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2007, No. 19

An Act to govern the distribution, sale and use of tobacco products

(28th June 2007)

BE IT ENACTED by the Parliament of the Cook Islands in Session assembled, and by the authority of the same as follows:

1. Short Title and commencement – (1) This Act may be cited as the Tobacco Products Control Act 2007.

(2) Except as provided in subsection (3) of this section, this Act shall come into force on the date appointed by the Queen's Representative, by Order in Executive Council.

(3) Sections 5, 8 9, and 28 to 31 of this Act shall come into force 3 months after the date appointed by the Queen's Representative, by Order in Executive Council provided in subsection (2) of this section.

2. The objects of this Act – The objects of this Act are to -
- (a) protect the health of the people of the Cook Islands from the diseases caused by tobacco use;
 - (b) reduce the social approval of tobacco use in the Cook Islands by applying controls on the marketing, advertising and promotion of tobacco products and their association through sponsorship with other products and events;
 - (c) protect the health of young persons by restricting access to tobacco products;
 - (d) promote the accurate portrayal of the health and social consequences of tobacco use;
 - (e) enhance awareness of the hazards of tobacco use by ensuring the effective communication of accurate and relevant information about tobacco use;

- (f) reduce some of the harmful effects of tobacco products by monitoring and regulating the presence of harmful substances in tobacco products and in tobacco smoke; and
- (g) protect individuals from the hazards of involuntary exposure to tobacco smoke.

PART 1
PRELIMINARY

3. **Interpretation** – In this Act, unless the context otherwise requires or the contrary intention appears -

“Additive” means a substance that forms part of a tobacco product that is not cured tobacco leaf; and includes -

- (a) a substance forming part of the product that has been derived or refined from tobacco leaf (whether cured or not); and
- (b) any substance that is introduced into a tobacco product during processing, manufacturing, or packaging, including, as applicable, those contained in the paper, filter, portion pouch or similar part of the tobacco product.

“Aircraft” has the same meaning ascribed to it by section 2 of the Air Services Licensing Act 1984;

“Broadcast” means the transmission of programmes, whether or not encrypted, by radio waves or other means of telecommunication for reception by the public by means of broadcasting receiving apparatus;

“Children’s product” means a product (such as comics, games, and toys) marketed primarily for children and includes sweets, ice cream, soft drinks, and other similar products;

“Cigarette” means a tobacco product comprising a roll of cut tobacco, enclosed in paper;

“Constituents” means -

- (a) in relation to tobacco products intended for smoking, the chemicals inherent in the product itself, and in the smoke and other products of combustion emitted from the product;
- (b) in relation to smokeless tobacco products, the chemicals inherent in the product.

“Distributor” means a person who sells tobacco products and includes a manufacturer or importer of tobacco products, but does not include a person whose only sale of tobacco products is by way of retail;

“Educational Facility” means any school, college, place of learning or instruction and includes any kindergarten or pre-school facility;

“Exporter” means any person who sends, or arranges for tobacco products or raw tobacco to be sent from the Cook Islands to a point outside of the Cook Islands for the purpose of sale or distribution;

“Health Inspector” means a person appointed under the Ministry of Health Act 1996 as a Health Inspector or Public Health Officer and who is appointed for the purposes of this Act under section 36 of this Act;

“Health message” means a warning or an explanatory statement about the health effects or social costs of tobacco use, the benefits of and/or suggestions for quitting, and any other matter related to tobacco and health, or other adverse effects of tobacco use or exposure, as prescribed by regulations made under the Act;

“Importer” means any person who brings tobacco products or raw tobacco into the Cook Islands for the purpose of sale or distribution;

“Licensed premises” means any premises, or any part of any premises, on which liquor may be sold pursuant to any licence (other than a restaurant licence) under the Sale of Liquor Act 1991-92;

“Loose cigarettes” means cigarettes that are not contained in a package;

“Loose tobacco” means tobacco, prepared for smoking in hand rolled cigarettes or in a pipe, that is not contained in a package;

“Manufacturer” means any person that manufactures, fabricates, produces, processes, packs and/or labels tobacco products for the purpose of sale or distribution;

“Minister” means the Minister of Health;

“Ministry” means the Ministry of Health;

“Other information”, in connection with a health message means such additional or amplifying information or explanatory material that, as prescribed, is to be displayed or published in conjunction with that health message;

“Package” means any container, wrapper, carton, or other enclosure that contains any tobacco product or in which tobacco products are customarily sold and includes the package’s label;

“Person” includes a natural person, a corporation sole, a body corporate, and an unincorporated body;

“Point of sale” means a counter or checkout where tobacco products may be bought; and includes a till or cashbox, where tobacco products may be bought, even if it is not at or part of that counter or checkout;

“Prescribed” means as required by regulations made under this Act;

“Promote” in relation to tobacco products or the activities of a seller, means any act or practice that is intended or likely to encourage the purchase or use of any tobacco product or brand or create a positive awareness of or association with, a tobacco product, brand, manufacturer or seller;

“Public place” means any place (including any ship, aircraft or other vehicle or conveyance used for the purposes of public transport) to which members of the general public or class of the general public ordinarily have access by express or implied invitation or licence, whether by payment or otherwise and includes any building, structure or facility which is either owned or occupied by the Crown. Any place or part thereof used primarily as a private residence shall not be considered a public place under this Act;

“Public transport vehicle” means any form of transportation that carries passengers for hire or reward by land or by sea, whether locally, between islands domestically, or internationally;

“Publish” means to -

- (a) insert in any book, newspaper or other periodical publication printed, published, or distributed in the Cook Islands; or
- (b) send to any person, by post or otherwise; or
- (c) deliver to any person or leave upon premises in the occupation of any person; or
- (d) broadcast; or
- (e) include in any film or video recording; or
- (f) include in any disk for use with a computer; or
- (g) disseminate by means of any other electronic medium; or
- (h) distribute by any means; or
- (i) display by way of a sign, notice, poster, or other means; or
- (j) bring to the notice of any person or of the public in the Cook Islands in any other manner.

“Raw tobacco” means tobacco that has not been processed or prepared for consumption;

“Restaurant” means any premises, or any part of any premises, where the principal business is the selling of meals or refreshments to the general public for consumption on the premises, whether or not liquor is or may be sold on those premises or that part of those premises; and includes any room or area on a ship or train where meals or refreshments are provided for passengers to consume;

“Retailer” means a person who sells tobacco products to consumers;

“Secretary” means the Secretary of Health and includes any person to whom he may have delegated his powers under this Act in accordance with section 35(4);

“Sell” includes -

- (a) to barter or exchange; or
- (b) to offer or expose for sale, barter or exchange; or
- (c) to supply, or offer to supply, in circumstances in which the supplier derives, or would derive, a direct or indirect pecuniary benefit; or
- (d) to supply, or offer to supply, gratuitously but with a view to gaining or maintaining custom, or otherwise with a view to commercial gain.

“Seller” means any person who sells any tobacco product or raw tobacco and includes any manufacturer, wholesaler, importer, exporter, retailer, or other distributor;

“Smoking” means inhaling or exhaling the smoke from, or handling, a lighted tobacco product;

“Tobacco” means any preparation of the dried leaves of the *Nicotiana tabacum*, a plant of the nightshade family;

“Tobacco carton” means a box, carton, pack, packet, pouch, tin, wrapping, or other package containing two or more tobacco packages;

“Tobacco product” means any product intended for human consumption which contains tobacco in any form, in an amount that is more than an incidental ingredient or component and includes all parts and materials such as filters, rods, portion pouches, and similar matter, as applicable, including loose tobacco but not including raw tobacco;

“Tobacco product advertisement” means any writing, still or moving picture, sign, symbol or other visual image, or any sounds, or any combination of two or more of those things (in whatever form that advertisement may be produced, including but not limited to hard copy, soft or electronic form, narrowcast or broadcast) which is either intended to or has the effect of advertising, promoting or giving any form of positive publicity (either directly or indirectly) to any one or more of the following;

- (a) smoking;
- (b) the purchase or use of a tobacco product or a range of tobacco products;
- (c) the whole or a part of a trade mark of goods which are or include tobacco products;
- (d) the whole or a part of a design of articles which are or include tobacco products;

- (e) the whole or a part of the name of a person;
 - (i) who is a manufacturer, importer or who sells tobacco products; and
 - (ii) whose name appears on, or on the packaging of, some or all of those products;
- (f) any other words (for example, the whole or a part of a brand name) or designs, or combination of words and designs, that are closely associated with a tobacco product or a range of tobacco products (whether also closely associated with other kinds of products).

“Tobacco sponsorship” means the attribution, acknowledgment, association or identification (in a manner which has the effect, directly or indirectly, of giving publicity (whether to the public, to any section of the public or to any person or group of persons)) of a tobacco manufacturer, seller, brand, or product with, on, or in connection with any one or more of -

- (a) an entertainment, sporting, recreational, educational, cultural, or other public event or work;
- (b) a person or team participating in such an event or work, including his equipment, clothing, and accessories;
- (c) a service provided or contribution made by a tobacco manufacturer or seller;
- (d) a building, institution, stadium, organisation or other entity which is not a tobacco manufacturer, importer or seller or the business premises of such a person.

“Wholesaler” means any person who buys tobacco products and re-sells them to another seller;

“Workplace” means any place (including any private club) in or at which employees, contractors, volunteers, or other persons perform duties of employment, services (paid or unpaid) or other work and includes private offices, common areas, and any other area that are generally used by such persons during the course of their employment or work. Any place or part thereof which is used primarily as a private residence shall not be considered a workplace under this Act.

PART II

TOBACCO PRODUCT CONTROL

4. Purpose of the Part - The purpose of this part of the Act is to eliminate, so far as is practical, the advertising and promotion of tobacco products in and from the Cook Islands in order to minimise the effect of such advertising and promotion on persons both within the country and overseas.

5. Prohibition on advertising - No person shall publish, or arrange for any other person to publish, whether in the Cook Islands or elsewhere, any tobacco product advertisement.

6. Activities that are not tobacco product advertisements - The undertaking of any one or more of the following activities, provided it is not made in exchange for or in the expectation of remuneration, reward or emolument of any sort or other consideration (whether direct or indirect) from a seller or any of its agents, shall not be considered to be a tobacco product advertisement under the Act -

- (a) commentary, opinion, report, editorial, or political discourse related to tobacco products or sellers ; and
- (b) depiction of or reference to a tobacco product or brand made in any artistic, literary, scientific, educational, or entertainment production, performance, writing or other work.

7. Permitted activities - The prohibition in section 5 does not apply to -

- (a) the display of a retailer's name or trade name on the exterior of a retailer's place of business, in accordance with any regulations made under this Act, even if that name or trade name contains a word or phrase that relates to tobacco products or to tobacco smoking, provided that wording does not include a reference to the name or trademark of a tobacco product or, if the name of a seller is commonly associated with tobacco products, the name of that seller;
- (b) the placement, inside a retailer's place of business, of price notices indicating the tobacco products available for purchase within that place and their prices, provided that these notices comply with any regulations made under this Act in relation to their size, colour, content and number, and the inclusion of a health message and other information;
- (c) the display of tobacco products inside a retailer's place of business provided that the display complies with any regulations made under this Act;
- (d) commercial communications by persons in the tobacco growing, manufacturing, importing, exporting, distribution, selling or trading business directed solely at other persons in the tobacco growing, manufacturing, importing, exporting, distribution, selling or trading business;
- (e) an internet web site for any particular seller, so long as it presents factual information about the business and does not advertise or promote tobacco products or brands;
- (f) a tobacco product advertisement contained in an imported newspaper, book or magazine, or in a radio or television transmission or a data message originating outside the Cook Islands or any film or video made outside the Cook Islands, unless -
 - (i) the principal purpose of the newspaper, book, magazine, radio or television broadcast, data message, film or video recording is the promotion of tobacco products; or
 - (ii) the newspaper, book, magazine, radio or television broadcast, data message, film or video recording is targeted primarily at a Cook Islands audience.

8. 'Smoking Kills' signage at point of sale – (1) Every retailer of tobacco products must clearly display, in close proximity to tobacco products which are displayed for sale, a sign with the words 'Smoking Kills', both in English and Cook Islands Maori, printed -

- (a) in dark coloured words on a white background; and
- (b) in a font which is clear and legible, and printed at such a size and boldness that, subject to subsection (3) of this section, the words 'Smoking Kills' as nearly as possible take up the full area of the sign.

(2) The sign must be at least 1240cm² in area.

(3) The sign may include the attribution 'Ministry of Health Warning' in English and Cook Islands Maori, printed after the words 'Smoking Kills', provided that the print size of the attribution is no greater than one half the print size of the words 'Smoking Kills'.

9. Prohibited marketing - (1) No person shall -

- (a) advertise, display for sale or distribution, sell, or distribute any service or any goods which are not a tobacco product, whether in the Cook Islands or elsewhere, in any manner or form that contains any writing, picture, image, graphic, message, or other matter, in whole or part, that is commonly identified or associated with, or is likely or intended to be identified or associated with a tobacco product, brand, or seller;
- (b) No person shall display (either in whole or in part) on a tobacco product, any brand name, trademark or other sign, symbol, logo, or similar visual matter which is commonly associated with any service or with any goods which are not a tobacco product.

(2) No person shall display on any building (including, but not limited to any building which is or houses a club, restaurant, or stadium) or on any other structure or in any other place any name, writing, picture, image, graphic, message, or other matter, in whole or part, which is commonly identified or associated with, or is likely or intended to be identified or associated with a tobacco brand, or seller. Nothing in this subsection shall apply in respect of the business premises of any seller whose sole or principal business is either the manufacture or sale of tobacco products.

(3) No person shall manufacture or distribute any goods or product, or offer any service which (whether of itself or in the manner of its sale distribution or marketing) is either intended or is likely to appeal to children or to persons under the age of 18 years and which mimics, evokes or is likely to evoke an association with a tobacco product or brand, including but not limited to candy cigarettes and similar products.

10. Tobacco sponsorships prohibited – (1) No person shall -

- (a) organise or promote any event or activity whether in the Cook Islands or elsewhere; or
- (b) make any financial contribution towards any event or activity wherever that event or activity may take place; or
- (c) make any financial contribution to any person in respect of-
 - (i) the organisation or promotion, by that person, of; or

- (ii) the participation, by the person, in -
any event or activity wherever that event or activity may take place -

where the name ascribed to that event or activity or any item used or associated with that event or activity or in connection with its organisation, promotion, marketing or merchandising, includes or is associated in any way (directly or indirectly), with any tobacco product or with any tobacco product trade mark, or a company name or any part of a company name which may be included in that tobacco product trade mark.

(2) Notwithstanding subsection (1) of this section, where a contract for sponsorship has been executed prior to 1 October 2006 any sponsorship obligations provided by that contract may, subject to that sponsor's performance of its obligations under the next subsection, be performed for a period of not more than six months following the date this section comes into operation (the "allowed period").

(3) Any tobacco product advertisement which is displayed at any event or activity to which the relevant sponsorship obligations apply during the allowed period (including any mention, display, or other public association by any means of a seller, tobacco brand, or tobacco product), also shall -

- (a) include such health messages and constituent and additives disclosures as may be prescribed;
- (b) give rise to an obligation on the sponsor to give the Secretary not less than seven prior days' notice of that display and, prior to that display to meet the cost of one Ministry advertisement about the dangers of tobacco use, at no cost to the Ministry, for every tobacco product advertisement displayed at the sponsored event.
- (c) the Ministry advertisement shall -
 - (i) be given such time, space, prominence, and treatment as the Secretary determines is equally favourable to that afforded its matching tobacco product advertisement; and
 - (ii) comply with any such requirements, if any, prescribed in regulations made under this Act or otherwise as determined by the Secretary.

11. Contributions permitted - (1) Subject to section 12, a seller may make contributions or give financial or other assistance to any event, activity, person, organisation, institution or other entity provided that any corresponding attribution, association or identification with the seller or with any tobacco product or brand (whether required by the seller or not) is limited to private correspondence.

12. Prohibited payments - (1) It shall be unlawful for a seller to make any payment or to provide any assistance (financial or otherwise), either directly or indirectly, to any person (whether in the Cook Islands or elsewhere) who holds or seeks public office, to any member of (or candidate for election to) Parliament, any island council or any vaka council or to any political party.

13. Sale of tobacco products to persons under eighteen prohibited - (1) No person may sell a tobacco product to a person younger than eighteen years of age.

(2) Any person who sells a tobacco product to another person must take reasonable precautions and exercise due diligence to establish that the intending purchaser is eighteen years of age or older.

(3) Every retail seller must display to customers, in a prominent manner at each point of sale of that seller at which tobacco products may be purchased a notice, the form and content of which may be prescribed by regulations, which clearly states that the sale of tobacco products to persons who are younger than eighteen years is prohibited.

14. Restrictions on the sale of certain tobacco products in small quantities -

(1) No person in the course of retail trade may either sell or offer for sale -

- (a) loose cigarettes; or
- (b) loose tobacco.

(2) No seller may sell or offer for sale -

- (i) cigarettes in a package that contains fewer than twenty cigarettes; or
- (ii) loose tobacco in a package that contains less than thirty grams of tobacco.

15. Tobacco products not to be advertised or labelled as suitable for chewing, etc. - (1) No person shall promote in any way a tobacco product in a manner which directly states or indirectly suggests the product is suitable for chewing or for any other oral use (other than smoking).

(2) No person shall import for sale, sell, pack, or distribute any tobacco product labelled or otherwise described as suitable for chewing, or for any other oral use (other than smoking).

16. Self-service vending machines and other methods of unsupervised sales prohibited - (1) No tobacco product may be sold or furnished through a vending machine which is capable of operation by a person other than the seller of that tobacco product or by any employee of the seller.

(2) No tobacco product may be sold or furnished at retail by postal, courier or other form of delivery or means by which the age of the purchaser or recipient of the tobacco product cannot be verified.

17. Sales of tobacco products prohibited in certain circumstances - (1) No person shall offer to sell, sell or otherwise distribute tobacco products in any place -

- (a) where health care services are rendered;
- (b) in any educational facility serving people under 18 years of age;
- (c) not being a point of sale in an established retail outlet or
- (d) in any other place as may be prescribed by regulations.

(2) No person under 18 years of age shall offer to sell, sell or otherwise distribute tobacco products in any place and every principal (within the meaning of section 40) of such a person shall take all reasonable steps to draw the provisions of this subsection to that person and thereafter to ensure compliance with this subsection.

18. Free distribution and rewards prohibited - (1) No seller may -

- (a) distribute any tobacco product; or
- (b) supply any tobacco product to any person for distribution; or in the case of a retailer;
- (c) supply any tobacco product to any person for the purpose of that retailer's business -

free of charge, or at a charge which is reduced below the usual market rate charged to purchasers at retail or (in the case of a distribution or supply to a wholesaler) at wholesale.

(2) No person, in connection with, or for the purpose of promoting, the sale of a tobacco product, may supply to the purchaser of any goods or services or any other person by reason of the purchase of those goods or services -

- (a) a prize, gift or other benefit; or
- (b) a stamp, coupon, token, voucher, ticket or other thing by virtue of which the purchaser or any other person may become entitled to, or may qualify for a prize, gift or other benefit (whether the entitlement or qualification is absolute or conditional); or
- (c) any thing which, or a copy or facsimile of which, is a necessary prerequisite to participation in, or is likely to confer an advantage in, any game, contest or other activity in which a participant may become entitled to, or may qualify for, a prize, gift, or other benefit (whether the entitlement or qualification is absolute or conditional).

19. Controls on the content of tobacco products - No person shall manufacture, import, export, sell or otherwise distribute any tobacco product that does not comply with the requirements regulating the additives and constituents of tobacco products or standards on matters as touching on safety, quality, performance, emissions and other attributes of tobacco products, in each case as prescribed by regulations made under this Act.

20. Testing required - (1) This section applies to each tobacco product prescribed, for the purposes of this section, by regulations under this Act.

(2) Every manufacturer and every importer of a tobacco product to which this section applies must at least once in each calendar year conduct, in accordance with the regulations, either or both of the following (as the regulations require) -

- (a) a test for the constituents of each brand of the tobacco product sold by the manufacturer or importer, and the respective quantities of those constituents; and
- (b) if the tobacco product is intended to be smoked, a test for the constituents of the smoke of each brand of the tobacco product sold by the manufacturer or importer, and the respective quantities of those constituents.

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

(4) In addition to the annual test or tests required by subsection (2) of this section, the Secretary may, by notice in writing to the manufacturer or importer of a tobacco product to which that subsection applies, require a further test or tests to be conducted.

(5) The further test or tests under subsection (4) must be conducted, in accordance with the regulations referred to in subsection (2) -

- (a) in a laboratory nominated by the Secretary; and
- (b) at the expense in all respects of the manufacturer or importer.

(6) In any calendar year, the Secretary must not require further tests under subsection (4) in respect of more than 10% of the brands of tobacco products to which subsection (2) applies sold by a particular manufacturer or importer.

21. Reports of constituents, additives, and certain business information required - (1) Every manufacturer, importer, and exporter of tobacco products shall submit to the Secretary -

- (a) the results of all tests carried out pursuant to section 20 within 60 days of testing and in any event not later than the 31st day of January the following year; and
- (b) all other information required either under this Act or its regulations, on or before the 31st day of January in each year unless otherwise prescribed.

(2) All reports and returns referred to in subsection (1) must be submitted strictly in accordance with regulations made under this Act.

PART III CONSUMER INFORMATION REQUIREMENTS

22. Packaging and labelling requirements - (1) Subject to section 23 of this Act, no person shall sell, distribute, display for sale or distribution, import or export, any tobacco product that is not packaged and labelled in a manner that complies with all requirements of this Act and with those of any regulations made under this Act.

(2) Subject to section 24 of this Act, no person may purchase for resale, tobacco products that are not packaged and labelled in a manner that complies with all requirements of this Part and with those of any regulations made under this Act.

23. Compulsory health messages and other information - (1) Subject to section 24 of this Act, no person shall sell, distribute, display for sale or distribution, import, or export any tobacco product unless it has, permanently affixed on its package, or permanently affixed to an individual wrapper in the case of cigars, the health messages and other information prescribed by regulations made under this Act.

(2) Regulations made shall provide that the package of every tobacco product sold in the Cook Islands, and all outside packaging and labelling of such tobacco products, must carry health messages and other information, as specified in the regulations and that those health messages and other information -

- (a) are rotated so that a range of messages and other information is displayed on all tobacco brands and brand variants;
- (b) are large, clear, visible and legible; and
- (c) take up a minimum of 50 percent of the principal display areas of tobacco packages.

(3) Regulations made may provide that every unit, packet and package of every tobacco product sold in the Cook Islands must carry messages that are in the form of, or include, pictures or pictograms.

(4) All tobacco products imported for sale or sold in the Cook Islands must carry a statement that the product is intended for sale in the Cook Islands.

24. Recognised acceptable standard - (1) For the purposes of this section "substantially to the same effect as required by the Act" means health messages and other information, or constituent information, which, while differing in some respects from the requirements of this Act are considered by the Minister, acting on advice from the Secretary, to be, in all material respects, of a standard which warns and informs to a standard which meets or exceeds that required by sections 23(2), 23(4), 25 and 27 of this Act and by any regulations made under this Act.

(2) Notwithstanding section 22 of this Act, but subject to their being the subject of a Gazette notice made pursuant to subsection (4) of this section, tobacco products that are packaged or labelled substantially to the same effect as required by the Act may be sold, distributed, displayed for sale or distribution, imported or exported.

(3) Notwithstanding section 23 of this Act, but subject to their being the subject of a Gazette notice made pursuant to subsection (4) of this section, tobacco products that carry health messages and other information substantially to the same effect as required by the Act may be sold, distributed, displayed for sale or distribution, imported or exported.

(4) The Minister, acting on advice from the Secretary, may, by notice in the Gazette, state that tobacco product labelling and the packaging of identified tobacco products, imported from an identified country or countries is regarded by him as being substantially to the same effect as required by the Act.

25. Constituent and additives disclosures required to be displayed on all tobacco product packages - No person shall sell, distribute, display for sale or distribution, import, or export any tobacco product unless it has, permanently affixed on its package, or permanently affixed an individual wrapper in the case of a cigar, a disclosure in the form and manner prescribed by regulations made under this Act of -

- (a) a list of those constituents of the product which are generally recognized as harmful including but not limited to tar, nicotine, and carbon monoxide;
- (b) the emissions of the product, as applicable; and
- (c) the product's additives.

26. Package inserts - No person shall sell, distribute, import, or export any tobacco product unless that product's package contains a package insert displaying information, including health messages and other information, in the form and manner prescribed by regulations made under the Act.

27. Misleading labelling prohibited - (1) No person shall sell, distribute, or display for sale or distribution, import, or export any tobacco product the packaging or labelling of which promotes that tobacco product by any means that are false, misleading, deceptive or likely to create an erroneous impression of the characteristics, health effects, hazards or emissions of that product or which includes any written term, descriptor, trademark, symbol or sign that directly or indirectly creates the false impression that a particular tobacco product is less harmful than other tobacco products.

(2) Regulations may prescribe words and terms which are not to be used on the packaging or labelling of a tobacco product and the use of any word or term so prescribed on the packaging or labelling of a tobacco product shall be deemed to be misleading for the purposes of subsection (1).

PART IV
PROTECTION FROM EXPOSURE TO SECOND-HAND SMOKE

28. Smoking in public places and workplaces prohibited - (1) Subject to sections 29 and 30 of this Act, no person who has actual possession or control of any public place or any workplace, shall smoke or permit smoking by any other person in any part of that public place or workplace which is either indoors or is fully or partly enclosed.

(2) Notwithstanding subsection (1) of this section, where only one person works in an indoor or a fully or partly enclosed workplace, that person may smoke in all areas of that workplace except those areas (if any) to which the public normally has access.

(3) Subject to sections 29 and 30, no owner or operator may permit smoking inside any Government owned or operated building or facility.

29. Smoking in restaurants - (1) Notwithstanding section 28 of this Act, where, in any restaurant, there is only one room or enclosed area set aside for the consumption of food by patrons, smoking shall be permitted in an area not exceeding more than 30% of that room or area nor containing more than 30% of the seating of that restaurant provided that the owner of that restaurant shall ensure that-

(a) at least 70% of the seating in that room or area is designated for persons who do not wish to smoke, and that signs giving notice of non-smoking areas are displayed prominently in those areas; and

(b) such designated seating, so far as is reasonably practicable, is separate from the seating where smoking is permitted; and

(c) no person smokes in the non-smoking areas of the room.

(2) Subject to subsection (3) of this section, where, in any restaurant, there is more than one room or enclosed area set aside for the consumption of food by patrons, the restaurateur may designate one of those rooms or enclosed areas for patrons who wish to smoke.

(3) Where, in any restaurant, there is more than 1 room or enclosed area set aside for the consumption of food by patrons, the restaurateur shall ensure that -

(a) at least 70% both of the dining area of that restaurant and of the seating in that restaurant is designated as a non-smoking area and shall prominently display signs accordingly; and

(b) ensure that no person smokes in that non-smoking area.

(4) No person shall smoke in any restaurant -

(a) in any area designated as a non-smoking area;

(b) in any area of that restaurant at any time after the first anniversary of the coming into force of this Act.

(5) Where, in any premises or any part of any premises, more than one room or enclosed area is used as a restaurant, and one or more of those rooms or enclosed areas, or any combination of them, is treated as a separate restaurant by reason that it caters for a different category of patron, or offers a different type of meal or refreshment or a different type of service, the provisions of this section shall apply, in respect of each such room or enclosed area or, as the case may be, each such combination of them so treated, as if it were a separate restaurant.

30. Smoking in licensed premises - (1) Notwithstanding section 28 of this Act, but subject to subsection (2) of this section, where, in any licensed premises, any room or enclosed area is set aside primarily for the consumption of liquor by patrons, the licensee may, until the first anniversary of this Act coming into force, permit smoking in that room or area.

(2) Where, in any such room or enclosed area, seating is set aside for the consumption of meals by patrons, the licensee shall ensure that-

- (a) at least 70% of that seating is designated for persons who do not wish to smoke, and shall prominently display signs accordingly; and
- (b) such designated seating, so far as is reasonably practicable, is separate from the seating where smoking is permitted; and
- (c) no person smokes in seating designated for persons who do not wish to smoke.

(3) No person shall smoke in any licensed premises -

- (a) in the area where seating is designated for persons who do not wish to smoke; or
- (b) after the first anniversary of this Act coming into force.

31. "No Smoking" signs required - (1) Any person having actual possession or control of any public place or workplace which is either indoors or is fully or partly enclosed shall post signs prominently, stating that smoking is not permitted in those parts of that place where smoking is not permitted under this Act.

(2) Where regulations so require, the signs required by subsection (1) of this section must comply with any requirements set out in those regulations.

32. No smoking on public transport vehicles - (1) No person shall smoke on any bus, taxi, shuttle vehicle or other vehicle used for the purposes of transporting passengers and the owner or operator of a such a vehicle shall ensure that signs are posted on the vehicle notifying the passengers that smoking is prohibited.

(2) No person shall smoke in any enclosed area on any ship used for the purpose of transporting passengers and the owner or operator of such a ship shall ensure that signs are posted on the ship notifying the passengers that smoking is prohibited.

33. Smoking in aircraft - No person shall smoke in an aircraft that is carrying members of the public on any journey in or beginning or ending in the Cook Islands.

34. Obligations of owners or operators of premises and owners or operators of public transport vehicles or aircraft – (1) All persons in actual possession or control of any public place or workplace, together with their agents and employees at that place, and the owner or operator of any public transport vehicle or aircraft and their agents and employees on that vehicle or aircraft shall take reasonable steps to ensure that no person smokes in violation of the provisions of this Act.

(2) Where a person does smoke in violation of the provisions of this Act, the taking of reasonable steps may include -

- (a) asking that person to stop smoking;
- (b) upon any failure or refusal of that person to comply with that request, requiring that person to leave the premises or, in the case of a public transport vehicle, to leave the vehicle at the next scheduled stop;
- (c) seeking the assistance of law enforcement personnel in cases where that person refuses to stop smoking or leave the premises or vehicle.

(3) No person shall in any way discriminate against any other person (whether or not a servant, agent or invitee) who asserts his right to a smoke-free environment or who reports any violation of the provisions of this Part of the Act. Where any person commits an offence under any other Act against any person or property and the Court is satisfied that the offence arises by way of discrimination, retaliation or response to such an assertion or report, that person shall be deemed to have also committed an offence under this provision.

PART V ADMINISTRATION AND ENFORCEMENT

35. Powers of the Secretary - (1) The Secretary may issue a direction requiring a person to cease anything done, or prohibiting a person from commencing, anything to be done by or on behalf of that person that contravenes or would, if done, contravene this Act or any requirement imposed by or under this Act.

(2) Where any person fails to comply with or acts in contravention of such a direction then, without affecting any right to prosecute that person under this Act, the Secretary may make application, on notice, to the High Court for an order against that person and against such other persons or class of persons as may reasonably be necessary to compel the performance of or compliance with the direction and the Court may make such orders as it thinks necessary to prevent any contravention of this Act or, as the case may be, to bring to an end the matters complained of in the direction.

(3) Without limiting the powers of the High Court under subsection (2), the Court may -

- (a) require a person to pay money to, or reimburse the Ministry for, any actual and reasonable costs and expenses that the Ministry has incurred or is likely to incur in avoiding, remedying, or mitigating any adverse effect arising from the failure of the person to comply with a direction earlier made against that person under subsection (1) of this subsection;

- (b) require a person to pay to the Ministry the Ministry's actual and reasonable enforcement costs in relation to a breach of this Act including the costs of investigation, supervision, and monitoring of the relevant situation, and the costs of any actions required to avoid, remedy, or mitigate an adverse effect relating to the breach of the Act.

(4) The Secretary may from time to time in writing either generally or particularly, delegate to any employee of the Ministry as he thinks fit all or any of the powers exercisable by him under any provision of this Act (or regulations made under this Act), including this present power of delegation.

36. Appointment of Health Inspectors - (1) The Secretary may appoint any person who has been appointed under the Ministry of Health Act 1996 as a health inspector or public health officer under that Act to be a Health Inspector, and each person so appointed shall have power to exercise and carry out the functions and powers of a Health Inspector under this Act.

(2) The Secretary shall supply every Health Inspector with a warrant of appointment that shall both provide evidence of the identity of that person and of the appointment of that person as a Health Inspector under this Act.

(3) Every Health Inspector who holds a warrant issued under this section shall, on the termination of his appointment, surrender the warrant to the Secretary.

37. Inspection and investigative powers of Health Inspectors - (1) A Health Inspector shall have the following powers -

- (a) to enter any place (other than a dwelling house or other residential accommodation) in which the Health Inspector has reasonable grounds to believe any tobacco product is manufactured, sold, transported, received, distributed, packaged, or otherwise found or likely to be found or have been present, for the purposes of conducting inspections or investigations. Unless the Health Inspector has reasonable cause to believe that an offence under this Act is in the course of commission at that place, such power shall be exercised only during the business or operating hours of the place in question;

(b) In the course of such inspection or investigation -

- (i) to examine, open, and test any equipment, tools, materials, packages or anything the Health Inspector reasonably believes is used or capable of being used for the manufacture, packaging, labelling, storage, distribution, display, advertising or promotion of any tobacco product;
- (ii) to examine any operation or process carried out at that place;
- (iii) to examine and make copies of or from any books, documents, notes, files, including electronic files, or other records the Health Inspector reasonably believes might contain information relevant to determining compliance with this Act or with regulations made under this Act ;

- (iv) to interview or question any person involved in selling, advertising or promoting, manufacturing, importing, exporting, growing, transporting, packaging, or distributing tobacco products, any owner or other person in actual possession or control of that place, or any person using that place, and his employees, agents, contractors and workers (without implying any right to require any person to answer any question which might tend to incriminate that person);
- (v) to take samples of tobacco or any tobacco product or component of product anywhere they may be found and have them removed from that place for the purposes of testing;
- (vi) to seize and detain, or order the storage without removal or alteration of any tobacco or tobacco product wherever found, if the Health Inspector reasonably believes that tobacco or tobacco product does not comply with the requirements of the Act or regulations made under the Act, providing (at the time of exercising this power or so soon thereafter as is reasonably practical in the circumstances) to the owner or apparent owner of that tobacco or tobacco product written notice of the exercise of this power and a short statement of the reasons for its exercise. In the absence of the owner or apparent owner that notice shall instead be provided to any other person at that place who appears, to the Health Inspector, to have charge of that place;
- (vii) to seize and detain any tobacco or tobacco product where that tobacco or tobacco product is offered for sale or is sold by a person in a manner which that Health Inspector reasonably believes contravenes the requirements of this Act or regulations made under this Act.

(2) If any tobacco or tobacco product is seized and detained by a Health Inspector in the exercise of the power contained in subsection (1)(vi) and it is subsequently determined to meet the requirements of the Act or regulations made under the Act, it shall be returned immediately to the place from which it was seized.

(3) If any tobacco or tobacco product is seized and detained by a Health Inspector in the exercise of the power contained in subsection (1)(vii) it shall be returned immediately to the place from which it was seized if that manner of sale or offering is subsequently determined to meet the requirements of the Act or regulations made under the Act.

(4) Unless the tobacco or tobacco product that has been seized or detained is liable to be returned under the provisions of this section, it shall be deemed to have been forfeited and taken to be condemned, as if by suit and judgment of condemnation, and shall thereafter be destroyed unless within one month after the day of the seizure any person having either an equitable or legal interest in the property (including any chargeholder) shall have made application to the High Court for relief against forfeiture.

(5) A police officer may accompany a Health Inspector exercising powers under this section.

(6) Notwithstanding subsection (1) of this section a Health Inspector may enter a dwelling house or other residential accommodation with the consent of an occupier, but only where such a dwelling house or other residential accommodation is also used for commercial purposes in any of the manufacture, import, export, sale or distribution of tobacco or any tobacco product and in any event only in those parts of such place as are used for that purpose.

38. Duties of Health Inspectors – In the performance of his duties under this Act, a Health Inspector may enter any public place (either in uniform or in plain clothes) in the same manner and exercising the same rights as a member of the public and without presenting identification, provided that prior to exercising any other power conferred by this Act in that place, that Health Inspector shall identify himself as a Health Inspector to that person who appears to be in charge of that place and if so requested shall produce his warrant issued under section 36.

39. General penalty – Any person who either acts in contravention of, or as the case may be, fails to comply with any provision of any of sections 5, 8, 9, 12 to 23 (both inclusive), 25, 26, 27 or of sections 34(1) or 34(3) commits an offence and is liable -

- (a) in the case of a body corporate, to a fine not exceeding \$10,000;
- (b) in the case of an individual to a fine not exceeding \$2,000.

(2) Any person being either a seller or the agent of such a seller, who fails to comply with section 10 and any other person who, with actual knowledge of the provisions of this section wilfully fails to comply with any of its terms commits an offence and is liable -

- (a) in the case of a body corporate, to a fine not exceeding \$10,000;
- (b) in the case of an individual to a fine not exceeding \$2,000.

(3) Any owner or operator who either acts in contravention of, or as the case may be, fails to comply with any provision of any of sections 28, 29, 30 or 31 commits an offence and is liable -

- (a) in the case of a body corporate, to a fine not exceeding \$10,000;
- (b) in the case of an individual, to a fine not exceeding \$2,000.

(4) Any person who smokes in contravention of sections 32 or 33 commits an offence and is liable to a fine not exceeding \$2000.

(5) Any person who threatens, assaults or intentionally obstructs or hinders a Health Inspector who is acting in the exercise or performance of powers under section 37 commits an offence and is liable -

- (a) in the case of a body corporate, to a fine not exceeding \$2,000;
- (b) in the case of an individual, to a fine not exceeding \$1000.

40. Liability for the actions of agents or employees – (1) Any act or omission on behalf of a body corporate or other person (both called “the principal”) by a director, agent, or employee (each called “the agent”) of the principal is to be treated for the purposes of this Act as being also the act or omission of the principal.

(2) Notwithstanding subsection (1) of this section, where a principal is charged under this Act in relation to the act or omission of an agent for an offence, it is a good defence to the charge if the principal proves either -

- (a) that the principal took all reasonable steps to prevent the commission of the offence or the commission of offences of that kind; or
- (b) that the agent acted otherwise than within the terms of his or her authority, agency or contract.

(3) In the case of any internet web site which is in breach of section 5 (not being a site whose activities are in compliance with the section 7(e)) both the person hosting that web site and the seller shall be jointly and severally liable, but no internet service provider, whether in the Cook Islands or elsewhere shall be liable by reason only of providing general internet service provision enabling such a web site to be viewed.

41. Additional jurisdiction of the Court - (1) In addition to the penalties for offences specified in this Act, upon the conviction of any person of an offence under this Act (or under regulations made pursuant to this Act), the High Court may order the confiscation and forfeiture of -

- (a) any equipment, machinery, materials, and related items owned by that person and used to publish, broadcast, display, or otherwise disseminate any advertisement or promote a tobacco product in violation of section 5;
- (b) any tobacco or tobacco product in the possession or control of that person where that tobacco or tobacco product is packaged or labelled in a manner that does not conform to the requirements of Part III of this Act;
- (c) any tobacco or tobacco product in the possession or control of that person, however packaged or labelled, if that person is convicted of an offence under any one or more of sections 9, 14, 15, 16, 17 or 18;
- (d) equipment, machinery, raw materials, components, and any other items where owned by that person and used to manufacture or pack any tobacco product in violation of section 19.

(2) Where an offence is committed under this Act on more than one occasion or on a continuing basis then a separate offence shall be deemed to be committed on each day upon which the offence occurs.

(3) In determining an appropriate sentence, the Court shall have regard to the extent, if any, to which the defendant has derived any pecuniary benefit by reason of the offence committed.

(4) Upon the making of any application pursuant to section 37(4), the High Court may, having regard to the provisions of this Act and the conduct of the applicant and to all the circumstances of the case, grant or refuse relief from forfeiture as it thinks fit (in respect of either all or any part of the forfeited property) and in the case of relief may grant the same on such terms (if any) as to costs, expenses damages, compensation penalty or otherwise as it thinks fit. Without affecting the generality of the High Court's powers under this subsection, the Court may impose terms as to the packaging and labelling of any property so as to bring that property into compliance with the provisions of this Act, or may require that the property be re-exported from the Cook Islands.

42. Enforcement cost recovery - In addition to any other power vested in it, the High Court, upon convicting any person of an offence under this Act (or under regulations made pursuant to this Act) may order that person to pay the reasonable costs of or incurred by the Ministry associated with any inspection, investigation, and enforcement action to which that conviction relates.

PART VI REGULATIONS

43. Regulations - The Queen's Representative may from time to time by Order in Executive Council make such regulations as are contemplated by this Act or as are necessary or expedient for the purposes of this Act including, but not limited to any of the following purposes -

- (a) prescribing the form and content of information, documents, forms, certificates, notices, leaflets, signs, displays, particulars, and notifications, and the persons by whom and the persons to whom any such information, documents, forms, certificates, notices, leaflets, signs, displays, particulars, and notifications are to be supplied;
- (b) prescribing records and registers for the purposes of the Act, the manner in which and the period during which any such records and registers are to be kept; and the persons to whom, and the conditions on which, any such records and registers may be available for searching, inspection, or copying;
- (c) prescribing the size, colour, content, and number of signs that may be placed on the exterior of a retailer's place of business under section 7(a) of this Act, and the inclusion of health messages and other information on those signs;
- (d) prescribing the size, colour, content and number of price notices permitted under section 7(b) of this Act, and the inclusion of a health message and other information on those notices;
- (e) prescribing the manner by which tobacco products may be displayed inside retail outlets under section 7(c) of this Act;
- (f) prescribing requirements for the purpose of section 9;

- (g) prescribing additional places where it is prohibited to sell tobacco products for the purpose of section 17;
- (h) prescribing the form, size, and content of health messages and other information (including information about constituents) to be displayed with, on, or in packages of, tobacco products; and prescribing the circumstances and manner in which the messages and other information are to be so displayed, including -
 - (i) requiring tobacco products sold or offered for sale to display a photograph or picture intended to have effect as a warning relating to the effects of their use on health; or
 - (ii) requiring a package insert, in a prescribed form, to be placed inside packages of tobacco products sold or offered for sale.
- (i) specifying controls on the content of tobacco products;
- (j) prescribing the method of determining the constituents of tobacco products and the constituents of smoke produced from their combustion;
- (k) prescribing the form and manner in which returns and reports are to be filed under section 21;
- (l) requiring manufacturers and importers of tobacco products conducting tests for the constituents, and the respective quantities of those constituents of each brand sold by that manufacturers or importers to test each variant of the brand separately; or
- (m) requiring manufacturers and importers of tobacco products conducting tests for the constituents, and the respective quantities of those constituents, in the smoke of each brand of the product sold by the manufacturers or importers that is intended to be smoked, to test each variant of the brand separately;
- (n) requiring manufacturers and importers of tobacco products to file with the Secretary returns showing all additives used in the manufacture of the tobacco products sold by that manufacturer or importer;
- (o) requiring manufacturers and importers of tobacco products to file with the Secretary returns showing by brand variant -
 - (i) the weight of tobacco (or the weight of tobacco and of each additive) used in the manufacture of the tobacco products sold by the manufacturer or importer; and
 - (ii) the quantity of each variant of a brand of tobacco product sold by the manufacturer or importer; and
 - (iii) the recommended price of each variant of a brand of tobacco product sold by the manufacturer or importer during the previous calendar year.

- (p) identifying any words or terms that are deemed as misleading words or terms for the purposes of section 27 of this Act;
- (q) providing for such other matters as are contemplated by or necessary for giving full effect to the provisions of this Act or its due administration.

44. Act to bind the Crown – This Act shall bind the Crown.

This Act is administered by the Ministry of Health