

TOBACCO CONTROL ACT 2018

2018/345 – 25 December 2018

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An Act to provide for the control of the distribution, promotion, sale and use of tobacco products in Niue.

1 Title

This is the Tobacco Control Act 2018.

2 Commencement

(1) Subject to subsections (2) to (4), this Act comes into force on 25 December 2018

(2) Sections 17 to 26, 28 to 31, 43 to 48, and 56 to 61 of this Act come into force on 25 June 2019.

(3) Sections 6 to 16 and 33 to 42 of this Act come into force on 25 December 2019.

PART 1

PRELIMINARY MATTERS

3 Purpose

The purposes of this Act are to—

- (a) protect the health of the people of Niue from the diseases caused by tobacco use and tobacco smoke;
- (b) reduce the social approval of tobacco use in Niue by applying controls on the manufacture, importation, packaging, labelling, marketing, advertising and promotion of tobacco products and their association through sponsorship with other products and events or activities;
- (c) protect the health of young persons by restricting access to tobacco products;
- (d) promote the accurate portrayal of the health and social consequences of tobacco use;
- (e) enhance awareness of the hazards of tobacco use by ensuring the effective communication of accurate and relevant information about tobacco use;
- (f) reduce some of the harmful effects of tobacco products by monitoring and regulating the presence of harmful substances in tobacco products and in tobacco smoke;
- (g) protect individuals from the hazards of involuntary exposure to tobacco smoke; and
- (h) facilitate Niue's compliance with, and implementation of, the WHO Framework Convention on Tobacco Control by implementing necessary legislative controls.
- (i) restrict the types of engagement between government agencies and the tobacco industry that are allowed.

4 Interpretation

In this Act, unless the context otherwise requires —

“additive” means a substance that forms part of a tobacco product that is not cured tobacco leaf; and includes—

- (a) a substance forming part of the product that has been derived or refined from tobacco leaf (whether cured or not); and
- (b) any substance that is introduced into a tobacco product during processing, manufacturing, or packaging, including, as applicable, those contained in the paper, filter, portion pouch or similar part of the tobacco product;

“brand variant” means a tobacco product distinguishable from other tobacco products by any means, including the following—

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- (a) the tobacco product is sold under different brand names;
 - (b) the tobacco product is sold under the same brand name, but differs in one or more of the following ways:
 - (i) containing or not containing menthol;
 - (ii) being otherwise differently flavoured;
 - (iii) producing different quantities of tar, nicotine, carbon monoxide or other constituents;
 - (iv) allegedly differing in "mildness";
 - (v) having or not having filter tips or cork tips;
 - (vi) being sold in retail packages containing different numbers of pieces; or
 - (vii) being of different length or mass;
- “broadcast” means the transmission of programmes, whether or not encrypted, by radio waves or other means of telecommunication for reception by the public by means of broadcasting receiving apparatus;
- “children’s product” means a product (including comics, books, games, and toys) marketed primarily for children and includes sweets, ice cream, soft drinks, and other similar products;
- “cigarette” means a tobacco product comprising a roll of cut tobacco, enclosed in paper;
- “commercial purpose” means exchanging tobacco or tobacco products intended for smoking or consumption for direct or indirect profit whether monetary or not;
- “constituents” means—
- (a) in relation to tobacco products intended for smoking, the chemicals inherent in the product itself, and in the smoke and other products of combustion emitted from the product;
 - (b) in relation to smokeless tobacco products, the chemicals inherent in the product;
- “corporate social responsibility activities” mean any activities promoting the health or welfare of other individuals, the wider community, or the environment; funding community services; activities related to disaster relief; charitable or any other activities that are philanthropic in nature;
- “Department” means the Department of Health;
- “Director” means the Director of Health and includes any person to whom he or she may have delegated his or her powers under this Act in accordance with section 47(4);
- “distribute” means to sell tobacco products and includes manufacturing and importing, but does not include sale by retail;
- “distributor” means a person or agent who sells tobacco products and includes a manufacturer or importer of tobacco products, but does not include a person whose only sale of tobacco products is by way of retail;
- “educational facility” means any school, college, place of learning or instruction and includes any kindergarten or pre-school facility;
- “enclosed”, in relation to a building, structure, location or place, means an area that is covered by a roof or roof-like structure and/or is surrounded by two or more walls or sides; regardless of the materials used for the roof and walls or sides, whether they comprise a permanent or temporary structure, or whether the roof and walls or sides have openings;
- “Enforcement Officer” means an officer who is appointed for the purposes of this Act under section 48;
- “exporter” means any person who sends, or arranges for tobacco products or raw tobacco to be sent from Niue to a point outside of Niue for the purpose of sale or distribution;

- “Government department” includes any government agency or statutory body;
- “health message” means a warning or an explanatory statement about the health effects or social costs of tobacco use, the benefits of, or suggestions for quitting, and any other matter related to tobacco and health, or other adverse effects of tobacco use or exposure, as prescribed by regulations made under the Act;
- “importer” means any person who brings tobacco products or raw tobacco into Niue for the purpose of sale or distribution;
- “licence” means a licence issued under section 7;
- “licensed premises” mean any premises, or any part of any premises, on which liquor may be sold according to any licence (other than a restaurant licence) under the Liquor Act 1975;
- “loose cigarettes” mean cigarettes that are not contained in sealed, unopened a package;
- “loose tobacco” means tobacco, prepared for smoking in hand rolled cigarettes or in a pipe, which is not contained in a sealed, unopened package;
- “manufacture” means to fabricate, produce, process, pack, or label tobacco products for the purpose of sale or distribution;
- “manufacturer” means any person that manufactures, fabricates, produces, processes, packs, or labels tobacco products for the purpose of sale or distribution;
- “Minister” means the Minister of Health;
- “other information”, in connection with a health message means, additional or amplifying information or explanatory material which, as prescribed, is to be displayed or published in conjunction with that health message;
- “package” means any container, wrapper, carton, or other enclosure that contains any tobacco product or in which tobacco products are customarily sold and includes the package’s label;
- “person or any term descriptive of a person” includes a natural person, a corporation sole, a body corporate, and an unincorporated body;
- “point of sale” means a counter or checkout where tobacco products may be bought; and includes a till or cashbox, where tobacco products may be bought, even if it is not at or part of that counter or checkout;
- “prescribed” means as required by regulations made under this Act;
- “promote” in relation to tobacco products or the activities of a seller, means any act or practice that is intended or likely to encourage the purchase or use of any tobacco product or brand or create a positive awareness of, or association with, a tobacco product, brand, manufacturer or seller;
- “public place” means any place (including any ship, aircraft or other vehicle or conveyance used for the purposes of public transport) to which members of the general public or class of the general public ordinarily have access by express or implied invitation or licence, whether by payment or otherwise and includes any building, structure or facility which is either owned or occupied by the Government, but does not include any place or part of it which is primarily used as a private residence, unless otherwise designated by the owner.;
- “public transport vehicle” means any form of transportation that carries passengers for hire or reward by land, air or by sea, whether locally, regionally, or internationally; it also includes government-owned vehicles;
- “publish” means to—
- (a) insert in any book, newspaper or other periodical publication printed, published, or distributed in Niue; or
 - (b) send to any person, by post or otherwise; or
 - (c) deliver to any person or leave upon premises in the occupation of any person;
- or

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- (d) broadcast; or
 - (e) include in any film or video recording; or
 - (f) include in any disk, portable drive, or other similar device capable of storing data, for use with a computer; or
 - (g) disseminate by means of any other electronic medium; or
 - (h) distribute by any means; or
 - (i) display by way of a sign, notice, poster, or other means; or
 - (j) bring to the notice of any person or of the public in Niue in any other manner;
- “raw tobacco” means tobacco that has not been processed or prepared for consumption;
- “restaurant” means any premises, or any part of any premises, where the principal business is the selling of meals or refreshments to the general public for consumption on the premises, whether or not liquor is or may be sold on those premises or that part of those premises; and includes any room or area on a ship where meals or refreshments are provided for passengers to consume;
- “retailer” means a person who sells tobacco products to consumers;
- “sell” includes—
- (a) to barter or exchange; or
 - (b) to offer or expose for sale, barter or exchange; or
 - (c) to supply, or offer to supply, in circumstances in which the supplier derives, or would derive, a direct or indirect pecuniary benefit; or
 - (d) to supply, or offer to supply, gratuitously but with a view to
 - (e) gaining or maintaining customs, or otherwise with a view to commercial gain;
- “seller” means any person who sells any tobacco product or raw tobacco and includes any manufacturer, wholesaler, importer, exporter, retailer, or other distributor;
- “smoking” means inhaling or exhaling the smoke from, or handling, a lighted tobacco product or any other product capable of being smoked;
- “smoke-free” means an area that does not permit or allow smoking;
- “tobacco” means any preparation of the leaves of plants from the genus *Nicotiana* or species *tabacum* used for smoking or chewing and includes all products which contain tobacco in any form and may include all parts and materials, such as filters, rods and similar matter. For the purposes of this Act tobacco also means any waterpipe, shisha, Electronic Nicotine Delivery systems (ENDS) or Electronic Non-Nicotine Delivery systems (ENNDS);
- “tobacco industry” includes any manufacturer of tobacco products as well as any entity or person working to further the interests of any sellers of tobacco products;
- “tobacco product” means any product intended for human consumption which contains tobacco in any form, in an amount that is more than an incidental ingredient or component and includes all parts and materials including filters, rods, portion pouches, and similar matter, as applicable, including loose tobacco but not including raw tobacco. Any product labelled as containing tobacco must be considered, for the purposes of this Act, to be a tobacco product;
- “tobacco product advertisement” means any form of writing, still or moving picture, sign, symbol or other visual image, or any sounds, or any combination of those things (in whatever form that advertisement may be produced, including but not limited to hard copy, soft or electronic form, narrowcast or broadcast) which is either intended to or has the effect of advertising, promoting or giving any form of positive publicity (either directly or indirectly) to any one or more of the following—
- (a) the purchase or use of a tobacco product or a range of tobacco products;
 - (b) the whole or a part of a trade mark of goods which are or include tobacco products;

- (c) the whole or a part of a design of articles which are or include tobacco products;
 - (d) the whole or a part of the name of a person:
 - (i) who is a manufacturer; and
 - (ii) whose name appears on, or on the packaging of, some or all of those products;
any other words (for example, the whole or a part of a brand name) or designs (for example tobacco company logo, or a tobacco brand), or combination of words and designs, that are closely associated with a tobacco product or a range of tobacco products (whether also closely associated with other kinds of products);
- “tobacco sponsorship” means the attribution, acknowledgment, association or identification (in a manner which has the effect, directly or indirectly, of giving publicity (whether to the public, to any section of the public or to any person or group of persons)) of a tobacco manufacturer, seller, brand, or product with, on, or in connection with any one or more of—
- (a) an entertainment, sporting, recreational, educational, cultural, or other public event, activity, or work;
 - (b) a person or team participating in an event, activity or work, including people’s equipment, clothing, vehicle, or accessories;
 - (c) a service provided or contribution made by a tobacco manufacturer or seller;
 - (d) a building, institution, stadium, organisation or other entity which is not a tobacco manufacturer, importer or seller or the business premises of a person;
- “vending machine” means any self-service machine that 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;
- “waterpipe and shisha” means a form of tobacco consumption that utilizes 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;
- “wholesaler” means any person who buys tobacco products and re-sells them to another seller;
- “workplace” means any place (including any private club) in or at which employees, contractors, volunteers, or other persons perform duties of employment, services (paid or unpaid) or other work and includes private offices, common areas, and any other area that generally used by people during the course of their employment or work. Any place or part thereof which is used primarily as a private residence is not to be considered a workplace under this Act;
- “WHO” means the World Health Organization.

5 Act binds the Government

This Act binds the Government.

PART 2

TOBACCO PRODUCT CONTROLS

Commercial growing and manufacturing prohibited

6 The commercial growing and manufacturing of tobacco is prohibited

- (1) A person must not grow tobacco in Niue for a commercial purpose or distribution whether for exchange of goods, money, or the like, or not.
- (2) The onus of proving that tobacco is not being grown for a commercial purpose is on the grower.
- (3) A person must not manufacture tobacco in Niue.

(4) Any person who fails to comply with subsection (1) commits an offence and is liable on conviction—

- (a) in the case of an individual, to a fine not exceeding 50 penalty units; or
- (b) in any other case, to a fine not exceeding 100 penalty units.

Licensing

7 Licence required for manufacturers, importers, exporters, and other sellers

(1) Unless they hold an appropriate licence issued by the Department of Health under this Act, a person must not—

- (a) import or export any tobacco product or raw tobacco; or
- (b) manufacture any tobacco product; or
- (c) distribute any tobacco product or raw tobacco; or
- (d) sell any tobacco product or raw tobacco.

(2) Any person who fails to comply with subsection (1) commits an offence and is liable on conviction—

- (a) in the case of an individual, to a fine not exceeding 50 penalty units; or
- (b) in any other case, to a fine not exceeding 100 penalty units.

8 Kinds of licence

(1) The Department of Health may issue the following kinds of licence under this Act—

- (a) a licence to import tobacco products or raw tobacco; or
- (b) a licence to export tobacco products or raw tobacco; or
- (c) a licence to manufacture tobacco or tobacco products; or
- (d) a licence to sell tobacco products or raw tobacco as a distributor; or
- (e) a licence to sell tobacco products as a retailer.

(2) The Department of Health must issue separate licences for each premises or location at which one or more of the above activities takes place.

9 How to apply for a licence

(1) Every application for a licence under this Act or for the renewal of a licence under this Act must be made on a form as prescribed by regulations made under this Act.

(2) Every licence application and application for the renewal of a licence must be accompanied by the prescribed information and documents and the prescribed fee.

10 The grounds for issuing or refusing to issue a licence

(1) A licence must not be issued or renewed under this Act unless the Department of Health is satisfied on reasonable grounds that—

- (a) the applicant is a fit and proper person to hold a licence (and where the applicant is a corporation, that the character of the members of the governing body of the corporation make the corporation a fit and proper person to hold a licence); and
- (b) the application complies with all of the relevant requirements of this Act as well as the requirements of the regulations made under this Act; and
- (c) the applicant has not been convicted of two or more offences under this Act within the last year; and
- (d) the applicant has not, without reasonable excuse, breached any conditions imposed on a licence issued under this Act within the last year.

(2) The issue or refusal of a licence is, in all cases, at the absolute discretion of the Department of Health, subject to the provisions of this Act.

(3) If a licence application is refused, the Department of Health must advise the applicant in writing of the reasons for refusal and advise the applicant of his or her right to appeal that decision of the Department under section 59.

11 The term of the licence and the conditions that may be imposed

(1) Subject to section 10, a licence issued under the Act must be renewed annually.

(2) The Department of Health can issue a licence subject to terms, conditions and directions that must either be recorded on the licence or in a direction made under section 47.

12 Suspension of licences

(1) Where the Department of Health is satisfied that a licensee has committed a breach of any of the conditions of a licence issued under this Act, the Department may suspend the licence for any time period as the Department thinks fit.

(2) In notifying a licensee of the decision to suspend a licence, the Department of Health must advise the licensee of the reason for suspension, and advise the applicant of his or her right to appeal that decision of the Department under section 59.

13 Revocation of licences

(1) The Department of Health may revoke a licence granted under this Part if—

- (a) the licensee commits an offence under this Act; or
- (b) the licensee fails to comply with a direction of the Department issued under section 47; or
- (c) the licensee is a corporation and ceases operation; or
- (d) the licensee ceases carrying out the activity to which the licence relates.

(2) In notifying a licensee of the decision to revoke a licence, the Department of Health must advise the licensee of the reason for revocation, and advise the applicant of his or her right to appeal that decision of the Department under section 59.

14 Register of licensees

(1) The Department of Health must keep a register of all licences issued under this Act.

(2) On issuing a licence, the Department of Health must ensure the following information is entered into the register of licences—

- (a) the name and address of the licensee;
- (b) contact details of the licensee;
- (c) the location at or from which the licensee intends to carry out the import, export, manufacture, or sale of tobacco products or raw tobacco; and
- (d) any other information which the Department of Health considers appropriate.

(3) The Department of Health must make available for public inspection, at all reasonable times and free of charge, a list of licences issued and the location at which the import, export, manufacture, or sale of tobacco products and raw tobacco are licensed to take place, and by whom.

15 Display of licence

(1) A licence issued under section 8 must state the location where the activities to be covered by the licence are to take place.

(2) A premises or location must not be used for the import, export, manufacture, or sale of tobacco products or raw tobacco unless a copy of the required licence is displayed as prescribed or directed by the Department of Health.

(3) Any person who fails to comply with subsection (2) commits an offence and is liable on conviction—

- (a) in the case of an individual, to a fine not exceeding 50 penalty units; or
- (b) in any other case, to a fine not exceeding 100 penalty units.

16 Notification of change of details

(1) Any person who holds a licence issued under section 8 must advise the Department of Health at the earliest opportunity of any proposed change to the location at which activities covered by the licence are to take place.

(2) On receipt of a notification under subsection (1), the Department of Health, may:

- (a) reissue the licence with the changed location endorsed if the remaining term of the licence is less than six months, or
- (b) require a new licence application to be submitted if the remaining term of the licence is greater than six months.

(3) Any person who fails to comply with subsection (1) commits an offence and is liable on conviction—

- (a) in the case of an individual, to a fine not exceeding 50 penalty units; or
- (b) in any other case, to a fine not exceeding 100 penalty units.

Advertising, promotion and sponsorship of tobacco products

17 Prohibition on tobacco and tobacco product advertising

(1) A person must not, whether for any direct or indirect benefit or on behalf of another person:

- (a) publish, or arrange for any other person to publish, whether in Niue or elsewhere, any tobacco product advertisement;
- (b) display, exhibit, announce, broadcast or telecast, or cause or permit to be displayed, exhibited; announced, broadcast, or telecast, or authorize the display, exhibition, announcement, broadcast or telecast to the public of, a tobacco product advertisement;
- (c) sell or distribute, or cause or permit to be sold or distributed, or authorize the sale of, any film, video, magazine or other printed material, that contains a tobacco product advertisement;
- (d) distribute, or cause or permit to be distributed, or authorize the distribution, to the public of any leaflet, handbill, or document that is a tobacco product advertisement; or
- (e) print or publish, or cause or permit to be printed or published; or authorize 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;

(2) A person who resides in, or operates from, Niue must not display, export or publish any tobacco product advertisement so that it can be viewed by persons resident in another country.

(3) Any person who fails to comply with subsection (1) commits an offence and is liable on conviction—

- (a) in the case of an individual, to a fine not exceeding 100 penalty units; or.
- (b) in any other case, to a fine not exceeding 250 penalty units.

18 The activities that are not tobacco product advertisements

The following are not tobacco product advertisements under this Act—

- (a) depictions of tobacco products or tobacco use in media where the depiction is purely incidental or is justified by reasons of historical accuracy or legitimate journalistic or artistic expression, or where the depiction is required for educational purposes, provided no payment or other consideration was offered or made by a tobacco manufacturer or seller, or any person acting on their behalf, unless-
 - (i) the principal purpose of the book, magazine, newspaper, broadcast, telecast, film, or video recording is the promotion of the use of a tobacco product;
 - (ii) the book, magazine, newspaper, film, or video recording is intended for sale, distribution, or exhibition primarily in Niue;
 - (iii) in the case of a tobacco product advertisement in any radio or television transmission, the advertisement is targeted primarily at a Niue audience; and
- (b) genuine political, social, or scientific commentary about tobacco products or tobacco use, provided no payment or other consideration was offered or made by a tobacco manufacturer or seller, or any person acting on their behalf.

19 Permitted activities

The prohibition in section 17 does not apply to—

- (a) plain black-and-white text-only price list made available where tobacco products are legally sold, provided the list contains nothing more than the tobacco product brand name and variant, package quantity, price, and any government-required or authorized information required in any regulations made under this Act;
- (b) product information made accessible to persons within the tobacco trade who need the information for trading decisions, and only to the extent access is limited to those persons;
- (c) tobacco manufacturers' newsletters destined for and distributed only to the manufacturer's employees, contractors, suppliers, and other tobacco-related business partners, and only to the extent their distribution is limited to such persons and not visible to the public; and
- (d) information that is necessary for business administration or for required corporate reporting but only to the extent access is limited to the person(s) who need to receive it for business administration or corporate reporting.

20 Display of tobacco products prohibited

(1) A person must not –

- (a) display or cause the display of tobacco products at a point of sale of retail outlets at which tobacco products are sold or offered for sale in Niue;
- (b) expose tobacco products for sale or visible from outside the place of business; and

(2) Any person who fails to comply with subsection (1) commits an offence and is liable on conviction—

- (a) in the case of an individual, to a fine not exceeding 50 penalty units or;
- (b) in any other case, to a fine not exceeding 100 penalty units.

21 ‘Smoking Kills’ signage at point of sale of tobacco products

(1) A tobacco product retailer must clearly display, in close proximity to the point of sale and/or any place a tobacco product price list is posted, a rectangular sign, no smaller than 50 cm x 100 cm, with the words “Smoking Kills”—

- (a) in English and Niuean; and
- (b) printed in black on a white background; and
- (c) clearly legible from at least 5 metres away; and
- (d) any further requirements as prescribed under regulations made under this Act.

(2) Any person who fails to comply with subsection (1) commits an offence and is liable on conviction—

- (a) in the case of an individual, to a fine not exceeding 50 penalty units; or
- (b) in any other case, to a fine not exceeding 100 penalty units.

22 Prohibition against brand stretching

(1) A person must 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, message, or other matter, in whole or part, that is commonly identified or associated with, or is likely or intended to be identified or associated with, a tobacco product, brand, trademark, or brand name of a tobacco product or manufacturer.

(2) A person must not display any name, writing, picture, image, graphic, message, or other matter, in whole or part, that is commonly identified or associated with, or is likely or intended to be identified or associated with, a tobacco brand, trademark, or seller on a building, including a club, restaurant, stadium, or other place which is not primarily a business that imports, manufactures, or sells tobacco products.

(3) Any person who fails to comply with this section commits an offence and is liable on conviction—

- (a) in the case of an individual, to a fine not exceeding 100 penalty units; or
- (b) in any other case, to a fine not exceeding 250 penalty units.

23 Prohibition against reverse brand stretching

(1) A person must not use the brand name, trademark, or other sign, symbol, logo, or similar visual matter, in whole or in part, commonly associated with a non-tobacco product on a tobacco product.

(2) A person must not manufacture or distribute any product designed for or likely to appeal to children or minors that evokes, or is likely to evoke, an association with a tobacco product or brand, including but not limited to candy cigarettes and similar products.

(3) Any person who fails to comply with this section commits an offence and is liable on conviction—

- (a) in the case of an individual, to a fine not exceeding 100 penalty units; or
- (b) in any other case, to a fine not exceeding 250 penalty units.

24 Tobacco sponsorship prohibited

(1) A person must not provide any tobacco sponsorship, which may promote, or cause to be promoted by any other person, any tobacco product or seller through direct or indirect means.

(2) A person must not promote, or cause to promote by any other person, a tobacco product or a tobacco product-related brand element through direct or indirect means, including through sponsorship of an organization, service, physical establishment or vehicle of any kind, or event, whether publicly attributable or not.

(3) Any person who fails to comply with this section commits an offence and is liable on conviction—

- (a) in the case of an individual, to a fine not exceeding 100 penalty units; or
- (b) in any other case, to a fine not exceeding 250 penalty units.

25 Corporate social responsibility activities

(1) Tobacco industry or any person or entity acting on their behalf, must not provide funding or any other form of support for any corporate social responsibility activities which have the direct or indirect aim or effect of the tobacco industry receiving public recognition for that support.

(2) Any person who fails to comply with this section commits an offence and is liable on conviction—

- (a) in the case of an individual, to a fine not exceeding 100 penalty units; or
- (b) in any other case, to a fine not exceeding 250 penalty units.

26 Prohibited payments and engagements

(1) A person representing tobacco industry must not make any payment, contribution, or provide any assistance, either directly or indirectly, to any political party, politician, or person who holds or seeks public office, or any member of (or candidate for election to) the Niue Assembly, or any village council member or any other community leader.

(2) A person representing tobacco industry must not offer to enter into a partnership, whether binding, enforceable or not with Government.

(3) A person representing tobacco industry must not offer assistance (whether monetary or not) to implement or enforce tobacco control policies such as, but not limited to providing tobacco control signage, conduct inspections or raids.

(4) Any person who fails to comply with this section commits an offence and is liable on conviction—

- (a) in the case of an individual, to a fine not exceeding 100 penalty units or;
- (b) in any other case, to a fine not exceeding 250 penalty units.

Controls on sales of tobacco products

27 Sale of tobacco products to persons under 21 prohibited

(1) A person must not sell or supply a tobacco product to a person younger than 21 years of age.

(2) Any person who wishes to sell or supply a tobacco product to a person who is 21 years of age or older must take reasonable precautions and exercise due diligence to establish that the intending purchaser is 21 years of age or older.

(3) It is not a defence in proceedings against a person who it is alleged sold or supplied a tobacco product to a person aged under 21 years, that that seller or supplier believed the person aged under 21 years was purchasing the tobacco on behalf of a parent or other adult.

(4) Every person who sells by retail a tobacco product must display clearly for the public a notice stating that the sale of tobacco products to people who are younger than 21 years is prohibited.

(5) Any notice under subsection (4) must comply with any requirements that may be prescribed in regulations made under this Act.

(6) Any person who fails to comply with this section commits an offence and is liable on conviction—

- (a) in the case of an individual, to a fine not exceeding 50 penalty units; or
- (b) in any other case, to a fine not exceeding 100 penalty units.

28 Restrictions on the sale of tobacco products in small quantities

(1) A person must not —

- (a) sell by retail; or
- (b) offer to sell for sale by retail —
 - (i) loose cigarettes; or
 - (ii) loose tobacco,

commits an offence.

(2) A manufacturer, importer, distributor, or retailer must not sell or offer for sale —

- (a) cigarettes in a package that contains fewer than 20 cigarettes; or
- (b) loose tobacco or chewing tobacco in a package that contains less than 30 grams of tobacco.

(3) Any person who fails to comply with this section commits an offence and is liable on conviction—

- (a) in the case of an individual, to a fine not exceeding 50 penalty units; or
- (b) in any other case, to a fine not exceeding 100 penalty units.

29 Tobacco products not to be advertised or labelled as suitable for chewing

(1) A person must not promote a tobacco product in a manner which directly states or indirectly suggests the product is suitable for chewing or for any other oral use (other than smoking).

(2) A person must not 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) Any person who fails to comply with this section commits an offence and is liable on conviction—

- (a) in the case of an individual, to a fine not exceeding 50 penalty units; or
- (b) in any other case, to a fine not exceeding 100 penalty units.

30 Vending machine sales and other methods of unsupervised tobacco sales prohibited

(1) A person must not place, or cause or permit to be placed, a vending machine for sale of tobacco products or use by members of the public in any place within Niue;

(2) A person must not sell, supply or cause the sale or supply of tobacco products by post, courier, the Internet or other form of delivery or means by which the age of the purchaser or recipient of the tobacco product cannot be verified.

(3) The sale of a tobacco product on the Internet is deemed to take place in the country where the computer used by the person who orders the tobacco product is located.

(4) Any person who fails to comply with this section commits an offence and is liable on conviction—

- (a) in the case of an individual, to a fine not exceeding 50 penalty units; or
- (b) in any other case, to a fine not exceeding 100 penalty units.

31 Sales of tobacco products prohibited in certain places

(1) A person must not sell or otherwise distribute tobacco products in any—

- (a) Government facility;
- (b) place where health care or rehabilitation services are rendered;
- (c) childcare facility;
- (d) educational facility serving persons aged under 21 years;
- (e) sports or athletic facility;
- (f) church or place of religious worship; or
- (g) public place to which the public has access as designated by regulations made under this Act.

(2) Any person who fails to comply with this section commits an offence and is liable on conviction—

- (a) in the case of an individual, to a fine not exceeding 50 penalty units; or
- (b) in any other case, to a fine not exceeding 100 penalty units.

32 Free distribution, promotional discounts, and rewards prohibited

(1) A person must not—

- (a) distribute any tobacco product free, at a reduced charge, or in exchange for an opinion or the like;
- (b) supply any tobacco product to any person for distribution free, at a reduced charge, or in exchange for an opinion or the like; or
- (c) in the case of a retailer, supply any tobacco product to any person for the purpose of that retailer's business free or at a reduced charge,

(2) A person must not, in connection with the sale of a tobacco product, or for the purpose of promoting the sale of a tobacco product, supply to the purchaser of a tobacco product or any other person—

- (a) a prize, gift or other benefit; or
- (b) a stamp, coupon, token, voucher, ticket or other thing by virtue of which the purchaser or any other person may become entitled to, or may qualify for a prize, gift or other benefit (whether the entitlement or qualification is absolute or conditional); or
- (c) any thing which, or a copy or facsimile of which, is a necessary prerequisite to participation in, or is likely to confer an advantage in, any game, contest or other activity in which a participant may become entitled to, or may qualify for, a prize, gift, or other benefit (whether the entitlement or qualification is absolute or conditional).

(3) Any person who fails to comply with this section commits an offence and is liable on conviction—

- (a) in the case of an individual, to a fine not exceeding 50 penalty units; or
- (b) in any other case, to a fine not exceeding 100 penalty units.

Tobacco Product Contents, Emissions, Testing and Reporting

33 Controls on the content and emissions of tobacco products

(1) A person must not manufacture, import, export, sell or otherwise distribute any tobacco product that does not comply with the requirements regulating the additives; ingredients; constituents; and product design characteristics, features, or attributes of tobacco products, or standards on matters regarding the safety, quality, performance, emissions and other attributes of tobacco products, in each case as prescribed by regulations made under this Act.

(2) Any person who fails to comply with this section commits an offence and is liable on conviction—

- (a) in the case of an individual, to a fine not exceeding 100 penalty units; or
- (b) in any other case, to a fine not exceeding 250 penalty units.

34 Testing required

(1) Every importer or manufacturer of a tobacco product must at least once in each calendar year provide, at their own expense, in accordance with any regulations made under this Act –

- (a) the results of testing of the constituents of each brand and brand variant of the tobacco product sold in Niue by the importer or manufacturer, and the respective quantities of those constituents; and
- (b) the results of testing of the smoke (emissions) of each brand and brand variant of the tobacco product sold in Niue by the importer or manufacturer and the respective quantities of those constituents;

to the Department of Health as is required by regulations made under this Act.

(2) Regulations made under this Act may set out the details of what tests are to be carried out, suitability criteria for any laboratory to undertake any testing of tobacco products required, and the means by which the results of these tests are to be reported to the Department of Health.

(3) In addition to the annual tests required by subsections (1) and (2), the Department of Health may, by notice in writing to the manufacturer or importer of a product to which that section applies, require a further test or tests to be conducted.

(4) The further test or tests must be conducted, in accordance with any prescribed regulations and with the product samples collected from the manufacturer, importer or retailer by an enforcement officer but at the expense in all respects of the manufacturer or importer.

(5) In any year, the Department of Health must not require tests under this section in respect of more than 10 brand and brand variant of products, to be designated by the Department, sold by a particular manufacturer or importer to which subsections (1) and (2) applies.

35 Reports of tests, constituents, additives, and certain business information required

(1) Every manufacturer, importer, and exporter of tobacco products must submit to the Department of Health on at least an annual basis, unless otherwise prescribed, reports and returns containing the information specified in regulations made under this Act.

(2) The information referred to in subsection (1) may include information relating to any or all of the following—

- (a) the results of all tests that, during the previous year, have been conducted by the manufacturer or importer for the purposes of section 34;
- (b) the characteristics or source of the tobacco used in the manufacture of tobacco products sold in Niue;
- (c) any specified design features of tobacco products;
- (d) the quantity of tobacco products manufactured or imported by that manufacturer or importer during the previous year in relation to—
 - (i) The total weight of tobacco used in the manufacture of each class of tobacco product manufactured or imported for sale in Niue; and
 - (ii) the total number of packages of each brand or brand variant manufactured or imported for sale in Niue;

- (e) the quantity of each brand or brand variant of tobacco product sold by that manufacturer or importer in Niue during the previous year;
- (f) the recommended retail price of each brand or brand variant sold by that manufacturer or importer in Niue during the previous year;
- (g) the total weight of each additive used in the manufacture of each class or each brand or brand variant of tobacco product sold by that manufacturer or importer in Niue during the previous year;
- (h) research activities underway or undertaken in Niue or relevant to Niue and the purpose or findings of that research;
- (i) marketing initiatives underway or undertaken in Niue including their focus, findings, and expenditure;
- (j) activities undertaken in the areas of lobbying and philanthropy in Niue, and the names of entities or agents acting for manufacturers, exporters, and importers in relation to those activities;
- (k) any other information that may be useful for the Department of Health in the setting of tobacco control policies and legislation.

(3) Any person who fails to comply with this section commits an offence and is liable on conviction—

- (a) in the case of an individual, to a fine not exceeding 100 penalty units; or
- (b) in any other case, to a fine not exceeding 250 penalty units.

36 Provision of false or misleading information

Any person who provides false or misleading information in relation to information required to be provided under section 35 commits an offence and is liable on conviction—

- (a) in the case of an individual, to a fine not exceeding 100 penalty units; or
- (b) in any other case, to a fine not exceeding 250 penalty units.

PART 3

CONSUMER INFORMATION REQUIREMENTS

37 Conformity with packaging and labelling requirements

(1) A person must not sell, distribute, or display for sale any tobacco product that is not packaged and labelled in a manner that complies with all requirements of this Act and with any regulations made under this Act.

(2) A person must not purchase for resale tobacco products that are not packaged and labelled in a manner that complies with all requirements of this Act and with any regulations made under this Act.

(3) Any person who fails to comply with this section commits an offence and is liable on conviction—

- (a) in the case of an individual, to a fine not exceeding 100 penalty units; or
- (b) in any other case, to a fine not exceeding 250 penalty units.

38 Compulsory health messages

(1) A person must not sell, distribute, or display for sale or distribution, any tobacco product unless it has permanently affixed on its package, or permanently affixed to an individual wrapper in the case of cigars, the health messages and other information prescribed by any regulations made under this Act.

(2) Any regulations made under this Act must provide that the package of any tobacco product sold in Niue, and all outside packaging and labelling of tobacco products, must carry health messages and other information, as specified in the regulations and that those health messages and other information:

- (a) are rotated so that a range of messages and other information is displayed on all tobacco brands and brand variants; and
- (b) are large, clear, visible, and legible; and
- (c) include elements in English; and
- (d) take up a minimum of 90 percent of the front and back principal display areas of tobacco packages.

(3) The regulations may provide that any or all packages of tobacco product sold in Niue must carry messages that are in the form of, or include, pictures or pictograms.

(4) Any person who fails to comply with this section commits an offence and is liable on conviction—

- (a) in the case of an individual, to a fine not exceeding 100 penalty units; or
- (b) in any other case, to a fine not exceeding 250 penalty units.

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

(1) A person must not sell, distribute, or display for sale or distribution any tobacco product unless it has permanently affixed on its package, or permanently affixed on an individual wrapper in the case of a cigar, a disclosure in a form and manner prescribed by regulations made under this Act of any or all of the following—

- (a) a message about the health hazards of constituents of tobacco products which are generally recognized as harmful including but not limited to tar, nicotine, and carbon monoxide; and/or
- (b) the product's additives.

(2) A person must not sell, distribute, or display any tobacco products that include any kind of date of manufacture or expiry on the tobacco packaging.

(3) A person must not sell, distribute, or display any tobacco products which display quantitative information on emissions yields (such as tar, nicotine, and carbon monoxide) on the tobacco packaging.

(4) Any person who fails to comply with this section commits an offence and is liable on conviction—

- (a) in the case of an individual, to a fine not exceeding 100 penalty units; or
- (b) in any other case, to a fine not exceeding 250 penalty units.

40 Recognized acceptable standard

(1) For the purposes of this section “substantially to the same effect as required by the Act” means health messages and other information, or constituent information, which, while differing in some respects from the requirements of this Act are considered by the Minister, acting on advice from the Director of Health, to be, in all material respects, of a standard which meets or exceeds that required by sections 38 and 39 and by any regulations made under this Act.

(2) Despite section 38 and 39, but subject to their being a *Gazette* notice made under subsection (3), tobacco products that are packaged or labelled substantially to the same effect as required by the Act may be sold, distributed, displayed for sale or distribution, imported or exported.

(3) The Minister, acting on advice from the Director of Health, may, by notice in the *Gazette*, state that tobacco product labelling and the packaging of identified tobacco products, imported from an identified country or countries, is regarded by him/her as being substantially to the same effect as required by the Act.

41 Misleading labelling prohibited

(1) A person must not sell, distribute, or display for sale or distribution, or export any tobacco product that has packaging or labelling that—

- (a) promotes that tobacco product by any means that are false, misleading, deceptive, or likely to create an erroneous impression of the characteristics, health effects, hazards, or emissions of that product; or
- (b) includes any written term, descriptor, trademark, symbol, image, sign, mark, colour scheme, or other mechanism that directly or indirectly creates the false impression that a particular tobacco product is less harmful than other tobacco products.

(2) Examples of misleading words and descriptors that are prohibited for display on tobacco packaging under subsection (1) include, but are not limited to, “light”, “mild”, “low tar”, and “slim”.

(3) Regulations may prescribe further words and terms which are not to be used on the packaging or labelling of tobacco products by virtue of the fact that they are deemed to be misleading for the purposes of subsection (1).

(4) Any person who fails to comply with this section commits an offence and is liable on conviction—

- (a) in the case of an individual, to a fine not exceeding 100 penalty units; or
- (b) in any other case, to a fine not exceeding 250 penalty units.

PART 4

PROTECTION FROM EXPOSURE TO SECOND-HAND SMOKE

42 Smoking in enclosed public places and workplaces prohibited

(1) A person must not smoke in any enclosed public place or workplace including but not limited to –

- (a) Health care and rehabilitation facilities;
- (b) Education facilities and grounds;
- (c) Government facilities;
- (d) Indoor offices and workplaces;
- (e) Restaurants, cafes, pubs, and bars;
- (f) Public transportation; and
- (g) Any public place to which the public has access as designated by regulations made under this Act.

(2) Any person who fails to comply with this section commits an offence and is liable on conviction to a fine not exceeding 50 penalty units.

43 Display of No Smoking signs

(1) The owner or occupier of any public place or workplace or their agents and employees, and the owner or operator of any public transport vehicle and their agents and employees, must ensure that signs are displayed prominently stating that smoking is not permitted in that public place, workplace, or public transport vehicle.

(2) The signs required by subsection (1) must comply with the requirements of any regulations made under this Act.

(3) Any person who fails to comply with this section commits an offence and is liable on conviction—

- (a) in the case of an individual, to a fine not exceeding 50 penalty units; or
- (b) in any other case, to a fine not exceeding 100 penalty units.

44 Obligations of owners or occupiers of premises and owners or operators of public transport

(1) The owner or occupier of any public place or workplace, or their agents and employees, and the owner or operator of any public transport and their agents and employees must take all reasonable steps to ensure that people do not smoke in violation of the provisions of this Act.

(2) As well as posting signs stating that smoking is not permitted, taking reasonable steps includes, but is not limited to, —

- (a) asking an offending person to stop smoking;
- (b) requiring an offending person who continues to smoke to leave the premises and in the case of a public transport vehicle to leave the vehicle at the next scheduled stop;
- (c) seeking the assistance of law enforcement personnel in cases where the offending person refuses to stop smoking or leave the premises or vehicle.

(3) An employer, public place owner, or occupier, or public transport vehicle owner or operator must not retaliate against any employee or person who asserts his or her right to a smoke-free environment or who reports any violation of the provisions of this Part.

(4) Any person who fails to comply with this section commits an offence and is liable on conviction—

- (a) in the case of an individual, to a fine not exceeding 50 penalty units; or
- (b) in any other case, to a fine not exceeding 100 penalty units.

45 Declaration of smoke-free outdoor areas

(1) Government authorities or any other person who legally owns or operates any ground, park, field, paddock, forest, plantation, scenic or tourist site or attraction, reserve, beach, stadium, stage, wharf/jetty, airport, bus stop, playground or recreational area, or other outdoor area in which groups of people congregate may, at their express discretion, declare those areas to be areas where smoking is not permitted.

(2) Any person declaring an area smoke-free under subsection (1) must publicise the decision to declare that area as smoke-free by way of public notice or announcement, or other communications to groups regularly using that area, or through other means likely to effectively inform users of the intended smoke-free designation and the date from which that designation is to apply.

(3) Any areas declared as smoke-free under subsection (1) must be clearly marked through the display of sufficient signage to communicate to all people entering those areas that smoking is not permitted.

(4) Any person who smokes in an area declared as smoke-free under subsection (1) who, on being advised by the owner or operator of that area, or by their agent or employee, to cease smoking, fails to do so, commits an offence and is liable on conviction to a fine not exceeding 50 penalty units.

46 Identification of smoke-free villages

(1) A smoke-free village means a village where within the village boundaries smoking is not permitted in any public place, whether inside a building or an outside place and where tobacco products may not be sold.

(2) A village council may, after consultation with its people, identify places within its village where smoking is not permitted.

(3) A person must not smoke in any place that a village council has identified as a non-smoking area in accordance with subsection (2).

(4) A village council may, after consultation with its people, identify its village to be a totally smoke-free village.

(5) A person must not smoke in any public area within a smoke-free village.

(6) A person must not sell tobacco products within the boundaries of a totally smoke-free village.

(7) Any village council that implements restrictions on smoking in accordance with subsection (2), or that identifies its village as a totally smoke-free village in accordance with subsection (4), must display prominent signs to advise residents of, and visitors to, that village of the smoking restrictions or prohibition within that village. These signs may be prescribed in regulations.

(8) Any person who smokes in an area of a village, or a village, declared as smoke-free under this section who, on being advised by another person to cease smoking, fails to do so, commits an offence and is liable on conviction to any fine prescribed in the village bylaws.

PART 5

ENFORCEMENT

47 Powers of the Director

(1) The Director may issue a direction—

- (a) requiring a person to cease anything done, or prohibiting a person from commencing, anything to be done by or on behalf of that person that contravenes or would, if done, contravene this Act or any requirement imposed by or under this Act;
- (b) imposing a term or condition on a licence or on a class of licences issued under this Act;
- (c) requiring a licence holder who has breached the terms and conditions of their licence to take specified remedial action.

(2) Where any person fails to comply with or acts in contravention of a direction then, without affecting any right to prosecute that person under this Act, the Director may make application, on notice, to the High Court for an order against that person and against other persons or class of persons as may reasonably be necessary to compel the performance of or compliance with the direction and the Court may make orders as it thinks necessary to prevent any contravention of this Act or, as the case may be, to bring to an end the matters complained of in the direction.

(3) Without limiting the powers of the High Court under subsection (2), the Court may—

- (a) require a person to pay money to, or reimburse the Department for, any actual and reasonable costs and expenses that the Department has incurred or is likely to incur in avoiding, remedying, or mitigating any adverse effect arising from the failure of the person to comply with a direction earlier made against that person under subsection (1) of this subsection;
- (b) require a person to pay to the Department the Department's actual and reasonable enforcement costs in relation to a breach of this Act including the costs of investigation, supervision, and monitoring of the relevant situation, and the costs of any actions required to avoid, remedy, or mitigate an adverse effect relating to the breach of the Act.

(4) The Director may from time to time in writing either generally or particularly, delegate to any employee of the Department as he or she thinks fit all or any of the powers exercisable by him/her under any provision of this Act (or regulations made under this Act), including this present power of delegation.

- (5) Any person who fails to comply with a direction issued under subsection (1) commits an offence and is liable on conviction—
- (a) in the case of an individual, to a fine not exceeding 50 penalty units; or
 - (b) in any other case, to a fine not exceeding 100 penalty units.

48 Appointment of enforcement officers

(1) The Minister may, by warrant and notice in the Niue Gazette appoint a person who is a public service employee as an enforcement officer, and each person so designated has the power to exercise and carry out the functions and powers of an enforcement officer under this Act.

(2) The Director must supply every enforcement officer with a warrant of designation that provides evidence of the identity of that person and of the designation of that person as an enforcement officer under this Act.

(3) The warrant must clearly state the functions and powers that the person concerned has been authorised to exercise and carry out under this Act.

(4) Every enforcement officer who exercises or purports to exercise any power conferred on him or her must have with him or her, and produce if required to do so, his or her warrant and evidence of his or her identity.

(5) Every enforcement officer who holds a warrant issued under this section must, on the termination of his/her appointment, surrender the warrant to the Director.

49 Inspection and investigative powers of enforcement officers

(1) Enforcement officers shall have the following powers—

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

products, or if he or she is unavailable, any other person on the place where the tobacco products are located. If any tobacco product so seized and detained is determined to meet the requirements of the Act or regulations made under the Act, it shall be returned immediately to the place from which it was seized. If any tobacco product is determined not to meet the requirements of the Act or regulations made under the Act, it may be confiscated and destroyed or subject to other disposal, as ordered by a court;

(h) to seize, detain, and dispose of any tobacco product being sold by a person in a manner which contravenes the requirements of this Act.

(2) A member of the Police may accompany an enforcement officer exercising powers under this section.

(3) Subsection (1) does not prevent an enforcement officer from entering a private residence—

(a) under authority given by or under an enactment other than this Act; or

(b) with the consent of an occupier, only to the extent necessary for, the following purposes:

(i) finding out whether this Act or regulations made under this Act are being complied with in, or in respect of, the place entered;

(ii) finding out the extent to which this Act is not being complied with in, or in respect of, the place entered.

(4) Any person who threatens, assaults, or intentionally obstructs or hinders an enforcement officer who is acting in the exercise or performance of their powers under this section commits an offence and is liable on conviction—

(a) in the case of an individual, to a fine not exceeding 50 penalty units; or

(b) in any other case, to a fine not exceeding 100 penalty units.

50 Duties of enforcement officers

An enforcement officer exercising powers under this Act must identify himself or herself as an enforcement officer to the person in charge of any premises where the officer intends to exercise his or her powers and, if asked to do so, must produce evidence of identity and his or her warrant issued under section 48.

51 Liability for the actions of agents or employees

(1) Any act or omission on behalf of a body corporate or other person (both called “the principal”) by a director, agent, or employee (each called “the agent”) of the principal is to be treated for the purposes of this Act as being also the act or omission of the principal.

(2) Despite subsection (1), where a principal is charged under this Act in relation to the act or omission of an agent for an offence, it is a good defence to the charge if the principal proves either—

(a) that the principal took all reasonable steps to prevent the commission of the offence or the commission of offences of that kind; or

(b) that the agent acted otherwise than within the terms of his/her authority, agency or contract

52 Additional jurisdiction of the Court

(1) In addition to the penalties for offences specified in this Act, upon the conviction of any person of an offence under this Act (or under regulations made under this Act), the High Court may order—

(a) licence suspension, revocation, or limitation, as applicable, for any violation;

- (b) confiscation and forfeiture of equipment, machinery, materials, and related items used to publish, broadcast, display, or otherwise disseminate any advertisement or promote a tobacco product in violation of section 17;
- (c) confiscation and forfeiture of any tobacco or tobacco product in the possession or control of that person where that tobacco or tobacco product is packaged or labelled in a manner that does not conform to the requirements of Part 3;
- (d) confiscation and forfeiture of any tobacco or tobacco product in the possession or control of that person, however packaged or labelled, if that person is convicted of an offence under any one or more of sections 27, 28, 29, 30, 31, or 32;
- (e) confiscation and forfeiture of any equipment, machinery, raw materials, components, and any items used to manufacture or pack tobacco products in violation of section 28 or 37.

(2) Where an offence is committed under this Act on more than one occasion or on a continuing basis then a separate offence may be deemed to be committed on each day upon which the offence occurs.

(3) Compounded penalties shall be assessed for repeat violations.

(4) In determining an appropriate sentence, the Court can have regard to the extent, if any, to which the defendant has derived any pecuniary benefit by reason of the offence committed.

53 Enforcement cost recovery

In addition to any other power vested in it, the High Court, upon convicting any person of an offence under this Act (or under regulations made under this Act) may order that person to pay the reasonable costs of or incurred by the Department associated with any inspection, investigation, and enforcement action to which that conviction relates.

PART 6

ENGAGEMENT WITH THE TOBACCO INDUSTRY

54 Permitted engagement with the tobacco industry

(1) Government agencies must only interact with the tobacco industry when and to the extent strictly necessary to enable them to effectively monitor and regulate the tobacco industry.

(2) Where interactions with the tobacco industry are necessary, government agencies must ensure that all interactions are conducted transparently, with agendas, minutes, and other records of meetings or submissions received made publicly available at the soonest opportunity.

55 No partnerships permitted between Government agencies and the tobacco industry

(1) Government agencies must not accept, support, or endorse partnerships, memoranda of understanding, non-binding or non-enforceable agreements, voluntary arrangements, or codes of conduct with the tobacco industry where legally enforceable tobacco control measures can be developed and implemented instead.

(2) Government agencies must not accept, support, or endorse any offer of assistance from the tobacco industry for the development of, or funding assistance for, tobacco control legislation, policy, or programmes.

(3) Government agencies must not allow any person representing the tobacco industry or representing the interests of the tobacco industry to participate in any government interagency, multi-sectorial committee, coordinating mechanism, or advisory group that sets public health policy.

(4) Government agencies must not endorse, support, form partnerships with, or participate in activities of, the tobacco industry with the direct or indirect aim or effect of promoting a positive image of the tobacco industry or their products.

(5) Government agencies must not accept, support, or endorse the tobacco industry organising, promoting, participating in, or performing, youth, public education, or any other initiatives that are directly or indirectly related to tobacco control.

56 Government agencies must establish policies and procedures aimed at curbing the influence of the tobacco industry

(1) All Government agencies who have, or are likely to have, any interaction with the tobacco industry must establish, implement, and periodically evaluate and enhance, policies and procedures on—

- (a) the disclosure and management of conflicts of interest by all persons involved in setting and implementing public health policies with respect to tobacco control, including government officials, employees, consultants, and contractors; and
- (b) codes of conduct for public officials, prescribing the standards with which they should comply in their dealings with the tobacco industry; and
- (c) ensuring that contracts for carrying out any work related to setting and implementing public health policies with respect to tobacco control are not awarded to individuals or organisations who have conflicts of interest as a result of their existing or past work for the tobacco industry; and
- (d) Requiring applicants for government positions which have a role in setting and implementing public health policies with respect to tobacco control to declare any current or previous occupational activity with any tobacco industry whether gainful or not; and
- (e) requiring that government position holders who have or have had a role in setting and implementing public health policies with respect to tobacco control inform their institutions about any intention to engage in an occupational activity within the tobacco industry, whether gainful or not, within a period of one year after leaving service; and
- (f) requiring government officials to declare and divest themselves of direct interests in the tobacco industry; and
- (g) prohibiting employees and agents of government agencies from accepting payments, gifts, or services, either monetary or in kind, from the tobacco industry.

(2) Government agencies must not allow any person employed by the tobacco industry or by any agency acting on behalf of the tobacco industry to be a member of any government body, committee, or advisory group that sets or implements tobacco control or public health policy.

(3) Government agencies must not nominate any person employed by the tobacco industry, or any entity working to further its interests, to serve on delegations to international meetings relating to tobacco control.

(4) Government agencies must not accept financial or other contributions from the tobacco industry, except where those contributions are mandated by law or result from legal action.

(5) Government agencies must not have any financial interest or investment in the tobacco industry.

57 No active support for the tobacco industry

(1) Government agencies must not provide any financial support in the form of subsidies, incentives, tax exemptions, research grants, or any other mechanism designed to support the establishment, expansion, or financial viability of the tobacco industry in Niue.

(2) Government agencies must not support, endorse, or advocate for the business interests of the tobacco industry outside Niue.

58 Existing partnerships or relationships with the tobacco industry

(1) Where any government agency has, prior to entry into force of this section, entered into a partnership or any other relationship with the tobacco industry that would otherwise be prohibited under sections 54 to 57 that government agency must take all reasonable steps to cancel that partnership or relationship, or bring that partnership or relationship to as speedy a conclusion as is reasonably practicable.

(2) The Public Service Commission may take the steps deemed necessary to monitor, and ensure, compliance by all government agencies with sections 54 to 57.

PART 7

MISCELLANEOUS MATTERS

59 Appeals

A person aggrieved by any act or decision of the Department of Health under sections 8, 10, 11, 12, 13, 16 or 49 may—

- (a) request that the Department give a written statement of the reasons for its act or decision;
- (b) within 21 days of the act or decision, appeal to the Minister, or to a person authorised by the Minister to consider the appeal, whose decision is, subject to subsection (c), final; and
- (c) seek a judicial review of any decision made under subsection (b).

60 Regulations

(1) The Cabinet may from time to time make the regulations it considers necessary or expedient for giving full effect to the provisions of this Act and for the due administration thereof.

(2) Without limiting the general power conferred by subsection (1), it is hereby declared that regulations may be made under this section for all of the following purposes—

- (a) prescribing the form and content of information, documents, forms, certificates, notices, leaflets, signs, displays, particulars, and notifications, and the persons by whom and the persons to whom any information, documents, forms, certificates, notices, leaflets, signs, displays, particulars, and notifications are to be supplied;
- (b) prescribing procedures and requirements with relation to licences and licence applications, including information requirements and fees;
- (c) prescribing records and registers for the purposes of the Act, the manner in which and the period during which any records and registers are to be kept; and the persons to whom, and the conditions on which, any records and registers may be available for searching, inspection, or copying;
- (d) prescribing the size, colour, content and number of price notices permitted under section 19(a), and the inclusion of a health message and other information on those notices;

- (e) prescribing additional places where it is prohibited to sell tobacco products for the purpose of section 31;
- (f) prescribing the form, size, and content of health messages and other information (including information about constituents) to be displayed with, on, or in packages of, tobacco products; and prescribing the circumstances and manner in which the messages and other information are to be so displayed, including—
 - (i) requiring tobacco products sold or offered for sale to display a photograph or picture intended to have effect as a warning relating to the effects of their use on health; or
 - (ii) specifying controls on the content of tobacco products;
- (g) specifying controls on the content of tobacco products including the setting of maximum and minimum limits for additives and constituents, the formulation of the product, product design characteristics, features or attributes, and any other matters required to give effect to the purpose of this Act;
- (h) prescribing the method and location for testing and determining the constituents of tobacco products and the constituents of smoke produced from their combustion, including any suitability criteria for any laboratory to be considered acceptable to undertake such testing;
- (i) prescribing which variants of brands should be tested or whether they should all be for the purposes of section 34;
- (j) prescribing the form and manner in which returns and reports are to be filed under section 35;
- (k) requiring manufacturers and importers of tobacco products conducting tests for the constituents, and the respective quantities of those constituents of each brand sold by that manufacturers or importers to test each variant of the brand separately; or
- (l) requiring manufacturers and importers of tobacco products conducting tests for the constituents, and the respective quantities of those constituents, in the smoke of each brand of the product sold by the manufacturers or importers that is intended to be smoked, to test each variant of the brand separately;
- (m) requiring manufacturers and importers of tobacco products to file with the Director returns showing all additives used in the manufacture of the tobacco products sold by that manufacturer or importer, including whether those returns should be brand variant-specific or product class-specific;
- (n) requiring manufacturers and importers of tobacco products to file with the Director returns showing by brand variant—
 - (i) the weight of tobacco (or the weight of tobacco and of each additive) used in the manufacture of the tobacco products sold by the manufacturer or importer; and
 - (ii) the quantity of each variant of a brand of tobacco product sold by the manufacturer or importer; and
 - (iii) the recommended price of each variant of a brand of tobacco product sold by the manufacturer or importer during the previous calendar year;
- (o) prescribing the form, size, and content of information, including information about constituents, and the health messages and other information to be displayed with, on, or in packages of tobacco products; and prescribing the circumstances and manner in which the information and messages are to be so displayed, including—

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- (i) Requiring tobacco products sold or offered for sale to display a photograph or picture intended to have effect as a warning relating to the effects of their use on health.
- (p) prescribing words, terms, descriptors, trademarks, symbols, signs, marks, colour schemes, or other techniques for branding tobacco packages that are considered misleading for the purposes of section 41;
- (q) prescribing the number, size, format, and content of no smoking signs for the purpose of section 43; and
- (r) providing for any other matters contemplated by this Act, necessary for its full administration, or necessary for giving it full effect.