



REPUBLIC OF NAURU

# TOBACCO CONTROL (AMENDMENT) ACT 2023

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No. 6 of 2023

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An Act to amend the *Tobacco Control Act 2009*.

Certified: [7 June 2023]

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Enacted by the Parliament of Nauru as follows:

**1 Short title**

This Act may be cited as the *Tobacco Control (Amendment) Act 2023*.

**2 Commencement**

This Act commences on the date it is certified by the Speaker.

**3 Amendment of the *Tobacco Control Act 2009***

This Act amends the *Tobacco Control Act 2009*.

**4 Amendment of Section 2**

Section 2 is amended by:

- (a) inserting in alphabetical order the following terms and their definitions:

**‘Secretary’** means the Secretary for Health and Medical Services;

**‘vape’** means a device used to inhale vapour containing nicotine including flavouring;

**‘waterpipe’ or ‘shisha’ or ‘hookah’** means a form of tobacco consumption that utilises a single or multi-stemmed instrument to smoke flavoured or non-flavoured tobacco, where smoke is designed to pass through water or other liquid before reaching the smoker;’;  
and

- (b) deleting and substituting the definitions of the terms *‘cigarette’*, *‘regulations’*, *‘tobacco product’* and *‘trademark’* as follows:

**‘cigarette’** includes:

- (a) any product that:

(i) consists wholly or partly of cut, shredded or manufactured tobacco or of any tobacco derivative or substance, rolled up in paper; and

(ii) is capable of being immediately used for smoking; and

- (b) any e-cigarette;

**‘regulations’** means regulations made under this Act;

**‘tobacco product’**:

- (a) means a product comprised in whole or in part of tobacco such as tobacco leaves and any extract of tobacco leaves containing, made, manufactured or derived from tobacco that is intended for human consumption, whether chewed, smoked, absorbed, dissolved, inhaled, snorted, sniffed or ingested by any other means, or comprised mainly of nicotine;
- (b) includes any component, part or accessory of a tobacco product such as cigarette papers, tubes, filters, electronic tobacco heating devices and waterpipe, shisha or hookah; and
- (c) includes a vape and cigarette;

**'trademark'** has the meaning given to it under the *Trademarks Act 2019*;

## **5 Insertion of Part 1A**

Part 1A is inserted after Section 2 as follows:

### **'PART 1A – PROHIBITION ON MANUFACTURE OF TOBACCO PRODUCTS**

#### **2A Prohibition on manufacture of tobacco products**

- (1) A person shall not manufacture a tobacco product for a commercial purpose.
- (2) In this Section, **'manufacture'** includes the production, assembly, preparation or making of a tobacco product.
- (3) A person who contravenes subsection (1) commits an offence and upon conviction is liable to a fine not exceeding \$20,000 or a term of imprisonment not exceeding 3 years or both.'

## **6 Amendment of Section 3**

Section 3 is amended by:

- (a) in subsection (1):
  - (i) in paragraph (c), deleting 'or' after the semicolon;
  - (ii) in paragraph (d), deleting the comma after 'public' and substituting with a semicolon; and
  - (iii) after paragraph (d), inserting paragraphs (e) and (f) as follows:
    - '(e) displays, or causes or permits to be displayed, a tobacco product in a way that is visible to the public at the point of sale of the tobacco product; or

- (f) displays, or causes or permits to be displayed, a waterpipe, shisha or hookah, or other equipment for sale or use with tobacco or a similar substance by any person in a hospital, school, an enclosed workplace or an enclosed public area.’;
- (b) deleting and substituting subsection (3) as follows:
- ‘(3) Subsection (1) does not apply to the display of a price list of a tobacco product which may include the brand name or variant of the tobacco product.’;
- (c) deleting and substituting subsection (4) as follows:
- ‘(4) For the purposes of subsection (3), the price list shall not contain the name of the tobacco company or brand logo, colouring, slogan or other form of text or graphics which may be prescribed by regulations.’; and
- (d) after subsection (4), inserting subsections (5) and (6) as follows:
- ‘(5) A person who contravenes subsection (1):
- (a) is liable to pay a fixed penalty of:
    - (i) in the case of an individual, \$1,000; or
    - (ii) in the case of a body corporate, \$10,000; and
  - (b) shall pay the fixed penalty within 14 days after the Tobacco Control Infringement Notice is served on the person by an authorised officer.
- (6) A person who contravenes subsection (5) commits an offence and upon conviction is liable to:
- (a) in the case of an individual:
    - (i) forfeiture of any remaining tobacco products; and
    - (ii) a fine not exceeding \$2,000 or a term of imprisonment not exceeding 12 months or both; or
  - (b) in the case of a body corporate, forfeiture of any remaining tobacco products and a fine not exceeding \$20,000.’

**7 Amendment of Section 4**

Section 4 is deleted and substituted as follows:

**‘4 Prohibition on giving or distributing free samples or offering prizes**

- (1) A person shall not, for the purposes of inducing or promoting the sale of tobacco products, or smoking generally:
  - (a) offer, supply or distribute to any person a free sample of a tobacco product;
  - (b) offer any gift or 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 the tobacco product or to any person in consideration for the furnishing of evidence of such a purchase; or
  - (c) offer, supply or distribute to the public a free sample of a product that is not a tobacco product but that is intended to promote the sale of tobacco products, or smoking generally.
- (2) A person who contravenes subsection (1):
  - (a) is liable to pay a fixed penalty of:
    - (i) in the case of an individual, \$1,000; or
    - (ii) in the case of a body corporate, \$10,000; and
  - (b) shall pay the fixed penalty within 14 days after the Tobacco Control Infringement Notice is served on the person by an authorised officer.
- (3) A person who contravenes subsection (2) commits an offence and upon conviction is liable to:
  - (a) in the case of an individual:
    - (i) forfeiture of any remaining tobacco products; and
    - (ii) a fine not exceeding \$2,000 or a term of imprisonment not exceeding 12 months or both; or
  - (b) in the case of a body corporate, forfeiture of any remaining tobacco products and a fine not exceeding \$20,000.'

## **8 Amendment of Section 5**

Section 5 is deleted and substituted as follows:

### **'5 Prohibition on sponsorship**

- (1) A person shall not promote or publicise, or agree to promote or publicise, under a contract, agreement, undertaking or understanding with another person, whether or not legally binding:
  - (a) a tobacco product or a trademark or brand name, or part of a trademark or brand name, of a tobacco product; or
  - (b) the name or interests of a manufacturer or distributor of a tobacco product, whether or not the manufacturer or distributor also manufactures or distributes a product other than the tobacco product, in association directly or indirectly with the tobacco product,

in exchange for a sponsorship, gift, prize, reward, scholarship or like benefit given or agreed to be given by any other person.
- (2) A person shall not give or agree to give any sponsorship, gift, prize, reward, scholarship or like benefit under a contract, agreement, undertaking or understanding with any other person, whether or not legally binding, in exchange for the promotion of, or an agreement to promote, a tobacco product or a name, interest, trademark or brand name of a tobacco product, or the name or interests of a manufacturer or distributor of a tobacco product, whether or not the manufacturer or distributor also manufactures or distributes a product other than the tobacco product, in association directly or indirectly with the tobacco product.
- (3) A manufacturer, wholesaler, distributor, importer or retailer of a tobacco product, whether an individual or body corporate, shall not provide a promotional discount of tobacco products.
- (4) A person who contravenes this Section commits an offence and upon conviction is liable to:
  - (a) in the case of an individual, a fine not exceeding \$5,000 or a term of imprisonment not exceeding 18 months or both; or
  - (b) in the case of a body corporate, a fine not exceeding \$25,000.'

## **9 Amendment of Section 6**

Section 6 is deleted and substituted as follows:

**'6 Information to be printed on packages of tobacco products – labelling**

- (1) A person shall not sell or import any tobacco product in any package that:
  - (a) does not comply with labelling requirements under regulations;
  - (b) contains any information which is likely to represent that the tobacco product is less harmful than other similar products;
  - (c) contains signs, colours, designs or other forms or patterns of such designs as a substitute for any prohibited content on such packaging;
  - (d) includes descriptors depicting flavours; or
  - (e) has written or endorsed on it an expiry date.
- (2) A person who contravenes subsection (1) commits an offence and upon conviction is liable to:
  - (a) in the case of an individual:
    - (i) forfeiture of any remaining tobacco products; and
    - (ii) a fine not exceeding \$2,000 or a term of imprisonment not exceeding 12 months or both; or
  - (b) in the case of a body corporate, forfeiture of any remaining tobacco products and a fine not exceeding \$20,000.
- (3) For avoidance of any doubt, any labelling required under regulations including health warnings does not remove or diminish the liability of a seller or importer of tobacco products.'

**10 Amendment of Section 7**

Section 7 is amended by:

- (a) deleting 'cigarette' where it appears and substituting with 'tobacco product';
- (b) in subsection (1), inserting 'or nicotine' after 'tar'; and
- (c) after subsection (1), inserting subsection (1A) as follows:



'(1A) A person shall not sell or import any tobacco product that displays the quantitative information on emission yields.'

**11 Amendment of Section 9**

Section 9 is amended by:

(a) deleting '18 years' where it appears and substituting with '20 years';

(b) deleting and substituting subsection (5) as follows:

'(5) A person who contravenes subsection (1):

(a) is liable to pay a fixed penalty of:

(i) in the case of an individual, \$1,000; or

(ii) in the case of a body corporate, \$10,000; and

(b) shall pay the fixed penalty within 14 days after the Tobacco Control Infringement Notice is served on the person by an authorised officer.;

(c) deleting and substituting subsection (6) as follows:

'(6) A person who contravenes subsection (5) commits an offence and upon conviction is liable to a fine not exceeding \$2,000 or a term of imprisonment not exceeding 12 months or both.;

(d) deleting subsections (7) and (8).

**12 Insertion of Section 10A**

Section 10A is inserted after Section 10 as follows:

**'10A Prohibition of online sale of tobacco products**

(1) A person shall not sell or advertise for sale in, or import to, the Republic any tobacco product online or through electronic or digital communication or an electronic system.

(2) A person who contravenes subsection (1) commits an offence and upon conviction is liable to:

(a) in the case of an individual, forfeiture of any remaining tobacco products and a fine not exceeding \$2,000 or a term of imprisonment not exceeding 12 months or both; or

(b) in the case of a body corporate, forfeiture of any remaining tobacco products and a fine not exceeding \$20,000.

(3) For the purposes of proving the offence under subsection (1), any form of electronic or digital communication or any form of payment generated from an electronic system is admissible.

(4) In this Section:

**'device'** includes:

- (a) a component of an electronic system such as a computer, mobile phone, graphic card and memory chip;
- (b) a storage component such as a hard drive, memory card, compact disc and tape;
- (c) an input device such as a keyboard, mouse, track pad, scanner and digital camera; and
- (d) an output device such as a printer and screen;

**'electronic or digital communication'** means any form of communication which is transmitted electronically or digitally and includes any text message, writing, post, photograph, picture, recording, telephone, email or any other matter that is communicated electronically or digitally; and

**'electronic system'** means a device or a group of interconnected or related devices, including the Internet, one or more of which, pursuant to a program, performs automatic processing of data or any other function.'

## 13 Amendment of Section 11

Section 11 is deleted and substituted as follows:

### '11 Prohibition on supply from restaurants

- (1) A person shall not sell, offer for sale or supply any tobacco product in a restaurant.
- (2) A person who contravenes subsection (1):
  - (a) is liable to pay a fixed penalty of:
    - (i) in the case of an individual, \$1,000; or
    - (ii) in the case of a body corporate, \$10,000; and
  - (b) shall pay the fixed penalty within 14 days after the Tobacco Control Infringement Notice is served on the person by an authorised officer.

- (3) A person who contravenes subsection (2) commits an offence and upon conviction is liable to:
- (a) in the case of an individual:
    - (i) forfeiture of any remaining tobacco products; and
    - (ii) a fine not exceeding \$2,000 or a term of imprisonment not exceeding 12 months or both; or
  - (b) in the case of a body corporate, forfeiture of any remaining tobacco products and a fine not exceeding \$20,000.'

**14 Amendment of Section 12**

Section 12 is amended by:

- (a) after subsection (2), inserting subsection (2A) as follows:

'(2A) A person shall not sell or import into the Republic for sale or distribution:

- (a) any product that is not a tobacco product but that has the brand name, logo, trademark or other similar association of a tobacco product; or
- (b) any counterfeit tobacco product.

- (b) in subsection (3), deleting 'or (2)' and substituting with ', (2) or (2A)';

- (c) deleting and substituting subsection (4) as follows:

'(4) A person who contravenes subsection (1), (2) or (2A):

- (a) is liable to pay a fixed penalty of:

- (i) in the case of an individual, \$1,000; or
- (ii) in the case of a body corporate, \$10,000; and

- (b) shall pay the fixed penalty within 14 days after the Tobacco Control Infringement Notice is served on the person by an authorised officer.'; and

- (d) after subsection (4), inserting subsections (5) and (6) as follows:

'(5) A person who contravenes subsection (4) commits an offence and upon conviction is liable to:

- (a) in the case of an individual:

- (i) forfeiture of any remaining tobacco products; and
  - (ii) a fine not exceeding \$2,000 or a term of imprisonment not exceeding 12 months or both; or
- (b) in the case of a body corporate, forfeiture of any remaining tobacco products and a fine not exceeding \$20,000.
- (6) In this Section, '**counterfeit tobacco product**' means a tobacco product that imitates, mimics, or copies a tobacco product without right and passes off as genuine.'

**15 Amendment of Section 13**

Section 13 is amended by:

- (a) deleting and substituting subsections (1) and (2) as follows:
- '(1) A person shall not smoke a tobacco product in any school, hospital, enclosed workplace or enclosed public place.
  - (2) Where a person smokes a tobacco product with the approval of the owner or occupier of a school, hospital, enclosed workplace or enclosed public place in contravention of subsection (1), the owner or occupier is deemed to have contravened subsection (1).'; and
- (b) after subsection (3), inserting subsections (4) and (5) as follows:
- '(4) A person who contravenes subsection (1):
    - (a) is liable to pay a fixed penalty of:
      - (i) in the case of an individual, \$100; or
      - (ii) in the case of a body corporate, \$10,000; and
    - (b) shall pay the fixed penalty within 14 days after the Tobacco Control Infringement Notice is served on the person by an authorised officer.
  - (5) A person who contravenes subsection (4) commits an offence and upon conviction is liable to:
    - (a) in the case of an individual, forfeiture of any remaining tobacco products and a fine not exceeding \$2,000 or a term of imprisonment not exceeding 12 months or both; or
    - (b) in the case of a body corporate, forfeiture of any remaining tobacco products and a fine not exceeding \$2,000.'

**16 Amendment of Section 14**

Section 14 is deleted and substituted as follows:

**'14 Enclosed workplaces or enclosed public places – display of signs**

- (1) An owner or occupier of an enclosed workplace or an enclosed public place shall display a *'no smoking'* sign at the enclosed workplace or enclosed public place.
- (2) The size and content of the sign under subsection (1) shall be as prescribed by regulations.
- (3) A person who contravenes subsection (1):
  - (a) is liable to pay a fixed penalty of:
    - (i) in the case of an individual, \$1,000; or
    - (ii) in the case of a body corporate, \$10,000; and
  - (b) shall pay the fixed penalty within 14 days after the Tobacco Control Infringement Notice is served on the person by an authorised officer.
- (4) A person who contravenes subsection (3) commits an offence and upon conviction is liable to:
  - (a) in the case of an individual, forfeiture of any remaining tobacco products and a fine not exceeding \$2,000 or a term of imprisonment not exceeding 12 months or both; or
  - (b) in the case of a body corporate, forfeiture of any remaining tobacco products and a fine not exceeding \$20,000.'

**17 Amendment of Section 17**

Section 17(1) is amended by:

- (a) deleting 'Upon the request of the occupier of any public place or workplace, an authorised officer shall inspect any area that the occupier seeks to have approved as a designated smoking area, and the authorised officer' and substituting with 'An occupier of any public place or workplace may request an authorised officer to inspect any area that the occupier seeks to have approved as a designated smoking area, and where an occupier makes such request, the authorised officer shall inspect the area and'; and
- (b) deleting and substituting paragraphs (b) and (c) as follows:

- (b) a designated smoking area:
- (i) is outdoors and is not covered by a roof or roof-like structure;
  - (ii) is not within 10 metres from any door or window;
  - (iii) occupies not more than 15 square metres;
  - (iv) has sufficient airflow which will minimise exposure to passive smoking;
  - (v) is properly equipped with rubbish bins and ashtrays; and
  - (vi) is clearly signposted as a designated smoking area; and'

**18 Insertion of Part 5A**

Part 5A is inserted after Section 17 as follows:

**'PART 5A – LICENCES**

**17A Licence**

- (1) A person shall not import, distribute or sell tobacco products for a commercial purpose without a licence issued under this Part.
- (2) A person who contravenes subsection (1) commits an offence and upon conviction is liable to:
  - (a) in the case of an individual:
    - (i) forfeiture of any remaining tobacco products; and
    - (ii) a fine not exceeding \$2,000 or a term of imprisonment not exceeding 12 months or both; or
  - (b) in the case of a body corporate, forfeiture of any remaining tobacco products and a fine not exceeding \$50,000.

**17B Classes of licence**

On receipt and consideration of an application for a licence, the Secretary may issue a licence in any one of the following classes:

- (a) importer licence;
- (b) distributor licence; and

(c) retail licence.

**17C Importer licence**

An importer licence authorises the licensee to import tobacco products including any ingredient, equipment and machinery of tobacco products under the conditions set out in the licence.

**17D Distributor licence**

A distributor licence authorises the licensee to sell or distribute to retailers tobacco products in cartons under the conditions set out in the licence.

**17E Retail licence**

A retail licence authorises the licensee to sell to consumers tobacco products under the conditions set out in the licence.

**17F Application for a licence under this Part**

(1) An application for a licence under this Part shall be:

- (a) in the prescribed form;
- (b) accompanied by evidence of payment of the prescribed fee;
- (c) accompanied by:
  - (i) in the case of a partnership, a certificate of registration of partnership issued under the *Partnership Act 2018*;
  - (ii) in the case of an individual, partnership or corporation, a current business licence issued under the *Business Licences Act 2017*; and
  - (iii) in the case of a corporation, an incorporation certificate issued under the *Corporations Act 1972*; and
- (d) accompanied by an import licence issued under the *Customs Act 2014*, if applying for an importer licence under this Part.

(2) The Secretary shall not consider an application for a licence if the prescribed fee required under subsection (1) has not been paid.

(3) Where information provided by an applicant under this Section is false, misleading or defective in any particular:

- (a) the applicant commits an offence and upon conviction is liable to a fine not exceeding \$2,000; and
- (b) if the applicant has been issued a licence, the licence is deemed to have been cancelled.

**17G Consideration of application**

- (1) The Secretary shall consider the application and inform the applicant of the decision within 7 working days of the lodgement of the application and either:
  - (a) issue a licence; or
  - (b) advise the applicant in writing that the application has been refused and provide reasons for the refusal.
- (2) Where an application is rejected on the grounds that it does not comply with the provisions of this Act, the applicant may appeal in writing to the Minister against that decision and if the Minister is satisfied that the provisions of this Act are not contravened, the Minister may direct that the licence be issued.

**17H Suspension of licence**

- (1) The Secretary may suspend a licence if:
  - (a) the licensee has contravened a provision of this Act;
  - (b) the licensee has contravened a condition of the licence; or
  - (c) the licensee has been convicted of an offence under this Act.
- (2) Before suspending a licence under subsection (1):
  - (a) the licensee shall be given a reasonable opportunity to be heard of the intended suspension; and
  - (b) the Secretary shall provide the licensee with the reasons for which the licence is to be suspended.

**17I Cancellation of licence**

- (1) The Secretary may cancel a licence if it is in the best interest of the public to do so.



- (2) Without limiting subsection (1), in determining whether it is in the public interest to cancel a licence, the Secretary shall consider whether:
  - (a) the licensee has contravened a provision of this Act;
  - (b) the licensee has contravened a condition of the licence;
  - (c) the licensee has been found guilty or convicted of an offence under this Act; or
  - (d) the circumstances of that contravention are such that the licence shall be cancelled.
- (3) Before cancelling the licence under subsection (1), the licensee shall be given a reasonable opportunity to be heard and the Secretary shall provide the licensee with the reasons for which his or her licence is to be cancelled.

**17J Duration and renewal of licence**

- (1) A licence is valid for 12 months from the date the licence is granted.
- (2) An application for the renewal of a licence under this Part shall be made in the prescribed form and accompanied with evidence of payment of the prescribed fee at least 30 days prior to its expiration.

**17K Transfer or assignment of licence**

- (1) A licensee shall not transfer or assign a licence issued under this Part except with the prior written approval of the Secretary.
- (2) A licensee seeking approval of the Secretary under this Section shall apply in the prescribed form and provide evidence of payment of the prescribed fee.

**17L Licences to be displayed**

- (1) A licence shall be displayed in a conspicuous place in or at the licensee's place of business.
- (2) A person who contravenes subsection (1):
  - (a) is liable to pay a fixed penalty of:
    - (i) in the case of an individual, \$1,000; and
    - (ii) in the case of a body corporate, \$10,000; and

- (b) shall pay the fixed penalty within 14 days after the Tobacco Control Infringement Notice is served on the person by an authorised officer.
- (3) A person who contravenes subsection (2) commits an offence and upon conviction is liable to:
  - (a) in the case of an individual, a fine not exceeding \$2,000; or
  - (b) in the case of a body corporate, a fine not exceeding \$20,000.'

**19            Insertion of Section 19A**

Section 19A is inserted after Section 19 as follows:

**'19A            Tobacco Control Infringement Notices**

- (1) An authorised officer may issue a Tobacco Control Infringement Notice to a person who:
  - (a) commits an offence under this Act that attracts a fine not exceeding \$2,000; and
  - (b) is liable to pay a fixed penalty.
- (2) The Cabinet may make regulations prescribing:
  - (a) fixed penalty offences for which fixed penalties shall be imposed;
  - (b) fixed penalties for corresponding fixed penalty offences;
  - (c) the Tobacco Control Infringement Notice which an authorised officer may serve on a person for a fixed penalty offence;
  - (d) additional penalties to be imposed by the court on a person who has failed to pay the fixed penalty in accordance with a Tobacco Control Infringement Notice;
  - (e) the procedures for dealing with a Tobacco Control Infringement Notice; and
  - (f) any other matter which shall ensure the effective enforcement of a Tobacco Control Infringement Notice.'