

Section G: Enforcement Powers (Compliance and Offences)

G1) What key changes are there to enforcing the new smokefree law?

There are few changes to how the smokefree law is enforced. The Ministry is concerned to ensure that the public and all people directly affected by the Act are educated on its provisions, and in particular, their responsibilities under the Act.

The Act establishes the procedure for the appointment of enforcement officers. Enforcement officers must be:

- appointed by the Director-General of Health, and
- employees of the Ministry of Health or a District Health Board, or
- Department of Labour OSH inspectors, or
- employees or officers of some other person or body.

From 10 March 2004, enforcement officers gained limited powers to assist them with carrying out their statutory duties. These powers only apply to places where the Act imposes duties, restrictions or prohibitions in respect of these places. These include the power to:

- enter and inspect premises at a reasonable time
- take photographs or videos
- take air samples
- inspect advertising or display material
- seek identifying information from any person when a sale to a minor has occurred.

Enforcement officers are not permitted to enter private dwelling houses, unless they have the consent of the occupier, or if they have the power of entry under other legislation.

The Police may accompany an enforcement officer in the execution of the enforcement officer's powers of entry and inspection.

G2) Who is enforcing the changes, and how?

The Ministry of Health is the lead agency enforcing the smokefree legislation. The smokefree law provides some limited powers for smokefree officers to enforce the law (eg, to investigate complaints, and seek identifying information and collect evidence [for retail-based offences]).

The Ministry is concerned to ensure that the public and all people directly affected by the Act are educated on its provisions, and in particular, their responsibilities under the Act.

There has been 95 percent compliance with smokefree provisions in New Zealand since 1990, with only two workplace prosecutions in over 10 years. New Zealanders strongly support the smokefree provisions (90 percent, including most smokers) and are likely to comply with it.

G3) How likely is it an employer or proprietor will be fined for a smoker smoking on their premises?

Not likely. The focus of the smokefree law and the smokefree officers enforcing the law will be on encouraging public health protections against second-hand smoke with public support and voluntary compliance.

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G4) What kind of penalties are employers, school managers and businesses liable for?

The Ministry is concerned to ensure that the public and all people directly affected by the Act are educated on its provisions, and in particular, their responsibilities under the Act.

The provisions relating to workplaces and hospitality venues came into effect from December 2004.

The provisions for schools and early childhood centres came into effect from January 2004.

It is rare for people to be prosecuted – there have been only two cases in the past decade for employers failing to meet the smokefree requirements for workplaces. It is the failure not to take all reasonably practicable steps that will breach the new law rather than the act of smoking itself.

The following table outlines the possible offences and penalties in respect of tobacco and herbal smoking products.

Offence	Penalty
Under-18 sale of a tobacco or herbal smoking product.	Fine of up to \$2,000
Under-18 supply of a tobacco or herbal smoking product.	Fine of up to \$2,000
Under-18 sale of a toy tobacco product.	Fine of up to \$2,000
Display of tobacco products contrary to product display restrictions.	Fine of up to \$10,000
Co-packaging of tobacco and other products.	Fine of up to \$10,000 (manufacturer, importer or distributor) or \$5000 (in any other case)
Public access to a vending (tobacco or herbal smoking products) machine.	Fine of up to \$2000
Failure to comply with a court order for repeat offences.	Fine of up to \$10,000 (body corporate) or \$4000 (in any other case)
Selling or offering to sell a tobacco or herbal smoking product that fails to comply with the labelling and health messages requirements.	Fine of up to \$10,000 (manufacturer, importer or distributor) or \$4000 (in any other case)
Distribution free of charge or at a reduced rate.	Fine of up to \$50,000
Offering a reward.	Fine of up to \$10,000 (body corporate) or \$5000 (individual)
Failure to conduct annual testing.	Fine of up to \$10,000
Failure to submit returns and reports.	Fine of up to \$10,000

G5) What happens if individuals insist on smoking in a smokefree area?

Fines will not be imposed on individual smokers for smoking in indoor workplaces (although individual smokers will be fined for smoking on an aircraft).

Employers, proprietors and other people present should advise the smokers that their smoking is unlawful and ask them to stop smoking or leave the premises.

It is up to employers and proprietors to take 'all reasonably practicable steps' to ensure that no one smokes in the workplace/premises. For the purposes of the Act, a reasonably practicable step is defined as what a reasonable and prudent person would do in similar circumstances. A failure to take such steps is a breach of the law under the Act and can result in a fine of up to \$400 (individual) or \$4000 (body corporate).

Reasonably practicable steps include displaying 'no-smoking at all times' signs, not providing ashtrays and giving oral warnings to those people who smoke.

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G6) Who does an employee complain to about breaches of the workplace smokefree law?

Complaints about workplace smoking should be made in the first instance to the employer, although in practice it is likely that people will complain to the smokefree officer at their local Public Health Unit.

If the employer fails to remedy the situation within 40 working days, the employer must refer the complaint to the Director-General of Health.

G7) What are the offences for breaching youth access restrictions?

The following table outlines the possible offences for breaching youth access restrictions.

Offence	Penalty
Under-18 sale of a tobacco or herbal smoking product.	Fine of up to \$2,000
Under-18 supply of a tobacco or herbal smoking product.	Fine of up to \$2,000
Under-18 sale of a toy tobacco product.	Fine of up to \$2,000
Public access to a vending (tobacco or herbal smoking products) machine.	Fine of up to \$2,000
Failure to comply with a court order for repeat offences.	Fine of up to \$10,000 (body corporate) or \$4000 (in any other case)
Obstruction of enforcement officer exercising powers/fails to provide information required	Fine of up to \$1,000 (individual retailer)

G8) What are the offences for breaching the tobacco product display, testing or returns restrictions?

The following table outlines the possible offences for breaching the tobacco display, testing or returns restrictions.

Offence	Penalty
Display of tobacco products contrary to product display restrictions.	Fine of up to \$10,000
Co-packaging of tobacco and other products.	Fine of up to \$10,000 (manufacturer, importer or distributor) or \$5000 (in any other case)
Public access to a vending (tobacco or herbal smoking products) machine.	Fine of up to \$2,000
Failure to comply with a court order for repeat offences.	Fine of up to \$10,000 (body corporate) or \$4000 (in any other case)
Selling or offering to sell a tobacco or herbal smoking product that fails to comply with the labelling and health messages requirements.	Fine of up to \$10,000 (manufacturer, importer or distributor) or \$4000 (in any other case)
Distribution free of charge or at a reduced rate.	Fine of up to \$50,000
Offering a reward.	Fine of up to \$10,000 (body corporate) or \$5000 (individual)
Failure to conduct annual testing.	Fine of up to \$10,000
Failure to submit returns and reports.	Fine of up to \$10,000
Obstruction of enforcement officer exercising powers/fails to provide information required	Fine of up to \$1,000 (individual retailer)