

REPUBLIC OF NAURU

(Act No. 4 of 2009)

AN ACT

to regulate the promotion, sale and use of cigarettes and other tobacco products
and for ancillary purposes

(Certified: 20 April 2009)



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TOBACCO CONTROL ACT 2009
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Republic of Nauru

TOBACCO CONTROL ACT 2009

An Act to regulate the promotion, sale and use of cigarettes and other tobacco products and for ancillary purposes.

[Certified: 20 April 2009]

Enacted by the Parliament of Nauru as follows —

PART 1 - PRELIMINARY

1. Short title and commencement

(1) This Act may be cited as the *Tobacco Control Act 2009*.

(2) Subject to subsection (3), this Act comes into force three months after the date on which it receives the certificate of the Speaker.

(3) Notwithstanding subsection (2), the provisions of this Act specified in Schedule 1 to this Act shall not come into force on the commencement date, but shall come into force on the later date specified in Schedule 1.

(4) Schedule 1 to this Act forms part of this Act.

2. Interpretation

In this Act, unless the context otherwise requires—

“*authorised officer*” means a police officer or a person prescribed under section 19;
“*certification*” means the certification by the Speaker in accordance with Article 47 of the Constitution that the Act has been passed by Parliament

“*cigarette*” includes any product that—

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

(b) is capable of being immediately used for smoking;

“*designated smoking area*” means an area approved by an authorised officer in accordance with section 17 of this Act;

“*enclosed public place*” means, subject to section 16 and Schedule 1, any enclosed place, including public transport, government offices and their verandas and corridors, airport terminals, and halls to which the public ordinarily has access, and includes restaurants, bars, cafes and public spaces within any hotel, any public place at which a sporting event is being held and any public place covered by a roof or enclosed by one or more walls or sides, regardless of the type of material used for the roof, wall or sides, and regardless of whether the structure is permanent or temporary, and any place deemed by regulation to be an enclosed public place, but does not include any designated smoking area within an enclosed public place nor any private residence;

“*enclosed workplace*” means, subject to section 16 and Schedule 1, any enclosed place, building or area that is occupied by an employer and that employees usually frequent during the course of their employment, and includes any cafeteria, veranda, corridor, lobby, stairwell, toilet, and washroom within such workplace, and also

includes any enclosed common areas and any workplace space covered by a roof or enclosed by one or more walls or sides, regardless of the type of material used for the roof, wall or sides and regardless of whether the structure is permanent or temporary, and employer-provided vehicles normally used by employees, but does not include any place of residence occupied by an employer or an employee or a vehicle while it is occupied by only one person, and does not include any designated smoking area within an enclosed workplace.

“*hospital*” means any place inside or within the grounds of any hospital;

“*Minister*” means the Minister responsible for health;

“*occupier*” in relation to an enclosed public place or an enclosed workplace is a person who is or appears to be in control of the public place or workplace;

“*package*” includes a box, tin, packet, or carton but does not include any outer wrapper, cellophane or other transparent material;

“*public space within a hotel*” means any area in or on the hotel premises that is accessible to the public and which is not restricted only to a particular guest or guests;

“*regulations*” means regulations made pursuant to section 30 of the Act;

“*restaurant*” means any place or any part thereof where the principal business is the serving of meals or refreshments to the public for consumption at such place;

“*school*” means any place inside or within the grounds of any school;

“*sell*” includes –

(a) barter or exchange;

(b) offer or expose for sale;

(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;

“*smoking*”, 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;

“*tar*” means the Condensate Particulate Matter (CPM) which results from the ignition of any tobacco product;

“*tobacco*” means any product obtained from the leaf of the *Nicotiana tabacum* or *Nicotiana glauca* plant or other related plants;

“*tobacco product*” means any tobacco or cigarette or any other product the main ingredient of which is tobacco and which is designed for human consumption in any manner;

“*tobacco product advertisement*” means any words, whether written, printed, spoken, broadcast, or telecast, including on film, video, visual compact disk, recording or other medium, and any pictorial representation, design, device, visual image, sign, symbol, trademark, brand name or company name, or part of a trademark, brand name or company name, or a combination of 2 or more of the foregoing, used to encourage the use or to notify the availability or to promote the sale of any tobacco product or to promote smoking;

“*trademark*” includes any trademark whether or not it is registered or registrable as such, and also includes:

(a) any brand name;

(b) any company name where that name is used for advertising or promotional purposes; and

(c) any name, word, or mark that so resembles any trademark that it may be taken as that trademark;

“*vending machine*” means a machine or device that is constructed to contain tobacco products and which can automatically retail any tobacco product upon the insertion of a coin, token, banknote or similar object into the machine or device;

PART 2 - PROHIBITION OF ADVERTISING AND PROMOTION OF TOBACCO PRODUCTS

3. Prohibition of tobacco product advertisements

(1) Any person who—

(a) displays, exhibits, announces, broadcasts or telecasts, or causes or permits to be displayed, exhibited, announced, broadcast or telecast, or authorises the display, exhibition, announcement, broadcast or telecast to the public of a tobacco product advertisement;

(b) sells or distributes, or causes or permits to be sold or distributed, or authorises the sale or distribution of, any film, video tape or disk that contains a tobacco product advertisement;

(c) distributes, permits or causes to be distributed, or authorises the distribution to the public, of any leaflet or document that is or contains a tobacco product advertisement; or

(d) prints or publishes, or causes or permits to be printed or published, or authorises the printing or publication of a tobacco product advertisement in any printed publication, book, magazine, leaflet, handbill, newspaper or other printed matter intended for the public,

commits an offence.

(2) Sub-section (1) does not apply to—

(a) a tobacco product advertisement in or on a package containing a tobacco product; or

(b) any tobacco product advertisement included in any book, magazine, or newspaper printed outside Nauru, or in any radio or television transmission originating outside Nauru, or any film, video recording or visual disk originating outside Nauru, unless—

(i) the principal purpose of the book, magazine, newspaper, broadcast, telecast, film, video recording or visual disk is the promotion of the use of a tobacco product or smoking; or

(ii) the book, magazine, newspaper, broadcast, telecast, film, video recording or visual disk is intended for sale, distribution, or exhibition primarily in Nauru; or

(iii) in the case of a tobacco product advertisement in any radio or television transmission, the advertisement is targeted primarily at a Nauru audience.

(3) Nothing in sub-section (1) applies to a tobacco product advertisement that is, or is to be, displayed inside a shop or other retail place where tobacco products are offered for sale so long as -

(a) the advertisement is, or is to be, displayed only at the point of sale of a tobacco product;

(b) one of the warning messages specified in the regulations is clearly and conspicuously printed in a prominent position in a block on each such advertisement and the block covers not less than 20% of the total area of the advertisement;

(c) the advertisement does not contain any trademark or brand name or part of a trademark or brand name of a tobacco product, or the name of a manufacturer or distributor of a tobacco product; and

(d) the advertisement complies with the Regulations.

(4) A person who commits an offence under subsection (1) of this section is liable upon conviction to a penalty of –

(a) in the case of an individual, \$1,000; and

(b) in the case of a body corporate, \$5,000.

4. Prohibition on giving or distributing free samples or offering prizes

Any person who, for the purpose of inducing or promoting the sale of any tobacco product or smoking generally—

(a) offers, supplies or distributes to any person a free sample of a tobacco product;

(b) offers 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 thereof, or to any person in consideration for the furnishing of evidence of such a purchase; or

(c) offers, supplies or distributes to the public a free sample of a product which is not a tobacco product, but which is intended to promote the sale of a tobacco product or smoking generally;

commits an offence.

5. Prohibition on sponsorship

(1) Any person who, under a contract, agreement, undertaking or understanding with another person, whether or not legally binding, promotes or publicises, or agrees to promote or publicise—

(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 that 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 another person, commits an offence, and is liable upon conviction to a penalty of, in the case of an individual \$5,000, and in the case of a body corporate \$25,000.

(2) Any person who, under a contract, agreement, undertaking or understanding with another person, whether or not legally binding, gives or agrees to give any sponsorship, gift, prize, reward, scholarship or like benefit 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 that manufacturer or distributor also manufactures or distributes a product other than the tobacco product) in association directly or indirectly with the tobacco product, commits an offence, and is liable upon conviction to a penalty of \$25,000.

PART 3 - PRODUCT REQUIREMENTS

6. Information to be printed on packages of tobacco products - labelling

Any person who sells any tobacco product in any package which is not marked in accordance with the regulations commits an offence.

7. Restrictions on tar and nicotine content

(1) The level of tar in any cigarette shall not exceed 15 milligrams and the level of nicotine shall not exceed 1.5 milligrams.

(2) Any person who sells any cigarette that contains tar or nicotine in excess of the level prescribed by sub-section (1) of this section commits an offence.

8. Minimum package size

(1) No person shall sell cigarettes unless they are contained in an unbroken package containing no fewer than 20 cigarettes.

(2) Any person who sells any cigarette that is not contained within an unbroken package prescribed by sub-section (1) of this section commits an offence.

PART 4 - RESTRICTIONS ON SALE OF TOBACCO PRODUCTS AND PRODUCTS RESEMBLING TOBACCO PRODUCTS

9. Prohibition on supplying tobacco to persons under 18 years

(1) Any person who—
(a) supplies any tobacco product to a person under the age of 18 years; or
(b) purchases a tobacco product for the use of a person under the age of 18 years;
commits an offence.

(2) The term “supplies” in sub-section (1)(a) of this section applies only to the supply of a tobacco product by a person who has a direct or indirect pecuniary interest in the sale of tobacco products.

(3) Every retailer of tobacco products shall post prescribed signs in the prescribed manner stating that it is illegal to sell or supply any tobacco product to persons under the age of 18 years, and any failure to comply with this requirement shall constitute an offence.

(4) It is a defence to a prosecution under sub-section (1) of this section if a person proves that he or she had taken all reasonable precautions to ensure that the tobacco product was not sold to a person under the age of 18 years.

(5) Any person who contravenes subsection (1)(b) of this section shall be penalised in accordance with section 20.

(6) Any person who contravenes subsection (3) of this section shall be liable upon conviction:

- (a) for a first offence to a fine of \$100;
- (b) for a second offence to a fine of \$500;
- (c) for a third or subsequent offence to a fine of \$1,000.

(7) Any person who contravenes sub-section (1)(a) of this section is liable upon conviction:

- (a) for a first offence to a fine of \$1,000;
- (b) for a second offence, to a fine of \$2,000;
- (c) for a third offence, to a fine of \$5,000, and an order prohibiting the person from selling or supplying tobacco products for a period of 3 years and prohibiting any other person from selling or supplying tobacco products from the premises at which any of the offences was committed, for a period of 3 years.

(8) Any person who sells or supplies any tobacco product during a period in which he or she has been prohibited from doing so under subsection (7)(c) of this section commits an offence, and is liable upon conviction to a fine not exceeding \$5,000.

10. Prohibition on supply from vending machines

Any person who sells or supplies tobacco products from a vending machine commits an offence, and is liable upon conviction to a fine of \$1,000 and forfeiture of the vending machine.

11. Prohibition on supply from restaurants

Any person who sells, offers for sale or supplies tobacco products in a restaurant commits an offence.

12. Prohibition on confectionery or toys resembling tobacco products

(1) A person shall not sell, or import into Nauru for sale, confectionery, or a toy, that is designed to resemble a tobacco product.

(2) A person shall not sell, or import into Nauru for sale, confectionery, or a toy, contained in packaging that is designed to resemble a tobacco product or the packaging of a tobacco product.

(3) For the purposes of any law regulating the importation of goods, a thing described in sub-section (1) or (2) of this section is a prohibited import.

(4) Any person who contravenes subsection (1) or (2) of this section commits an offence, and shall be liable upon conviction to forfeiture of any remaining prohibited goods and:

(a) for a first offence to a fine of \$100;

(b) for a second offence to a fine of \$500;

(c) for a third or subsequent offence to a fine of \$1,000.

PART 5 - SMOKING IN PUBLIC PLACES AND WORKPLACES

13. Prohibition on smoking in enclosed public places and enclosed workplaces

(1) Any person who smokes in any school, hospital, enclosed public place or in any enclosed workplace commits an offence.

(2) If smoking occurs in a school, hospital, enclosed public place or enclosed workplace in contravention of sub-section (1) of this section, the occupier of the public place or workplace is guilty of an offence.

(3) It is a defence to a prosecution under sub-section (2) of this section if the defendant proves that the defendant did not provide an ashtray, matches, a lighter or any other thing designed to facilitate smoking where the contravention occurred and that—

(a) the defendant was not aware, and could not reasonably be expected to have been aware, that the contravention was occurring; or

(b) the defendant requested the person contravening to stop smoking; and informed the person that the person was committing an offence.

14. Enclosed public places and enclosed workplaces - display of signs

(1) If, within an enclosed public place or enclosed workplace, 'no smoking' signs that comply with sub-section (2) of this section are not displayed, or are not displayed in the prescribed manner (if any), without reasonable excuse, the occupier of the enclosed public place or enclosed workplace commits an offence.

(2) A sign referred to in sub-section (1) must comply with any requirements prescribed in regulations as to size and content.

15. Smoking in bars, restaurants, cafes and hotels

(1) Pursuant to subsection (3) of section 1 and Schedule 1, all bars, restaurants and cafes and all public spaces within hotels shall, four years and three months after certification, become enclosed public places for the purposes of this Act.

(2) The licensee of any bar, restaurant, café or hotel may, prior to the date on which such places become enclosed public places under this Act, adopt a 'no smoking' policy in respect

of all or part of their business premises, and, provided that if such policy is adopted, signs are displayed that comply with the requirements prescribed for the purposes of subsection (2) of section 14 and have been so displayed for not less than four weeks, the 'no smoking' policy shall be enforced in accordance with this Act as if the relevant bar, restaurant, café or hotel or the respective part thereof was an enclosed public place.

16. Interim definitions of enclosed public place and enclosed workplace

(1) Subject to subsection (3) of section 17, from the date of certification until twenty-seven months after certification, "enclosed public place" shall mean any room or indoor space in any government building, and any other indoor public facility including public transport, and "enclosed workplace" shall mean any room or indoor space that is occupied by an employer and that employees usually frequent during the course of their employment but shall not include a vehicle or any place of residence occupied by an employer or an employee.

(2) From twenty-seven months after certification until four years and three months after certification, "enclosed public place" shall mean any place inside or within the grounds of any government building (including buildings of state owned enterprises and government instrumentalities), airport terminal or other public building or facility, and public transport, but shall not include any designated smoking area, and "enclosed workplace" shall mean any place occupied by an employer and that employees usually attend during the course of their employment that is enclosed by a roof and by two or more walls or sides, including any veranda, balcony or corridor with a roof and two or more walls that is in or adjoined to any such place, but shall not include restaurants, bars, cafes or hotels or any place of residence occupied by an employer or an employee nor any designated smoking area.

17. Approval of designated smoking area

(1) 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 may issue a certificate of approval under subsection (2) for an area at or within such public place or workplace to be a designated smoking area, provided that:

(a) There shall be no more than one designated smoking area in any public place or workplace unless such public place or workplace covers an area greater than two hundred square metres;

(b) Approval shall not be given unless the proposed designated smoking area is an outdoor area at least two metres away from all doors and windows and the authorised officer is satisfied that there is sufficient air flow in the proposed area to make the likelihood of involuntary passive smoking by those outside the proposed designated smoking area remote;

(c) A designated smoking area shall occupy no more than 15 square metres, shall be properly equipped with rubbish bins and/or ashtrays and shall be clearly delimited and signposted as a designated smoking area;

(d) The occupier of any public place or workplace that has a designated smoking area shall ensure that health warning signs in the prescribed form are posted in the designated smoking area/s.

(2) If an authorised officer is satisfied that a proposed designated smoking area complies with the requirements in subsection (1), he shall issue a certificate of approval to the occupier which certifies that the requirements of subsection (1) have been complied with and which clearly describes the location and boundaries of the designated smoking area, and shall provide a copy of the certificate of approval to the Minister.

(3) Notwithstanding the requirements of subsections (1) and (2), an authorised officer may issue a certificate of approval for a designated smoking area within the transit and

departure lounge of the airport terminal, provided that he is satisfied that the proposed designated smoking area is sufficiently separated or sealed off from other public areas within the airport terminal that the risk of involuntary passive smoking by those outside such designated smoking area is remote.

PART 6 - MISCELLANEOUS

18. Appropriation for tobacco control activities

(1) Each financial year, a reasonable portion of the total import duty revenue collected on tobacco products in the previous financial year shall be appropriated for the purposes of tobacco control activities.

(2) In sub-section (1) the expression “tobacco control activities” means any measure designed to reduce the harm caused by tobacco products, including monitoring and enforcement of the Act and regulations, tobacco education activities, and activities designed to encourage individuals to quit smoking and to assist people in quitting smoking.

19. Authorised officer

(1) The Minister may, by notice in the Gazette, prescribe any person or persons of a specified class or description to be authorised officers for the purposes of this Act.

(2) All health inspectors and food inspectors are authorised officers for the purposes of this Act.

(3) An authorised officer shall, upon request, provide identification that he or she is an authorised officer.

20. Offences and penalties

A person who contravenes or fails to comply with any provision of this Act creating an offence is liable upon conviction, where there is no penalty provided, to a fine of—

- (a) in the case of an individual—\$50 for a first offence and \$250 for a second or subsequent offence; and
- (b) in the case of a body corporate—\$500 for a first offence and \$1000 for a second or subsequent offence.

21. Offences by corporate bodies and trading businesses

(1) If a body corporate commits an offence against this Act, each director or other person concerned in the management of the body corporate is also guilty of, and liable to the penalty provided for, that offence unless the director or other person proves that he exercised reasonable diligence to prevent the commission of the offence.

(2) If an offence is committed under section 3, 4, 6, 7, 9(1)(a), 9(3), 9(8), 10, 11, 12 or 14(1) of this Act by a business that holds a trading licence, whether that business is incorporated or not, both the licensee and the person in charge of the day-to-day management and trade of the business shall be liable to the respective penalties, provided that where one person is both the licensee and the manager, he shall not be twice penalised for one offence.

22. Prosecutions

Prosecutions for an offence under this Act may be brought—

- (a) by the Director of Public Prosecutions;
- (b) by or on behalf of the Minister;
- (c) by a member of the police; or
- (d) by an authorised officer.

23. Powers of entry, search and seizure

- (1) For the purposes of this Act, an authorised officer may at all reasonable times—
 - (a) enter any premises he or she knows or reasonably suspects—
 - (i) are being used for the production, manufacture, assembly, preparation, storage or sale of any tobacco product, tobacco product package or tobacco product advertisement; and
 - (ii) have been or are being or are likely to be used by any person in connection with a contravention of this Act;
 - (b) enter any premises where he or she knows or reasonably suspects that records are kept relating to the sale or manufacture of tobacco products or to tobacco advertisements in contravention of this Act;
 - (c) enter any premises which he or she knows or reasonably suspects are being used by any person for the printing, or as an office in connection with the printing, of any newspaper or other publication or for the manufacture or distribution of any videotape or visual disk which contravenes this Act;
 - (d) enter any broadcasting or television station which he or she knows or reasonably suspects is associated with any contravention of this Act;
 - (e) in any premises entered by him or her—
 - (i) search for, examine, take possession of or make copies of or extracts from records relating to any tobacco product or tobacco product advertisement or package supplied or to be supplied or relating to any matter the subject of an investigation under this Act;
 - (ii) search for and examine goods found thereon;
 - (iii) seize without payment any tobacco product or tobacco product package or advertisement that contravenes the Act or which he or she reasonably believes or suspects contravenes the Act;
 - (iv) seize without payment any brochures, leaflets, books, writing, documents or other materials that he or she knows or reasonably suspects have been, are being, or are likely to be used to advertise, promote, publicise or package any tobacco product in contravention of this Act;
 - (v) open any room, place or package that he or she knows or reasonably suspects contains any tobacco product or tobacco product advertisement;
 - (vi) question with respect to matters under this Act any person he or she finds thereon.
 - (f) make such inquiry and examination as he or she believes to be necessary or desirable to assist the discharge or exercise of any function or power under this Act to ascertain whether any contravention of this Act has been, is being or is likely to be committed.
- (2) Sub-section (1) of this section does not authorise forcible entry by an authorised officer to any premises except under the authority of a warrant obtained pursuant to sub-section (3).
- (3) A Magistrate, if satisfied upon the information of an authorised officer that there is reasonable cause to suspect that any place has been or is being or is likely to be used in connection with a contravention of this Act, or for the keeping of records relating to a contravention of this Act, may issue a search warrant directing the authorised officer to enter the place specified in the search warrant for the purpose of exercising the powers conferred on an authorised officer under this Act.
- (4) For the purpose of gaining entry to any place, an authorised officer may call in aid such persons as he or she considers necessary.
- (5) A search warrant issued under sub-section (3) of this section is, for a period of one month from its issue, sufficient authority—

- (a) to the authorised officer to whom it is directed, and to all persons acting in aid of the officer, to enter the place specified in the search warrant; and
- (b) to the authorised officer to whom it is directed to exercise in respect of the place specified in the search warrant all the powers conferred on an authorised officer by this Act.

- (6) If an authorised officer has taken possession of records or of other property for the purposes of this Act he or she may—
- (a) in the case of records, retain them for as long as necessary for those purposes but the person otherwise entitled to possession of the records, if he or she so requests, is entitled to be furnished as soon as practicable with a copy certified by the authorised officer to be a true copy and such a certified copy must be received in all courts and elsewhere as evidence of the matters contained in it as if it were the original;
 - (b) in the case of other property subject to this Act, retain the property for as long as necessary for those purposes, and thereafter dispose of it as the Court directs, or, if no prosecution results in relation to such property, return the property to the person from whom it was taken.

24. Power to obtain information

- (1) Where an authorised officer has reasonable cause to suspect that any person has information or records in his or her possession that may be relevant to the operation or enforcement of this Act or to the investigation of a suspected contravention of this Act, he or she may require that person (either by oral or written requisition) to provide -
- (a) any such information;
 - (b) any such records or a *copy* thereof; in the person's possession.
- (2) For the purpose of sub-section (1), a person shall be taken to be in possession of—
- (a) information, if the person has the information or is entitled to access to the information; and
 - (b) records, if the person has them in his or her possession or under his or her control in any place, whether for his or her own use or benefit or for another's use or benefit and although another person has the actual possession or custody of the records.
- (3) A requisition made under sub-section (1) may require that the information or records or copy thereof be provided—
- (a) to the authorised officer or another authorised officer or to an officer of a specified department of the Government;
 - (b) at the place the requisition is made or at another place;
 - (c) immediately or at, by or within, a time specified;
 - (d) in person, or by mail or in another specified manner;
 - (e) by means of, or accompanied by, verification in the form of an affidavit; and
 - (f) in the case of information, orally or in writing.
- (4) A person shall not without reasonable cause—
- (a) refuse or fail to provide any information, or produce records or a copy as required under this section; or
 - (b) in response to a requisition made under this section provide information, or produce records or copies that is or are false or misleading in a material particular.
- (5) 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 shall include a duty to produce the matters in written form if that is demanded.
- (6) Any person required to produce a copy of any records under this section shall produce a clear reproduction of the records.

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

(8) Any person who without reasonable cause—

- (a) fails to provide information, records or copies required under this section; or
- (b) provides or produces in response to a requisition under this section information, records or copies, that is or are false or misleading in a material particular,

commits an offence.

25. Continuing offences

If a person commits an offence by failing to provide information or to produce records or a copy of any records required under section 24—

- (a) the obligation to provide the information or produce the records, or copies, 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 passed;
- (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 requisition continues;
- (c) the person is liable to a fine of \$50 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, notwithstanding prior conviction for the commission of the initial offence.

26. Obstruction

(1) A person who obstructs an authorised officer in the exercise of his or her powers under this Act commits an offence.

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

- (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;
- (b) directly or indirectly prevents or attempts to prevent any person from being questioned by an authorised officer or from providing under this Act any information, records or copies; or
- (c) in any other way obstructs or attempts to obstruct an authorised officer in the exercise of his or her powers under this Act.

27. Directions may be issued to ensure compliance

(1) If—

- (a) any tobacco product, package, label, tobacco product advertisement, shop or retail place, restaurant, enclosed public place or enclosed workplace or other place or thing does not comply with the provisions of this Act; or
- (b) any provision of this Act has not been complied with,

an authorised officer may, in writing, direct 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 further contravention and to remedy the matters in respect of which the non-compliance has occurred.

(2) The issue of a direction under sub-section (1) does not affect any proceeding under this Act which has been or may be taken for the non-compliance.

(3) A person to whom a direction is issued under sub-section (1) and who does not comply with the direction commits an offence.

28. Removal of advertisements and destruction of tobacco products

- (1) If a person is convicted of an offence under section 3, the Court, in addition to any other penalty, may order—
- (a) that any advertisement be removed or obscured or destroyed by an authorised officer; and
 - (b) that the person convicted shall pay the reasonable costs incurred in removing or obscuring or destroying any advertisement.
- (2) If a person is convicted of an offence under section 6, 7 or 8, the Court, in addition to any other penalty, may order—
- (a) that the tobacco product be confiscated and destroyed by an authorised officer, and
 - (b) that the person convicted shall pay the reasonable costs incurred in confiscating and destroying the tobacco product.
- (3) Costs payable under sub-section (1) or (2) may be recovered in the same way as a fine.

29. Contracts, agreements or undertaking unenforceable

- (1) A contract, agreement, undertaking or understanding that is in effect when this Act comes into force cannot, to the extent to which it is inconsistent with this Act, be enforced by a party thereto or by a third party.
- (2) Neither the Republic nor any person is liable to pay any damages or other compensation to any other person in consequence of sub-section (1).

30. Regulations

Cabinet may make regulations of limited or general application, not inconsistent with this Act, prescribing matters necessary or convenient to be made for carrying out or giving effect to this Act and, in particular—

- (a) prescribing the warning messages, explanatory information and other information to be displayed on packages containing tobacco, including the position of the information on packages and the size, colour, style, content and nature of these warnings or information;
- (b) prescribing the size, content, colour, style, position, number and nature of information on toxic constituents to be displayed on packages of tobacco products;
- (c) prescribing the size, content, colour, style, position, number and nature of notices to be displayed concerning the prohibition on sales to persons under the age of 18 years;
- (d) prescribing the size, content, colour, style, position, number and nature of notices to be displayed concerning restrictions on smoking in enclosed public places and enclosed workplaces;
- (e) prescribing the entry into and the conduct of inspections at points of sale of tobacco products;
- (f) declaring certain smoking products to be prohibited and prescribing penalties in relation to the sale and/or import of such prohibited smoking products; and
- (g) declaring a place or class or category of places to be ‘enclosed public places’ for the purposes of the Act.

31. Repeal

The Prohibition of the Possession of Tobacco by Children Ordinance 1924-1967 is repealed.

Tobacco Control Act 2009 - Schedule 1

Phased implementation of certain provisions

Pursuant to section 1 of the Act, the provisions specified in the left hand column of the following table shall come into force on the date specified in the corresponding row of the right hand column:

Table of commencement dates

Provision of the Act	Date of commencement
Definition of “enclosed public place” in section 2	4 years and 3 months after certification
Definition of “enclosed public workplace” in section 2	4 years and 3 months after certification
Section 6	6 months after certification
Section 7	6 months after certification
Section 8	9 months after certification
Paragraph (b) of sub-section 9(1), and sub-section 9(5)	6 months after certification
Section 11	12 months after certification
Section 12	6 months after certification
Sub-section 24(8) and Section 25	3 months after certification, provided that failure to provide information, records or copies in relation to the operation or enforcement or investigation of a suspected contravention of a provision that has not yet commenced shall not be an offence
Section 26	3 months after certification, provided that no offence shall be deemed to have been committed under this section if it relates to a provision that has not yet commenced
Sub-section 27(3)	3 months after certification, provided that it shall not be an offence to fail to comply with a direction wrongfully issued in respect of a provision that has not yet commenced
Paragraph (g) of section 30	4 years and 3 months after certification

I hereby certify that the above is a fair print of a Bill for an Act entitled the **Tobacco Control Act 2009**, that has been passed by the Parliament of Nauru and is now presented to the Speaker for his certificate under Article 47 of the Constitution.



Clerk of Parliament
20 April 2009

Pursuant to Article 47 of the Constitution, I, RIDDEL AKUA, Speaker of Parliament, hereby certify that the **Tobacco Control Act 2009** has been passed by the Parliament of Nauru



Speaker of Parliament
20 April 2009