

REPUBLIC OF NAURU

TOBACCO CONTROL (AMENDMENT) BILL 2023

EXPLANATORY MEMORANDUM

The *Tobacco Control (Amendment) Bill 2023* is a Bill for an Act to amend the *Tobacco Control Act 2009*.

This memorandum provides an explanation of the Bill and is only intended to indicate the general effect.

EXPLANATION OF CLAUSES

Clause 1 provides that, once enacted, the short title of the Bill will be the *Tobacco Control (Amendment) Act 2023*.

Clause 2 sets out when the Bill's provisions will commence which is on the date it is certified by the Speaker of Parliament.

Clause 3 is the enabling provision for the amendment of the *Tobacco Control Act 2009*.

Clause 4 amends Section 2 by inserting three new terms and their definitions. The new terms inserted are 'Secretary', 'vape' and 'waterpipe', 'shisha' or 'hookah'.

The definition of 'cigarette', 'regulations', 'tobacco product' and 'trademark' are deleted and substituted with new definitions. The definition of 'cigarette' is extended to include e-cigarettes. The definition of 'regulations' is extended to include all the regulations made under the Act and not just those made under Section 30. The definition of 'tobacco product' is formulated to ensure it addresses the products which are consumed in Nauru. The definition of 'tobacco product' also includes cigarettes, vapes, water pipes, shisha and hookah. The term 'trademark' is defined for the purposes of ensuring consistency with its meaning under the *Trademarks Act 2019*.

Clause 5 inserts a new Part 1A and a new Section 2A which relate to the prohibition on the manufacture of tobacco products for a commercial purpose. This Section prevents the manufacturing of tobacco products in Nauru.

It is an offence to contravene this Section. It carries a fine not exceeding \$20,000 or a term of imprisonment not exceeding 3 years or to both.

Clause 6 amends Section 3 by deleting the word 'or' where it appears after the semicolon in subsection (1)(c). Subsection (1) is further amended to insert new paragraphs (e) and (f). The amendment prohibits the display of tobacco products. Displaying tobacco products constitutes a form of advertising. The tobacco products should not be displayed in any manner which is visible to the people or consumers in a public place. The equipment includes waterpipes, shisha or hookah equipment for sale or use with or without tobacco or a similar substance by any person in a hospital, school, an enclosed workplace or an enclosed public area.

Subsection (3) is included to clarify that retailers or wholesalers may display the price list, brand name or variant of tobacco products.

Subsection (4) restricts the placing of brand logos, company names, colourings or slogans in the price list in subsection (3). For the avoidance of doubt, this does not prohibit having the brand logos, company names, colourings or slogans on the tobacco packet itself.

New subsections (5) and (6) are inserted.

Fixed penalties for any breach of subsection (1) are as follows:

- (i) individual - \$1,000; or
- (ii) body corporate - \$10,000.

A person served with an infringement notice under this Section will have to pay the fixed penalty within 14 days of the service of the notice by the authorised officer.

A failure to pay the fixed penalty within the specified time is an offence with severe penalties.

Clause 7 deletes and substitutes Section 4 which is on the prohibition on the giving or distributing of free samples of tobacco products or offering of prizes.

This Section prevents the distribution of free tobacco products to any person.

Fixed penalties for any breach of subsection (1) are as follows:

- (i) individual - \$1,000; or
- (ii) body corporate - \$10,000.

A person served with an infringement notice under this Section will have to pay the fixed penalty within 14 days of the service of the notice by the authorised officer.

A failure to pay the fixed penalty within the specified time is an offence with severe penalties.

Clause 8 deletes and substitutes Section 5.

Subsections (1) and (2) retain the intention of the previous subsections (1) and (2). These have been redrafted so that the wording is clearer.

Subsection (3) prohibits promotional discounts of tobacco products. Youth and smokers are attracted to promotional discounts. With the prohibition of promotional discounts of tobacco products, it will discourage the initiation and continuation of tobacco use.

Subsection (4) is the offence provision which provides that a person who fails to comply with the entire Section commits an offence. The penalties are as follows:

- (i) individual - a fine not exceeding \$5,000 or a term of imprisonment not exceeding 18 months or both; or
- (ii) body corporate - a fine not exceeding \$25,000.

Clause 9 deletes and substitutes Section 6 to ensure that the labelling requirements under the *Tobacco Control Regulations 2009* are complied with. For the avoidance of doubt, there are no changes to the labelling requirements under the regulations. This is just to ensure compliance with the regulations.

Also, the new Section 6 ensures that no misleading information is included in the packaging. Misleading terms and expiry dates often provide a false impression of safety or reduced harm, but in fact all tobacco is dangerous. The taste differences are only a result of the variation in the composition of the dangerous chemicals the tobacco manufacturers use to make the different products. The display of an expiry date on a tobacco product packaging is prohibited as an expiry date will encourage a consumer to buy the tobacco product before the expiry date.

This Section is amended to restrict the nature of information which may be contained in the packaging of the tobacco product. It also contains prohibition on using signs, colours or designs or other methods to circumvent any prohibited publication on packaging. Likewise, flavours are also not to be contained in the packaging as these are likely to encourage consumers to purchase the product.

Clause 10 amends Section 7 by deleting the word ‘cigarette’ where it appears and substituting with ‘tobacco product’. A new subsection (1A) is inserted after subsection (1) where it is an offence to sell or import any tobacco product which includes the display of quantitative information on emission yields such as tar and nicotine on the packaging or product.

Quantitative amounts of chemicals like nicotine and tar on the packaging give the false impression that some tobacco products are less harmful than others, but all tobacco products are harmful. Allowing for qualitative statements is acceptable as a health warning. For example, “this product contains over 40 cancer-causing chemicals.”

Clause 11 amends Section 9 by deleting references to ‘18 years’ and substituting with ‘20 years’.

The cognitive ability to judge risks responsible for decision-making and impulse control does not strengthen until a person’s mid-20s (i.e., 25 or 26 years), and young people are more vulnerable to the effects of nicotine including addiction compared to older people. Raising the minimum legal age to 20 years “will mean that those who can legally obtain tobacco are less likely to be in the same social networks” as secondary school students. According to Pacific data, regular use often occurs as soon as it becomes legal and accessible for people to obtain tobacco. For example, in countries where the minimum legal age is 20 years or above, tobacco users are reported as having started regular use after 20 years whereas in countries where the minimum legal age is 18 years, the age of regular use is 18 years or below.

Some 18-year-olds are still attending school with those under 18 years therefore, sharing social circles. This poses a risk for peer pressure and increased access to tobacco.

Subsections (5) and (6) are deleted and substituted.

Fixed penalties for any breach of subsection (1) are as follows:

- (i) individual - \$1,000; or
- (ii) body corporate - \$10,000.

A person served with an infringement notice under this Section will have to pay the fixed penalty within 14 days of the service of the notice by the authorised officer.

A failure to pay the fixed penalty within the specified time is an offence with severe penalties.

Subsections (7) and (8) are deleted.

This Section aims to protect youth brain and health development from the dangers of tobacco use and ensures consistency in the penalties with other similar provisions.

Clause 12 inserts a new Section 10A. This Section prohibits the online sale of tobacco products through electronic or digital communication or through an electronic system - whether by sale, advertisement for sale or import to Nauru. It is an offence if a person sells or advertises for sale or import to Nauru any tobacco product online.

Subsection (2) is the offence provision where a fine not exceeding \$2,000 or an imprisonment term not exceeding 12 months or both may be imposed.

Further, this Section prevents the availability of tobacco products at a cheap price. Online sellers may not be able to verify the age of the recipient of a tobacco product sold online. This provision is a deterrence for everyone particularly non-smokers and children.

Clause 13 deletes and substitutes Section 11. This Section relates to the prohibition on the supply of tobacco products from restaurants.

Fixed penalties for any breach of subsection (1) are as follows:

- (i) individual - \$1,000; or
- (ii) body corporate - \$10,000.

A person served with an infringement notice under this Section will have to pay the fixed penalty within 14 days of the service of the notice by the authorised officer.

A failure to pay the fixed penalty within the specified time is an offence with severe penalties.

Clause 14 amends Section 12 by inserting a subsection (2A). This subsection prohibits 'brand stretching' because it is a means of tobacco advertising and promotion. The sale or distribution of any counterfeit tobacco product, or of any non-tobacco product which has a tobacco product brand name, logo, trademark or other similar association is prohibited. Non-tobacco products under this subsection include confectioneries or toys.

Subsection (4) is deleted and substituted with new subsections (4) and (5).

Fixed penalties for any breach of subsection (1), (2) or (2A) are as follows:

- (i) individual - \$1,000; or

- (ii) body corporate - \$10,000.

A person served with an infringement notice under this Section will have to pay the fixed penalty within 14 days of the service of the notice by the authorised officer.

A failure to pay the fixed penalty within the specified time is an offence with severe penalties.

Subsection (6) defines 'counterfeit tobacco product' as a tobacco product that imitates, mimics, or copies a tobacco product without right and passes off as genuine.

Clause 15 deletes and substitutes Section 13(1) and (2) and also inserts new subsections (4) and (5).

Subsection (1) prohibits smoking in any school, hospital, enclosed workplace and enclosed public place.

Subsection (2) places an obligation on the owner or a person who is in charge of a school, hospital, enclosed workplace or enclosed public place to ensure that no smoking takes place. If the owner or person in charge gives his or her approval for smoking in such places, he or she will be liable as the owner or person in charge of the place.

For a school, the school principal or head teacher can be charged. For a hospital, the doctor or nurse or other health practitioner in charge of the hospital can be charged. For government departments, the heads of departments can be charged. However, a defence can be that no approval was given, or no tobacco product, ashtray, match or lighter was provided by the owner or person in charge.

Fixed penalties for any breach of subsection (1) are as follows:

- (i) individual - \$100; or
- (ii) body corporate - \$10,000.

A person served with an infringement notice under this Section will have to pay the fixed penalty within 14 days of the service of the notice by the authorised officer.

A failure to pay the fixed penalty within the specified time is an offence with severe penalties.

Clause 16 deletes and substitutes Section 14 which relates to the display of signs in an enclosed workplace and enclosed public place.

The 'no smoking' sign is necessary to protect workers and the general public from exposure to the harmful effects of passive smoking. Furthermore, the 'no smoking' sign makes the public aware and supports enforcement of the law.

Subsection (1) requires the owner or person in charge of an enclosed workplace or enclosed public place to display a 'no smoking' sign at such places.

Subsection (2) provides that the size and content of the sign must be in the form and content as prescribed by regulations.

Fixed penalties for any breach of subsection (1) are as follows:

- (i) individual - \$1,000; or
- (ii) body corporate - \$10,000.

A person served with an infringement notice under this Section will have to pay the fixed penalty within 14 days of the service of the notice by the authorised officer.

A failure to pay the fixed penalty within the specified time is an offence with severe penalties.

Clause 17 amends Section 17(1) to specify the requirements for a designated smoking area.

Clause 18 inserts a new Part 5A. This new Part contains Sections 17A to 17L. This new Part requires tobacco-specific licensing; namely import, distributor and retail licences. Licensing would enhance the Government's ability to regulate because Government would know exactly how many tobacco retailers exist. Licensing requirements will hold licensees accountable for adhering to tobacco control laws.

NEW PART 5A - LICENCES

New Section 17A prevents the importation, distribution or sale of tobacco products without a licence.

Penalty:

- (i) individual - a fine not exceeding \$2,000 or a term of imprisonment not exceeding 12 months or both; or
- (ii) body corporate - a fine not exceeding \$50,000.

New Section 17B outlines the classes of licences:

- (a) importer licence;
- (b) distributor licence; and
- (c) retail licence.

New Section 17C relates to importer licence.

New Sections 17D relates to distributor licence.

New Section 17E relates to retail licence.

New Section 17F provides that any licence issued under this Part must be in the prescribed form and be accompanied by evidence of payment of the prescribed fee and accompanied by prescribed particulars.

Subsection (3) ensures that information provided by an applicant are true and not misleading. Penalty – fine not exceeding \$2,000 including automatic cancellation of the licence.

New Section 17G allows the Secretary to consider an application for a licence under this Part within 7 working days. The Secretary may either grant or refuse the application. Subsection (2) allows an applicant to appeal to the Minister if the applicant's application is refused by the

Secretary. The Minister may direct that the licence be issued if the Minister is satisfied that the provisions of the Act are not contravened.

New Section 17H allows the Secretary to suspend a licence if:

- (a) the licensee has contravened a provision of the Act;
- (b) the licensee has contravened a condition of the licence; or
- (c) the licensee has been convicted of an offence under the Act.

Subsection (2) requires the Secretary to give the licensee an opportunity to be heard of the intended suspension and also provide to the licensee the reasons for the intended suspension.

New Section 17I allows the Secretary to cancel a licence where it would be in the best interest of the public to do so. The Secretary has to consider the following when considering whether to cancel a licence:

- (a) the licensee has contravened a provision of the Act;
- (b) the licensee has contravened a condition of the licence;
- (c) the licensee has been found guilty or convicted of an offence under the Act; or
- (d) the circumstances of that contravention are such that the licence should be cancelled.

The Secretary is required to allow the licensee an opportunity to be heard before the licence can be cancelled. Further, the Secretary has to provide to the licensee the reasons for which the licensee's licence is to be cancelled.

New Section 17J provides that a licence is valid for 12 months from the date the licence is granted. Subsection (2) requires an application for renewal of a licence to be made in the prescribed form and accompanied with evidence of payment of the prescribed fee at least one month prior to its expiration.

New Section 17K prevents a licensee from transferring or assigning a licence unless there has been a written approval of the Secretary. Subsection (2) requires a licensee to make the request for transfer or assignment in the approved form and accompanied with evidence of payment of the prescribed fee.

New Section 17L requires a licence to be displayed in a conspicuous place at the licensee's place of business. Penalty under subsection (2):

- (a) liable to a fixed penalty of \$1,000 for an individual or \$10,000 for a body corporate; and
- (b) pay the fixed penalty within 14 days of a notice of the breach being served by an authorised officer.

Clause 19 inserts new Section 19A. This Section sets out the framework for the Tobacco Control Infringement Notice.