

Tobacco Control Bill 2009

EXPLANATORY MEMORANDUM

1.0 INTRODUCTION

The Bill provides for the regulation of the use, promotion and content of tobacco and tobacco products in Nauru.

2.0 CLAUSES

Clause 1: The short title of the Act would be the *Tobacco Control Act 2009*. The legislation would come into force three months after receiving the certificate of the Speaker, except for the provisions in Schedule 1, which would come into force on the later dates specified in Schedule 1. Schedule 1 would be part of the Act.

Clause 2: The clause defines a number of terms used throughout the Bill. Of particular note is the broad definition of “selling”, which includes barter or exchange or giving tobacco products away for free with a view to gaining or maintaining custom or otherwise gaining a commercial gain; and the definitions of “enclosed workplace” and “enclosed public place” which are quite comprehensive, but which would not come into effect until 4 years and three months after certification (during the first four years, the provisions of clause 16 would apply, in order that the smoking ban can be introduced in phases, to enhance the likelihood of compliance). The definition of “enclosed public place” may be expanded by regulation, but may not be expanded within the first four years and 3 months of certification.

Clause 3: This clause prohibits tobacco advertising and makes it an offence to contravene the prohibition on advertising. The clause also provides some limited exceptions to the prohibition, including tobacco product advertising contained on tobacco product packaging and advertising contained in certain publications or programs printed or originating outside Nauru, provided they are not principally aimed at promoting tobacco or targeted primarily at a Nauruan audience. It would be permissible to display a tobacco advertisement inside a shop at the point of sale, provided such advertisement does not display the trademark or brand name of any tobacco product or the name of any manufacturer of tobacco products, and provided that the display contains a conspicuous health warning message covering at least 20% of the display. The clause prescribes heavy penalties for contravening advertising restrictions.

Clause 4: This clause prohibits the distribution of free samples or offering prizes for the purpose of inducing or promoting the sale of any tobacco product or smoking generally, and makes it an offence to do so.

Clause 5: Giving or receiving sponsorship, gifts, prizes, rewards or scholarships in connection with the promotion or publicity of a tobacco product or trademark or brand name or the name or interests of a manufacturer or distributor of tobacco products, and any agreement allowing such activities are prohibited and constitute an offence under this clause. This clause imposes severe penalties for breach of the prohibition on tobacco sponsorship, as it is necessary for the penalties to serve as an effective deterrent to entering into tobacco sponsorship arrangements. Light penalties are unlikely to have the desired effect, as parties may decide that it is worth incurring the penalty and proceeding with the sponsorship arrangement. Accordingly, an individual who accepts a tobacco sponsorship deal will face a penalty of \$5,000, and a company that accepts a deal will be fined \$25,000. Any person or

company which provides sponsorship will also be fined \$25,000.

Clause 6: This clause requires the packaging of tobacco products to be marked in accordance with the regulations, and makes it an offence to sell tobacco products that are not so marked. Detailed prescriptions as to the required form of labeling or marking tobacco products, such as the inclusion of health warnings like ‘SMOKING CAUSES CANCER,’ ‘SMOKING IS DANGEROUS TO YOUR HEALTH’ etc, will be comprehensively covered in the regulations. This provision would not come into force until six months after certification, to provide time for manufacturers, importers and retailers to be able to comply with the new requirements.

Clause 7: This clause places maximum limits on the permissible tar and nicotine contents of cigarettes for sale in Nauru. These two chemical components are the main causes of addiction and health problems in smoking. The clause would make it an offence to sell cigarettes with tar or nicotine content in excess of the prescribed maximum. This provision would not come into force until six months after certification, to provide time for manufacturers, importers and retailers to be able to comply with the new requirements.

Clause 8: This clause prohibits the sale of individual cigarettes from a packet. The clause provides that cigarettes may only be sold in unbroken packages of 20 cigarettes or more, and makes it an offence to sell cigarettes in any other form. This provision would come into force nine months after certification.

Clause 9: This clause requires retailers to post signs stating that it is an offence to sell tobacco to persons under 18, and also prohibits the sale of tobacco to persons below the age of 18. The clause sets out strict penalties for contravention. Some parts of this provision would come into force 3 months after certification, and other parts 6 months after certification.

Clause 10: This clause makes it an offence to sell tobacco and tobacco products from a vending machine.

Clause 11: This clause prohibits sale and supply of tobacco products in restaurants and makes such sale or supply an offence. This provision would come into force 12 months after certification.

Clause 12: This clause makes it an offence to import or sell confectionery or toys that are designed to resemble a tobacco product or which are contained in packaging that is designed to resemble a tobacco product or the packaging of a tobacco product, and declares such items to be prohibited imports. This provision would come into force 6 months after certification, to provide importers and retailers with time to comply with the new provisions.

Clause 13: This clause prohibits smoking in all enclosed public places and enclosed workplaces. This includes but is not limited to government offices, schools, hospitals and public transport. If smoking occurs in an enclosed public place or enclosed workplace, both the smoker and the occupier of such place (the person who is or appears to be in control of such place) shall be guilty of an offence. The clause also sets out available defences to prosecution. As noted in the note on clause 2, above, and clause 16, below, it is proposed that the prohibition on smoking in enclosed public places and enclosed workplaces be phased in gradually over four years, and therefore different definitions of enclosed public place and enclosed workplace would apply at different stages of implementation.

Clause 14: This clause puts the onus on employers and officers-in-charge of institutions or events to put ‘NO SMOKING’ signs in their workplaces, halls etc and makes it an offence to

fail to do so. The clause envisages that regulations will prescribe the form, size and content of such signs.

Clause 15: This clause clarifies that the ban on smoking in restaurants, bars, cafes and hotels will not take effect until four years and three months after certification, but provides that the licensee of any such business may adopt a 'no smoking' policy earlier than that date, and that subject to certain conditions such policy will be enforced under the Act.

Clause 16: This clause provides the two interim definitions of enclosed public place and enclosed workplace that will apply for the first two years after commencement of the Act, and the period from two to four years after commencement of the Act. The definitions get progressively stricter. During the first two years, smoking is prohibited inside any room or indoor space within a government building, school, hospital, public transport and any other indoor public facility and any indoor workplace. During the period from two to four years after commencement of the Act, smoking will be prohibited in any place inside or within the ground of any public building or facility including public transport, except within a designated smoking area, and within any workplace enclosed by a roof and two or more walls except restaurants, hotels, bars and cafes and designated smoking areas. After four years and three months, the definitions in section 2 would apply.

Clause 17: This clause provides for the approval by an authorised officer of a designated smoking area. If the occupier of any public place or workplace makes a request, an authorised officer will inspect the proposed designated smoking area, and if it complies with the prescribed requirements as to size, location, air flow, rubbish bins and signage, may grant a certificate of approval, which shall also be provided to the Minister. This clause also provides for the approval of a designated smoking area inside the transit and departure lounge at the airport.

Clause 18: This clause requires a reasonable portion of import duty collected on tobacco products in the previous year to be appropriated for tobacco control activities, such as monitoring and enforcement of the Act and regulations, tobacco education and 'QUIT' campaigns.

Clause 19: This clause provides that all health inspectors and food inspectors are authorised officers for the purposes of the Act, and allows the Minister to prescribe persons as 'authorised officers' by notice in the Gazette. In view of the powers granted to authorised officers under the Act, the clause also requires the officers to show identification upon request.

Clause 20: This clause is a general penalty provision applicable where there is no penalty provided (which therefore applies to offences created under clauses 4, 6, 7, 8, 11, 12, 13, 14, 21(8), 23 and 24(3) of the Bill).

Clause 21: This clause provides that where an offence is committed by a corporate body, each director of such corporate body is individually liable to pay the corporate penalty provided for, unless he proves that he exercised reasonable diligence to prevent the commission of the offence. It also provides that if one of the specified offences is committed by a business that has a trading licence, both the licensee and the person in charge of the daily operations of the business will be liable to a penalty. This latter provision is designed to ensure that where a Nauruan holds the trading licence for a Chinese-run business, the Nauruan licensee will have an interest in monitoring compliance with the Act, and also that the person who actually commits the offence will be penalised.

Clause 22: This clause specifies the persons authorised to prosecute offences under the Act.

Clause 23: This clause makes detailed provision for the powers of entry, search and seizure of authorised officers and the circumstances under which such powers may be exercised.

Clause 24: This clause outlines the power of authorised officers to request and obtain information or records that may be relevant to the operation or enforcement of the Act or the investigation of a suspected contravention of the Act, and makes it an offence to fail to provide information or records that have been requisitioned under this clause or to provide false or misleading information.

Clause 25: This clause deals with continuing offences against clause 22, and provides for daily fines to be imposed for each day on which the offence continues after the initial conviction.

Clause 26: This clause makes it an offence to obstruct authorised officers in the performance of their duties under the Act.

Clause 27: This clause enables authorised officers to issue directions to persons who have contravened the Act to remedy their non-compliance within a specified time, and makes it an offence to fail to comply with such direction.

Clause 28: This clause provides that persons convicted of certain offences under the Act may be ordered to pay the costs of removal of advertisements or destruction of tobacco products.

Clause 29: This clause renders any agreements that are in effect at the commencement of the Act and which are inconsistent with the Act unenforceable to the extent of the inconsistency, and provides that neither the Republic nor any person shall be liable to pay any compensation in respect of such unenforceable contracts.

Clause 30: This clause empowers Cabinet to make regulations to give effect to the provisions of the Act, and includes a non-exhaustive list of the matters that may be prescribed by regulation. The power to make regulations under paragraph (g) declaring a place or a class or category of places to be 'enclosed public places' for the purposes of the Act would not come into force until 4 years and three months after certification.

Clause 31: Provides for the repeal of the *Possession of Tobacco by Children Ordinance 1924 – 1967*.

Schedule 1: Schedule 1 provides for the commencement dates of the provisions that commence on a date later than three months after certification.