced:

(h) for the first financial year to which a levy applies, include in a levy amount or method the costs relating to establishing the database and performing or exercising the functions, duties, and powers of the Director-General that relate to **Part 4**:

(i) require payment of a levy for a financial year or part financial year, irrespective of the fact that the regulations may be made after that financial year has commenced:

(j) provide for waivers or refunds of the whole or any part of a levy for any case or class of cases.

(5) If a person is in 2 or more classes of notifiers in respect of which different levies have been prescribed, the person must pay each of those levies (unless the regulations provide otherwise).

(6) Any levy prescribed under this section is recoverable in any court of competent jurisdiction as a debt due to the Crown.

## Subpart 2—Infringement offences

### 81 Infringement offences

In this subpart,—

**infringement fee**,—

(a) in relation to an infringement offence against **sections 37(3), 38(3), 40(2), 41(2), 42(3), 43(4), 46(4), and ~~50(2)~~52(4)**, means an amount not exceeding $2,000 prescribed in regulations; and

(b) in relation to an infringement offence against **sections 33(4), 39(2), and 53(3)** means an amount not less than $5,000 and not exceeding $10,000 prescribed in regulations

**infringement offence** means an offence against any of **sections 33(4), 37(3), 38(3), 39(2), 40(2), 41(2), 42(3), 43(4), 46(4), ~~50(2)~~52(4), and 53(3)**.

### 82 Commission of infringement offences

A person who is alleged to have committed an infringement offence may—

(a) be proceeded against for the alleged offence by the filing of a charging document under the Criminal Procedure Act 2011; or

(b) be served with an infringement notice as provided for in **section 83**.

### 83 Infringement notices

(1) An enforcement officer may issue an infringement notice on a person if the officer believes on reasonable grounds that the person is committing or has committed an infringement offence.

(2) An enforcement officer may deliver the infringement notice (or a copy of it) to the person alleged to have committed the infringement offence—

(a) by delivering it personally or by post addressed to that person's last known place of residence or business; and

(b) regardless of whether the enforcement officer issued the infringement notice.

(3) An infringement notice (or a copy of it) sent to a person under **subsection (2)** is to be treated as having been served on that person when it was posted.

(4) An infringement notice must be in the prescribed form and must contain the following particulars:

(a) such details of the alleged infringement offence as are sufficient fairly to inform a person of the time, place, and nature of the alleged offence; and

(b) the amount of the infringement fee; and

(c) the address of the place at which the infringement fee may be paid; and

(d) the time within which the infringement fee must be paid; and

(e) a summary of the provisions of section 21(10) of the Summary Proceedings Act 1957; and

(f) a statement that the person served with the notice has a right to request a hearing; and

(g) a statement of what will happen if the person served with the notice neither pays the infringement fee nor requests a hearing; and

(h) any other particulars that may be prescribed.

(5) If an infringement notice has been issued under this section, the procedure under section 21 of the Summary Proceedings Act 1957 may be used in respect of the offence to which the infringement notice relates and, in that case, the provisions of that section apply with all necessary modifications.

**84 Payment of infringement fees**

All infringement fees paid in respect of infringement offences must be paid into a Crown Bank Account.

## Subpart 3—Enforcement officers

**85 Appointment of enforcement officers**

(1) The Director-General must appoint to enforce this Act people who are—

(a) employees of the Ministry of Health, a local authority under the Local Government Act 2002, or a District Health Board under the New Zealand Public Health and Disability Act 2000; or

(b) employees or officers of some other person or body; or

(c) officers designated under section 7A of the Health Act 1956; or

(d) inspectors appointed under section 163 of the Health and Safety at Work Act 2015.

(2) A person may be appointed by name, or as the holder for the time being of a particular position.

(3) The Director-General must not appoint a person under **subsection (1)(b)** unless satisfied,—

(a) in the case of a named person, that the person is suitably qualified and trained:

(b) in the case of the holder for the time being of a particular position, that holders of the position are likely to be suitably qualified and trained.

(4) Every enforcement officer must have an instrument of appointment identifying the holder as an enforcement officer appointed under this section.

(5) The Director-General may do any or all of the following:

(a) appoint people to enforce only some of the provisions of this Act:

(b) appoint people to exercise only some of the powers given to enforcement officers under this Act (**enforcement powers**):

(c) appoint people subject to limitations or restrictions on their exercise of enforcement powers.

(6) An instrument of appointment must state—

(a) the provisions of this Act that an enforcement officer is appointed to enforce (whether all or stated provisions); and

(b) enforcement powers that the enforcement officer is appointed to exercise (whether all enforcement powers or stated powers); and

(c) all limitations and restrictions on the enforcement officer's exercise of enforcement powers.

### 86 Protection of people acting under authority of this Act

No enforcement officer who does an act or omits to do an act when carrying out a duty, performing a function, or exercising a power conferred on that person by or under this Act is under any civil or criminal liability in respect of that act or omission unless the person has acted or omitted to act in bad faith or without reasonable care.

### 87 Powers of entry and inspection

(1) This section applies to a place if—

(a) this Act imposes duties, restrictions, or prohibitions in respect of places of a kind to which it belongs; or

(b) there is carried out in it, regularly or from time to time, an activity in respect of which this Act imposes duties, restrictions, or prohibitions.

(2) An enforcement officer may at any reasonable time enter a place if—

(a) the officer believes on reasonable grounds that it is a place to which this section applies; and

(b) it is not a dwelling house or other residential accommodation.

(3) An enforcement officer who enters a place under **subsection (2)** may do any or all of the following things:

(a) inspect the place, including any regulated products for sale at the place:

(b) take photographs, videos, or other recordings with any device brought by the officer:

(c) take samples of the air in the place with any device that the officer brings for that purpose:

(d) if the officer believes on reasonable grounds that the place is a place where regulated products are sold from time to time,—

(i) exercise the powers given by **section 88**:

(ii) inspect any advertising or display material relating to regulated products on display in the place, or on the outside of a building containing the place.

(4) An enforcement officer exercising powers under this section may be accompanied by a constable.

(5) **Subsection (2)** does not prevent an enforcement officer from entering a dwelling house or other residential accommodation—

(a) under authority given by or under an enactment other than this section; or

(b) with the consent of an occupier.

**88 Enforcement officer may require identifying information**

(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) regulated products have been sold to a person younger than 18 years in and from a place where regulated products are sold; or

(b) regulated products have, after they are sold, been delivered to a person younger than 18 years in and from the place where they are sold; or

(c) regulated products have been delivered to a person younger than 18 years after being sold at that place (where the regulated products were sold) or at another place.

(2) The enforcement officer may—

(a) require the person that the officer believes on reasonable grounds to have sold, delivered, or arranged for the delivery of the regulated product to, while the person is at the place where the regulated product was sold, give the officer their name and address; and

(b) require the person who appears to be in charge of that place, or part of that place, to give the officer—

(i) the name and address of the person described in **paragraph (a)**; or

(ii) if that information is not within the person's knowledge, the name or any other identifying information within the person's knowledge relating to the person described in **paragraph (a)**.

(3) An enforcement officer who suspects that the person described in **subsection (2)(a)** is younger than 18 years must not require information under **subsection (2)(a)**) unless—

(a) there is no other person in the place who appears to be in charge of the place; or

(b) there is another person in the place who appears to be in charge of it, but the enforcement officer suspects that person is also younger than 18 years.

(4) An enforcement officer who suspects that the person in charge of the place is younger than 18 years must not require the person to provide information under **subsection (2)(b)** in relation to a person who is at the place and appears to be 18 years old or older.

**89 Search warrant**

(1) An enforcement officer may apply for a search warrant in respect of any place.

(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

(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.

**90 Purposes for which powers may be used**

(1) The powers given by **section 87** must be used only for, and only to the extent necessary for, the following purposes:

(a) finding out whether this Act is being complied with in and in respect of the place entered:

(b) finding out the extent to which this Act is not being complied with in or in respect of the place entered:

(c) exercising the powers given by **section 91**.

(2) The powers given by **section 88** must be used only for, and only to the extent necessary for, the purpose of obtaining the information referred to in **section 88(2)**.

(3) This section does not prevent an enforcement officer from using in proceedings for an offence against this Act evidence obtained during the lawful exercise of any of the powers given by **sections 87 and 88**.

**91 Duties of enforcement officers**

(1) When an enforcement exercises any power under **section 87** in respect of a place where there is a person in charge, the enforcement officer must—

(a) identify themselves as an enforcement officer to the person in charge; and

(b) if asked by the person in charge to do so, produce to the person evidence of identity, their instrument of appointment as an enforcement officer, or both.

(2) When an enforcement officer exercises any power under **section 88** in respect of a person, the enforcement officer must—

(a) identify themselves as an enforcement officer to the person; and

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

**92 Offence to obstruct enforcement officers, intentionally fail to comply with section 87, or give false and misleading information**

A person commits an offence, and is liable on conviction to a fine not exceeding $10,000, if the person—

(a) intentionally obstructs, hinders, or resists an enforcement officer exercising or attempting to exercise powers under **section 87 or 88**; or

(b) intentionally fails to comply with a requirement under **section 87**; or

(c) when required to give information by or under this Act, gives information that the person knows to be false or misleading.

**93 Enforcement**

(1) It is the Director-General's duty to enforce this Act.

(2) Every prosecution for an offence against this Act must be commenced by the Director-General or a person authorised by the Director-General.

(3) Despite anything to the contrary in section 25 of the Criminal Procedure Act 2011, the limitation period in respect of an offence against this Act ends on the date that is 12 months after the date on which the offence was committed.

## Subpart 4—Annual returns and reports

**94 Annual reporting requirements for manufacturers, importers, and specialist vape retailers**

(1) Each year a person who is a manufacturer of regulated products or an importer of regulated products must, in accordance with regulations,—

(a) prepare—

(i) a return showing sales-related information required by regulations in respect of the regulated products manufactured or imported by the person; and

(ii) a report of the results of all tests (if any) that the person conducted during the previous year for the purposes of **section 55 or 56**; and

(b) file the return and the report with the Director-General no later than 31 January.

(2) Each year a specialist vape retailer must, in accordance with regulations,—

(a) prepare a return showing sales-related information required by regulations in respect of the regulated products or class of regulated products sold by the retailer; and

(b) file the return with the Director-General no later than 31 January.

(3) The Director-General—

(a) must take all practicable steps to ensure that all returns and reports received under this section are publicly available on an Internet site under the Director-General's control; and

(b) may publish or make publicly available in any other way all or any part of any such return or report.

(4) A person who fails to comply with **subsection (1) or (2)** commits an offence and is liable,—

(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.

### 27 Schedule amended

(1) Replace the Schedule heading with:

## Schedule 1
## Transitional, savings, and related provisions

**s 3B**

## Part 1
## Smoke-free Environments (Tobacco Standardised Packaging) Amendment Act 2016

(2) In the Schedule, clause 1, replace "this schedule" with "this Part".

(3) In the Schedule, after clause 4, insert the **Part 2** as set out in **Schedule 1** of this Act.

### 28 New Schedule 2 inserted

After the Schedule, insert as **Schedule 2** the schedule set out in **Schedule 2** of this Act.

# Part 2
# Amendments to other enactments

## 29 Enactments amended

Amend the enactments specified in **Schedule 3** as set out in that schedule.

# Schedule 1
# New Part 2 inserted into Schedule

s 27

## Part 2
## Provisions relating to Smokefree Environments and Regulated Products (Vaping) Amendment Act 2020

**5 Interpretation**

~~In this Part, **amendment Act** means the Smokefree Environments and Regulated Products (Vaping) Amendment Act **2020**.~~

In this Part, unless the context otherwise requires,—

**amendment Act** means the Smokefree Environments and Regulated Products (Vaping) Amendment Act **2020**

**commencement date** means the date on which the amendment Act comes into force.

**5A Application of section 7A to schools, early childhood education and care centres**

The manager of any school premises or premises to which **section 7A(4)** applies—

(a) is not required to comply with **section 7A(1)(b)** until the date that is 6 months after the commencement of the amendment Act; but

(b) until that date, must comply with **section 7A(1)(b)** (as it was immediately before the commencement of the amendment Act) unless the manager earlier complies with **section 7A(1)(b)** (as amended by the amendment Act).

**5B Retailer may elect to operate as specialist vape retailer during transitional period**

(1) A person may, before the expiry date, elect to be a transitional specialist vape retailer if during the transitional period—

(a) the person sells vaping products from retail premises that are a fixed permanent structure; and

(b) at least 50% of the person's total sales are from the sale of vaping products.

(2) A person who elects to be a transitional specialist vape retailer—

(a) must notify the Director-General of their election:

(b) must, on and from the date of notifying the Director-General, operate as an approved specialist vape retailer in accordance with this Act and the regulations:

(c) must maintain compliance with **subclause (1)** while operating as an approved specialist retailer under this clause:

(d) ceases to be a transitional specialist vape retailer on the expiry date unless—

(i) the person earlier withdraws their status by notifying the Director-General; or

(ii) **subclause (4)** applies.

(3) For the purposes of this clause, the retail premises of a transitional specialist vape retailer must be treated as approved vaping premises.

(4) At any time before the expiry date, the Director-General may withdraw a person's status as a transitional specialist vape retailer if the Director-General has reasonable grounds to believe that the person is not complying with **subclause (2)(b) or (c)**.

(5) In this clause—

**expiry date** means the date that is 12 months after the commencement date

**to notify** means notifying on an Internet site maintained by or on behalf of the Ministry of Health

**transitional period** means the period of 12 months after the commencement date.

**~~6~~ ~~Continued application of sections 23A and 36(1A)~~**

~~Sections 23A and 36(1A) of this Act (as they were immediately before the commencement of the amendment Act) continue to apply in respect of tobacco products, tobacco packages, and tobacco cartons until the date **section 36** of this Act comes into force.~~

**7 Visibility of regulated products from place of business and vending machines**

(1) The following provisions do not apply until the date that is 6 months after the commencement date:

(a) **section 36** (which restricts the visibility of regulated products (other than vaping products) from a place of business):

(b) **section 45** (which restricts the visibility of regulated products sold by automatic vending machine).

(2) Sections 23A and 36(1A) (as they were immediately before the commencement of the amendment Act) continue to apply in respect of tobacco products,

tobacco packages, and tobacco cartons until the date that is 6 months after the commencement date.

**8 Requirement that vaping substance must not contain colouring substance**

**Section 66(3)** (which prohibits a vaping substance from containing a colouring substance) does not apply until the date that is 6 months after the commencement date.

**9 Notifiable products**

(1) The following provisions (which relate to the notification of vaping products and smokeless tobacco products) do not apply until the date that is 6 months after the commencement date:

(a) **sections 60 to 62** (which require a manufacturer or an importer of a vaping product or smokeless tobacco product to notify the product in accordance with **Part 4** before sale in New Zealand); and

(b) **section 63(2)** (which restricts the flavours that may be contained in vaping products sold by retailers (other than specialist vape retailers)); and

(c) **section 73** (which requires the Director-General to establish a database for the purpose of **Part 4**).

(2) **Sections 59 and 63(1)** (which prohibit the sale of notifiable products that have not been notified) do not apply until the date that is 12 months after the commencement date.

**10 Appeals committee**

**Section 73B** (which establishes an appeals committee) does not apply until the date that is 6 months after the commencement date.

**11 Continued application of Smoke-free Environments Regulations 2017 to tobacco products and herbal smoking products**

(1) Until the effective date, the Smoke-free Environments Regulations 2017 apply, with all necessary modifications, in respect of tobacco products and herbal smoking products as if those regulations were made under **subpart 1 of Part 5**.

(2) In this clause, **effective date**, means the date that the Smoke-free Environments Regulations 2017 are replaced by regulations made under subpart 1 of Part 5.

# Schedule 2
# New Schedule 2 inserted

s 28

## Schedule 2
## Vaping product flavours

ss 63, 66, 78

### Part 1
### Classes of flavours ~~Flavours~~ that may be contained in vaping products sold by any retailer

Tobacco

Menthol

Mint

### Part 2
### Prohibited flavours and classes of flavours for all vaping products

# Schedule 3
# Enactments amended

s 29

## Part 1
## Amendments to Acts

### Civil Aviation Act 1990 (1990 No 98)

In the heading to section 65N, after "**smoking**", insert "**or vaping**".

In section 65N(1), after "smokes", insert "or vapes".

In section 65N(1)(a), after "smoke", insert "or vape".

Replace section 65N(3) with:

(3) In subsection (1), **to smoke** and **to vape** have the meanings set out in section 96A(1).

In the heading to section 96A, after "**smoking**", insert "**or vaping**".

In section 96A(1), after the definition of **to smoke**, insert:

**to vape** means to inhale using a vaping device or a heated tobacco product, and **vaping** has a corresponding meaning

In section 96A(4)(a) and (b), replace "smoking" with "smoking or vaping".

In section 96A(5) and (6), replace "smoke" with "smoke or vape".

### Corrections Act 2004 (2004 No 50)

In section 3(1), definition of **unauthorised item**, after paragraph (bb), insert:

(bc) any vaping product or smokeless tobacco product within the meaning of section 2 of the Smokefree Environments and Regulated Products Act 1990:

In the heading to section 129, replace "**and smoking**" with "**smoking, and vaping**".

In section 129(aa), after "substance", insert ", or vapes within the meaning of section 2 of the Smokefree Environments and Regulated Products Act 1990,".

### Designs Act 1953 (1953 No 65)

In section 51(2), replace "Smoke-free Environments Act 1990" with "Smokefree Environments and Regulated Products Act 1990".

### Psychoactive Substances Act 2013 (2013 No 53)

In section 9(3)(h), replace "Smoke-free Environments Act 1990" with "Smokefree Environments and Regulated Products Act 1990".

After section 9(3)(h), insert:

**Psychoactive Substances Act 2013 (2013 No 53)**—*continued*

(ha) any regulated product (other than a tobacco product) within the meaning of section 2(1) of the Smokefree Environments and Regulated Products Act 1990, unless the regulated product contains a psychoactive substance as defined in subsection (1) or (2):

**Search and Surveillance Act 2012 (2012 No 24)**

In the Schedule, replace the item relating to the Smoke-free Environments Act 1990 with:

| Act | Section | Brief description of power | Which provisions in Part 4 apply |
|---|---|---|---|
| Smokefree Environments and Regulated Products Act 1990 | **s 89** | Enforcement officer may obtain and execute search warrant to search for evidential material in relation to suspected offence against Smokefree Environments and Regulated Products Act 1990 | All (except sections 118 and 119) |

**Trade Marks Act 2002 (2002 No 49)**

In section 17(3), replace "Smoke-free Environments Act 1990" with "Smokefree Environments and Regulated Products Act 1990".

# Part 2
# Amendments to legislative instruments

**Civil Aviation (Offences) Regulations 2006 (SR 2006/168)**

In Schedule 4, under the heading "**Request**", item 13, after "smoked", insert "or vaped".

**Gambling (Prohibited Property) Regulations 2005 (SR 2005/299)**

Replace regulation 4(c) with:

(c) a regulated product as defined in the Smokefree Environments and Regulated Products Act 1990:

**Medicines Regulations 1984 (SR 1984/143)**

After regulation 58C, insert:

**58D Non-oral products containing nicotine are medicines**

Products containing nicotine that are not for oral use are medicines for the purposes of the Act.

## Legislative history

| | |
|---|---|
| 24 February 2020 | Introduction (Bill 222–1) |
| 11 March 2020 | First reading and referral to Health Committee |

Wellington, New Zealand:

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