

**Manatū Hauora**

# **Smokefree Compliance and Enforcement Manual**

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Chapter 9: Controlled Purchase Operations

Released under the Official Information Act 1982

## Chapter 9: Controlled Purchase Operations

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### Introduction

Controlled Purchase Operations (CPOs) are planned operations designed to monitor and enforce the provisions in the SERPA relating to the sale of regulated products to minors. The meaning of regulated products is found in section 2 and means a tobacco product, vaping product, or herbal smoking product.

CPOs involve supervised volunteers aged between 14 and 17 years of age attempting to buy regulated products from retail premises including dairies, supermarkets, specialist vape retailers and service stations. In the event that a volunteer's purchase is successful, the seller and in some instances, the owner are liable to an infringement fine in the first instance, or prosecution via the District Court.

For the purposes of this chapter, reference to the word 'minor' means a person younger than 18 years of age.

### The Law

The sale of tobacco, vaping and herbal smoking products to minors is prohibited under section 40. In the event of a sale to a minor, the seller *and* the owner may be liable even though the owner was not the person who sold the regulated product to the minor.

### Defences

#### 'Reasonable Precautions' and 'Due Diligence'

Section 40(3) of the SERPA provides a defence to a charge of selling a regulated product to a minor if the person charged proves that the sale occurred without the person's knowledge and that they took 'reasonable precautions' and exercised 'due diligence' to ensure that the person they sold the regulated product to was 18 years of age or older.

The meaning of 'reasonable precautions' is 'action taken beforehand'. 'Due diligence' refers to the level of judgement and care that a person would reasonably be expected to do under particular circumstances. The defendant must produce evidence that action was taken before the event to determine the age of the person to whom the tobacco or herbal smoking product was sold, or (in the case of the

prosecution of the owner of the shop) that a procedure was in place to check the age of a buyer and that staff were trained in and aware of this procedure.

The owner must have taken active steps to check for proof of age *before* they can activate the defence provision, for example, location of under 18 stickers, written policy and procedures and training of staff members.

Where an owner seeks to use this provision as a defence to a charge based on the acts of the owner's staff, it is unlikely to be sufficient that the owner has simply orally instructed staff not to sell to under aged persons. The owner must have substantive and clear policies and procedures regarding the sale of tobacco and herbal products which have been adequately communicated to staff.

### 'Evidence of Age' Document – Section 40(4)

In addition to section 40(3), a specific defence to a charge of selling a tobacco or herbal smoking products is contained in section 40(4). Where a person proves that they sighted an 'evidence of age' document indicating that the person to whom the product was sold was 18 years of age or older, they are deemed to have proven those matters referred to in section 40(3).

The types of 'evidence of age' identification that are permissible are the same as for the Sale and Supply of Alcohol Act 2012. These include a driver's licence, passport or Kiwi Access card (formerly known as a HANZ 18+ card). These are all photo ID cards. The original document must be presented – it cannot be a photo or copy of the document.

## Penalties

### Repeat Offenders

A person who sells a tobacco, vaping or herbal smoking product to a minor is liable to be issued with an infringement notice. A person who sells to a minor on a further occasion may be prosecuted via the District Court and if convicted, is liable to a fine up to \$5,000 in the case of an individual, or \$10,000 in the case of a body corporate.

In addition, where a retailer has been convicted at least twice within a two-year period of selling a tobacco product to a minor, the Court has the power under section 45 to make a prohibition order, which may include an order preventing the person (and/or the shop where the offence occurred) from selling tobacco products for up to three months. A prohibition order may be made in addition to any other sentence (ie, a fine) that the Court is able to impose.

A person who fails to comply with a prohibition order may be fined up to \$5,000 (individual) or \$10,000 (body corporate).

## Volunteers

CPOs and resulting prosecutions depend upon well-trained and credible volunteers. It is therefore important that volunteers are carefully selected and are willing to participate in the CPO without reservation. If they appear too nervous, the retailer may be more likely to request ID.

### Finding a volunteer

There are many sources of CPO volunteers. These include:

- Children of staff
- Children of local police
- Relatives of yourselves, colleagues, friends
- Children of colleagues or people in personal or business networks
- Local secondary schools
- Employment services
- Other youth organisations.

Volunteers must not be approached directly. Parental/guardian consent is the first and most important criteria for selection of volunteers.

### The Volunteer's Age

It is Ministry of Health policy that it is both appropriate and necessary to use underage volunteers to help enforce section 40 of the SERPA. Volunteers must be aged between 14 and 17 years.

### The Volunteer's Appearance

Volunteers should represent their age group – that is, look and act their age.

- During the CPO, they should dress in their normal clothes and avoid appearing older than they are. Make-up must not be worn
- Hats, beanies, sunglasses, caps or other clothing that can 'disguise' a volunteer's features must not be worn
- Should a Court hearing eventuate the volunteer should dress as they did on the day of the CPO. This, together with the photographs taken of the volunteer on the day of the CPO, helps the Judge form a view from the retailer's perspective.

## The Volunteer's Safety

The following points must be followed to ensure the safety of the volunteer:

- The volunteer must always be accompanied by two adults on car journeys to CPO locations
- At least one adult (ie a person 18 years of age or older) must stay in the car with the volunteer at all times
- The need for the volunteer to cross a busy road or exit the car from the driver's side at premises should be avoided
- Volunteers should be told that they can cease a CPO at any time if they feel unsafe

## The Ideal Volunteer

The ideal volunteer must:

- Want to be part of the CPO and not feel pressured to continue if they want to withdraw at any time
- Be able to cope with being 'told-off'. Sometimes retailers refusing to sell cigarettes will also lecture the volunteer or be angry that they have tried to purchase restricted products. The volunteer should be warned that this is likely to happen
- Look under 18 years of age. It is not the aim of a CPO to 'trick' retailers into selling restricted products to young people, but rather to identify and apprehend retailers who knowingly or recklessly sell to minors
- Be available after school, during weekends or school holidays
- Understand that if the matter is defended, they may be required to give evidence in Court. It is important to explain to volunteers and their parent(s)/guardian that this is a possibility. A defended hearing may mean time off school for the volunteer (about a half-day for each defended matter). It is therefore important that the Enforcement Officer maintains regular contact with the volunteer and their parent(s)/guardian. To avoid last-minute surprises, the Enforcement Officer should find out if and when the volunteer will be unavailable because of holidays, exams or other commitments.

## Paying Volunteers

Section 36(1) of the SERPA provides that any person who buys a tobacco product cannot be offered gifts, cash rebates or the right to participate in any contest or game in consideration for the purchase of that product.

However, section 36(3) provides the following exception:

*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.*

It has been common practice to pay volunteers for their time or provide them with a gift voucher irrespective of the CPO outcome. Payment shall be made to volunteers at the end of a CPO. The amount of any payment should be at least commensurate with the minimum youth wage. Information on the current wage rates is available from <https://www.govt.nz/browse/work/workers-rights/minimum-wage/>.

It is important to ensure that volunteers understand that payment is for the entire CPO and is not related in any way to sales made during an operation, or the success of any prosecution action. Volunteers in CPOs that do not result in any sales are therefore paid the same amount as volunteers in CPOs where one or more sales occur.

## Briefing the Volunteer and their Guardian(s)

Once a suitable volunteer has been selected, a time should be arranged to speak with the volunteer and their parent(s)/guardian. This should be done at the convenience of the volunteer's family and in their own home if they prefer.

Informed consent must be obtained from the volunteer and the parent(s)/guardian so it is important to talk to both at length and answer any questions they may have.

During the meeting, the following points should be discussed:

- Why the CPO is being conducted and who will be involved. Section 40 of the SERPA should be explained in simple terms. Volunteers should be reassured that they are not committing an offence by buying cigarettes, vape or herbal smoking products
- Expectations on the volunteer. The points made under the section 'The Ideal Volunteer' should be discussed

- The importance of being able to identify the person who sold the cigarettes, vapes or herbal smoking product. Sometimes the one point at issue in a Court hearing is the identity of the person who actually sold to the volunteer
- The procedure for the day. The pick-up and drop-off times should be specified, together with the names of other Enforcement Officers or staff who will be involved in the CPO, and the area to be covered
- The fact that there will be no attempt to trick the retailer. The volunteer will be expected to tell the truth about their age if asked
- The need for confidentiality. It is important that the volunteer is clear that they should not discuss the specific shops visited with anyone
- Clothing to be worn. School uniform or casual and age-appropriate clothing should be worn if the CPO is carried out after school, otherwise casual and age-appropriate clothing at any other time. It is important that the volunteer looks their age. Hats must not be worn, as the retailer should be given every opportunity to have a clear view of the volunteer so that they can accurately assess the volunteer's age. Makeup is not to be worn
- The volunteer notes. The volunteer and their parent(s)/guardian should be shown the Volunteer CPO Notes (CPO4) that the volunteer will be required to complete in the event of a sale so that the volunteer and their parent(s)/guardian are aware of the detail that the volunteer will be expected to gather while in the shop and during the sale. The reason why such detail is required should be explained as well as its place in the Court process. The volunteer should be told that if they do not remember a detail, it is better to write 'unknown' than to guess
- A volunteer must not be sent into their local dairy or service station, or one owned by a family friend or associate. The Enforcement Officer must check whether the volunteer has any relationship with any of the outlets that will be visited during the operation
- The enforcement process should be briefly explained including:
  - A file will be prepared and sent to the Ministry of Health in Wellington. A decision will be made by the Ministry on whether to issue the seller with an Infringement Notice.
  - If the person to whom an infringement notice is issued denies liability, the volunteer may have to attend Court as a witness.
  - If the seller has sold to a minor on previous occasions, a decision may be made to initiate a prosecution. If a decision is made to initiate a prosecution, the file will be sent to the Crown Solicitor and the case will

be heard in the District Court. The seller/owner has the opportunity to plead either guilty or not guilty to the charge.

- If the seller/owner pleads not guilty, the volunteer may be required to attend the District Court hearing and give evidence. Name suppression will be sought so the media cannot report the volunteer's name, however name suppression cannot be guaranteed
  - If the volunteer is required to attend Court as a witness, the volunteer and their parent(s)/guardian will be kept up to date with the progress of matters leading up to the prosecution. The parent(s)/guardian and the volunteer should be provided with the Enforcement Officer's contact details so they can make contact if they have any questions
  - If the retailer contacts or tries to contact the volunteer before the Court hearing, the parent(s)/guardian must inform the Enforcement Officer immediately so that this can be reported to the Crown Solicitor acting in the case
- The need to have a copy of the volunteer's birth certificate
  - The need to have a photograph of the volunteer. A facial and full-length photograph will need to be taken. The height of the volunteer (in centimetres) also needs to be recorded
  - Ensure the volunteer and their parent(s)/caregiver(s) know what day and time the volunteer will be collected from home.

The volunteer will also need to be provided with food during the CPO, so check beforehand for any special dietary requirements.

Once the process has been fully explained, the volunteer and their parent(s)/guardian must complete the *Volunteer Consent Form (CPO2)*.

## Planning the CPO

The following factors need to be considered when planning a CPO:

### Timing

- The CPO will need to be planned around school hours. Volunteers must not be taken out of school
- Up to 45 – 50 minutes should be allowed for each sale
- The premises that are planned to be visited should be mapped out before beginning the CPO
- Consider conducting a CPO outside of school holidays, ie in the weekends/after school.



## Compliance Visit

**Note:** It is Ministry of Health policy that all premises selected for inclusion in a CPO must first receive a compliance visit from an Enforcement Officer or Health Promoter within 6 months of the CPO is carried out. The purpose of the visit is to ensure that the owner is aware of their legal obligations regarding the sale of tobacco, vaping and/or herbal smoking products to minors and to provide any signage or Ministry of Health pamphlets that will assist the owner with understanding these obligations.

The compliance visit must be documented on the *Compliance Inspection Record: Tobacco Retailer Form (CPO1)* and must be included in the case file.

Following the visit, premises must be ranked according to a risk assessment approach to determine which premises will be included in the CPO. This approach ensures that enforcement resources are used effectively by ensuring that premises at a higher risk of non-compliance are included in the CPO in preference to lower risk premises.

**Note:** Factors that must be considered as part of a risk assessment approach include:

- whether the premises has had previous complaints recorded against it
- whether previous warnings have been given
- the location of the premises eg, proximity to schools; level of deprivation
- the time elapsed since the last CPO.

## The Day of the CPO

### Equipment

- An unmarked car
- A list of premises to be visited and their addresses
- A street map or GPS
- Two photographs of the volunteer taken on the day of the CPO. If wearing a mask, take photos with and without the mask.
- Money for purchases

- Money for food and other incidentals
- Evidence bags. Self-sealing plastic bags make the most effective evidence bags. They can be sealed instantly so that none of the change is lost. Self-sealing, clear plastic bags are available from supermarkets
- Evidence labels. A stack of evidence labels containing the following information should be kept. Some of this information can be pre-printed for easy use during the operation:
  - what was purchased (ie a packet of Holiday 20s)
  - where it was purchased from
  - exact time and date that evidence was put into bag
  - who the evidence was given to, ie received by J Smith
  - name of the purchasing volunteer
  - the amount of change in the bag.
- A cell phone
- A clipboard and pen. It is extremely important that the CPO forms are completed as soon as there has been a sale and a clipboard is useful to write on in the car
- A good supply of the following hard copy/paper forms:
  - CPO4 - Volunteer Controlled Purchase Operation Notes
  - CPO5 - Interview Under Caution
- A notebook (preferably a hardback A4 ruled lecture book)
- Instrument of Appointment and Ministry of Health photographic identification.

## The Volunteer

- Take two photographs of the volunteer. One photograph should be full length to portray the volunteer's relative height against a doorframe or similar reference point, and one 'head and shoulders' shot that clearly reveals the volunteer's face to give an accurate representation of the volunteer's appearance at the time of the CPO
- The photographs of the volunteer should be secured in a plastic sleeve. The name of the volunteer must not be written on the photographs or the sleeve until after the CPO is completed as the retailer may see the name of the volunteer when they are shown the photograph

- The time, date and the place where the photograph was taken and who took the photo must be recorded. The photographs will need to be taken along on the day of the CPO
- The volunteer's height should be measured by the same Enforcement Officer who took the volunteer's photographs, and recorded in the Enforcement Officer's notebook
- A copy of the volunteer's birth certificate must be obtained
- The volunteer must read and sign the Volunteer Information Form (CPO3). Check with the volunteer that they understand what is required of them during the CPO
- Spend time going over the *Volunteer Controlled Purchase Operation Notes (CPO4)* with the volunteer – their observations will be crucial to a successful prosecution. It should be explained that this is the level of detail that they will need to remember and record. Consider conducting a 'test run' in a store where there is no attempt to purchase. This may also 'fine-tune' the volunteer's observation skills. The volunteer should write down as much detail as possible
- Make sure the volunteer is not carrying any identification.

## Visiting Retail Premises

- Proceed to the first premises to be tested. Where practicable, park the car within sight of the entrance of each premises visited, so that the volunteer is in view for as long as possible. Do not park directly outside, or where the shop attendant can easily see the volunteer return to you.
- Write the time of arrival at the premises, together with the date and the name of the premises
- Give the volunteer the final instructions and the money for the attempted purchase. Confirm with the volunteer exactly what they will say when asking for cigarettes, vape product or a herbal smoking product:

*ie 'Can I please have a packet of Horizon 20's?'*

- If the volunteer is purchasing cigarettes, discuss with them whether they are to ask for menthol or filter cigarettes
- If the volunteer is purchasing vapes, discuss with them what flavour they will ask for. (Bear in mind whether the premises is a SVR when considering flavours.)

- Discuss with the volunteer exactly how much the cigarettes, vape or herbal smoking product will cost
- Remind the volunteer that only tobacco, vapes or herbal smoking products are to be purchased
- Remind the volunteer to tell the truth about their age if asked. If the retailer still continues with the sale, they are to buy the products
- If another person in the shop tells the volunteer that it is illegal to buy cigarettes/vape/herbal smoking products (such as another staff member or a member of the public) the volunteer should leave the shop immediately
- Tell the volunteer that they may be asked the following questions, and that these are the correct answers:

**Q.** *Do you know that you have to be 18 to buy cigarettes/herbal smoking products?*

**A.** Yes.

**Q.** *Do you know how old you have to be to buy cigarettes/vape/herbal smoking products?*

**A.** Yes. 18.

**Q.** *How old are you?*

**A.** 14 – 17 (truthful answer)

**Q.** *Are you buying cigarettes/vapes/herbal smoking product for anyone else (ie parent)?*

**A.** No.

**Q.** *Are the cigarettes/vape/herbal smoking product for you?*

**A.** Yes.

**\*** *I don't sell Horizon 20s*

**A.** *Then can I have (different brand name) please.*

If the volunteer does not feel comfortable with giving these answers, their continued participation in the CPO should be reassessed.

- The volunteer should aim to buy from the person who appears to be in charge of the shop, either the owner or a person who appears to be over the age of 17. If there is more than one person behind the counter, the volunteer should direct the sale to the person who is not a child or young person. If there is only a child or young person serving in the shop, the

volunteer should not try to buy cigarettes or herbal smoking products from this person

- The volunteer should be shown the *Volunteer Controlled Purchase Operation Notes (CPO4)* to remind the volunteer what they should be looking for while they are in the shop
- Reassure the volunteer that if they no longer want to continue, the CPO will end, and their efforts would have been appreciated.

## No Sale

If no sale takes place the volunteer will return to the car, retain the money for the purchase, and repeat the process at the next shop.

## Where a Sale is Made

The volunteer should return to the car immediately. The cigarettes, vape or herbal smoking product must be handed over to the Enforcement Officer, who will complete an evidence label and put the change and the cigarettes in a plastic evidence bag. The time and date the evidence was received must be recorded.

The volunteer must then complete the *Volunteer Controlled Purchase Operation Notes (CPO4)*. The volunteer's description of the seller should be written down and the seller's description should be verified with the volunteer before the Enforcement Officer enters the premises.

## Interviewing the Seller and Owner

The volunteer must stay in the car while the Enforcement Officer enters the shop to interview the seller. The volunteer must be accompanied at all times by the other staff member while left in the car – although the person who remains in the car does not need to be an enforcement officer. There have been instances where angry retailers have followed Enforcement Officers out of the shop and tried to speak to the volunteer.

The photographs of the volunteer must be taken into the shop, along with the Enforcement Officer's Instrument of Appointment, photographic identification and the *Interview Under Caution Form (CPO5)*.

Upon entering the shop, the Enforcement Officer should approach and introduce themselves to the seller. The reason for the visit should be explained, and that the Enforcement Officer has some questions they would like to ask.

The interview with the seller must be recorded on the *Interview Under Caution - CPO Form (CPO5)*. Begin the interview by asking the seller their full legal name (ie

the name on their passport including middle names) and address. As Enforcement Officers have a statutory power under section s94(2) of the SERPA to require identifying information (ie name and address) from the seller, it is not necessary to issue a caution before asking the seller for their name and address. However, a caution must be administered *before* any further questions are asked. Note that you cannot require any further information from the seller – for example, their date of birth.

The seller's name and address may also be requested from the person who appears to be in charge under s94(2)(b).

Section 94(3) says that if an Enforcement Officer suspects that the seller is under 18 years, they must not ask for identifying information from that person unless the person in charge is not present, or the person in charge is present, but the Enforcement Officer suspects that the person in charge is also younger than 18 years.

In addition, the enforcement officer cannot request the person in charge to provide information if they suspect the person in charge of the place is younger than 18 years.

If the seller refuses to provide their name and address, they must be informed that they are committing an offence and may be liable for a fine of up to \$10,000.

If the seller asks for a lawyer or someone else to be present during the interview, the Enforcement Officer must agree to this (see *Chapter 6: Interviews*). If there is going to be a delay, it will almost certainly be best to arrange another meeting time rather than leaving the volunteer waiting in the car.

If it appears that the seller is having difficulty understanding the questions, they should be offered the services of an interpreter. If the seller would like to have an interpreter present, the interview should cease, and the Enforcement Officer should return to the office to arrange a suitable time to return to the premises with the interpreter. A friend, family member or colleague cannot act as an interpreter during an interview under caution.

It is Ministry of Health policy to charge both the seller and the owner in appropriate cases. Often the seller and the owner will be the same person. If this is not the case, an interview under caution must be conducted with the owner as well as the seller.

Enforcement Officers should avoid getting into a general debate with retailers about CPOs. Lead the conversation naturally along the interview, and bring it back to the topic if things go off-track. If a retailer becomes threatening or abusive, the

Enforcement Officer should leave immediately. The details of the conversation and surrounding circumstances should be recorded in the Enforcement Officer's notebook. If the threat was serious, inform the police.

If the shop is particularly busy it may be appropriate to record only contact names and come back to speak with the seller and owner at a later time. You can ask what time that same day they will be less busy, or when they can have more staff in to support.

The seller must be shown the photograph of the volunteer and asked whether they recognise them. The seller must not be asked how old they think the volunteer is. The seller should then be told how old the volunteer is, and that they have just purchased cigarettes, vape or a herbal smoking product from their shop.

If at any point during the interview, the seller states that they are under the age of 17 years, the interview must cease immediately. It is not Ministry of Health policy to prosecute children and young people. They are not to be interviewed. However, the owner should still be interviewed as they may be prosecuted.

The following flowchart outlines the sequence of, and the questions that must:

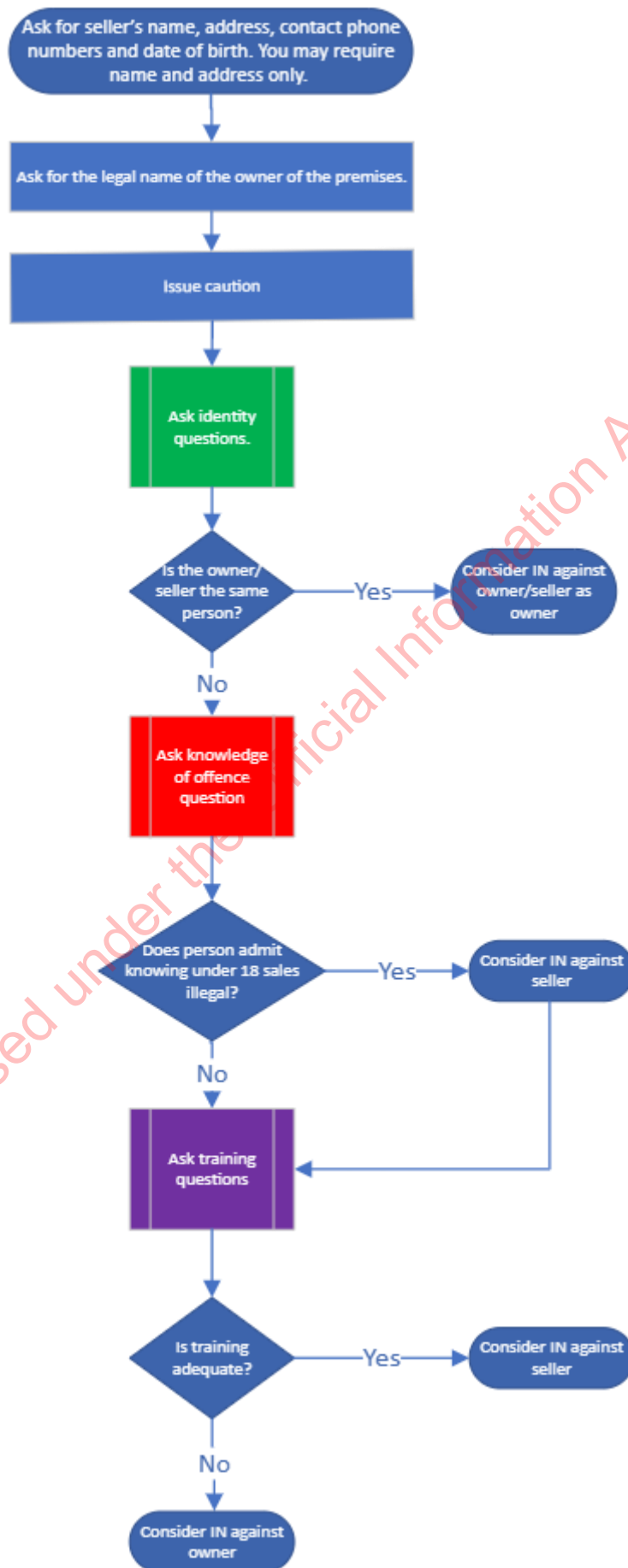
- I. be put to the seller; and
- II. if the seller has had no training, the owner.

If the seller is not the owner and the seller states that they have received training on the sale of cigarettes, vape or herbal smoking products to persons under the age of 18, there is no need to interview the owner (*Refer flowchart and questions on the following pages*).

If the seller states that they have not received training on the sale of cigarettes, vape or herbal smoking product to persons under the age of 18, the owner must also be interviewed in addition to the seller (*Refer flowchart and questions on the following pages*)

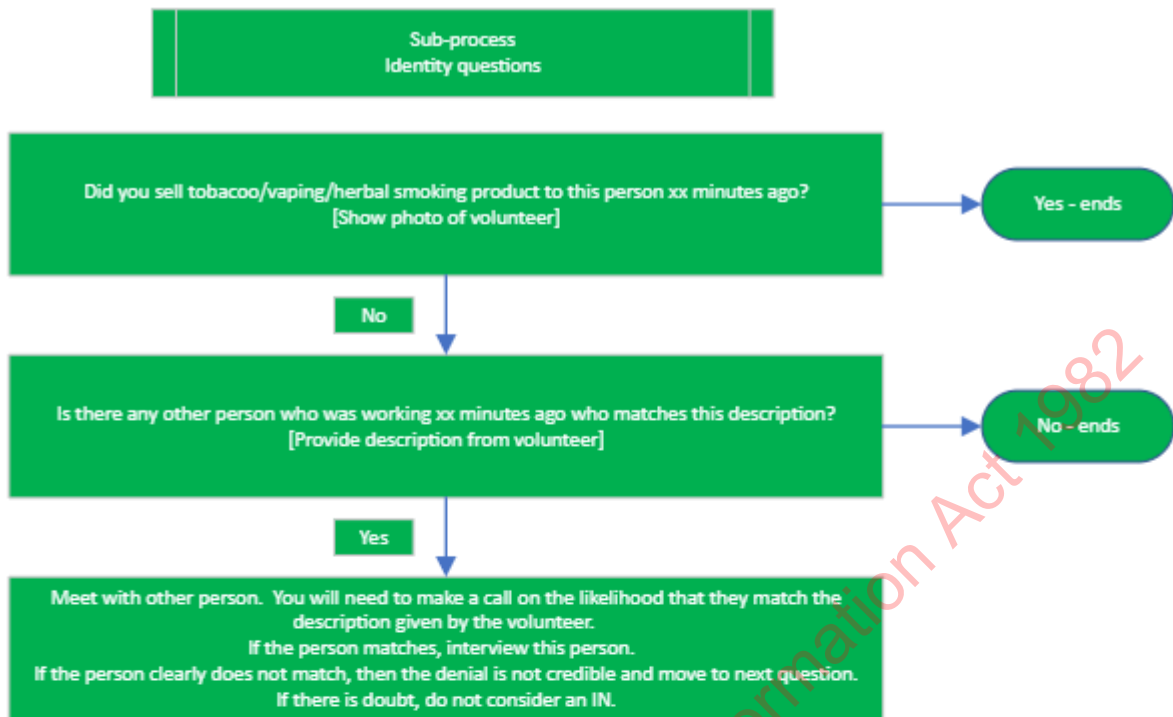
Note that the colour of the boxes in the flowchart match the questions that should be asked under each subprocess on the following page.

IN the case that the owner and the seller are the same person, there is no need to go further than asking the identity questions. Training and admission of knowledge of the offence are not elements that need to be proven.



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Sub-process  
Knowledge of offence question

Did you know it is against the law to sell cigarettes/vapes/herbal smoking products to a person younger than 18 years?

Sub-process-  
Training questions

Have you been given training on selling cigarettes/vapes/herbal smoking products to young people under 18?

No - ends

When did the training occur?  
What were you told during training about selling to young people under 18 years?  
Why did you not follow the training when selling to the volunteer?

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At the end of the interview, ask the person being interviewed if there is anything else that they would like to say. Give them the opportunity to read and sign the statement and initial any corrections. If the person refuses to sign their statement, ask them why. Record any reason given and the fact that they have refused to sign.

If the seller or owner requests a copy of their statement, they should be provided with a copy.

Inform them that the file will be sent to the Ministry of Health for a decision on enforcement action. Give them a copy of your business card or a phone number should they wish to contact you.

## Questions Asked During an Interview

Following are some questions that may be asked during the interview and some suggested responses. Remember that all questions asked by the seller or owner, and any responses given, must be recorded.

- Q.** *Do I have to answer these questions?*
- A.** *No, you are not required to answer any questions but this is your opportunity to explain what happened and make any comments.*
- Q.** *Will I be fined/charged?*
- A.** *That is not my decision. I will complete the file and send it to the Ministry of Health for their decision.*
- Q.** *But your volunteer told me that they were 18.*
- A.** *Our volunteer was instructed to tell you their real age if asked.*
- Q.** *You tricked me.*
- A.** *There was no attempt to trick you. Had you asked our volunteer their age, they would have told you. There was no entrapment.*
- Q.** *Can my lawyer be here when you talk to me?*
- A.** *Certainly. If there is going to be a delay before they are available then, perhaps we could organise a time to meet later.*
- Q.** *Can I see the volunteer?*

- A.** *No, but you can look at the photograph. Their date of birth is (month and year only).*

At the conclusion of the CPO the volunteer must be taken home or returned to their guardian. The Enforcement Officer should give the volunteer's guardian(s) a debrief on the day and what the volunteer was involved in, including any issues the volunteer dealt with, such as an angry retailer. Explain that the files will be completed and sent to the Ministry of Health for a decision as to whether or not to issue an Infringement Notice or prosecute.

## Back at the Office

Ensure that all evidence is securely locked away and complete the Chain of Custody Form.

**Send a letter to the seller and the owner (or just the seller if the seller and owner are the same person) advising of the CPO and the sale to the volunteer.**

Send out no sale letters to those premises that did not sell tobacco products to the volunteer (CPO6).

A final check should be made to ensure that all notebook entries are complete and all relevant information and forms have been placed on the case file.

## CPO Infringement File

As a result of the 2011 amendments to the SERPA, an Infringement Notice scheme was introduced. The scheme is considered much more efficient to deal with persons who sell tobacco, vape or herbal smoking products than by way of prosecution via the District Court.

Infringement fees are not imposed by the Court so they are set at a lower level. Infringement fees are generally between 10% and 20% of the maximum penalty available to the Court. The infringement fee for selling a regulated product \$500 for both a body corporate and an individual.

A prosecution will be initiated only in limited circumstances. This may include where a person has been issued with two Infringement Notices for selling a tobacco or vaping product.

Documents that must be included as part of a CPO Infringement File are:

- Infringement File Cover Sheet (CPO8)
- Certificate of Incorporation (If applicable)

- Incident Report (CPO9)
- Notebook Entries
- Interview Under Caution (CPO5)
- Volunteer Controlled Purchase Operation Notes (CPO4)
- Photographs of volunteer
- Copy of volunteer's birth certificate.

A copy of the entire CPO Infringement File must be scanned and emailed to [infringementfees@health.govt.nz](mailto:infringementfees@health.govt.nz) and cc in [enforcement@health.govt.nz](mailto:enforcement@health.govt.nz) and [smokefree@health.govt.nz](mailto:smokefree@health.govt.nz).

## CPO Prosecution File

Where a person has been issued with previous Infringement Notices for selling a regulated product and has subsequently sold a tobacco, vaping or herbal smoking product to a minor, a prosecution via the District Court may be the appropriate course of action.

Where a prosecution is recommended, an Enforcement Officer must record this on the Incident Report (CPO9) and clearly state the reasons for the recommendation.

Other reasons for recommending a prosecution include (but are not limited to) the following:

- The person has previously been convicted of selling a tobacco product to a minor
- The person has a history of non-compliance with public health legislation (ie selling regulated products to minors).

Health Legal will decide on whether or not prosecution proceedings should be initiated, taking into account the contents of the CPO Infringement File and the Enforcement Officer's recommendation as well as the Prosecution Policy and the Solicitor-General's Prosecution Guidelines.

Where a decision is made to prosecute, a Caption Sheet, Evidence List and a Summary of Facts must be drafted. The Prosecution File Cover Sheet (CPO12) must be completed and together with the documents listed in the Prosecution File Cover Sheet (CPO 12), be emailed to Health Legal at the Ministry of Health at [infringementfees@health.govt.nz](mailto:infringementfees@health.govt.nz) and cc in [enforcement@health.govt.nz](mailto:enforcement@health.govt.nz) and [smokefree@health.govt.nz](mailto:smokefree@health.govt.nz).

A prosecution must be taken within 1 year of the offence and is initiated with the filing of a Charging Document Information (See *Chapter 3: Powers of Enforcement Officers*).

District Court prosecutions can be taken against:

- The owner of the shop that sold the regulated product to the volunteer
- The seller – ie the person who sold the regulated product to the volunteer.

## The Volunteer and the Court Process

- It is not the Ministry of Health's policy to insist that an unwilling volunteer give evidence if they decide after the CPO that they do not want to attend Court. The likelihood of this occurring can be minimised by carefully preparing and supporting the volunteer.
- Under disclosure, the defence is entitled to all documents relating to the CPO. This means that the name of the volunteer may be disclosed. Parents or guardians of the volunteer must be made aware of this fact.
- It is important to ensure that a volunteer who is required to give evidence is supported by the Enforcement Officer. The Justice Department has developed resources to give young people some information about the Court process. These resources are available from the Ministry of Justice website at [www.justice.govt.nz](http://www.justice.govt.nz).
- When giving evidence, the volunteer will be able to refresh their memory from the notes they made immediately after they were sold the cigarettes/herbal smoking product. The volunteer may be asked to identify the person who sold them the cigarettes/vape/herbal smoking product. Once the volunteer has finished giving evidence, they will be able to leave the Court even though the case may not be finished.

## Notebooks

An Enforcement Officer's notebook is used to:

- Record anything of significance that occurs during the course of the investigation
- Provide a reference source for records of interviews
- Act as a memory prompt when testifying in Court.

It is important to follow the note taking procedures carefully, to avoid doubt about the information collected.

Evidential notebooks are particularly useful to refresh a person's memory when testifying in Court. Generally, it takes 6 to 9 months to have a matter heard in the District Court, sometimes longer. It is therefore important that every notebook entry is completed correctly and with as much relevant information as possible. Entries should be neat, accurate and complete.

For further information on the formal requirements for notebooks and notebook entries, refer to *Chapter 8: Notebooks*.

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## Procedure

### 1.0 Planning the CPO

- 1.1 Prepare a list of premises to be visited using a risk assessment approach.
- 1.2 Plan the CPO around school hours.

### 2.0 Volunteer Selection and Briefing

- 2.1 Short-list a pool of prospective volunteers aged between 14 and 17 years.
- 2.2 Obtain the consent of the parent/caregiver of the volunteer before approaching the volunteer.
- 2.3 Meet with the volunteer and their parent/caregiver to discuss all aspects of the CPO including:
  - 2.3.1 The importance of being able to identify the seller.
  - 2.3.2 The procedure for the day.
  - 2.3.3 The fact that the volunteer will be expected to tell the truth about their age if asked.
  - 2.3.4 The need for confidentiality.
  - 2.3.5 The CPO Volunteer Notes (CPO4).
  - 2.3.6 The prosecution process.
- 2.4 Inform the volunteer that they are to dress in normal clothing and avoid appearing older than they are ie by wearing make-up or obscuring their features with a hat or beanie.
- 2.5 Ask the volunteer and their parent/caregiver to read and sign the *Volunteer Consent Form (CPO2)*.
- 2.6 Obtain a certified copy of the volunteer's birth certificate.

### 3.0 The Day of the CPO

- 3.1 Check with the volunteer that they understand what is required of them during the CPO.
- 3.2 Provide the volunteer with a list of premises to be visited during the CPO to check that they have no relationship with any of the outlets that will be visited during the CPO.
- 3.3 Go through the *Volunteer Information Form (CPO3)* with the volunteer.



- 3.4 Ask the volunteer to read and sign the *Volunteer Information Form (CPO3)*.
- 3.5 Take a full length and "head and shoulders" photograph of the volunteer.
- 3.6 Record the time, date and the place where the photographs were taken and who took the photographs.
- 3.7 Do not record the volunteer's name or details on the photographs.
- 3.8 Secure the photographs of the volunteer in a plastic sleeve.
- 3.9 Measure and record the volunteer's height in centimetres.
- 3.10 Make sure the volunteer is not carrying any identification.

#### 4.0 Visiting Retail Premises

- 4.1 Use an unmarked car where possible.
- 4.2 Ensure that at least two adults accompany the volunteer on car journeys to CPO locations.
- 4.3 Ensure that at least one adult stays in the car with the volunteer at all times.
- 4.4 Wherever possible, avoid the need for the volunteer to cross a busy road.
- 4.5 Where practicable, park the car within sight of the entrance of each premises visited, so that the volunteer is in view for as long as possible.
- 4.6 On arrival at the first premises, record the date, time of arrival at the premises together with the name of the premises.
- 4.7 Give the volunteer the final instructions and the money for the attempted purchase.
- 4.8 Ask the volunteer to confirm what they will say when asking for cigarettes, vapes or a herbal smoking product.
- 4.9 If the volunteer is purchasing cigarettes, tell the volunteer whether they are to ask for menthol or filter cigarettes.
- 4.10 If purchasing vapes, tell the volunteer what flavour to ask for.

- 4.11 Tell the volunteer how much the cigarettes, vape or herbal smoking product will likely cost. Research this beforehand, so you can give the volunteer enough cash.
- 4.12 Remind the volunteer that only tobacco, vaping or herbal smoking products are to be purchased.
- 4.13 Remind the volunteer to tell the truth about their age if asked.
- 4.14 Inform the volunteer that if there is only a child or young person serving in the shop, they should not try to buy cigarettes or herbal smoking products from this person.
- 4.15 Inform the volunteer that if another person in the shop tells the volunteer that it is illegal to buy cigarettes/vaping/herbal smoking products (such as another staff member or a member of the public) the volunteer should leave the shop immediately.

## 5.0 No sale

- 5.1 If no sale takes place the volunteer must return to the car, retain the money for the purchase, and repeat the process at the next premises. The volunteer does not get to keep the leftover cash.

## 6.0 Sale

- 6.1 Following a sale, the volunteer must return to the car immediately and hand over the cigarettes, vape or herbal smoking product.
- 6.2 Place the product in a plastic exhibit bag
- 6.3 Complete the exhibit label.
- 6.4 Complete the *Volunteer Controlled Purchase Operation Notes (CPO4)*.
- 6.5 Verify the volunteer's description of the seller before entering the premises.
- 6.6 Ensure that an adult stays in the car with the volunteer at all times.

## 7.0 Interviewing the Seller and Owner

- 7.1 The volunteer must stay in the car while the interview(s) take place.
- 7.2 Take the photographs of the volunteer into the shop, along with Instrument of Appointment, photographic identification and the *Interview Under Caution – CPO Form (CPO5)*.
- 7.3 Upon entering the shop, approach and introduce yourself to the seller.

- 7.4 State the reason for your visit and explain that you have some questions you would like to ask.
- 7.5 Produce your Instrument of Appointment and photographic identification.
- 7.6 Record the interview with the seller on the *Interview Under Caution - CPO Form (CPO5)*.
- 7.7 Commence the interview by asking the seller their name and address.
- 7.8 Administer the caution *after* the seller has provided their name and address and *before* any further questions are asked.
- 7.9 If the seller appears younger than 18 years, do not ask the seller for their name and address unless the person in charge is not present.
- 7.10 If the seller refuses to provide their name and address, inform them that by refusing to do so, they are committing an offence and may be liable for a fine of up to \$10,000.
- 7.11 If the shop is particularly busy, record contact details only and arrange to speak with the seller and the owner at a more convenient time.
- 7.12 If the owner is present, interview the seller in a private place. The seller should not be interviewed in the presence of the owner.
- 7.13 If at any point during the interview, the seller states they are under the age of 17 years, the interview must cease immediately.
- 7.14 If the seller asks for a lawyer or someone else to be present during the interview, this must be agreed to.
- 7.15 If it appears the seller is having difficulty understanding the questions, they must be offered the services of an interpreter.
- 7.16 If the seller would like to have an interpreter present, the interview must cease and a suitable time to return to the premises with an interpreter must be agreed to.
- 7.17 Show the seller the photograph of the volunteer and asked whether they recognise the volunteer.
- 7.18 Inform the seller how old the volunteer is, and that they have just purchased cigarettes, vape or a herbal smoking product from their shop.

- 7.19 If the volunteer was not asked their age by the seller, this should be noted.
- 7.20 If the seller or owner refuses to sign their statement, they should be asked for the reason why.
- 7.21 Any reason given by the seller or owner for refusing to sign their statement must be recorded.
- 7.22 If the seller or owner requests a copy of their statement, they should be provided with a copy as soon as possible.
- 7.23 The seller or owner must be informed that a case file will be sent to the Ministry of Health for a decision on enforcement action.

## 8.0 Post CPO

- 8.1 All evidence must be securely locked away and the Chain of Custody Form completed.
- 8.2 An acknowledgement letter should be sent to those premises that did not sell to the volunteer (CPO6).
- 8.3 The volunteer must be reimbursed for their time. The amount of any payment must be at least commensurate with the minimum youth wage.
- 8.4 A final check should be carried out to ensure that all notebook entries are complete and that all relevant information and forms have been placed on the case file.

## 9.0 The CPO Infringement File

- 9.1 The following forms must be completed and included as part of the Infringement file:
  - 9.1.1 Infringement File Cover Sheet (CPO8).
  - 9.1.2 Certificate of Incorporation (if applicable).
  - 9.1.3 Incident Report (CPO9).
  - 9.1.4 Notebook entries.
  - 9.1.5 Interview Under Caution – CPO (CPO5).
  - 9.1.6 Volunteer Controlled Purchase Operation Notes (CPO4).
  - 9.1.7 Photographs of volunteer.

- 9.1.8 Copy of volunteer's birth certificate.
- 9.2 A photocopy of the entire file must be emailed to Health Legal at the Ministry of Health: [infringementfees@health.govt.nz](mailto:infringementfees@health.govt.nz) and cc in [enforcement@health.govt.nz](mailto:enforcement@health.govt.nz) and [smokefree@health.govt.nz](mailto:smokefree@health.govt.nz).
- 9.3 The original file must be retained by the Public Health Service.

## 10.0 The Prosecution File

- 10.1 Where a decision is made to prosecute, a Caption Sheet, Evidence List and a Summary of Facts must be drafted.

The Prosecution File Cover Sheet (CPO12) must be completed and together with the documents listed in the Prosecution File Cover Sheet (CPO 12), be emailed to Health Legal at the Ministry of Health at: [infringementfees@health.govt.nz](mailto:infringementfees@health.govt.nz) and cc in [enforcement@health.govt.nz](mailto:enforcement@health.govt.nz) and [smokefree@health.govt.nz](mailto:smokefree@health.govt.nz).

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## Appendix A – Compliance Checklist: Tobacco Retailer

### A. Retailer Details

Premises Name: \_\_\_\_\_

Premises address: \_\_\_\_\_

\_\_\_\_\_

Phone Number: \_\_\_\_\_ Person Spoken To: \_\_\_\_\_

Owner's Name: \_\_\_\_\_ Owner's Phone Number: \_\_\_\_\_

### B. Sales to Under 18s *(Indicate with ✓ if 'yes' or X if 'no')*

Have all staff been trained in asking for ID?

If **yes**, how? .....

If **no**, why not? .....

Are all staff aware of the implications of selling to minors?

ID leaflet discussed and left with retailer?

Infringement Notice system explained?

Controlled Purchase Operations (CPOs) explained?

### C. Display of Tobacco Products *(Indicate with ✓ if compliant or X if non-compliant)*

Are tobacco products visible from outside or from an area inside the premises to which the public have access?

If **yes**, how? .....

No bundling of cigarettes with other products?

No incentive or rewards offered in exchange for purchase of cigarettes?

**D. Tobacco Products Price List** (*Indicate with ✓ if yes or X if no*)

- Does the retailer have a Tobacco Products Price List?
- Does it comply with the formatting requirements?
- Is the list kept out of sight?



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**E. E-cigarettes** (*Indicate with ✓ if yes or X if no*)

- Does the retailer sell e-cigarettes?
- Is the retailer aware of the regulation of e-cigarettes under the Medicines Act 1981?
- Are any therapeutic claims made? (*If yes, must be removed from sale – Medicines Act 1981*)
- Toy Tobacco Product? (*Sales to under 18s prohibited*).

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**F. Resources provided** (*Indicate with ✓ resources provided*)

- Sale and Supply of Smoking Products to Under 18's
- E-cigarettes Fact Sheet

**E. Comments (including further action required)**

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**Signed:** \_\_\_\_\_ **Date:** \_\_\_\_\_

## Appendix B – Volunteer Consent Form

### 1. Parent/Caregiver Section:

(a) My full name is \_\_\_\_\_

and I am the parent/caregiver of \_\_\_\_\_

(b) The procedure for the Controlled Purchase Operation has been explained to me by \_\_\_\_\_

and I have given my consent for \_\_\_\_\_

to participate as a volunteer.

(c) I understand that \_\_\_\_\_ may be required to appear as a witness in the District Court which may result in the loss of some school time.

Signed: \_\_\_\_\_

Date: \_\_\_\_\_

Time: \_\_\_\_\_

Place: \_\_\_\_\_

### 2. Volunteer Section:

(a) My full name is \_\_\_\_\_ and my date of birth is \_\_\_\_\_

(b) I have had the procedure for the Controlled Purchase Operation explained to me by \_\_\_\_\_

\_\_\_\_\_ and I am volunteering to assist in this operation.

Signed: \_\_\_\_\_

Date: \_\_\_\_\_

Time: \_\_\_\_\_

Place: \_\_\_\_\_

Witnessed: \_\_\_\_\_

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## Appendix C – Volunteer Information Form

*(To be completed prior to the commencement of the Controlled Purchase Operation)*

Thank you for your interest in being involved in the CPO.

You have already been verbally briefed about what happens during a CPO and the role of the volunteer. Please read the following information and feel free to ask any questions if anything is unclear.

- At each visit you will be issued with cash to purchase cigarettes/vaping/herbal smoking products. If you are sold cigarettes/vaping/herbal smoking products, remember to take them with you when you leave the premises. As soon as you get back to the car you must hand over the cigarettes/vaping/herbal smoking products to the CPO supervisor, along with any change from the transaction
- During the CPO the person serving you may ask you how old you are. If you are asked your age, you must tell the truth
- You must not carry any identification on the CPO. If you are asked for your ID, you can truthfully say: "I don't have any identification on me"
- You need to be very observant when purchasing so that you can accurately fill out the Volunteer Controlled Purchase Operation Notes Form when you return to the car. You must note who sells you the smoking products, their appearance, and what was said. You are also required to note who else was there (staff, other customers, etc), the general layout of the shop, and other details
- If you are asked who the cigarettes/vaping/herbal smoking products are for, you must say they are for you
- When asking for a packet of cigarettes, you should say something like 'can I have a packet of Holiday 20's'? or 'can I have a disposable vape in green apple flavour'? The Enforcement Officer will talk you through what each store sells, and what you can ask for at each visit.
- If you are unsure of what to do at any stage, come back to the car immediately
- If you are refused cigarettes/vaping/herbal smoking products, be polite and leave the premises immediately
- If you feel unsafe at any time, you should leave the store.

- If asked who you are with, you can give the name of the CPO supervisor and say they are with the National Public Health Service, Te Whatu Ora.

I have read and understand the information detailed above.

**Volunteer's name** .....

**Volunteer signature** .....

**Date** .....

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## Appendix D – Volunteer Controlled Purchase Operation Notes

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### **Volunteer Information**

**Full Name:** .....

**Address** .....

**Phone:** (home) .....

**Phone:** (cell).....

**Date of birth** .....

**Ethnicity:** .....

**Height:** .....

**Parent/Caregiver full name:** .....

### **Premises Information**

**Premises Name:**

**Premises Address:**

**Premises Type** (*ie Dairy; Service Station; Supermarket*):

### **Internal Premises Sketch**

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**Description of Seller** (Complete information where known)

**Sex:** .....

**Approx. Age:** .....

**Ethnicity:** .....

**Circle the appropriate information, or if unsure circle 'unknown'**

<b>Height</b>	Tall	Short	Medium				Unknown
<b>Build</b>	Thin	Medium	Solid				Unknown
<b>Eyes</b>	Blue	Brown	Green	Black	Hazel		Unknown
<b>Hair Type</b>	Straight	Wavy	Curly	Bald			Unknown
<b>Hair Colour</b>	Brown	Black	Blond	Ginger	Grey	Other	Unknown
<b>Hair Style</b>	Short	Long	Collar length	Other			Unknown
<b>Facial Hair</b>	Yes/No	Moustache	Beard				Unknown

**Identifying Features** (spectacles/scars/tattoos/accent/jewellery/name badge/hair style and colour)

.....

**Description of Clothes (Colour/Type)**

.....

**Other people selling in the shop: Yes/No**

**Description:**

.....

**Purchase of product**

**Date:** .....

**Day:** .....

**Time:** .....

**Brand and type (ie 20s or 25s) of cigarettes/vape/herbal smoking product purchased:**

.....

**Cost:** .....

**Change:** .....

**Exhibit given to:** .....

**Time:** .....

**Date:** .....

**Circumstances**

*(Exactly what happened when you went in to the shop, who said what, where were the cigarettes/herbal smoking products kept, was there any 'Under 18' signage, who else was in the shop, what did you buy, how much was it, who did you give it to when you came out of the shop, anything else you noticed?).*

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**Time:** .....

**Date:** .....

**Volunteer Signature:** .....

## Appendix E – Interview Under Caution: Controlled Purchase Operation

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**Person Interviewed:** \_\_\_\_\_

**Place of Interview:** \_\_\_\_\_

**Date:** \_\_\_\_\_

**Time  
Commenced:** \_\_\_\_\_

**Time  
Completed:** \_\_\_\_\_

Interviewing Enforcement Officer

Other Persons Present

Q/A	
	<p>My name is ..... I am an Enforcement Officer designated under the Smokefree Environments and Regulated Products 1990 and I am acting under the direction of the Ministry of Health. Here is my identification and my Instrument of Appointment identifying myself as an Enforcement Officer (show photographic identification and Instrument of Appointment).</p> <p>I am investigating ..... and I would like to ask you some questions in connection with my investigation. I will be writing down both my questions and your answers to those questions.</p> <p>I now require you pursuant to section 41B of the Smokefree Environments and Regulated Products 1990 to give me your full name and residential address.</p>
	What is your full name?
	What is your residential address?

Signature:

Signature witnessed by:

Page \_\_\_ of \_\_\_\_

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Q/A	
	<p>You need to understand that you are not required to answer any further questions but that anything you say may later be used as evidence.</p> <p><b>You may if you wish have a lawyer present during this interview to assist you.</b></p> <p><b>(Delete if lawyer present).</b></p> <p>Do you understand what I have told you?</p> <p>Are you willing for the interview to now continue?</p>
	What is your date of birth?
	What is your occupation?
	What are your contact phone numbers?
	What is your email address?

Signature:

Signature witnessed by:

Page \_\_\_ of \_\_\_\_



Q/A	

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Signature:

Signature witnessed by:

Page \_\_\_ of \_\_\_\_



## Appendix F – Letter to Retailer: No Sale

---

Date

[Address]

Dear Sir/Madam

### **Smokefree Environments and Regulated Products Act 1990**

Your premises was visited by an Enforcement Officer acting under the authority of the Director-General of Health on **[insert relevant date]** as part of a Controlled Purchase Operation. The purpose of a Controlled Purchase Operation is to assess retailer compliance with section 40(1) of the Smokefree Environments and Regulated Products 1990.

I am pleased to inform you that of the **[number of premises visited]** premises visited during this period, you were amongst the **[enter number]** premises that did not sell **[tobacco/herbal smoking/vaping]** to a person under the age of 18 years.

Enforcement Officers will continue to check tobacco, vaping and herbal smoking product retailers for compliance with the Smokefree Environments and Regulated Products. The Act states that it is illegal to sell tobacco, vaping and herbal smoking products to persons under 18 years of age so please ensure that both you and your staff remain familiar with the legal requirements for the sale of tobacco, vaping and herbal smoking products to underage persons; and that your staff understand what it is they are required to do should a young person attempt to purchase tobacco, vaping and herbal smoking products.

The sale of tobacco, vaping and herbal smoking products to minors is viewed very seriously and it is the Te Whatu Ora – Health New Zealand's policy to either recommend issuing an Infringement Notice or prosecute in appropriate cases. In the case of a successful prosecution, the maximum fine that can be ordered by the court is \$10,000 in the case of a body corporate (ie company) or \$5,000 in the case of an individual.

Yours sincerely

## Appendix G - Letter to Retailer: Sale by Employee

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Date

[Address]

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Dear Sir/Madam

## **Smokefree Environments and Regulated Products Act 1990**

Your premises was visited by an Enforcement Officer acting under the authority of the Director-General of Health on **[insert relevant date]** as part of a Controlled Purchase Operation. The purpose of a Controlled Purchase Operation is to assess retailer compliance with section 40 (1) of the Smokefree Environments and Regulated Products 1990.

During a visit on **[date of visit]**, a shop assistant, **[name]**, sold a packet of **[brand cigarettes/vaping products]** to a **[age]** year old volunteer. As a result of this incident, the matter will be referred to the Ministry of Health and it is likely an Infringement Notice will be issued against **[name]**. The infringement fee for selling a tobacco product to a person under 18 is \$500.

On this occasion no further action will be taken against you as the shop owner however Enforcement Officers will continue to visit premises to monitor compliance with the Act. Please ensure that both you and your staff are fully familiar with the requirements of the Act, which govern not only the sales to under-age persons but also include prohibitions on advertising, and workplace smoking.

The sale of tobacco, vaping and herbal smoking products to minors is viewed very seriously and it is Te Whatu Ora – Health New Zealand's policy to either recommend issuing an Infringement Notice or prosecute in appropriate cases. In the case of a successful prosecution, the maximum fine that can be ordered by the court is \$10,000 in the case of a body corporate (ie company) or \$5,000 in the case of an individual.

Yours sincerely

## Appendix H - Infringement File Cover Sheet

**From:** \_\_\_\_\_ [Officer name]

**Date:** \_\_\_\_\_

\_\_\_\_\_ [Public Health Unit]

\_\_\_\_\_ [email]

\_\_\_\_\_ [contact phone number(s)]

**RE:** \_\_\_\_\_

(Tick as appropriate)

<input type="checkbox"/>	Short Form File Cover Sheet
<input type="checkbox"/>	Certificate of Incorporation ( <i>if applicable</i> )
<input type="checkbox"/>	Incident Report
<input type="checkbox"/>	Notebook Entries
<input type="checkbox"/>	Interview Under Caution
<input type="checkbox"/>	Volunteer Controlled Purchase Operation Notes
<input type="checkbox"/>	Photographs of Volunteer
<input type="checkbox"/>	Birth Certificate

**Signed:** \_\_\_\_\_

**Date:** \_\_\_\_\_

**EMAIL SHORT FORM FILE WITHIN 5 WORKING DAYS TO:**

[infringementfees@health.govt.nz](mailto:infringementfees@health.govt.nz) and cc in [enforcement@health.govt.nz](mailto:enforcement@health.govt.nz) and [smokefree@health.govt.nz](mailto:smokefree@health.govt.nz).

## Appendix I – Incident Report

<b>INCIDENT REPORT</b>		
Smokefree Enforcement Officer:		
Report Date:		
Date of Education Visit:		
Incident Date and time: (hh:mm)		
Volunteer's Date of Birth:		
<b>Seller Details</b>		
Name:	Occupation:	Date of Birth:
Address:		Phone:
<b>Owner Details - Individual</b>		
Name:	Occupation:	Date of Birth:
Address:		Phone:
<b>Owner Details - Company</b> (*Delete if inapplicable)		
Name:	Directors:	
Registered Office:		
<b>Incident Details</b>		
Trading name of premises:		

Comments/Observations:

**Recommendation(s)**

*(Include reasons for recommendations. Where prosecution is recommended provide full details of previous complaints/convictions. Where prosecution is not recommended, provide reasons for this)*

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## Appendix J – Caption Sheet

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**Ministry of Health v**      **Name:**

**Address:**

**Occupation:**

---

**Charge:**

- 1      *Section 40(1) Smokefree Environments and Regulated Products 1990.*  
On **[date]** at **[place]**, **[defendant's name]** did sell a tobacco product,  
namely **[name of tobacco product]**, to a person who had not attained the  
age of 18 years.

**Penalty:**

- 2      *Section 40(2) Smokefree Environments and Regulated Products 1990.*  
A person who contravenes subsection (1)(a) or (b) commits an offence  
and is liable to a fine not exceeding \$5,000 (individual) or \$10,000 (body  
corporate).

**Witnesses:**

1. **[Name of volunteer]**  
Controlled Purchase Operation volunteer
2. **[Name of Enforcement Officer]**  
Enforcement Officer  
**[Public Health Unit]**
3. **[Name of Enforcement Officer]**  
Enforcement Officer  
**[Public Health Unit]**
4. **[Name of Enforcement Officer]**  
Enforcement Officer  
**[Public Health Unit]**

**Evidence:**

Purchase of tobacco product

Exhibit Collection

Photographs of volunteer

Interview with defendant

---

**Evidence:**

1 x pack **[name of tobacco product]**  
and **[ \$ ]** change

Photographs of **[name of volunteer]**  
Controlled Purchase Operation volunteer  
taken on **[date photographs taken]**

Birth Certificate of Volunteer

**Produced by:**

**[Name of Enforcement Officer]**  
Enforcement Officer  
**[Public Health Unit]**

**[Name of Enforcement Officer]**  
Enforcement Officer  
**[Public Health Unit]**

**[Name of parent]**  
Mother (or father) of Controlled  
Purchase Operation volunteer

## Appendix K – Summary of Facts

---

### Introduction

1. Young people in New Zealand continue to become addicted to nicotine at an age when many do not realise the full consequences of smoking. On average, most New Zealand youth aged 15–19 years start smoking at 14.6 years of age and almost 72% would not smoke if they had their lives over again. Almost three-quarters of youth in this age group purchase their cigarettes themselves.
2. By the time these young smokers reach an age where they would be expected to have a greater appreciation of smoking, many have difficulty stopping. By age 18, two thirds of New Zealand youth smokers regret starting and half have tried to quit. Studies indicate that youth smokers are especially vulnerable to the effects of nicotine and that nicotine addiction may be heightened if smoking is initiated during adolescence.
3. The Smokefree Environments and Regulated Products 1990 (Act) prohibits the sale or supply of tobacco products to youth less than 18 years of age. The Act is a means of curtailing the availability of tobacco to a demographic group which is particularly vulnerable to initiation of smoking behaviour.
4. The Ministry of Health routinely conducts Controlled Purchase Operations to test retailer compliance with the prohibition on selling tobacco products to minors. Retailers who sell tobacco products to minors are liable to a fine up to \$5,000 in the case of an individual and \$10,000 in the case of a body corporate. In addition, retailers who have at least two convictions for selling tobacco products to a person under 18 within a two year period may also be prohibited from selling tobacco products for up to three months.

### The present case

5. On **[insert date(s)]** the Ministry of Health conducted an Under-18 Controlled Purchase Operation for tobacco products in the **[region]** using an **[age]** year old **[male/female]** volunteer.
6. The purpose of the operation was to determine the compliance of retail premises with regard to section 30(1) of the Smokefree Environments and Regulated Products 1990.
7. Between **[start time]** and **[finish time]** on the **[date]** **[number]** retail outlets in the **[ ]** region were visited by the volunteer. **[Number]** retail outlets sold tobacco products to the volunteer.

8. The volunteer was born on the **[date of birth]** and was **[age]** at the time of the purchase. They were wearing casual clothing, namely **[describe clothing worn by volunteer]**.
9. At approximately **[time]** on **[date]**, the volunteer entered the **[name of premises]** situated at **[address of premises]** and requested a packet of **[name of tobacco product]** from the defendant, **[name of defendant]**.
10. The defendant sold a packet of **[name of tobacco product]** to the volunteer.
11. The volunteer paid for the cigarettes with a **[\$]** note and was given **[\$]** change.
12. During the transaction the volunteer was not asked their age [*\*delete if not applicable*].
13. The volunteer returned to the car and described the defendant to the Enforcement Officer.
14. At approximately **[insert time]** on the same day, an Enforcement Officer entered the **[name of premises]** and spoke to the defendant.
15. The Enforcement Officer showed a photograph of the volunteer to the defendant. The defendant stated that **[ ]**.
16. The defendant confirmed that they had been told by the owners of **[insert name of premises]** that they could not sell cigarettes to persons under 18 [*\*delete if inapplicable*].
17. A sign was displayed in the shop stating that cigarettes could not be sold to persons under 18 [*\*delete if inapplicable*].
18. The defendant **[has/has not]** previously appeared.
19. A fee of \$130 is sought.

### **Penalty**

A maximum fine of \$5,000.

## Appendix L – Prosecution File Cover Sheet

**To:** Tobacco Control Team  
Ministry of Health

**From:**

-----

**Te Whatu Ora:**

-----

**Date:**

-----

**Re:** \_\_\_\_\_

(Tick or insert N/A as appropriate)

<input type="checkbox"/>	Prosecution File Cover Sheet (CPO12)
<input type="checkbox"/>	Summary of Facts (CPO11)
<input type="checkbox"/>	Caption Sheet; Witness/Exhibit Lists (CPO10)
<input type="checkbox"/>	Photocopy/transcript of notebook entries
<input type="checkbox"/>	Confirmation of Trading Name/Ownership
<input type="checkbox"/>	Interview Under Caution (CPO5)
<input type="checkbox"/>	Volunteer Controlled Purchase Operation Notes (CPO4)
<input type="checkbox"/>	Copy of photo of Evidence/Evidence has been photocopied, labelled and secured
<input type="checkbox"/>	Copy of photograph of Volunteer attached
<input type="checkbox"/>	Photocopy of birth certificate
<input type="checkbox"/>	Volunteer Information Form (CPO3)
<input type="checkbox"/>	Volunteer Consent Form (CPO2)
<input type="checkbox"/>	Compliance Inspection Record: Tobacco Retailer (CPO1)
<input type="checkbox"/>	Copy of designation
<input type="checkbox"/>	Original file retained at PHU

**Signed:** \_\_\_\_\_

**Date:** \_\_\_\_\_