



**Tuvalu**

# **TOBACCO CONTROL ACT**

**2008 Revised Edition**

**CAP. 28.14**





Tuvalu

## TOBACCO CONTROL ACT

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Tuvalu

## TOBACCO CONTROL ACT

**AN ACT TO PROTECT THE HEALTH OF THE PEOPLE OF TUVALU FROM THE DISEASES CAUSED BY TOBACCO USE AND TO REDUCE THE SOCIAL APPROVAL OF TOBACCO USE IN TUVALU BY APPLYING CONTROLS ON THE MARKETING, ADVERTISING, PROMOTION AND SALE OF TOBACCO PRODUCTS AND THEIR ASSOCIATION THROUGH SPONSORSHIP WITH OTHER PRODUCTS AND EVENTS.<sup>1</sup>**

Commencement [30 December 2008]<sup>2</sup>

### **1 Short title and commencement**

- (1) This Act may be cited as the Tobacco Control Act.
- (2) This Act comes into force on the date of its publication by exhibition except as provided in subsections (3) and (4) of this section.
- (3) Sections 24 and 26 of this Act shall cease to have effect at midnight on 31 May 2009.
- (4) Sections 25 and 26B of this Act shall come into force on 1 June 2009.

### **2 Purpose**

The purposes of this Act are —

- (a) to protect the health of the people of Tuvalu from the diseases caused by tobacco use;
- (b) to reduce the social approval of tobacco use in Tuvalu by applying controls on the marketing, advertising, promotion and sale of tobacco products and their association through sponsorship with other products and events;

- (c) to protect the health of young persons by restricting access to tobacco products;
- (d) to promote the accurate portrayal of the health and social consequences of tobacco use;
- (e) to enhance awareness of the hazards of tobacco use and exposure to tobacco smoke by ensuring the effective communication of accurate and relevant information about tobacco use and exposure;
- (f) to 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;
- (g) to protect individuals from the hazards of exposure to tobacco smoke;
- (h) to promote an environment where non-smoking and the absence of tobacco promotion is the norm.

### 3 Interpretation

In this Act, unless 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;

**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;

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

**Constituents** in relation to tobacco products intended for smoking, means the chemicals found in the product itself, and in the smoke emitted from the product, and in relation to smokeless tobacco products, constituents mean the chemicals inherent in the tobacco itself;

**Court** means the Magistrates or Senior Magistrates Court;

**Distributor** means a person that is in the business of selling tobacco products (but who does not sell tobacco products by retail) and includes a manufacturer or importer of tobacco products;

**Enforcement Officer** means a person appointed for the purposes of this Act under section 34 of this Act;

**Exporter** means any person that sends, or arranges for tobacco products or raw tobacco to be sent from Tuvalu to a point outside Tuvalu;

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

**Importer** means any person who brings tobacco products or raw tobacco into Tuvalu for the purpose of sale or distribution;

**Licensed premises** means any premises, or any part of any premises, on which liquor may legally be sold;

**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, which is not contained in a package, and includes products known as “sului”, “tufaga” and “Irish cake”;

**Manufacturer** means any person that manufactures, fabricates, produces, processes, packs and/or labels tobacco products, and includes any entity that is associated with the manufacturer, including an entity that controls or is controlled by the manufacturer, or that is controlled by the same entity that controls the manufacturer;

**Minister** means the Minister of Health or designate;

**Ministry** means the Ministry of Health;

**Other message** means, in relation to messages on tobacco packaging, other information relating to the social, economic, cultural or other effects of tobacco use or exposure to tobacco smoke, or advice on avoidance of harms associated with tobacco use or exposure;

**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 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 a checkout;

**Prescribed** means 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 to which members of the general public or segments of the general public ordinarily have access by express or implied invitation, whether by payment or otherwise. 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, and includes buses, taxis and boats;

**Publish** means to —

- (a) insert in any book, newspaper or other periodical publication printed, published, or distributed in Tuvalu; 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 the public in Tuvalu by any other means;

**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 or designate;

**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 customs, 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 product** means any product containing tobacco in any form, in an amount that is more than an incidental ingredient or component, and that is intended for human consumption and includes all parts and materials, such as filters, rods, portion pouches, and similar matter, as applicable. The term tobacco product excludes raw tobacco that has not been processed or prepared for consumption;

**Tobacco product advertisement** is any writing, still or moving picture, sign, symbol or other visual image, or any sounds, or any combination of 2 or more of those things, that gives publicity to, or otherwise promotes or is intended to promote either directly or indirectly;

- (a) smoking; or
- (b) the purchase or use of a tobacco product or a range of tobacco products; or
- (c) the whole or a part of a trade mark of goods that are or include tobacco products; or
- (d) the whole or a part of a design of articles that are or include tobacco products; or
- (e) the whole or a part of the name of a person;
  - (i) who is a manufacturer, importer or seller of tobacco products; and
  - (ii) whose name appears on, or on the packaging of, some or all of those products; or
- (f) any other words (for example, the whole or a part of a brand name or trade mark) 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 public attribution, acknowledgment, association or identification of a tobacco manufacturer, importer, seller, brand, or product with, on, or in connection with;

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

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

**Workplace** means any place in which employees, contractors, volunteers, or other persons perform duties of employment or work and includes private offices, common areas, and any other area that they generally use during the course of their employment or work. Any place or part thereof that is used primarily as a private residence shall not be considered a workplace under this Act.

#### **4 Prohibition on advertising**

- (1) No person shall publish, or arrange for any other person to publish, any tobacco product advertisement in Tuvalu.
- (2) Any person who contravenes this section commits an offence and is liable —
  - (a) in the case of a body corporate, to a fine not exceeding \$1,000;
  - (b) in the case of an individual to a fine not exceeding \$300.

#### **5 Activities that are not tobacco product advertisements**

The following shall not be considered to be tobacco product advertisements under the Act —

- (a) commentary, opinion, report, editorial, or political discourse related to tobacco products or sellers so long as it is not made in exchange for remuneration or other direct or indirect consideration from a seller or any of its agents; 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 so long as it is not done in whole or part in exchange for remuneration or other direct or indirect consideration from a seller or any of its agents.

#### **6 Permitted activities**

The prohibition in section 4 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 sign contains a word or phrase that relates to tobacco products or to tobacco smoking, provided that that wording does not include a reference to the name or trademark of a tobacco product or tobacco company; or
- (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; or

- (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; or
- (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; or
- (e) 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 of Tuvalu or any film or video made outside Tuvalu, 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 tobacco use; or
  - (ii) the newspaper, book, magazine, radio or television broadcast, data message, film or video recording is targeted primarily at Tuvalu.

## **7 'Smoking Kills' signage at point of sale**

- (1) Every retailer of tobacco products must clearly display, in close proximity to where tobacco products are displayed for sale, a sign with the words 'Smoking Kills', in English and Tuvaluan, printed —
  - (a) in dark coloured words on a white background; and
  - (b) in type that is clear and legible, and of 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 the area of an A3 piece of paper.
- (3) the sign may include the attribution 'Ministry of Health Warning' in English and Tuvaluan, 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'.
- (4) Any person who contravenes this section commits an offence and is liable —
  - (a) in the case of a body corporate, to a fine not exceeding \$500;
  - (b) in the case of an individual to a fine not exceeding \$150.

## **8 Prohibition against brand stretching**

- (1) For the purposes of this section, non-tobacco products include but are not limited to such items as clothes, caps, bags, umbrellas, ashtrays, matches,

lighters, coasters, dishes, sporting equipment, personal items, and similar items.

- (2) No person shall advertise, display for sale or distribution, sell, or distribute any non-tobacco product 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.
- (3) No person shall display any name, 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 brand, or seller on a building, such as a club, restaurant, stadium or other place which is not primarily a business that manufactures or sells tobacco products.
- (4) Any person who contravenes this section commits an offence and is liable —
  - (a) in the case of a body corporate, to a fine not exceeding \$1,000;
  - (b) in the case of an individual to a fine not exceeding \$300.

## **9 Prohibition against reverse brand stretching**

- (1) No person shall use the brand name, trademark or other sign, symbol, logo, or similar visual matter, in whole or in part, commonly associated with a non-tobacco product on a tobacco product.
- (2) Any person who contravenes this section commits an offence and is liable —
  - (a) In the case of a body corporate, to a fine not exceeding \$1,000;
  - (b) In the case of an individual to a fine not exceeding \$300.

## **10 Tobacco sponsorships, scholarships, etc. prohibited**

- (1) No seller of tobacco products, or their agent, shall —
  - (a) organise or promote any organised activity, scholarship or other event that is to take place, in whole or in part, in Tuvalu; or
  - (b) make any financial contribution towards any organised activity, scholarship, or other event that is to take place, or is taking place, or has taken place, in whole or in part, in Tuvalu; 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 organised activity, scholarship or other event that is to take place, or is taking place, or has taken place, in whole or in part, in Tuvalu,

where that organised activity, scholarship or other event involves the use, in the name of that activity, scholarship or other event, or on any article other than a tobacco product, of a tobacco product trade mark, or of a company name or any part of a company name included in that tobacco product trade mark.

- (2) Any person who contravenes this section commits an offence and is liable —
  - (a) in the case of a body corporate, to a fine not exceeding \$1,000;
  - (b) in the case of an individual to a fine not exceeding \$300.

## **11 Sale of tobacco products to people under 18 prohibited**

- (1) No person may sell a tobacco product to a person younger than 18 years of age.
- (2) Any person who wishes to sell a tobacco product to a person aged 18 years or older must take reasonable precautions and exercise due diligence to establish that a person who wishes to buy a tobacco product is 18 years of age or older.
- (3) It shall be a defence to an offence under subsection (1) of this section if it is shown that the purchaser presented a form of identification showing his or her age and that there was no apparent reason to doubt the authenticity of the document or that it was issued to the person producing it.
- (4) Every person who sells by retail a tobacco product must display clearly for the public a notice, in accordance with any regulations made under this Act, stating that the sale of tobacco products to people who are younger than 18 years is prohibited.
- (5) No person who is not the parent or guardian of a person under the age of 18 years may supply a tobacco product to that person under 18 years of age, whether in exchange for payment or not.
- (6) Every person who fails to comply with this section commits an offence and is liable —
  - (a) in the case of a body corporate, to a fine not exceeding \$500;
  - (b) in the case of an individual to a fine not exceeding \$150.

## **12 Confectionery and toy tobacco products prohibited**

- (1) No person shall manufacture or sell any product designed for or likely to appeal to children or youth under the age of 18 years that evokes or is likely to evoke an association with a tobacco product or brand, including but not limited to candy cigarettes, toys in the shape of cigarettes or other tobacco products, and similar products.
- (2) Every person who fails to comply with this section commits an offence and is liable —

- (a) in the case of a body corporate, to a fine not exceeding \$500;
- (b) in the case of an individual to a fine not exceeding \$150.

### **13 Sale of tobacco via vending machines and other methods of unsupervised sales prohibited**

- (1) No person shall sell or offer to sell tobacco products through a vending machine.
- (2) Tobacco products may not be sold or furnished through the mail, or through any means by which the age of the purchaser or recipient of the tobacco product cannot be verified.
- (3) Tobacco products may not be sold or offered for sale by means of a display that permits a person to handle the tobacco product before paying for it.
- (4) Every person who allows a tobacco product to be sold or offered for sale in contravention of this section commits an offence and is liable —
  - (a) in the case of a body corporate, to a fine not exceeding \$500;
  - (b) in the case of an individual to a fine not exceeding \$150.

### **14 Free distribution and rewards prohibited**

- (1) No seller of tobacco products may —
  - (a) distribute any tobacco product; or
  - (b) supply any tobacco product to any person for distribution; or
  - (c) in the case of a retailer, supply any tobacco product to any person for the purpose of that retailer's business,free of charge, or at a reduced charge.
- (2) No person, in connection with the sale of a tobacco product, or for the purpose of promoting the sale of a tobacco product, may supply to the purchaser of a tobacco product or any other person —
  - (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).

- (3) Every person who fails to comply with this section commits an offence and is liable —
  - (a) in the case of a body corporate, to a fine not exceeding \$500;
  - (b) in the case of an individual to a fine not exceeding \$150.

## **15 Controls on the content of tobacco products**

- (1) No person shall manufacture, import, export, sell or otherwise distribute any tobacco product that does not comply with standards relating to the manufacture of tobacco products prescribed by regulations made under this Act.
- (2) Regulations relating to the manufacture of tobacco products may be made to —
  - (a) prescribe the amount of a substance that may be contained in tobacco products or their emissions; and
  - (b) prescribe substances that may not be added to tobacco products; and
  - (c) prescribe product design standards to reduce the harmful effects of tobacco products and to reduce their appeal to young people.
- (3) Every person who fails to comply with this section commits an offence and is liable —
  - (a) in the case of a body corporate, to a fine not exceeding \$1,000;
  - (b) in the case of an individual to a fine not exceeding \$300.

## **16 Testing required**

- (1) This section applies to each product prescribed for the purposes of this section by regulations under this Part.
- (2) Every manufacturer and every importer of a product to which this section applies must in each year conduct, in accordance with the regulations, and at an overseas laboratory nominated by the Ministry, either or both of the following (as the regulations require) —
  - (a) a test for the additives and/or constituents of each brand of the product sold by the manufacturer or importer, and the respective quantities of those additives and/or constituents;
  - (b) if the product is intended to be smoked, a test for the constituents of the smoke of each brand of the 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 this section “**product**” means anything that is a tobacco product of any kind.
- (5) In addition to the annual test or tests required by subsection (2) of this section, the Ministry may, by notice in writing to the manufacturer or importer of a product to which that section applies, require a further test or tests to be conducted.
- (6) The further test or tests must be conducted, in accordance with the regulations referred to in subsection (2) —
  - (a) in a laboratory nominated by the Ministry; and
  - (b) at the expense in all respects of the manufacturer or importer.
- (7) In any year, the Ministry must not require further tests under subsection (5) in respect of more than 10% of the brands of products to which subsection (2) applies sold by a particular manufacturer or importer.
- (8) Every person who fails to comply with this section commits an offence and is liable —
  - (a) in the case of a body corporate, to a fine not exceeding \$1,000;
  - (b) in the case of an individual to a fine not exceeding \$300.

## **17 Reports of constituents, additives, and certain business information required**

- (1) Every manufacturer, importer, and exporter of tobacco products shall submit to the Ministry on at least an annual basis, unless otherwise prescribed, reports and returns containing the information specified in regulations made under this Act.
- (2) If required by regulations made under this Act, the information referred to in subsection (1) of this section shall be made available to the public in the manner prescribed by regulations made under this Act.
- (3) Every person who fails to comply with this section commits an offence and is liable —
  - (a) in the case of a body corporate, to a fine not exceeding \$1,000;
  - (b) in the case of an individual to a fine not exceeding \$300.

## **18 Packaging and labelling requirements**

- (1) Subject to section 20 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 any regulations made under this Act.

- (2) Every unit packet and package of tobacco sold in Tuvalu, and any outside packaging and labelling of such tobacco products, must carry a clear and legible health message or messages.
- (3) Any health messages applied to tobacco packets and packages in accordance with subsection (2) must conform to any regulations made under this Act.
- (4) Any regulations made under this Act must carry health messages that —
  - (a) are rotated so that a range of messages are displayed on all tobacco brands and brand variants;
  - (b) are large, clear, visible and legible; and
  - (c) take up a minimum of 30 percent of the principal display areas of tobacco packets and packages.
- (5) Regulations may provide that every unit packet and package of tobacco sold in Tuvalu must carry messages that are in the form of, or include, pictures or pictograms.
- (6) All tobacco products imported for sale or sold in Tuvalu must carry a clear statement that the product is intended for sale in Tuvalu.
- (7) Any message applied to tobacco products in accordance with subsection (4) may be applied to a tobacco packet or package via a stamp or sticker, provided that the message is not readily able to be removed, damaged or obscured.
- (8) Every person who imports tobacco products into Tuvalu in non-compliance with subsections (1) to (7) of this section commits an offence and is liable —
  - (a) in the case of a body corporate, to a fine not exceeding \$1,000;
  - (b) in the case of an individual to a fine not exceeding \$300.

## **19 Other acceptable standard may be adopted**

- (1) For the purpose of this section “substantially to the same effect” means messages that at least meet the standards set out in subsections (4) and (6) of section 18 and section 22.
- (2) Notwithstanding section 18 of this Act, tobacco products that are packaged or labelled substantially to the same effect as the requirements set out in regulations made pursuant to this Act may be imported for sale.
- (3) No person may rely on the exception provided in subsection (2) unless they have written notification from the Secretary of Health stating that the packaging and labelling of specified imported tobacco products is approved by the Secretary of Health as being substantially to the same effect as the packaging and labelling required by regulations.

**20 Constituent and additives disclosures required to be displayed on all tobacco product packages**

- (1) 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 a cigar, a disclosure in the form and manner prescribed by regulations made under this Act, relating to any or all of the following —
  - (a) a list of the product's harmful constituents;
  - (b) the emissions of the product, as applicable;
  - (c) the product's additives.
- (2) Every person who fails to comply with this section commits an offence and is liable —
  - (a) in the case of a body corporate, to a fine not exceeding \$1,000;
  - (b) in the case of an individual to a fine not exceeding \$300.

**21 Package inserts**

- (1) No person shall sell, distribute, import, or export any tobacco product unless the product's package contains a package insert displaying information, including health messages, in the form and manner prescribed by regulations made under the Act.
- (2) Every person who fails to comply with this section commits an offence and is liable —
  - (a) in the case of a body corporate, to a fine not exceeding \$1,000;
  - (b) in the case of an individual to a fine not exceeding \$300.

**22 Misleading labelling prohibited**

- (1) No person shall package or label tobacco products in a manner that allows a consumer or purchaser of tobacco products to be deceived or misled concerning its characteristics, properties, toxicity, composition, merit or safety.
- (2) No person shall sell, distribute, or display for sale or distribution, import, or export any tobacco product that displays any words, terms, markings or other identifiers on its package or label that are prescribed by regulations as being misleading.
- (3) Any requirements arising from subsections (1) and (2) of this section do not relieve a manufacturer, importer or retailer of tobacco products of other obligations or liabilities arising from other applicable legal norms to warn consumers of the risks of using tobacco products.
- (4) Any person who contravenes this section commits an offence and is liable —

- (a) in the case of a body corporate, to a fine not exceeding \$1,000;
- (b) in the case of an individual to a fine not exceeding \$300.

### **23 Smoking in public places and workplaces prohibited**

- (1) For the purposes of this section, and sections 24, 25, 26, 26A, 27, 28, 31, 30 and 31 of this Act, an indoor or enclosed area of a public place, workplace or vehicle means an area within or on the premises or vehicle that, when all its doors, windows, and other closeable openings are closed, is completely or substantially enclosed by —
  - (a) a ceiling, roof or similar overhead surface; and
  - (b) walls, sides, screens or other similar surfaces; and
  - (c) those openings.
- (2) Subject to sections 24, 26 and 27 of this Act, no person in charge of a premises shall permit smoking to take place in any indoor or enclosed area of a public place or workplace, or in any part of any indoor or enclosed area of a public place or workplace.
- (3) Notwithstanding subsection (2) of this section, but subject to subsection (4) of this section, where only one person works in an indoor or enclosed area of a workplace, and that person wishes to smoke, smoking may be permitted in all areas of that workplace except areas to which the public normally has access.
- (4) Subject to section 27, no person in charge of any Government owned or operated building or facility may allow smoking in that building or facility.
- (5) No person may smoke in any area of any workplace or public place where smoking is prohibited under this Act.
- (6) Any person in charge of a Government building or facility who contravenes this section commits an offence and is liable —
  - (a) in the case of a body corporate, to a fine not exceeding \$500;
  - (b) in the case of an individual to a fine not exceeding \$150.

### **24 Smoking in restaurants until 31 May 2009**

- (1) Notwithstanding section 24 of this Act, where, in any restaurant, there is only 1 indoor or enclosed area set aside for the consumption of food by patrons, the restaurateur shall ensure that —
  - (a) at least 50% of the seating in that area 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.
- (2) Subject to subsection (3) of this section, where, in any restaurant, there is more than 1 indoor or enclosed area set aside for the consumption of food by patrons, the restaurateur may designate 1 of those areas for patrons who wish to smoke.
- (3) Where, in any restaurant, there is more than 1 indoor or enclosed area set aside for the consumption of food by patrons, the restaurateur shall ensure that —
  - (a) at least 50% of the seating in that restaurant is designated for persons who do not wish to smoke, and shall prominently display signs accordingly; and
  - (b) ensure that no person smokes in that area so designated.
- (4) No person shall smoke in any restaurant in seating designated for persons who do not wish to smoke.
- (5) Where, in any premises or any part of any premises, or on any ship or train, more than 1 indoor or enclosed area is used as a restaurant, and 1 or more of those 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 indoor or enclosed area or, as the case may be, each such combination of them so treated, as if it were a separate restaurant.
- (6) Any person who contravenes this section commits an offence and is liable —
  - (a) in the case of a body corporate, to a fine not exceeding \$500;
  - (b) in the case of an individual to a fine not exceeding \$150.

## **25 Smoking in restaurants from 1 June 2009**

- (1) Restaurateurs must take all reasonably practicable steps to ensure that no person smokes at any time in any indoor or enclosed area in any restaurant which they operate.
- (2) Subsection (1) does not prevent restaurateurs from prohibiting smoking in a part of the restaurant that is an open area.
- (3) No person may smoke at any time in any part of a restaurant that is an indoor or enclosed area.
- (4) Any person who contravenes this section commits an offence and is liable —
  - (a) in the case of a body corporate, to a fine not exceeding \$500;
  - (b) in the case of an individual to a fine not exceeding \$150.

**26 Smoking in licensed premises until 31 May 2009**

- (1) Notwithstanding sections 23 and 24 of this Act, but subject to subsection (2) of this section, where, in any premises, any indoor or enclosed area is set aside primarily for the consumption of liquor by patrons, the operator of a licensed premises may permit smoking in that area.
- (2) Where, in any such indoor or enclosed area, seating is set aside for the consumption of meals by patrons, the operator of the licensed premises shall ensure that —
  - (a) at least 50% 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 in seating designated for persons who do not wish to smoke.
- (4) Any person who contravenes this section commits an offence and is liable —
  - (a) in the case of a body corporate, to a fine not exceeding \$500;
  - (b) in the case of an individual to a fine not exceeding \$150.

**26A Smoking on licensed premises from 1 June 2009**

- (1) The operator of any licensed premises must take all reasonably practicable steps to ensure that no person smokes at any time in a part of the premises that is an indoor or enclosed area.
- (2) Subsection (1) does not prevent the operator of any licensed premises from prohibiting smoking in a part of the premises that is an open area.
- (3) No person may smoke at any time in a part of any licensed premises that is an indoor or enclosed area.
- (4) Any person who contravenes this section commits an offence and is liable —
  - (a) in the case of a body corporate, to a fine not exceeding \$500;
  - (b) in the case of an individual to a fine not exceeding \$150.

**27 Smoking in certain institutions**

- (1) Subject to subsection (2) of this section, no owner or operator of a place where health care services are rendered shall permit smoking in that place.
- (2) An owner or operator of a place where health care services are rendered may permit smoking to take place in a designated area of that place, provided that —

- (a) no person is required to undertake his or her usual work duties in that designated area or in close proximity to that area; and
  - (b) the smoke from the designated area does not adversely affect any indoor or enclosed place.
- (3) The person in charge of any prison shall designate an outdoor area where smoking is permitted in that prison.
- (4) Subject to subsection 5 of this section, no owner or operator of an educational facility shall permit smoking in that facility.
- (5) An owner or operator of an educational facility may permit employees of that facility to smoke in a designated area of that facility, provided that —
  - (a) no person is required to undertake his or her usual work duties in that designated area or in close proximity to that area; and
  - (b) the smoke from the designated area does not adversely affect any indoor or enclosed place nearby.
- (6) Any person who contravenes this section commits an offence and is liable —
  - (a) in the case of a body corporate, to a fine not exceeding \$500;
  - (b) in the case of an individual to a fine not exceeding \$150.

## **28 No smoking signs required**

- (1) The person in charge of any indoor or enclosed area of a public place or workplace where smoking is not permitted under this Act shall post signs prominently in that place or workplace stating that smoking is not permitted.
- (2) The signs required by subsection 1 of this section must comply with any requirements set out in regulations made under this Act.
- (3) Any person who contravenes this section commits an offence and is liable —
  - (a) in the case of a body corporate, to a fine not exceeding \$300;
  - (b) in the case of an individual to a fine not exceeding \$150.

## **29 No smoking on public transport vehicles**

- (1) No person shall smoke in any indoor or enclosed area of a public transport vehicle.
- (2) The owner or operator of a public transport vehicle shall ensure that signs are posted on the vehicle notifying the passengers that smoking is prohibited.
- (3) Any person who contravenes sub-section 2 commits an offence and is liable —
  - (a) in the case of a body corporate, to a fine not exceeding \$500;
  - (b) in the case of an individual to a fine not exceeding \$150.

**30 Smoking in aircraft**

- (1) No person shall smoke any tobacco product in an aircraft that is carrying members of the public on any journey beginning or ending in Tuvalu.
- (2) Any person who contravenes subsection (1) commits an offence and is liable to a fine not exceeding \$150.
- (3) Any person who allows a person to smoke in contravention of sub-section (1) commits an offence and is liable —
  - (a) in the case of a body corporate, to a fine not exceeding \$500;
  - (b) in the case of an individual to a fine not exceeding \$150.

**31 Obligations of owners or operators of premises and owners or operators of public transport vehicles or aircraft**

- (1) The owner or operator of any public place or workplace, or their agents and employees, and the owner or operator of any public transport vehicles or aircraft and their agents and employees shall take all reasonable steps to ensure that no person smokes in violation of the provisions of this Act.
- (2) In addition to posting required signs, taking reasonable steps includes, but is not limited to —
  - (a) asking an offending person to stop smoking;
  - (b) requiring an offending person who continues to smoke to leave the premises and 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 the offending person refuses to stop smoking or leave the premises or vehicle.
- (3) No employer, public place owner or operator, or public transport vehicle owner or operator shall retaliate against any employee or person who asserts his or her right to a smoke-free environment or who reports any violation of the provisions of this Act.
- (4) Any person who contravenes the requirements of subsection (1) or (3) of this section commits an offence and is liable —
  - (a) in the case of a body corporate, to a fine not exceeding \$500;
  - (b) in the case of an individual to a fine not exceeding \$150.

**32 Appointment of Enforcement Officers**

- (1) The Ministry may authorise any person to exercise and carry out the functions and powers of an Enforcement Officer under this Act.

- (2) The Ministry shall supply every Enforcement Officer with a warrant, and that warrant shall clearly state the functions and powers that the person concerned has been authorised to exercise and carry out under the Act.
- (3) Every Enforcement Officer who exercises or purports to exercise any power conferred on him or her shall have with him or her, and shall produce if required to do so, his or her warrant and evidence of his or her identity.
- (4) Every Enforcement Officer who holds a warrant issued under this section shall, on the termination of his or her appointment, surrender the warrant to the Ministry.

### **33 Inspection and investigative powers of Enforcement Officers**

- (1) Those Enforcement Officers appointed under section 32 of this Act shall have the following powers —
  - (a) provided that the place is not a dwelling house or other residential accommodation, to enter the premises of any place where tobacco is manufactured, sold, transported, received, distributed, packaged, or otherwise found or likely to be found or have been present, and to enter any public place, including a workplace, to conduct inspections or investigations at any time during business or operating hours of a workplace or at any other reasonable or necessary time;
  - (b) to examine, open, and test any equipment, tools, materials, packages or anything the officer reasonably believes is used or capable of being used for the manufacture, packaging, labelling, storage, distribution, display, advertising or promotion of tobacco products;
  - (c) to examine any operation or process carried out on the premises;
  - (d) to examine and make copies of or from any books, documents, notes, files, including electronic files, or other records the officer reasonably believes might contain information relevant to determining compliance with this Act or with regulations made under this Act;
  - (e) to interview or question any licensee or other person involved in selling, advertising or promoting, manufacturing, importing, exporting, growing, transporting, packaging, or distributing tobacco products, any owner of the premises, or any person using the premises, and his or her employees, agents, contractors and workers, all of whom must cooperate fully and truthfully with any inspection or investigation;
  - (f) to take samples of tobacco or tobacco products or components of products anywhere they are found and have them tested;
  - (g) to seize and detain, or order the storage without removal or alteration of any tobacco or tobacco product where ever they may be found, the officer reasonably believes does not comply with the requirements of the Act or regulations made under the Act, upon providing the licensee or owner of the tobacco products, or if he or she is unavailable, any

- other person on the place where the tobacco products are located, written notice of the seizure and detention and the grounds for it;
- (h) to seize and detain and dispose of any tobacco product being sold by a person in a manner which contravenes the requirements of the Act.
- (2) If any tobacco product that is seized and detained by an Enforcement Officer 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 product that has been seized or detained is determined not to meet the requirements of the Act or of the regulations made under the Act, it may be confiscated and destroyed or subject to other disposal, as ordered by a court.
- (4) A member of the police may accompany an Enforcement Officer exercising powers under this section.
- (5) Subsection (1) of this section does not prevent an Enforcement Officer from entering a dwelling house or other residential accommodation —
- (a) under authority given by or under an enactment other than this Act; or
- (b) with the consent of an occupier, only to the extent necessary for, the following purposes —
- (i) finding out whether this Act or regulations made under the Act is being complied with in and in respect of the place entered;
- (ii) finding out the extent to which this Act is not being complied with in or in respect of the place entered.
- (6) A person commits an offence if they threaten, assault or intentionally obstruct or hinder an Enforcement Officer who is acting in the exercise or performance of his or her powers under this section and is liable —
- (a) in the case of a body corporate, to a fine not exceeding \$500;
- (b) in the case of an individual to a fine not exceeding \$150.

### **34 Duties of Enforcement Officers**

- (1) An Enforcement Officer exercising powers under this Act must identify himself or herself as an Enforcement Officer to the person who appears to be in charge of any premises where the officer intends to exercise his or her powers; .
- (2) If asked to do so, the Enforcement Officer must produce evidence of identity and his or her warrant issued under section 32.

**35 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) Despite 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 that the principal took all reasonable steps to prevent the commission of the offence or the commission of offences of that kind.

**36 Additional penalties**

- (1) In addition to the penalties for offences specified in this Act, the following penalties may be imposed, singly or in combination, for any violation —
  - (a) licence suspension, revocation, or limitation, as applicable, for any violation;
  - (b) removal of the offending person from the premises or public transport vehicle and confiscation and forfeiture of any tobacco product smoked in violation of the provisions of sections 23, 24, 25, 26, 26A, 27, 29 and 30;
  - (c) confiscation and forfeiture of —
    - (i) equipment, machinery, materials, and related items used to publish, broadcast, display, or otherwise disseminate any advertisement or promote a tobacco product in violation of section 4;
    - (ii) any tobacco product packaged or labelled in a manner that does not conform to the requirements of sections 18, 19, 20, 21, and 22, wherever they may be located and regardless of the knowledge or intent of the person who owns or possesses such products;
    - (iii) any and all tobacco products owned by or under the control of the person found to have committed a violation of sections 9, 13, and 14, wherever located and regardless of the knowledge or intent of the person who owns or possesses such products;
    - (iv) equipment, machinery, raw materials, components, and any items used to manufacture or pack tobacco products in violation of section 15.
- (2) For any continuing violation, each day the violation continues shall constitute a separate offence.
- (3) Compounded penalties shall be assessed for repeat violations.

- (4) Where any person derived any monetary or financial benefit from any act or omission that constitutes a violation under this Act or implementing regulations, all monies so gained shall be forfeited in addition to any other penalty imposed.

### **37 Enforcement cost recovery**

Any person found to have violated any requirement under this Act or implementing regulations may be ordered to pay the reasonable costs associated with any inspection, investigation, and enforcement action brought about by the non-compliance.

### **38 Regulations**

The Minister may make such regulations as are contemplated by this Act or as are necessary or expedient for the purposes of this Act for all or any of the following purposes —

- (a) prescribing 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; prescribing the manner in which and the period during which any such records and registers are to be kept; and prescribing the persons to whom, and the conditions on which, any such records and registers may be available for searching, inspection, and copying;
- (c) prescribing the size, colour, content and number of price notices permitted to be displayed inside retail outlets, and the inclusion of a health message on those notices;
- (d) prescribing the manner by which tobacco products may be displayed inside retail outlets;
- (e) prescribing the size, colour, content and location for the notice required by subsection 4 of section 11;
- (f) prescribing requirements for the purpose of section 18;
- (g) prescribing the form, size, and content of information (including information about additives and constituents) and the health messages to be displayed with, on, or in packages of, tobacco products; and prescribing the circumstances and manner in which the information and messages 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; and
  - (ii) requiring a package insert, in a prescribed form, to be placed inside packages of tobacco products sold or offered for sale;
- (h) prescribing the information that may not be displayed on tobacco packaging;
- (i) prescribing the form, size, colour and content of *No smoking* signs in workplaces, public places and public transportation as contemplated in section 28;
- (j) establishing standards for the manufacture of tobacco products, including —
  - (i) prescribing the amount of substances that may be contained in the product or its emissions; and
  - (ii) prescribing substances that may not be added to tobacco products; and
  - (iii) prescribing product design standards to reduce the harmful effects of tobacco products and to reduce their appeal to young people;
- (k) prescribing what products must be tested for the purposes of section 16 of this Act;
- (l) prescribing the method of determining the additives and/or constituents of tobacco products and the constituents of smoke produced from their combustion;
- (m) 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;
- (n) 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;
- (o) prescribing the form and manner in which returns and reports are to be filed under section 17 of this Act;
- (p) requiring manufacturers and importers of tobacco products to file with the Ministry returns showing all additives used in the manufacture of the tobacco products sold by that manufacturer or importer;
- (q) requiring manufacturers and importers of tobacco products to file with the Ministry 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 year;
- (r) requiring manufacturers and importers of tobacco products to disclose to the public any information they are required under regulations made under this Act to disclose to the Ministry and the manner by which this disclosure shall take place;
- (s) identifying any words, terms, markings or other identifiers that are deemed as misleading for the purposes of section 22 of this Act;
- (t) 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.

**ENDNOTES**

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<sup>1</sup> Act 8 of 2008

<sup>2</sup> In force on publication, but –

Sections 25 and 26B of this Act came into force on 1 June 2009, and sections 24 and 26 of this Act shall ceased to have effect at midnight on 31 May 2009.