

No. 53 of 2016.

*Tobacco Control Act 2016.*

Certified on : 26 JAN 2017



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No.        of 2016.

An Act

entitled

***Tobacco Control Act 2016,***

Being an Act to control and regulate the manufacture, importation, distribution and sale and use of tobacco and tobacco products and for related purposes,

MADE by the National Parliament to come into operation -

- (a) for all parts except Parts V, VI, VII and IX, upon certification; and
- (b) for Parts V, VI, VII and IX, individually or together in accordance with a notice or notices published in the National Gazette by the Minister acting on the advice of the Secretary.

**PART I. - PRELIMINARY.**

**1. COMPLIANCE WITH CONSTITUTIONAL REQUIREMENTS.**

(1) This Act, to the extent that it regulates or restricts a right or freedom referred to in Subdivision III.3.C (*qualified rights*) of the *Constitution*, namely -

- (a) the right to freedom from arbitrary search and entry conferred by Section 44; and
- (b) the right to freedom of expression conferred by Section 46; and
- (c) the right to privacy conferred by Section 49; and
- (d) the right to freedom of information conferred by Section 51; and
- (e) the right to freedom of movement conferred by Section 52; and
- (f) protection from unjust deprivation of property conferred by Section 53,

is a law that is made for the purpose of giving effect to the public interest in public safety, public welfare and public health and in order to protect the rights and freedoms of others including the right to health.

(2) For the purposes of Section 41(2) of the *Organic Law on Provincial Governments and Local-level Governments*, it is declared that this Act relates to a matter of national interest.

(3) For the purposes of Section 41(6) of the *Organic Law on Provincial Governments and Local-level Governments*, it is declared that this Act is an Act of the Parliament on a matter specified in Section 42 or 44 of the *Organic Law*, and prevails over any law made under Section 42 or 44 to the extent of any inconsistency.

**2. 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



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- (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;
- “air service” means an air transport service or an aerial work service, whether regular or casual;
- “air service operations” means any operations by aircraft for the carriage of passengers, mail, or cargo for hire or reward;
- “brus” means unbranded loose tobacco, grown in Papua New Guinea and sold in an informal business whether sold loose, packaged or in stick form and is not an excisable material for the purposes of the *Excise Tariff Act 1956*;
- “cigarette” means a tobacco product comprising a roll of cut tobacco, enclosed in paper and includes the tobacco product commonly known as cigarillo;
- “company name” includes any corporate name, firm name or business name, whether or not, it is registered or registrable under the *Companies Act 1997* or any other law;
- “constituents”, in relation to tobacco products intended for smoking, means the chemicals found in the product, and in relation to smokeless tobacco products, constituents mean the chemicals inherent in the tobacco itself;
- “Court” means the National Court of Papua New Guinea;
- “craft” means -
- (a) a craft used for air service operations; or
  - (b) any vessel used in navigation not ordinarily propelled by oars only, other than a traditional canoe;
- “Department” means the Department responsible for health matters;
- “distributor” means a person engaged in the business of selling tobacco products otherwise than by retail only;
- “District Development Authority” means a district development authority established under the *District Development Authority Act 2014*;
- “emissions” mean substances that are released when the tobacco product is used as intended -
- (a) in the case of cigarettes and other combustible products, emissions are the substances found in the smoke; and
  - (b) in the case of smokeless tobacco products for oral use, emissions are the substances released during the process of chewing or sucking; and
  - (c) in the case of nasal use, refer to substances released by particles during the process of snuffing;
- “employee” means any person over the age of 18 who is employed under a contract of service by an employer to do any work for hire or reward;
- “employer” means a person who employs any employee;
- “enclosed” means an area within or on the premises or vehicle that, when all its doors, windows, and other closable openings are closed, is completely or substantially enclosed by -
- (a) a ceiling, roof or similar overhead surfaces; and
  - (b) walls, sides, screens or other similar surfaces; and
  - (c) those openings;
- “government” means the Government of the Independent State of Papua New Guinea;
- “health message” means a warning or an explanatory statement or picture about the health effects of tobacco use, the benefits of or suggestions for quitting, and any other matter related to tobacco and health, as prescribed by regulations made under the Act;

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“health promotion trust fund” means the health promotion trust fund established under Section 47 and is deemed to be a trust account for the purposes of Section 15 of the *Public Finances (Management) Act 1995*;

“informal business” means informal business within the definition in the *Informal Sector Development and Control Act 2004*;

“local-level government president” means a head of a Local-level Government elected pursuant to Section 12 of the *Local-level Government Administration Act 1997*;

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

“loose tobacco” means tobacco prepared for smoking in a hand-rolled cigarette or pipe tobacco;

“occupier” means a person or company residing in or using a property as its owner or tenant;

“other message”, in relation to messages on tobacco packaging, means 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” or “packaging” means any pack, carton, wrapping, or other container in which tobacco products are customarily sold at retail and includes the packages label;

“premises” means a building and includes any part of a building, and any place or part of a place;

“public place” means a place or vehicle that the public, or a section of the public is entitled to use or that is open to, or is being used by, the public or a section of the public (whether on payment of money, by virtue of membership of a club or other body, or otherwise);

“publish” means -

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

“retail” means the business or conduct of a business that includes or may include the sale of a tobacco product in whole or in part;

“retailer” means a person engaged in any business that includes or may include the sale of a tobacco product in whole or in part;

“Secretary” means the departmental head of the Department responsible for health matters;

“sell” includes -

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

“smoke-free area” means any public place declared by the Minister to be a smoke-free area or a smoke-free building under Part II;



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“smoking” or “to smoke”, with its grammatical variations, means puffing or inhaling and expelling the smoke of any tobacco product and includes the holding of, or control over, any ignited tobacco product or brus;

“smoking cessation product” means a product intended for the purpose of assisting a person to cease smoking as prescribed under Section 54;

“tobacco product” means -

- (a) any product made or derived from tobacco that is intended for human consumption, including any component, part, or accessory of a tobacco product and includes, but is not limited to, cigarettes, packaging, cigarette tobacco, roll-your-own tobacco, and smokeless tobacco; and
- (b) any electronic device that can be used to deliver nicotine to the person inhaling from the device, including, but not limited to, an electronic cigarette, cigar, cigarillo or pipe; and
- (c) notwithstanding Paragraph (a), “tobacco product” does not mean brus or any product that the Secretary has approved as a tobacco cessation product;

“tobacco product advertisement” or “advertise” means any word, whether written, printed, or spoken, including on film, video recording, or other medium, broadcast or telecast, and any pictorial representation, design, or device used to encourage the use or notify the availability or promote the sale of any tobacco product or to promote smoking behaviour and includes -

- (a) any depiction, in a film, video recording, telecast or other visual medium of a tobacco product or a tobacco product trademark, where in return for that depiction any money is paid, or any valuable thing is given, whether to the maker or producer of that film, video recording, telecast or visual medium or to any other person; and
- (b) the use in any advertisement or promotion to the public of a tobacco product manufacturer’s company name where that name or any part of that name is used as, or is included in, a tobacco product trademark;

“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;

“trademarks” means any trademark whether or not it is registered or registerable under any applicable law of Papua New Guinea and includes -

- (a) any brand name; or
- (b) any company name, where that name is used for advertising or promotional purposes; or
- (c) any name, word, or mark that so resembles any trademark that it is likely to be taken as, or confused with, that trademark;

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“vehicle” means bus, motor vehicle, aeroplane, taxi, hire car, ferry or other vessel;

“vending machine” means any self-service machine that -

- (a) on the insertion of a coin or token or by any other means, dispenses by way of sale tobacco products, whether automatically or with the assistance of the purchaser; and
- (b) does not require replenishment between each sale;

“wholesale” means the business or conduct of a business that sells or offers for sale, tobacco products for the purpose of resale;

“wholesaler” means a person who sells or offers for sale, tobacco products for the purpose of resale.

“work place” means any indoor or enclosed area that is occupied by an employer and that employees usually frequent during the course of their employment and includes -

- (a) any vehicle, cafeteria, corridor, lift, lobby, stairwell, toilet and washroom; and
- (b) any enclosed common areas and employer provided vehicles normally used by employees,

but does not include any place which is primarily used as a residence occupied by the employer.

### **3. CONFLICT OF INTEREST.**

(1) The Government may interact with tobacco product distributors, importers, lobbyists, manufacturers, or retailers as may be necessary for matters including but not limited to registration, licensing and excise payment.

(2) The Government shall protect its public health policies by requiring that any such interaction undertaken under Subsection (1) is -

- (a) transparent and publicly accessible wherever possible; and
- (b) undertaken with reasonable efforts to protect against commercial, corporate and all other interests which do not promote the objectives of this Act.

### **4. ACT TO BIND THE STATE.**

This Act binds the State.

## **PART II. - SMOKE-FREE ENVIRONMENT WHERE PUBLIC HAS ACCESS.**

### **5. SMOKING PROHIBITED IN SMOKE-FREE AREA.**

(1) A person shall not smoke in a smoke-free area.

(2) Subject to this section, any person who smokes in a smoke-free area commits an offence.

Penalty: A fine not exceeding K500.00.

(3) A person who performs in a theatre or other performance space does not commit an offence under this section by smoking during the performance if smoking is of any artistic, literary, scientific, political, educational, or entertainment value, 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.

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### **6. OCCUPIER NOT TO ALLOW SMOKING IN SMOKE-FREE AREA.**

(1) An occupier must take all reasonably practicable steps to ensure that no person smokes at any time in a smoke-free area.

(2) An occupier who fails to comply with this section commits an offence.

Penalty: A fine not exceeding K2,000.00.

### **7. OCCUPIER TO DISPLAY SIGNS.**

(1) The occupier of a smoke-free area must display, within the smoke-free area, signs stating that smoking is not permitted.

(2) The signs must comply with any requirements set out in the regulations made under this Act.

(3) A person who contravenes this section commits an offence.

Penalty: A fine not exceeding K2,000.00.

### **8. MINISTER MAY PRESCRIBE SMOKE-FREE BUILDING OR SMOKE-FREE BUILDINGS OR SMOKE-FREE AREAS.**

(1) The Minister may, by an order published in the National Gazette, and subject to any conditions he thinks fit, prescribe any class of buildings or any part of buildings to which members of the public have access to, to be smoke-free areas in which smoking is prohibited.

(2) The Minister may, by an order published in the National Gazette, and subject to any conditions he thinks fit, prescribe any specific building, or part of it, to which members of the public have access to, to be a smoke-free area in which smoking is prohibited either permanently or for any period the Minister thinks fit.

(3) The Minister may, by an order published in the National Gazette, and subject to any conditions he thinks fit, prescribe any vehicle or craft or class of vehicle or craft used for public transport to be a smoke-free area in which smoking is prohibited either permanently or for any period the Minister thinks fit.

## **PART III. - SMOKE-FREE WORK PLACES.**

### **9. SMOKING PROHIBITED IN THE WORK PLACE.**

(1) Smoking in the work place is prohibited.

(2) A person who smokes in a work place commits an offence.

Penalty: A fine not exceeding K500.00.

### **10. EMPLOYER NOT TO ALLOW SMOKING IN THE WORK PLACE.**

(1) An employer must take all reasonably practicable steps to ensure that no person smokes at any time in a work place.

(2) An employer who fails to comply with this section commits an offence.

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Penalty: A fine not exceeding K2,000.00.

### **11. EMPLOYER TO DISPLAY SIGNS.**

- (1) An employer must display signs at the work place stating that smoking is not permitted.
- (2) The signs must comply with any requirements set out in the regulations.
- (3) A person who contravenes this section commits an offence.

Penalty: A fine not exceeding K2,000.00.

### **12. EXEMPTIONS.**

Employers and persons must not be subject to the provisions of this Part if the work place is a place where smoking is permitted under this Act.

### **13. LIABILITIES OF A BODY CORPORATE.**

When a body corporate is convicted of any offence under this Act, the director, manager and officer of the body corporate are liable to be convicted of the same offence and fined in the same manner as the body corporate unless the director, manager or officer, as the case may require, establishes to the satisfaction of the Court that the director or manager or officer, as the case may require, did not know and could not have taken reasonable steps to have known that an offence under this part was being or had been committed by the body corporate.

## **PART IV. - TOBACCO PRODUCT CONTROL.**

### **14. ADVERTISING OF TOBACCO PRODUCTS.**

(1) Subject to this Act, no person shall publish, or arrange for any other person to publish, any tobacco product advertisement in Papua New Guinea.

(2) Subsection (1) does not apply to any price list given to retailers of tobacco products if the price list includes the health messages required by or under this part.

### **15. ACTIVITIES THAT ARE NOT TOBACCO PRODUCT ADVERTISEMENTS.**

The following shall not be considered to be tobacco product advertisements under this 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.

### **16. PERMITTED ACTIVITIES.**

(1) The prohibition in Section 14(1) does not apply to -

- (a) the use of a retailer's name or trade name, or a sign notifying the public of the

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availability of tobacco products, on the exterior of a retailer's place of business, or the display of tobacco products inside a retailer's place of business provided that the retailer complies with Section 17 or Section 18; or

- (b) 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
- (c) an internet website for any particular seller, so long as it presents factual information about the business and does not advertise or promote tobacco products or brands; or
- (d) 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 Papua New Guinea or any film or video made outside Papua New Guinea, 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 Papua New Guinea audience.

(2) A person who, without reasonable excuse, publishes any advertisement for a tobacco product in contravention of this section commits an offence.

- Penalty:
- (a) for a manufacturer, importer or distributor of a tobacco product, a fine not exceeding K15,000.00; and
  - (b) for any other case, a fine not exceeding K1,000.00.

### **17. EXCEPTIONS FOR RETAILERS.**

- (1) Notwithstanding Section 14(1), a retailer of tobacco products may do any of the following:
- (a) expose any tobacco product for sale inside the retailer's place of business so long as the display complies with any prescribed requirements; or
  - (b) the placement, inside a retailer's place of business, of price notices indicating the tobacco products made for the purpose of this section.

(2) A retailer who acts in contravention of Subsection (1) commits an offence.

Penalty: A fine not exceeding K2,000.00.

### **18. USE OF TRADEMARKS, ETC., ON GOODS OTHER THAN TOBACCO PRODUCTS OR IN RELATION TO SPONSORED EVENTS.**

- (1) No person shall use, otherwise than in a private capacity, a tobacco product trademark -
- (a) on any article other than a tobacco product or a package or container in which a tobacco product is sold or shipped; or
  - (b) for the purpose of advertising or identifying to the public -
    - (i) any article other than a tobacco product; or
    - (ii) any service, activity or event; or
    - (iii) any scholarship, fellowship or other educational benefit,

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even though that person would be, but for this Act, entitled to use the trademark on that article or for that purpose.

(2) If a trademark includes the company name, or part of the company name of a manufacturer, importer, or distributor, in Papua New Guinea, of any tobacco product, no person shall, otherwise than in a private capacity, use that company name or part of the company's name for the purpose of advertising or identifying to the public -

- (a) any article other than a tobacco product; or
- (b) any service, activity, or event; or
- (c) any scholarship, fellowship, or other educational benefit,

even though that person would be, but for this Act, entitled to use that trademark or company name or part of the company name for that purpose.

(3) No person shall distribute, sell or offer or expose for sale any article, other than a tobacco product or a package or container in which a tobacco product is sold or shipped, that bears a trademark of a tobacco product that is sold in Papua New Guinea.

(4) A person who, without reasonable excuse, uses any trademark or company name in contravention of Subsection (1) or (2), or who distributes, sells, or offers or exposes for sale any article in contravention of Subsection (3) commits an offence.

- Penalty:
- (a) for a manufacturer, importer or distributor of a tobacco product, a fine not exceeding K15,000.00; and
  - (b) for any other case, a fine not exceeding K1,000.00.

### **19. ORGANISING OR PROMOTING ACTIVITY USING TRADEMARKS, ETC., OF TOBACCO PRODUCTS.**

(1) No manufacturer, importer, distributor or retailer of tobacco products shall -

- (a) organise or promote any organised activity that is to take place, in whole or in part, in Papua New Guinea; or
- (b) make any financial contribution towards any organised activity that is to take place, or is taking place, or has taken place, in whole or in part, in Papua New Guinea; or
- (c) make any financial contribution to any person in respect of the organisation, promotion or the participation by that person in an organised activity that is to take place, or is taking place, or has taken place, in whole or in part, in Papua New Guinea,

where that organised activity involves the use of a tobacco product trademark, or of a company name or any part of a company name included in that tobacco product trademark.

(2) A manufacturer, importer, distributor or retailer of a tobacco product who contravenes this section commits an offence.

- Penalty:
- (a) for a manufacturer, importer or distributor, a fine not exceeding K15,000.00; and
  - (b) for any other case, a fine not exceeding K1,000.00.



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### **20. FREE DISTRIBUTION AND REWARDS PROHIBITED.**

- (1) No manufacturer, distributor, importer or retailer of a tobacco product shall -
  - (a) distribute any tobacco product; or
  - (b) supply any tobacco product to any person for subsequent distribution; or
  - (c) for a retailer, supply any tobacco product to any person for the purpose of that retailer's business,free of charge or on a reduced charge.
- (2) No person shall -
  - (a) offer any gift or cash rebate, or the right to participate in any contest, lottery or game, to the purchaser of a tobacco product in consideration for the purchase of that product, or to any person in consideration for the provision of evidence of such a purchase; or
  - (b) offer to any retailer any gift or cash rebate, or the right to participate in any contest, lottery or game, as an inducement or reward in relation to -
    - (i) the purchase or sale of tobacco products by that retailer; or
    - (ii) the advertising of tobacco products inside that retailer's place of business; or
    - (iii) the location of tobacco products in a particular part of that retailer's place of business.
- (3) Subsections (1) and (2) do not prohibit the giving of any normal trade discount or normal trade rebate.
- (4) Subsection (2) does not apply in respect of any payment or reward to any person who -
  - (a) with the authority of the Secretary or of some other person authorised for that purpose by the Secretary; and
  - (b) for the purpose of monitoring compliance with the provisions of this part,purchases or attempts to purchase any tobacco product.
- (5) A person who offers any gift, cash rebate, or right of participation in contravention of this section commits an offence.

Penalty: (a) for a manufacturer, importer or distributor, a fine not exceeding K15,000.00; and  
(b) for any other case, a fine not exceeding K1,000.00.

### **21. TOBACCO PRODUCTS NOT TO BE ADVERTISED OR LABELLED AS SUITABLE FOR CHEWING.**

- (1) No person shall publish an advertisement for a tobacco product that directly or indirectly states or suggests that 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).
- (3) A person who publishes any advertisement in contravention of Subsection (1), or who imports, sells, packs or distributes any tobacco product in contravention of Subsection (2) commits an offence.

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- Penalty: (a) in the case of a manufacturer, importer or distributor, a fine not exceeding K15,000.00; and  
(b) in any other case, a fine not exceeding K1,000.00.

### **22. SALE OF TOBACCO PRODUCTS TO PERSONS UNDER 18 PROHIBITED.**

(1) No person shall sell any tobacco product to a person who is under the age of 18 years.

(2) It is a defence to a charge in respect of a contravention of Subsection (1) if the person proves that the offence was committed without the person's knowledge and that the person took reasonable precautions and exercised due diligence to prevent the commission of the offence.

(3) It is no defence to a charge in respect of a contravention of Subsection (1) where -

- (a) the person to whom the tobacco product was sold was purchasing it for or on behalf of, or as agent for, a person to whom tobacco products may legally be sold; or
- (b) the person who sold the tobacco product believed on reasonable grounds that the person to whom the tobacco product was sold was purchasing it for or on behalf of, or as agent for, a person to whom tobacco products may legally be sold.

(4) A person who sells by retail any tobacco product must display clearly for the public a notice to the effect that the sale of any tobacco product to persons who are under the age of 18 years is prohibited.

(5) A retailer of a tobacco product who fails, without reasonable excuse, to display the notice required by Subsection (4) commits an offence.

Penalty: A fine not exceeding K1,000.00.

(6) A person who sells any tobacco product in contravention of this section commits an offence.

Penalty: A fine not exceeding K5,000.00.

### **23. CONFECTIONERY AND TOYS.**

(1) No person shall sell -

- (a) any confectionery or other food; or
- (b) any toy, amusement or other product,

that resembles a tobacco product, contains a brand name or trademark of a tobacco product or is packaged to resemble a tobacco product.

(2) A person who contravenes Subsection (1) commits an offence.

Penalty: A fine not exceeding K500.00.

### **24. RESTRICTIONS ON SALE OF CERTAIN TOBACCO PRODUCTS IN SMALL QUANTITIES.**

(1) No person shall -

- (a) sell by retail; or

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(b) offer for sale by retail,  
loose cigarettes in amounts of fewer than 25 cigarettes.

- (2) No manufacturer, importer, distributor or retailer of tobacco products may sell or offer for sale -  
(a) cigarettes in a package that contains fewer than 25 cigarettes; or  
(b) loose tobacco in a package that contains less than 25 grams of loose tobacco.

(3) A person who permits any tobacco product to be sold in contravention of this section commits an offence.

Penalty: (a) in the case of a body corporate, a fine not exceeding K15,000.00; and  
(b) in the case of a natural person, a fine not exceeding K1,000.00.

### **25. 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) A person who contravenes this section commits an offence.

Penalty: A fine not exceeding K15,000.00.

### **26. PROHIBITION ON BRAND STRETCHING.**

(1) A person shall not advertise, display for sale or distribution, sell, or distribute any goods which are not a tobacco product, or any service, in any manner or form that contains any writing, picture, image, graphic, logo, message, colour or other matter, in whole or part, that is commonly identified or associated with, or is likely to be identified or associated with a tobacco product or trademark or brand name, or part of a trademark or brand name, of a tobacco product or manufacturer.

(2) A person must not 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, logo message, colour 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 product or trademark or brand name, or part of a trademark or brand name, of a tobacco product or manufacturer.

(3) Nothing in Subsection (2) applies in respect of the business premises of any manufacturer or seller whose sole or principal business is either the manufacture or sale of tobacco products.

(4) Any person who contravenes Subsection (1) or (2) commits an offence.

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- Penalty: (a) in the case of a body corporate, a fine not exceeding K15,000.00; and  
(b) in the case of a natural person, a fine not exceeding K1,000.00.

### **27. PROHIBITION AGAINST REVERSE BRAND STRETCHING.**

(1) A person shall not 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 goods which are not a tobacco product, or any service.

(2) A person who contravenes Subsection (1) commits an offence

- Penalty: (a) in the case of a body corporate, a fine not exceeding K15,000.00; and  
(b) in the case of a natural person, a fine not exceeding K1,000.00.

### **28. LABELLING AND HEALTH MESSAGES.**

(1) No person shall sell or offer for sale a tobacco product unless -

- (a) the package containing the product conforms with prescribed requirements; and  
(b) the package containing the product displays a health message in accordance with the regulations.

(2) Any tobacco product or advertisement must carry health messages that -

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

(3) Regulations may provide that every unit packet and package of tobacco sold in Papua New Guinea must -

- (a) carry messages that are in the form of, or include, pictures or pictograms; and  
(b) include elements in English, Pidgin and Motu.

(4) All tobacco products imported for sale or sold in Papua New Guinea must carry a clear statement that the product is intended for sale in Papua New Guinea.

(5) A manufacturer, distributor, importer, or retailer of a tobacco product who distributes or supplies any tobacco product in contravention of this section commits an offence.

Penalty: A fine not exceeding K15,000.00.

(6) A manufacturer, importer, distributor, or retailer of a tobacco product who sells or offers for sale any cigarettes or tobacco in contravention of Subsection (1) commits an offence.

Penalty: A fine not exceeding K15,000.00.

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### **29. 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 as being misleading.

(3) Any requirements arising from Subsections (1) and (2) do not relieve a manufacturer, importer or retailer of tobacco products of other obligations or liabilities arising from other requirements to warn consumers of the risks of using tobacco products.

(4) A person who contravenes Subsection (1) or (2) commits an offence.

Penalty: A fine not exceeding K15,000.00.

### **30. CONTROLS ON THE CONSTITUENTS AND EMISSIONS OF TOBACCO PRODUCTS.**

(1) No person shall manufacture, import, export, sell or otherwise distribute any tobacco product that does not comply with prescribed standards relating to the manufacture of tobacco products.

(2) Regulations relating to the manufacture of tobacco products may prescribe standards for the purposes of Subsection (1).

(3) A person who manufactures, imports, exports, sells or distributes any tobacco product that does not comply with the standards required by Subsection (1) commits an offence.

Penalty: (a) in the case of a manufacturer, importer, exporter or distributor, a fine not exceeding K15,000.00; and  
(b) in the case of a retailer, a fine not exceeding K1,000.00.

### **31. BAN ORDERS.**

(1) The Minister may, by order published in the National Gazette, ban a product or a class of products if the Secretary recommends the making of the order to the Minister under Section 32.

(2) A ban order must set out the grounds for the recommendation.

(3) A ban order may apply, adopt or incorporate, wholly or partially or as amended by the order, any matter contained in any document as existing -

- (a) from time to time; or
- (b) at a particular time.

### **32. SECRETARY MAY RECOMMEND BAN ORDER.**

(1) The Secretary may recommend to the Minister that a ban order be made in respect of a specified product or a specified class of products.

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(2) The Secretary must not make a recommendation under Subsection (1) unless the Secretary has fully investigated the matter and is satisfied that -

- (a) the product -
  - (i) is a tobacco product and the product or its smoke possesses a distinctive fruity, sweet or confectionery-like character; or
  - (ii) is a tobacco product and has packaging that appeals to children or young people; or
  - (iii) is not a tobacco product but resembles a tobacco product; or
  - (iv) is of a nature or is advertised in a way that may encourage children or young people to smoke; and
- (b) the supply of the product should be prohibited, having regard to the objects of this Act.

(3) A recommendation by the Secretary must set out the grounds for the recommendation.

### **33. OPERATION OF BAN ORDER.**

(1) A ban order takes effect on the date specified in the ban order or seven days after the ban order is published in the National Gazette, whichever is the later.

(2) The Minister may, by order published in the National Gazette, amend or revoke a ban order.

### **34. NOTICE OF BAN ORDER.**

(1) The Secretary shall cause a copy of a ban order, or a copy of an order amending or revoking a ban order -

- (a) to be given to each person who, to the knowledge of the Minister, supplies the product or class of products in respect of which the ban order was made; and
- (b) to be published in a newspaper circulating generally throughout Papua New Guinea.

(2) A copy of a ban order or a copy of an order amending or revoking a ban order must be given and published under Subsection (1) within two days after the publication of the order in the National Gazette, or if that is not practicable, as soon as possible after the end of that period.

(3) A failure to comply with Subsection (1) or (2) in relation to a ban order or an order amending or revoking a ban order does not invalidate the order.

### **35. OFFENCE TO BREACH BAN ORDER.**

(1) A person shall not sell by retail or wholesale a product in respect of which a ban order under Section 31 is in force.

(2) A person who sells or distributes, or causes or permits to be sold or distributed, or authorises the sale of tobacco products in breach of a ban order commits an offence.

Penalty: (a) in the case of a body corporate, a fine not exceeding K100,000.00; and  
(b) in the case of a natural person, a fine not exceeding K10,000.00.

(3) A tobacco company that intentionally or recklessly -  
(a) contravenes Subsection (1); or



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(b) causes another person to contravene Subsection (1), commits an offence.

Penalty: A fine not exceeding K200,000.00.

(4) An offence against Subsection (2) is an indictable offence.

### **36. TESTING REQUIRED.**

(1) A manufacturer and an importer of tobacco products to which this section applies shall, in each year, conduct, in accordance with the regulations, and at an independent overseas or local laboratory nominated by the Secretary, one or both of the following as prescribed by regulations:

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

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

(3) In addition to the annual test or tests required by Subsection (1), the Secretary may, by notice in writing to the manufacturer or importer of tobacco products, require a further test or tests to be conducted.

- (4) The further test or tests must be conducted in accordance with the regulations -
- (a) in an independent laboratory nominated by the Secretary; and
  - (b) at the expense, in all respects, of the manufacturer or importer.

(5) In any year, the Secretary may require further tests under Subsection (3) in respect of more than ten percent of the brands of products, to which Subsection (2) applies, sold by a particular manufacturer or importer.

- (6) A manufacturer or importer of a tobacco product who fails -
- (a) to conduct any test required by Subsection (3); or
  - (b) to conduct any further test required under Subsection (4),
- commits an offence.

Penalty: A fine not exceeding K100,000.00.

### **37. REPORTS OF CONSTITUENTS, ADDITIVES, AND EMISSIONS, ETC.**

(1) A manufacturer, importer or exporter of tobacco products shall submit to the Department responsible for health matters on an annual basis, unless otherwise prescribed, reports and returns containing the information specified in regulations.

(2) If required by the regulations, the information referred to in Subsection (1) shall be made available to the public in the prescribed manner.

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- (3) A manufacturer, importer or exporter of a tobacco product who fails -
- (a) to submit any return required by Subsection (1); or
  - (b) to publish any report required by Subsection (2),
- commits an offence.

Penalty: A fine not exceeding K100,000.00.

### **38. FURTHER COURT ORDERS ON CONVICTION FOR AN OFFENCE.**

- (1) If a manufacturer, distributor, importer or retailer is convicted of an offence under this Act, the Court may, in addition to any penalty imposed, make an order -
- (a) for a manufacturer, distributor or importer, prohibiting the manufacturer, distributor or importer from manufacturing, distributing or importing tobacco products for a period not exceeding 12 months; and
  - (b) for a retailer, prohibiting the sale or offering for sale of tobacco products by the retailer for a period not exceeding 12 months.
- (2) If a manufacturer, distributor, importer or retailer is convicted three or more times for the same offence under this Act, the Court shall make an order under Subsection (1).
- (3) A person who contravenes a Court order made under Subsection (1) is guilty of contempt of Court and shall be subject to a fine or imprisonment, or both, for the contempt as the Court shall determine.

## **PART V. - REGISTRATION OF WHOLESALERS AND RETAILERS OF TOBACCO PRODUCTS.**

### **39. WHOLESALERS AND RETAILERS OF TOBACCO PRODUCTS TO BE REGISTERED.**

- (1) No person shall conduct, in whole or in part, the business of selling tobacco products by retail, or wholesale without being registered by the Secretary under this Act upon payment of the prescribed fee.
- (2) The Secretary shall, on the commencement of this part, cause to be established and maintained, a register of all persons who carry on the business of selling tobacco products by wholesale and retail.
- (3) An application under this section must be made in writing in the prescribed form and must -
- (a) specify the name of the applicant and the address at which he ordinarily resides; and
  - (b) specify the address of each premises at which the applicant carries on, in whole or in part, the business of selling tobacco products by retail or wholesale; and
  - (c) contain such other information as may be prescribed by regulations.
- (4) Subject to Subsection (3), a person who knowingly provides information or a particular that is false or misleading, commits an offence.

Penalty: A fine not exceeding K50,000.00.

- (5) The Minister may, by regulation, and subject to any conditions he thinks fit, prescribe the conditions for registration in relation to wholesalers, retailers and distributors.

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(6) A person who sells or distributes, or causes or permits to be sold or distributed, or authorises the sale of tobacco products without being registered under Subsection (1) commits an offence.

Penalty: (a) in the case of a body corporate, a fine not exceeding K50,000.00; and  
(b) in the case of a natural person, a fine not exceeding K5,000.00.

(7) All fees received by the Secretary under this part shall be paid into the Health Promotion Trust Fund.

### **40. NOTIFICATION OF CHANGE OF NAME, ADDRESS, ETC.**

(1) A person who is registered pursuant to this Act shall notify the Minister, within 28 days, of any change which may affect the records with regards to -

- (a) the person's name; or
- (b) the person's employment or business address; or
- (c) any other detail requiring notification pursuant to this Act.

(2) Notification of any change under Subsection (1) shall be made -

- (a) on the prescribed form; and
- (b) accompanied by the relevant certificate of registration.

(3) A person who contravenes Subsection (1) commits an offence.

Penalty: A fine not exceeding K5,000.00.

## **PART VI. - LICENSING OF MANUFACTURERS, IMPORTERS AND DISTRIBUTORS.**

### **41. LICENCE REQUIRED FOR MANUFACTURERS, IMPORTERS AND DISTRIBUTORS OF TOBACCO PRODUCTS.**

(1) No manufacturer, importer or distributor carrying on business as a person, partnership, corporation or other entity shall conduct, on any premises, the business of manufacturing, importation, production or distribution of tobacco products without obtaining a tobacco manufacture or importation licence upon payment of the prescribed fee.

(2) The Secretary shall serve as the licensing authority.

(3) The Head of State, acting on advice, may prescribe the requirement under the regulations for the grant of a new licence or the renewal or revocation of a licence and any other matters necessary or convenient to carry out or give effect to this part.

(4) A licence once granted shall be valid for a period of up to one calendar year.

(5) Applications for the issue or renewal of a licence shall be made in writing to the Secretary on an annual basis in the prescribed form.

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- (6) A person who operates without a licence commits an offence.

Penalty: A fine not exceeding K50,000.00.

- (7) All fees received by the licensing authority under this part shall be paid into the Health Promotion Trust Fund.

### **PART VII. - REGULATION OF THE SALE OF BRUS.**

#### **42. SELLERS OF BRUS TO BE REGISTERED.**

- (1) No person shall conduct, in whole or in part, the informal business of selling brus without being registered.

- (2) Each District Development Authority shall, on the commencement of this section, cause a register of all persons who carry on the business of selling brus within the district to be established and maintained.

- (3) An application for registration under this section shall be made in writing in the prescribed form and must -

- (a) specify the name of the applicant and the address at which he ordinarily resides; and
- (b) specify the address of each market, premises or site at which the applicant carries on, in whole or in part, the business of selling brus; and
- (c) contain such other information as may be prescribed by regulations made by the Head of State acting on advice; and
- (d) include the prescribed fee.

- (4) A person who knowingly provides information or a particular that is false or misleading, commits an offence.

Penalty: A fine not exceeding K100.00.

- (5) The Head of State, acting on advice, may, by regulation and subject to any conditions he thinks fit, prescribe the conditions for registration in relation to the informal business of selling brus.

- (6) A person who sells or distributes, or causes or permits to be sold or distributed, or authorises the sale of brus without being registered under Subsection (1) commits an offence.

Penalty: A fine not exceeding K50.00.

#### **43. NOTIFICATION OF CHANGE OF NAME, ADDRESS, ETC.**

- (1) A person who is registered pursuant to this part shall notify the District Development Authority, which has registered the person, within 28 days of any change which may affect the records with regards to -

- (a) the person's name; or
- (b) the person's employment or business address; or
- (c) any other detail requiring notification pursuant to this Act.

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- (2) Notification of any change under Subsection (1) shall be made -
  - (a) on the prescribed form; and
  - (b) accompanied by a copy of the relevant registration.
- (3) A person who contravenes Subsection (1) commits an offence.

Penalty: A fine not exceeding K50.00.

### **PART VIII. - POWER TO MAKE DECLARATIONS OF CUSTOM FOR HEALTHY DISTRICT STANDARDS AND HEALTHY VILLAGE STANDARDS ON THE USE OF BRUS AND THE USE OF TOBACCO PRODUCTS.**

#### **44. DECLARATIONS OF CUSTOM ABOUT HEALTHY DISTRICT STANDARDS ON THE USE OF BRUS AND TOBACCO PRODUCTS BY DISTRICT DEVELOPMENT AUTHORITIES.**

(1) The purpose of this part is to regulate the manner in which, and the purposes for which, custom may be recognised, applied or enforced pursuant to Schedule 2.1 of the *Constitution*.

(2) A District Development Authority may make a declaration of a customary law in the district in relation to -

- (a) a healthy district standard on the use of brus and other tobacco products; and
- (b) a healthy village standard on the use of brus and other tobacco products.

(3) A declaration under Subsection (2) is deemed to be a declaration of custom pursuant to Section 16(2) of the *Underlying Law Act 2000*.

#### **45. DECLARATIONS OF CUSTOM ABOUT HEALTHY VILLAGE STANDARDS ON THE USE OF BRUS AND TOBACCO PRODUCTS BY DISTRICT DEVELOPMENT AUTHORITIES AND LOCAL-LEVEL GOVERNMENT PRESIDENTS.**

(1) A District Development Authority and a Local-level Government President, in relation to a village in the district served by the District Development Authority, shall make joint statements and declarations of local customary law in relation to a healthy village standard on the use of brus and other tobacco products.

(2) A declaration under Subsection (1) is deemed to be a declaration of custom pursuant to Section 16(2) of the *Underlying Law Act 2000*.

#### **46. REGULATIONS TO PRESCRIBE THE PROCESS FOR DEVELOPMENT OF A HEALTHY DISTRICT STANDARD AND A HEALTHY VILLAGE STANDARD ON THE USE OF BRUS AND TOBACCO PRODUCTS.**

(1) The Head of State, acting on advice, may prescribe the process for development of a healthy district standard and a healthy village standard on the use of brus and other tobacco products in regulations under this Act.

(2) The matters that may be included in a healthy district standard or a healthy village standard include, but are not limited to, the matters set out in Schedule 2.

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(3) The Minister may, from time to time, by notice in the National Gazette, amend Schedule 2 as circumstances require.

### **PART IX. - HEALTH PROMOTION TRUST FUND.**

#### **47. ESTABLISHMENT OF THE HEALTH PROMOTION TRUST FUND.**

(1) The Health Promotion Trust Fund is hereby established to receive moneys held by the State as a trustee.

(2) The Health Promotion Trust Fund shall be used for -

- (a) the purposes of promoting health and encouraging healthy lifestyles; and
- (b) funding of prescribed matters relating to this Act; and
- (c) for such purposes as are approved by the Minister responsible for finance matters.

(3) The Health Promotion Trust Fund is an approved trust fund into which the following shall be paid into:

- (a) moneys appropriated by Parliament for the purpose of the Fund; and
- (b) fees or other charges collected under this Act; and
- (c) any interest accrued to moneys in the Fund; and
- (d) any donations, grants or bequests to the Fund from other sources.

(4) On the coming into operation of this Part, the Head of State, acting on advice, shall prescribe the arrangements for the governance, operation, administration, due diligence and any other matters necessary or convenient for the proper management and functioning of the Health Promotion Trust Fund.

### **PART X. - AUTHORISED OFFICERS.**

#### **48. APPOINTMENT OF AUTHORISED OFFICERS.**

(1) The Minister may, upon the recommendation of the Secretary, by notice in the Gazette, appoint any person or class of persons as officers authorised to carry out inspections and investigations as necessary or appropriate under this Act and to take enforcement actions against persons found to have violated any provision of this Act.

(2) The Secretary shall supply every authorised officer with a warrant, and that warrant shall clearly state the functions and powers that the person appointed has been authorised to exercise and carry out under the Act.

(3) An authorised officer exercising powers under this Act must identify himself as an authorised officer to the person who appears to be in charge of any premises where the officer intends to exercise his powers.

(4) If asked to do so, the authorised officer must produce evidence of identity and his warrant issued under Subsection (2).

(5) An authorised officer who holds a warrant issued under this section shall, on the termination of his appointment, surrender the warrant to the Secretary.



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### **49. INSPECTION AND INVESTIGATIVE POWERS OF AUTHORISED OFFICERS.**

- (1) The authorised officers appointed under Section 48 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 work place, to conduct inspections or investigations during business or operating hours of a work place or at any other reasonable or necessary time; and
  - (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; and
  - (c) to examine any operation or process carried out on the premises; and
  - (d) to examine and make copies of or from any books, documents, notes, files, including electronic files, or other records that the officer reasonably believes might contain information relevant to determining compliance with this Act or the regulations; and
  - (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 employees, agents, contractors and workers, all of whom must cooperate fully and truthfully with any inspection or investigation; and
  - (f) to take samples of tobacco or tobacco products or components of products anywhere they are found and have them tested; and
  - (g) to seize and detain, or order the storage without removal or alteration of any tobacco or tobacco product wherever they may be found, the officer reasonably believes does not comply with the requirements of the Act or the regulations, upon providing the licensee or owner of the tobacco products, or if he 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; and
  - (h) to seize and detain and dispose of any tobacco product being sold by a person in a manner which contravenes the requirements of this Act.

(2) If any tobacco product that is seized and detained by an authorised officer is subsequently determined to meet the requirements of the Act or the regulations, it shall be returned immediately by the authorised officers 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 the regulations, it may be confiscated and destroyed or subject to other disposal, as ordered by a court.

(4) A member of the Police Force may accompany an authorised officer exercising powers under this section.

(5) Subsection (1) does not prevent an authorised officer from entering a dwelling house or other residential accommodation -

- (a) under authority given by or under any laws other than this Act; or

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- (b) with the consent of an occupier, only to the extent necessary, for the following purposes:
  - (i) finding out whether this Act or the regulations is being complied with in respect of the place entered; or
  - (ii) finding out the extent to which this Act is not being complied with in respect of the place entered.

### **50. POWER TO OBTAIN INFORMATION.**

(1) In relation to any matter relevant to the operation or enforcement of this Act, an authorised officer may require a person (either by oral or written request) to furnish -

- (a) any information; or
- (b) any records or a copy of the records,

in the person's possession.

(2) For the purpose of Subsection (1), a person is to be taken to be in possession of -

- (a) information, if the person has the information or is entitled to access the information; and
- (b) records, if the person has them in his possession or under his control in any place,

whether for his own use or benefit or for another's use or benefit and although another person has the actual possession or custody of the information or records.

(3) A request made under Subsection (1) may require that the information or records or a copy of the information or record be furnished -

- (a) to the authorised officer or another authorised officer or to an officer of a specified department of the Government; and
- (b) at the place the request is made or at another place; and
- (c) at, by or within a time specified; and
- (d) in person or by registered mail or in another manner specified; and
- (e) by means of, or accompanied by, verification in the form of a statutory declaration; and
- (f) in the case of information, orally or in writing.

(4) A person shall not, without reasonable cause -

- (a) refuse or fail to furnish any information, records or copies as required under this section; or
- (b) in response to a request made under this section, furnish information, records or copies that is or are false or misleading in a material particular.

(5) A person may not refuse to furnish any information, records or copies on the ground that its contents may incriminate him, but if a person, at the time he supplies any information, records or copies states in writing that the information, records or copies are, or may be, incriminating of him, the information, records or copies may not be used in any proceedings against that person for an offence against this Act.

(6) If a person records or stores any matter by means of a mechanical, electronic or other device, the duty imposed by this section to produce any records containing those matters is to be construed as including a duty to produce the matters in written form if that is demanded.

(7) The duty imposed by this section to produce a copy of any records is to be construed as a duty to produce a clear reproduction.

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(8) An authorised officer may take notes or copies of or extracts from records or a copy of any records produced under this section.

### **51. CONTINUING OFFENCE.**

If a person commits an offence by failing to furnish information required under Section 50 or to produce any records or a copy of any records -

- (a) the obligation to furnish the information or produce the records or a copy of them, as the case may be, continues until the person complies with the requirement, notwithstanding that in a particular case, a time was specified at, by or within which, compliance was required and that time has lapsed; and
- (b) the person commits a continuing offence in respect of each day after the day of conviction during which the failure to comply with the request continues; and
- (c) the person is liable to a fine of K100.00 for each day during which the offence continues; and
- (d) the person may be prosecuted from time to time in respect of the continuing offence.

### **52. OBSTRUCTION.**

(1) A person shall not obstruct an authorised officer in the exercise of his powers under this Act.

(2) For the purposes of this Act, a person obstructs an authorised officer in the exercise of his powers under this Act if the person -

- (a) assaults, abuses, intimidates or insults the authorised officer or any other person assisting the authorised officer in the exercise of his powers under this Act; or
- (b) directly or indirectly deliberately prevents any person from being questioned by an authorised officer or from furnishing any information or records or copies or attempts to do so; or
- (c) in any other way, obstructs or attempts to obstruct an authorised officer in the exercise of his powers under this Act.

(3) A person who contravenes Subsection (1) commits an offence

Penalty: A fine not exceeding K5,000.00.

### **53. DIRECTIONS MAY BE ISSUED TO SECURE COMPLIANCE.**

(1) If -

- (a) any tobacco product, container, label, tobacco product advertisement, eating-house, smoke-free building, smoke-free area, or other place or thing does not comply in every respect with the provisions of the Act; or
- (b) any provision of this Act has not been complied with in relation to any of the things or areas mentioned in Paragraph (a),

an authorised officer may issue a Compliance Notice in the prescribed form to any person who has contravened the provision by such non-compliance, to take, within a specified time, not exceeding 14 days, such steps as may be specified to prevent any future contravention and to remedy the matters in respect of which the non-compliance has occurred.

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(2) The issue of a direction under this section does not affect any proceeding under this Act which has been or may be taken for the non-compliance which gave rise to the direction.

(3) A person to whom a direction is issued under this section and who does not comply with the direction commits an offence.

Penalty: A fine not exceeding K10,000.00.

### **PART XI. - MISCELLANEOUS.**

#### **54. SMOKING CESSATION PRODUCTS MAY BE PRESCRIBED IN REGULATIONS.**

Subject to this Act, smoking cessation products may be prescribed in the regulations.

#### **55. ACT DOES NOT CREATE OR PRESERVE RIGHT TO SMOKE.**

(1) To remove any doubt, it is declared that this Act does not create or preserve a right for a person to smoke in or at any place.

(2) Nothing in this Act affects the operation of another Act to the extent that the other Act prohibits smoking at any place.

#### **56. ACQUISITION OF PROPERTY.**

(1) This Act does not apply to the extent (if any) that its operation would result in an acquisition of property from a person otherwise than on just terms.

(2) In particular, if, apart from this section, this Act would result in such an acquisition of property because it would prevent the use of a trademark or other sign on or in relation to the retail packaging of tobacco products, or on tobacco products, then notwithstanding any other provision of this Act, the trademark or sign may be used on or in relation to the retail packaging of tobacco products, or on tobacco products, subject to any requirements that may be prescribed in the regulations for the purposes of this subsection.

(3) Offences and civil penalties apply to the supply, purchase and manufacture etc. of tobacco products that do not comply with any requirements specified in the regulations.

(4) To avoid doubt, any tobacco product requirement under this Act that does not result in such an acquisition of property continues to apply in relation to:

- (a) the retail packaging of tobacco products; and
- (b) the appearance of tobacco products.

#### **57. RESPONSIBILITY FOR ACTS OR OMISSIONS OF REPRESENTATIVES.**

(1) This section applies in a proceeding for an offence against this Act.

(2) If it is relevant to prove a person's state of mind about a particular act or omission, it is enough to show that-

- (a) the act was done or omitted to be done by a representative of the person within the scope of the representative's actual or apparent authority; and

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(b) the representative had the state of mind.

(3) An act done or omitted to be done for a person by a representative of the person within the scope of the representative's actual or apparent authority is taken to have been done or omitted to be done also by the person, unless the person proves that he could not, by the exercise of reasonable diligence, have prevented the act or omission.

### **58. REMOVAL OF ADVERTISEMENTS AND DESTRUCTION OF TOBACCO PRODUCTS.**

(1) If a person is convicted of an offence under Part IV, the Court, in addition to imposing any other penalty, may order -

- (a) that the advertisement be removed or obscured or destroyed by an authorised officer; and
- (b) that the person convicted pay the reasonable costs incurred by the authorised officer in removing or obscuring or destroying the advertisement.

(2) If the person is convicted of an offence under Section 23, 27, 28 or 29, the Court may, in addition to imposing any other penalty, order -

- (a) that the tobacco product be forfeited and confiscated and destroyed by an authorised officer; and
- (b) that the person convicted pay the reasonable costs incurred by an authorised officer in confiscating and destroying the tobacco product.

(3) Costs payable under Subsection (1) or (2) may be recovered as a debt due to the State or to the Council of a Local-level Government or local authority or to a statutory body, as the case requires.

### **59. REGULATIONS.**

The Head of State, acting on advice, may make regulations, not inconsistent with this Act, prescribing all matters which, by this Act, are required or permitted to be prescribed or which are necessary or convenient to be prescribed for carrying out or giving effect to this Act.

### **60. EVIDENCE BY CERTIFICATE.**

Notwithstanding any other law, in any proceedings under or concerning this Act, including but not limited to a prosecution for an offence, a certificate signed by or on behalf of the Secretary stating -

- (a) that on that date, a person was or was not permitted to do or was prohibited from doing any matter or thing under or concerning this Act; or
- (b) that on that date, the Minister or Secretary or a person duly authorised by the Minister or Secretary, as the case may require, had made, done, issued or otherwise taken an action permitted or required under or concerning this Act; or
- (c) that the content of the permission or prohibition referred to in Paragraph (a) or the content of the act referred to in Paragraph (b),

shall be sufficient evidence of the matters stated in the certificate and the certificate shall be presumed to be so signed unless the contrary is proved.

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### **61. SERVICE OF NOTICES, ETC.**

(1) If, under this Act, a notice, order, direction, requirement, determination, letter, other document or act of authority is required or permitted to be served on any person by the Minister, Secretary or person acting under the authority of the Minister or Secretary, the notice, order, direction, requirement, determination, letter, other document or act of authority may be served by -

- (a) delivering it to the person at the nominated address in Papua New Guinea of the person in any application to or correspondence from the person to the Minister or Secretary; or
- (b) delivering it to the address in Papua New Guinea of any solicitor acting as legal representative for the person; or
- (c) sending it by pre-paid post or facsimile transmission to the Papua New Guinean postal address or facsimile address, as the case may require, nominated by the person in any application to or correspondence with, or correspondence from the person, to the Minister or Secretary; or
- (d) sending it by pre-paid post or facsimile transmission to the Papua New Guinean postal or facsimile address, as the case may require, of any solicitor acting as legal representative for the person; or
- (e) notice published in newspapers circulating in Papua New Guinea; or
- (f) sending it by electronic media such as email or any other form of electronic media as may be necessary or as the case may require, as nominated by the person, in any application to or correspondence with, or correspondence from the person, to the Minister or the Secretary.

(2) For all intents and purposes -

- (a) in the case of prepaid post, service is taken to have been effected two days after the date of postage; and
- (b) in the case of service by facsimile or electronic media transmission -
  - (i) service is taken to have been effected upon completion of transmission without evidence of garbling or incomplete transmission; and
  - (ii) a printed or copied signature shall be sufficient for any notice, order, direction, requirement, determination, letter, other document or act of authority served by facsimile or electronic media transmission.

## **PART XII. - SAVINGS AND TRANSITIONAL PROVISIONS.**

### **62. TRANSITIONAL PROVISIONS.**

(1) The Head of State, by notice in the National Gazette, shall nominate dates by which the various Parts of the Act come into operation.

(2) In the case of any tobacco product, the first reports required by Section 37 shall be submitted to the Secretary on the date specified by the Secretary by notice, in writing, to the manufacturer or importer.

(3) All references in law or any document or act of authority to the *Tobacco Products (Health Control) Act 1987* shall be read as referring to this Act unless the context requires otherwise.



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(4) Insofar as they are not inconsistent with the provisions of this Act, any regulation, order, document or act of authority under or concerning the ***Tobacco Products (Health Control) Act 1987***, so far as they are subsisting or in force at the time of the commencement of this Act, shall continue and have effect under the corresponding provisions of the Act until such time as they are altered, amended or cancelled, as the case may require, under the provisions of this Act and, where there is any question or concern as to what is a corresponding provision of this Act, the Minister may, by notice in the National Gazette, determine what is to be a corresponding provision.

(5) Notwithstanding the provisions of this Act, all applications, prosecutions and other matters arising out of or under the provisions of the ***Tobacco Products (Health Control) Act 1987*** which are not determined or otherwise dealt with under such provisions at the date of the commencement of this Act shall be determined or otherwise dealt with under the corresponding provisions of this Act with such modifications, adaptations or alterations as the Minister may, by notice in the National Gazette, determine from time to time.

(6) An office, official position or advisory body created or established under ***Tobacco Products (Health Control) Act 1987*** and in existence at the date of commencement and in existence under the corresponding provisions of this Act shall continue to exist until such time as they are altered, amended, cancelled or terminated under the provisions of this Act.

(7) Notwithstanding the other provisions of this Act, where this Act does not provide or provides insufficient or inadequate provision for the transition from the ***Tobacco Products (Health Control) Act 1987*** to this Act, the Minister may, by notice in the National Gazette, make such provisions as the Minister deems necessary in order for all matters under or concerning the ***Tobacco Products (Health Control) Act 1987*** and this Act to be properly and effectively determined or otherwise dealt with under the provisions of this Act.

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**SCHEDULE 1.**

Notice number \_\_\_\_\_

**COMPLIANCE NOTICE.**  
(Section 42)

To:

.....  
.....  
.....

Business address and contact:

.....  
.....

This NOTICE is issued to inform you of non-compliance: (state provision of the Act or Regulations that have allegedly been breached)

.....  
.....  
.....  
.....

You are required within..... days of the date of this notice to remedy the non-compliance and take the following action:

- (1) .....
- (2) .....
- (3) .....

Failure to comply with this NOTICE within the specified time frame may result in court proceedings.

Signed: .....Date: .....  
(Authorised Officer).

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**SCHEDULE 2.**

**HEALTHY VILLAGE STANDARDS AND HEALTHY DISTRICT STANDARDS ON THE USE OF  
BRUS AND TOBACCO PRODUCTS.**

A Healthy Village Standard or a Healthy District Standard on the use of brus and tobacco products under this or any other enabling law may include, but are not limited to, the following matters -

- (a) use of tobacco products in villages and around children and young people; and
- (b) sale of locally grown brus tobacco in the market including location and signage.

I hereby certify that the above is a fair print of the *Tobacco Control Act 2016* which has been made by the National Parliament.

Acting Clerk of the National Parliament.

26 JAN 2017

I hereby certify that the *Tobacco Control Act 2016* was made by the National Parliament on 3 November 2016, by an absolute majority as required by the *Constitution*.



Speaker of the National Parliament.

26 JAN 2017