

# PACIFIC LEGISLATIVE FRAMEWORK FOR NON-COMMUNICABLE DISEASES



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The Pacific Legislative Framework for Non-Communicable Diseases is dedicated to the memory of Mr Rupeni Nawaqakuta and Dr Mbololwa Mbikusita-Lewanika who were instrumental to the realisation of this important project.

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## Acronyms

CNMI	Commonwealth of Northern Mariana Islands
DFAT	Australian Department of Foreign Affairs and Trade
ECHO	Pacific Ending Childhood Obesity
EEZ	Exclusive Economic Zone
FAO	Food and Agriculture Organization of the United Nations
FCTC	WHO Framework Convention on Tobacco Control
FNU	Fiji National University
FSM	Federated States of Micronesia
IMF	International Monetary Fund
MANA	Pacific Monitoring Alliance for NCD Action
MFAT	New Zealand Ministry of Foreign Affairs and Trade
NCD	Non-communicable diseases
NGO	Non-governmental organisation
PHMM	Pacific Health Ministers Meeting
PHoH	Pacific Heads of Health
PICTs	Pacific Island countries and territories
PIFS	Pacific Islands Forum Secretariat
PIHOA	Pacific Islands Health Officers' Association
PLF	Pacific Legislative Framework for NCDs
PNG	Papua New Guinea
RMI	Republic of the Marshall Islands
RTIs	Road traffic injuries
SPC	The Pacific Community
SSBs	Sugar-sweetened beverages
TBT	World Trade Organization Technical Barriers to Trade
TRIPS	Trade-Related Aspects of Intellectual Property Rights
UNICEF	United Nations Children's Fund
VAT	Value Added Tax
WHO	World Health Organization
WTO	World Trade Organization

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## Executive summary

Non-communicable diseases (NCDs) are a leading cause of death and disability in Pacific Island countries and territories (PICTs), accounting for 75 per cent of mortalities in most PICTs. The implementation of effective legislative measures is critical to addressing the growing burden of NCDs in the Pacific region. The development of the Pacific Legislative Framework (PLF) evolved from the recognition that NCD-related laws in PICTs need to be strengthened and improved. The proposed approach for the development of the PLF was endorsed by the Pacific Heads of Health (PHoH) and Pacific Health Ministers Meeting (PHMM) in 2019.

The PLF was developed in close consultation with expert legal drafters and health policy experts in PICTs, along with development partners and academic institutions. The initial regional consultation was conducted in March 2019 and a follow-up consultation was conducted in November 2019. Between 2020 and 2021, further consultations with individual PICTs and agencies were conducted, leading to the finalisation of the PLF in 2021.

The purpose of the PLF is to strengthen PICT laws that regulate NCD risk factors, as an urgent measure to address the growing burden of NCDs in the Pacific. The PLF is designed to provide a regional framework for legislative reforms addressing key NCD risk factors. The PLF covers key NCD prevention and control areas including: tobacco control; liquor control; health promotion; breastfeeding promotion and protection; regulating the marketing of unhealthy food and beverages to children; reducing the consumption of salt, sugar and trans-fat; and NCD taxation measures.

In each area, where relevant, the PLF sets out three components: legislative policies; the legislative plan; and the draft legislative provisions. The legislative policies state the primary objective and rationale, thus establishing the legal intention of the draft legislative provisions. The legislative plan sets out the proposed framework that will guide the drafting of actual legislative provisions. The draft legislative provisions are minimum provisions that PICTs may consider and adapt when reviewing NCD-related laws in their respective jurisdictions. PICTs should use the legislative draft provisions as a guide, taking into account the drafting practices and styles and the relevant laws within their jurisdictions.

It is important to note that the PLF may need to be reviewed and revised periodically to ensure that it remains relevant. This will ensure that NCD-related legislations in the Pacific region can evolve to address future challenges and changes to NCD risk factors.

# CHAPTER 1: INTRODUCTION

## 1.1 Background

### 1.1.1 The burden of non-communicable diseases

The increasing global burden of non-communicable diseases (NCDs) poses a major threat to health and development. NCDs account for approximately 75 per cent of deaths in Pacific Island countries and territories (PICTs), a high proportion of which are premature. The death, disability, and reduced productivity caused by NCDs create a heavy burden for governments, communities, and families across the Pacific region.

High rates of NCD-related death and disability in the Pacific region are mirrored by the high prevalence of NCD risk factors. In Kiribati, Tokelau, Nauru, and Wallis and Futuna approximately half of the adult population smoke daily.<sup>1</sup> Across most PICTs over 80 per cent of adults eat fewer than five servings of fruit and vegetables per day.<sup>2</sup> In American Samoa, Cook Islands, French Polynesia, Niue and Tokelau over 60 per cent of adult males drink alcohol.<sup>3</sup> In at least 10 PICTs, 50-90 per cent of the population is overweight or obese, and across the region the prevalence of diabetes in adults is among the highest in the world.<sup>4</sup>

In 2011 the Pacific Forum Leaders declared the Pacific region to be in the grips of a “human, social and economic crisis” caused by NCDs.<sup>5</sup> The emergence of the COVID-19 pandemic in early 2020 and the growing evidence showing comorbidities of COVID-19 and NCDs further exposes the Pacific region and presents a challenge for PICTs to achieve the Healthy Island Vision and health-related targets of the United Nations Sustainable Development Goals (SDGs).

### 1.1.2 Key regional strategies to address NCDs

To intensify the multi-sectoral response to the Pacific NCD crisis, Pacific Leaders committed to take action on the following key regional strategies which are in line with the World Health Organization’s “best buys” and other recommended interventions for the prevention and control of non-communicable diseases.<sup>6</sup>

**Pacific NCD Roadmap:** The inaugural Joint Forum Economic and Health Ministers Meeting held in Solomon Islands in 2014 endorsed the Pacific NCD Roadmap. The Roadmap identified five key areas for action including: 1) strengthening tobacco control by an incremental increase in excise duties to 70 per cent of the retail price of cigarettes; 2) increasing taxation of alcohol products; 3) improving policies on food and drink products directly linked to NCDs; 4) enhancing primary and secondary prevention of NCDs; and 5) strengthening the evidence base for programme effectiveness. The Roadmap includes a menu of over 30 other multi-sectoral interventions suited to the Pacific region.

**Tobacco Free Pacific 2025:** In line with WHO’s Framework Convention on Tobacco Control (FCTC), the Tobacco Free Pacific 2025 strategy was endorsed by the Pacific Health Ministers in 2013 and launched in 2014. The goal of the strategy is to attain a target of less than five per cent current tobacco use among adults for each PICT by 2025. To achieve this, the strategy endorsed: 1) raising tobacco taxes to at least 70 per cent of the retail price; 2) protecting people from second-hand smoke through establishing

<sup>1</sup> The Pacific Community. 2019. <https://www.spc.int/updates/blog/2019/05/pacifics-continued-battle-against-substantial-tobacco-use-and-lung-cancer> (accessed 15 April 2021).

<sup>2</sup> The Pacific Community. 2018. Pacific Guidelines for Healthy Living. Available at: <https://www.spc.int/sites/default/files/resources/2018-05/Pacific%20guidelines%20for%20healthy%20living.pdf>

<sup>3</sup> Kessaram T, McKenzie J, Girin N, Roth A, Vivili P, Williams G, Hoy D. 2015. Alcohol use in the Pacific region: Results from the STEPwise approach to surveillance. Wiley Drug and Alcohol Review.

<sup>4</sup> World Health Organization. 2010. <https://www.who.int/bulletin/volumes/88/7/10-010710.pdf> (accessed 23 June 2021).

<sup>5</sup> Pacific Islands Forum Secretariat. 2011. Available at: [http://www.pmc.aut.ac.nz/sites/default/files/file\\_bin/201109/2011%20Forum%20Communique%20FINAL.pdf](http://www.pmc.aut.ac.nz/sites/default/files/file_bin/201109/2011%20Forum%20Communique%20FINAL.pdf) (accessed 23 June 2021).

<sup>6</sup> World Health Organization. 2017. “Best buys” and other recommended interventions for the prevention and control of non-communicable diseases. Available at: [https://www.who.int/ncds/management/WHO\\_Appendix\\_BestBuys.pdf](https://www.who.int/ncds/management/WHO_Appendix_BestBuys.pdf) (accessed 23 June 2021).

tobacco-free settings; 3) preventing tobacco industry interference; 4) supporting cessation services; 5) monitoring tobacco use; and 6) strengthening and enforcing tobacco control legislation.

**Yanuca Island Declaration:** In 2015, Pacific Health Ministers reaffirmed their commitment to the Healthy Islands Vision. The key recommendations related to NCD policy and legislation under the theme “reducing avoidable disease burden and premature deaths” include: 1) fostering and leading multi-sectoral action and health-in-all-policies approaches through actions in the NCD Roadmap; and 2) expanding health promotion and protection beyond health education by building healthy public policy through legislation and fiscal measures and introducing food labelling requirements.

**Pacific NCD Summit:** In 2016, at the Pacific NCD Summit, Pacific Heads of Government, Ministers of Health and health leaders committed to strengthen policies and legislative measures including: 1) the taxation of tobacco, sugar-sweetened beverages and unhealthy products in the Pacific; and 2) the implementation of national legislation to ensure that all PICTs are compliant with the WHO FCTC and meet or exceed the Pacific NCD Roadmap taxation target.

**Pacific Ending Childhood Obesity (ECHO):** In 2017, to address the growing burden of childhood obesity (in line with WHO Ending Childhood Obesity recommendations), Pacific Health Ministers endorsed and committed to support PICTs to implement Pacific ECHO priorities. These include: 1) physical activity promotion; 2) fiscal policy intervention particularly on sugar-sweetened beverages; and 3) restriction of marketing of foods and non-alcoholic beverages to children.

### 1.1.3 Monitoring the implementation of key regional strategies

In 2017 the Pacific Monitoring Alliance for NCD Action (MANA) was established and a mutual accountability mechanism using the MANA Dashboard was developed to assist PICTs to monitor their progress on implementing the regional response to NCDs. The Dashboard has 31 NCD indicators across four areas: 1) leadership and governance; 2) prevention policies; 3) health system response programmes; and 4) routine monitoring processes.

The areas relating to legislative measures in the MANA Dashboard are tobacco control, alcohol control, unhealthy food and drinks and enforcement. In 2018 the MANA Dashboard report on the status of the implementation of NCD-related policies and legislation in PICTs identified key regional legislation gaps in the following areas:

- **Tobacco:** Tobacco tax, smoke-free environments, health warnings, advertising, promotion and sponsorship, and tobacco industry interference;
- **Alcohol:** Alcohol licensing, advertising, taxation and drink driving;
- **Unhealthy food and drinks:** Reducing salt consumption, trans-fat restriction, unhealthy food marketing to children, food fiscal policies and healthy food policies in schools;
- **Health system response:** Marketing of breastmilk substitutes, supporting breastfeeding facilities and providing paid maternity leave; and
- **Enforcement:** Enforcement of laws and regulations related to NCD risk factors.

### 1.1.4 Developing the Pacific Legislative Framework for NCDs

Legislative measures are important tools, and the effective use of law and regulation has been recognised as critical to addressing the burden of NCDs in the Pacific region. Assessment undertaken through the Pacific MANA Dashboard indicates that most PICTs need to strengthen their NCD-related laws and regulations to keep up with changing environments and needs. Recognising this, the Pacific Heads of Health (PHoH) endorsed a recommendation for the Pacific Community (SPC) and WHO Secretariats to write a concept note for the development of a Pacific Legislative Framework (PLF) for NCDs. The concept note was presented to, and approved by, Pacific Health Ministers in 2017.

In 2018, the PHoH were presented with three options for the framework: 1) to incorporate all the legislative measures deemed appropriate to address NCDs; 2) to focus on gaps that currently exist and address them in existing legislative measures; or 3) to strengthen current practices and existing legislative measures. The PHoH agreed to proceed with the first option. The proposed structure and approach for the PLF were subsequently endorsed by the Pacific Health Ministers Meeting in 2019.

The PLF was developed in close consultation with expert legal drafters and health policy experts in PICTs, development partners and academic institutions. The initial regional consultation was conducted in March 2019 and a follow-up consultation was conducted in November 2019. Between 2020 and 2021, further extensive consultations with individual PICTs and agencies were conducted, and the PLF was finalised in 2021.

## 1.2 Purpose and implementation of the PLF

The purpose of the PLF is to strengthen PICT laws that regulate NCD risk factors, as an urgent measure to address the growing burden of NCDs in the Pacific. The PLF is designed to provide a regional framework for legislative reforms addressing key NCD risk factors. The PLF covers key NCD prevention and control areas including: tobacco control; liquor control; health promotion; breastfeeding promotion and protection; regulating the marketing of unhealthy food and beverages to children; reducing the consumption of salt, sugar and trans-fat; and NCD taxation measures.

In each area, where relevant, the PLF sets out three components: legislative policies; the legislative plan; and the draft legislative provisions.

The **legislative policies** state the primary objective and rationale, thus establishing the legal intention of the draft legislative provisions.

The **legislative plan** sets out the proposed framework that will guide the drafting of actual legislative provisions.

The **draft legislative provisions** are minimum provisions that PICTs may consider and adapt when reviewing NCD-related laws in their respective jurisdictions. PICTs should use the legislative draft provisions as a guide, taking into account the drafting practices and styles and the relevant laws within their jurisdictions.

The PLF is also intended to provide practical guidance on the process of reviewing NCD-related laws in each of the PICTs with the view to strengthening those laws.

The regional endorsement of the PLF facilitates its implementation across the Pacific region, enabling PICTs to work as one bloc in the fight to prevent NCDs.

It is important to note that the PLF may need to be reviewed and revised periodically to maintain its relevance. This will ensure that NCD-related legislation in the Pacific region can evolve to address future challenges and changes to NCD risk factors.

### 1.2.1 Gap analysis

Implementation of the PLF should commence with each PICT undertaking a gap analysis of its current NCD-related legislation for critical analysis and comparison with the PLF.

The gap analysis should cover the following:

- (a) the status of the current NCD-related laws for a PICT;
- (b) any weaknesses in the current NCD-related laws;

- (c) any proposed amendment; and
- (d) the production of a policy document on the review of NCD-related legislation.

The gap analysis will help to inform areas of reform for NCD-related legislation in individual PICTs.

### **1.2.2 Drafting and enactment of implementing Bills**

The policy document produced by the gap analysis should be approved by the government. Following the approval of the policy document, the drafting of new Bills or amending Bills can be undertaken.

The government may seek to undertake consultations within the government services and with the public.

The new Bills and amending Bills can then be presented to parliament for enactment.

Drafting should be undertaken with the assistance of relevant development partners and legislative drafters in individual PICTs.

### **1.2.3 Draft Bills and Regulations**

Annexes 1 to 7 contain draft Bills and Regulations. These are sample provisions only and do not prevent a PICT from using other provisions to suit its circumstances or to comply with any constitutional provision.

The Bills and Regulations are composite drafts to ensure that each provision is consistent with the whole Bill or Regulations.

If a PICT decides to draft amending Bills and Regulations, it should ensure consistency with its amended principal Act or Regulations.

Matters that appear in square brackets are policy matters for each PICT to consider and adapt to their local circumstances, drafting practices and style.

Legislative drafters are expected to undertake an analysis of their draft laws in order to be consistent with their general laws and the constitution of the country, including regional and international treaties, conventions and agreements.

Copies of the draft Bills and Regulations contained in Annexes 1-7 can be requested in MS Word format by emailing: [health-enquiries@spc.int](mailto:health-enquiries@spc.int)

## CHAPTER 2: TOBACCO CONTROL

### 2.1 Overall policy objective and rationale

The overall policy objective is to give effect to, or implement, obligations of Parties to the WHO Framework Convention on Tobacco Control (FCTC)<sup>7</sup> and its protocols, and in particular to:

- (a) reduce the demand for tobacco through tax and price increases in tobacco products;
- (b) prevent exposure to tobacco smoke;
- (c) regulate the contents and emissions of tobacco products;
- (d) regulate disclosure of information on tobacco products;
- (e) regulate the packaging and labelling of tobacco products;
- (f) regulate tobacco advertising, promotion and sponsorship;
- (g) regulate the illicit trade in tobacco products;
- (h) regulate the sale of tobacco products to and by young persons;
- (i) provide education, communication, training and public awareness on the health risks of tobacco use and exposure to tobacco smoke; and
- (j) reduce tobacco dependence and encourage cessation.

The policy rationale is to protect people from the adverse health, social, environmental and economic consequences of tobacco product use and exposure to tobacco smoke.

It is important to note that the WHO FCTC provisions are the floor, not the ceiling, and that Parties are encouraged to implement measures beyond those required by the Convention and its protocols.<sup>8</sup>

### 2.2 Policy recommendations

The Pacific MANA Dashboard identified the following areas requiring urgent remedial legislative actions:

- (a) regulating tobacco industry interference;
- (b) increasing the use of graphic health warnings and health warning display areas;
- (c) controlling tobacco product sales and licensing; and
- (d) raising tobacco taxes.

<sup>7</sup> World Health Organization. 2005. Framework Convention on Tobacco Control. Available at: <http://apps.who.int/iris/bitstream/handle/10665/42811/9241591013.pdf;jsessionid=F25B0CAAF66F1BCF8F96A093CD264D80?sequence=1> (accessed 23 June 2021).

<sup>8</sup> World Health Organization. 2006. A Guide to Domestic Implementation of the Framework Convention on Tobacco Control. Available at: <https://www.fctc.org/a-guide-to-domestic-implementation-of-the-framework-convention-on-tobacco-control/> (accessed 20 March 2021).

In addition to the urgent remedial legislative actions above, the policy recommendations also cover:

- (a) the following “best-buys” for tobacco control and NCDs:<sup>9</sup>
  - (i) implementing plain standardised packaging and large graphic health warnings on all tobacco packages;
  - (ii) prohibiting tobacco advertising, promotion and sponsorship;
  - (iii) eliminating exposure to second-hand tobacco smoke in all indoor workplaces, public places and public transport by creating smoke-free environments; and
  - (iv) implementing effective mass media campaigns to educate the public about the harms of smoking or tobacco use and second-hand smoke.
- (b) the following WHO recommendations:
  - (i) controlling the illicit trade in tobacco products; and
  - (ii) providing programmes for tobacco cessation.

## 2.3 Priority areas for reform

### 2.3.1 Regulating tobacco industry interference

#### 2.3.1.1 Policy objective and rationale

The policy objective is to give effect to, or to implement, obligations under Article 5.3 of the FCTC, namely to protect public health policies on tobacco control from commercial and other vested interests of the tobacco industry.<sup>10</sup>

The policy rationale is to ensure that governments and Parties to the FCTC can implement public health policies to combat the tobacco epidemic without outside interference or disruption.<sup>11</sup>

#### 2.3.1.2 Legislation plan

The legislative provisions intended to give effect to Article 5.3 of the FCTC include:

- (a) **Definitions:** Lists terms that are defined specifically for this part of the Bill. The tobacco industry is defined in that context as “manufacturer” to cover all those involved in the tobacco industry;
- (b) **Purpose clause:** Provides for the policy intents or purposes;
- (c) **Functions:** Lists the statutory functions on administration;
- (d) **Interaction with manufacturers:** Prohibits the government from interacting with the tobacco industry except where interaction is necessary to effectively regulate the tobacco industry or tobacco products;

<sup>9</sup> World Health Organization. 2017. “Best buys” and other recommended interventions for the prevention and control of non-communicable diseases. Available at: [https://www.who.int/ncds/management/WHO\\_Appendix\\_BestBuys.pdf](https://www.who.int/ncds/management/WHO_Appendix_BestBuys.pdf) (accessed 23 June 2021).

<sup>10</sup> World Health Organization. Guidelines for implementation of Article 5.3 of the WHO Framework Convention on Tobacco Control. Available at: [https://www.who.int/fctc/guidelines/article\\_5\\_3.pdf](https://www.who.int/fctc/guidelines/article_5_3.pdf)

<sup>11</sup> World Health Organization. 2001. World Health Assembly resolution WHA54.18. Available at: [https://apps.who.int/gb/archive/pdf\\_files/WHA54/ea54r18.pdf](https://apps.who.int/gb/archive/pdf_files/WHA54/ea54r18.pdf)



- (e) **Prohibitions on partnership, etc.:** Prohibits the government from entering into any partnership or agreement with the tobacco industry;
- (f) **Support, endorsement, etc.:** Prohibits manufacturers from entering into any contract, agreement or partnership with the government to develop or implement tobacco control measures;
- (g) **Interests and contracts:** Requires government employees or applicants for government positions to declare any interests they have with the tobacco industry and prohibits the government from awarding contracts to persons who have any interest in the tobacco industry;
- (h) **Disqualifications to government boards, etc.:** Prevents appointments of manufacturers and manufacturer representatives or agents to government boards or nominations to represent government at national, regional or international meetings;
- (i) **Contribution to political parties:** Prohibits any financial contribution from manufacturers to political parties;
- (j) **Disclosure of information on business operations:** Requires manufacturers to disclose to the government any information on the operations of tobacco product business;
- (k) **Industry not entitled to government incentives:** Prohibits manufacturers from obtaining incentives from government;
- (l) **State interests:** Prohibits the State from undertaking or having any interest in any business associated with tobacco products; and
- (m) **Corporate social responsibility:** Prevents Ministries from endorsing or supporting corporate social responsibility activities undertaken by manufacturers, and places restrictions on the disclosure of corporate social responsibility activities.

### 2.3.1.3 Suggested draft legislative provisions

Suggested draft legislation in the form of a Tobacco Control Bill is presented in Annex 1. Elements of the Bill specific to addressing tobacco industry interference can be found in Part 5 (Industry interference).

[ [Annex 1 – Tobacco Control Bill](#) | [Part 5 – Industry interference](#) ]

## 2.3.2 Large health warnings

### 2.3.2.1 Policy objective and rationale

The policy objective is to give effect to, or implement, the obligations under Article 11 of the FCTC, namely that:

- (a) tobacco product packaging or labelling does not promote a tobacco product by any means that are false, misleading, deceptive or likely to create an erroneous impression about the product's characteristics, health effects, hazards or emissions, including any term, descriptor, trademark, figurative or any other sign that directly or indirectly creates the false impression that a particular tobacco product is less harmful than any other tobacco products (including terms such as "low tar", "light", "ultra-light", or "mild");

- (b) any unit packet or package of a tobacco product, including any outside packaging and labelling,<sup>12</sup> carries health warnings describing the harmful effects of tobacco use, and that the warnings:
  - (i) are approved by a government authority;
  - (ii) are rotated after a specified period;
  - (iii) are large, clear, visible and legible;
  - (iv) utilise 50 per cent or more of the principal display area and no less than 30 per cent of the principal display area; and
  - (v) include an appropriate picture or pictogram.
- (c) each unit packet and package of tobacco products and any outside packaging and labelling of the products contains information on relevant constituents and emissions of tobacco products; and
- (d) the warnings and other textual information specified in paragraphs (b) and (c) appear on each unit packet and package of tobacco products and any outside packaging and labelling of tobacco products in the principal language or languages of each Party.

The policy rationale is to increase awareness of the inherent risks associated with tobacco use and to discourage consumption.

#### 2.3.2.2 Legislation plan

The health warning provisions cover the following:

- (a) **Health warnings:** Requires the packaging or labelling to contain health warnings. Health warning requirements cover the form or design taking into account matters, such as the different types of tobacco products, shape of packaging or labelling, and government ownership of copyright in any pictorial on health warnings;
- (b) **Location of health warnings:** Requires health warnings to be large, clear, visible and legible. The location and the layout are to ensure maximum visibility. Health warnings are to be positioned on the front and back or on all the main faces of the packet. Health warnings are not to be permanently damaged or obscured when opening the packet, or by other markings, such as tax stamps;
- (c) **Size of health warnings:** Specifies the size of the principal display areas for the warning. It specifies matters to be excluded (for example, the border) when calculating the size of the principal display area;
- (d) **Use of pictorials in health warnings:** Requires the use of pictorials on health warnings;
- (e) **Use of colour in health warnings:** Requires any pictorial element of health warnings to be in full colour not black and white;

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<sup>12</sup> The term "outside packaging and labelling" refers to any packaging and labelling used in the retail sale of tobacco products.

- (f) **Rotation of health warnings:** Requires health warnings to be rotated after a specified period of time, taking into account multiple types of health warnings, appearance in each brand including approval of sets of health warnings to be rotated after a specified period of time;
- (g) **Message content of health warnings:** Provides for the contents of health warnings, such as health effects, advice on cessation, addictive nature, etc. Requires health warnings to be conveyed in an effective manner and be simple, clear and concise and in various formats;
- (h) **Language:** Requires health warnings to be in the official language of the country and any other vernacular language if required;
- (i) **Source attribution:** Provides that the source of health warnings may be added to the health warning in a much smaller but legible font;
- (j) **Information on constituents and emissions:** Requires packaging or labelling to include information about the constituents and emissions of tobacco products;
- (k) **Obscuring health warnings:** Prevents adhesive labels, etc., from obscuring health warnings except for an adhesive label that cannot be removed or if it is used on metal or wood container;
- (l) **Pre-marketing testing:** Requires pre-marketing testing of health warnings to assess effectiveness; and
- (m) **Display for sale:** Requires retailers to provide a “Smoking Kills” sign in an approved form at the point-of-sale.

### 2.3.2.3 Suggested draft legislative provisions

Suggested draft legislation in the form of a Tobacco Control Bill is presented in Annex 1. Elements of the Bill specific to health warnings on tobacco products can be found in Division 4 (Health warnings) of Part 2 (Reducing demand for tobacco products).

[ [Annex 1 – Tobacco Control Bill](#) | [Part 2 – Reducing demand for tobacco products](#) | [Division 4 – Health warnings](#) ]

## 2.3.3 Tobacco sale and licensing

### 2.3.3.1 Policy objective and rationale

The policy objective is to control the supply of tobacco products through licensing systems and to monitor businesses that supply tobacco products.

The policy rationale is to regulate the manufacture, wholesale distribution, importation and retail sale of tobacco products.

### 2.3.3.2 Legislation plan

The following provisions cover licensing and sale of tobacco products:

- (a) **Licences to manufacture, import/export or sell tobacco products:** Prohibits manufacturing, importing, distributing and selling tobacco products without a licence;
- (b) **Number of manufacturing licences (Optional):** Provides for a maximum number of manufacturing licences;

- (c) **Restrictions on import licences (Optional):** Provides for a maximum number of import licences;
- (d) **Manufacturing prohibition (Optional):** Places a total prohibition on manufacturing tobacco products, especially relevant to PICTs that currently do not have manufacturers of tobacco products;
- (e) **Power to issue licences:** Provides for the statutory power to issue different types of licences dealing with tobacco products;
- (f) **Applications:** Provides for the procedural requirements for applying for a licence;
- (g) **Register of licences:** Provides for the establishment of a register of licences and entitlement to inspect the register;
- (h) **Notification of change of name, address, etc.:** Requires licensees to give written notice of any change to their contact information;
- (i) **Term and renewal of licence:** Sets out the terms of licences as 12 months, subject to renewals. The licensee has the right to apply to renew the licence within three months before expiry;
- (j) **Conditions of licence:** Provides for the power to impose conditions on licences;
- (k) **Variation, suspension and revocation of licences:** Provides for the power to vary, suspend or revoke licences. The licensee has a right to be heard if the licence is to be revoked;
- (l) **Transfer of licence:** Prohibits transfer of licences to another person; and
- (m) **Appeal:** Provides for the right to appeal the decision not to issue or renew or to revoke the licence.

### 2.3.3.3 Suggested draft legislative provisions

Suggested draft legislation in the form of a Tobacco Control Bill is presented in Annex 1. Elements of the Bill specific to regulating tobacco sale and licensing can be found in Part 3 (Licensing of manufacturers, etc.).

[ Annex 1 – Tobacco Control Bill | Part 3 – Licensing of manufacturers, etc. ]

## 2.3.4 Plain packaging

### 2.3.4.1 Background

The Guidelines on the implementation of Article 11 of the FCTC encourage Parties to consider adopting “plain packaging” measures that restrict or prohibit the use of logos, stylised fonts, colours, brand images, or other promotional information on or in packaging, other than brand and product names displayed in a standard colour and font style on a plain background.

Australia was the first country in the world to adopt a law requiring plain packaging.<sup>13</sup>

<sup>13</sup> Since the introduction of its Tobacco Plain Packaging Act 2011, Australia has successfully defended four litigation matters brought by the tobacco industry - 1. in the High Court of Australia by British American Tobacco – the High Court found that Australia’s plain packaging measure did not breach section 51 (xxxix) of the Australian Constitution; 2. In a tribunal instituted following a dispute brought by Phillip Morris Asia under the 1993 Agreement between the Government of Australia and the Government of Hong Kong for the Promotion and Protection of Investments – the Tribunal found that the Tribunal did not have the jurisdiction to hear the matter and Phillip Morris had abused process; 3. In the WTO Panel body which found that Australia’s plain packaging measure did not breach international trade law and intellectual property rights; and 4. The WTO Appellate Body which upheld the decision of the WTO panel body.

The Australian Tobacco Plain Packaging Act 2011:<sup>14</sup>

- (a) bans the use of logos, brand imagery, symbols, other images, colours and promotional text on tobacco products and tobacco product packaging;
- (b) requires packaging to be a standard drab dark brown colour in matt finish;
- (c) requires packs to be distinguished by brand and product name printed in a standard colour, position, font size and style; and
- (d) requires graphic health warnings to be 75 per cent of the front and 90 per cent of the back of tobacco packaging.

The objects of the Act are to:

- (a) improve public health;
- (b) discourage people from taking up smoking, or using tobacco products;
- (c) encourage people to give up smoking, and to stop using tobacco products;
- (d) discourage people who have given up smoking, or who have stopped using tobacco products, from relapsing;
- (e) reduce people's exposure to smoke from tobacco products; and
- (f) give effect to certain obligations under the FCTC.

The Australian example of the plain packaging for cigarette packets is depicted in Figure 1. The packaging gives prominence to health warnings and uses a non-attractive packet colour (drab dark brown).



*Figure 1. Australian example of tobacco product plain packaging*

After the introduction of plain packaging in Australia, evidence showed an increased rate of attempts to quit smoking, and a significant decrease in the appeal of cigarette packs and brands.<sup>15</sup>

Plain packaging legislation has since been implemented in 15 further countries including New Zealand, Canada, the United Kingdom, Ireland, France, and Singapore.

<sup>14</sup> Government of Australia. 2011. Tobacco Plain Packaging Act 2011. Available at: <https://www.legislation.gov.au/Details/C2011A00148> (accessed 23 June 2021).

<sup>15</sup> Cancer Council Australia. 2015. <https://www.cancer.org.au/blog/the-evidence-is-in-plain-packs-are-working> (accessed 23 June 2021).

#### 2.3.4.2 Policy objective and rationale

The policy objective is to give effect to certain obligations under Articles 11 and 13 of the FCTC by adopting plain packaging to:

- (a) regulate printing of the brand name in a mandated size, font and place on the package, in addition to the health warnings and any other legally mandated information such as toxic constituents and tax-paid stamps;
- (b) reduce appeal of tobacco products to consumers;
- (c) increase visibility of health warnings and messages on retail packaging of tobacco products; and
- (d) reduce the ability of the retail packaging of tobacco products to mislead consumers about the harmful effects of smoking or using tobacco products.

The policy rationale is to ensure that the packaging of cigarettes and other tobacco products does not carry advertising or promotion, or include design features that make products attractive.

#### 2.3.4.3 Legislation plan

The proposed provisions cover the following:

- (a) **Retail packaging:** The requirement that the outer and inner surfaces of the packaging should not have irregularities of shape or texture, such as decorative ridges, embossing, bulges except those permitted by regulations. Any adhesives, such as glue used in manufacturing should be transparent and not coloured;
- (b) **Cigarette package:** Requires that packs or cartons for cigarettes should be rigid and made only with cardboard, including the rectangular shape and how the surfaces should meet at 90 degree angles. It also provides for dimensions, a flip-top lid, inside lip and lining;
- (c) **Colour and finish of retail packaging:** The requirements for outer surfaces and sides to have matt finish and colour that is not attractive (e.g. drab dark brown used by Australia). The colour does not apply to information, such as, health messages and warnings, brand name, etc. It also provides for regulations to provide for health warning requirements including the principal display area for health warnings and messages; and
- (d) **Offence:** Creates the offence of non-compliance with the requirements for plain packaging.

#### 2.3.4.4 Suggested draft legislative provisions

Suggested draft legislation in the form of a Tobacco Control Bill is presented in Annex 1. Elements of the Bill specific to plain packaging can be found in Division 3 (Plain packaging of tobacco products) of Part 2 (Reducing demand for tobacco products).

[ [Annex 1 – Tobacco Control Bill](#) | [Part 2 – Reducing demand for tobacco products](#) | [Division 3 – Plain packaging of tobacco products](#) ]

## 2.3.5 Tobacco advertising, promotion and sponsorship

### 2.3.5.1 Policy objective and rationale

The policy objective is to give effect to the obligations under Article 13 of the FCTC in order to either totally prohibit tobacco product advertising, promotion and sponsorship or, if there are constitutional impediments or limitations, to restrict tobacco product advertising, promotion and sponsorship to the greatest extent possible.

The following principles<sup>16</sup> apply:

- (a) any tobacco product advertisement, promotion or sponsorship increases tobacco use and any ban on tobacco product advertisement, promotion or sponsorship decreases the tobacco use;
- (b) any ban on tobacco product advertisement, promotion and sponsorship should be comprehensive;
- (c) any ban on tobacco advertisement, promotion and sponsorship should:
  - (i) apply to any form of commercial communication, recommendation or action and any form of contribution to any event, activity or individual with the aim, effect, or likely effect of promoting a tobacco product or tobacco use either directly or indirectly;
  - (ii) include cross-border tobacco product advertisement, promotion and sponsorship (this includes both out-flowing tobacco product advertisement, promotion and sponsorship (originating from within the country) and in-flowing tobacco product advertisement, promotion and sponsorship (entering the country)); and
  - (iii) address any person involved in the production, placement or dissemination of tobacco product advertisement, promotion and sponsorship.
- (d) effective monitoring and enforcement, supported by strong public education and community awareness programmes, is essential to ban tobacco product advertisement, promotion and sponsorship;
- (e) civil society has a central role in building support for, developing and ensuring compliance with laws addressing tobacco product advertisement, promotion and sponsorship, and it should be included as an active partner in this process; and
- (f) effective international cooperation is fundamental to the elimination of both domestic and cross-border tobacco product advertisement, promotion and sponsorship.

### 2.3.5.2 Legislation plan

The proposed provisions to regulate tobacco product advertisement cover the following:

- (a) **Tobacco product advertising:** Prohibits the advertising of tobacco products, including advertisements that originate from outside a PICT, and the sale of material that contains tobacco product advertising. There are certain exceptions, such as, advertising as an incidental part of a film, book or magazine, etc;

<sup>16</sup> World Health Organization. 2006. A Guide to Domestic Implementation of the Framework Convention on Tobacco Control. Available at: <https://www.fctc.org/a-guide-to-domestic-implementation-of-the-framework-convention-on-tobacco-control/> (accessed 20 March 2021).

- (b) **Tobacco product promotion:** Prohibits the promotion of tobacco products;
- (c) **Tobacco product sponsorship:** Prohibits the use of tobacco products or brands to sponsor events, such as sports;
- (d) **Free samples and incentives to smoke:** Prohibits giving or offering free samples or incentives to use tobacco products;
- (e) **Competition:** Prohibits the use of tobacco products as prizes in a competition;
- (f) **Brand stretching and reverse brand stretching:** Prohibits the use of tobacco product brand names to be connected with a non-tobacco product and vice-versa; and
- (g) **Corporate social responsibility:** Prohibits a tobacco company from publicly promoting or funding any corporate social responsibility programme or undertaking educational campaigns to prevent smoking.

### 2.3.5.3 Suggested draft legislative provisions

Suggested draft legislation in the form of a Tobacco Control Bill is presented in Annex 1. Elements of the Bill specific to advertising, promotion and sponsorship can be found in Division 5 of Part 2 (Advertising, promotion and sponsorship).<sup>17</sup>

[ [Annex 1 – Tobacco Control Bill | Part 2 – Reducing demand for tobacco products | Division 5 – Advertising, promotion and sponsorship](#) ]

## 2.3.6 Smoke-free environment

### 2.3.6.1 Policy objective and rationale

The policy objective is to give effect to, and implement, obligations under Article 8 of the FCTC to protect others from exposure to tobacco smoke. The policy rationale is to:

- (a) reduce tobacco smoke (through smoking and second-hand smoking) that causes death, disease and disability;
- (b) reduce exposure to tobacco smoking particularly in young people;<sup>18</sup>
- (c) regulate the environment by having absolute smoke-free environments;
- (d) regulate the environment where smoking areas may be designated; and
- (e) provide for smoke-free zones in places such as public parks, streets, hotel premises etc.

<sup>17</sup> The proposed arrangement is to cover separate provisions dealing with the three basic issues about advertising, namely advertisement, promotion and sponsorship.

<sup>18</sup> International Development Law organization. 2017. Advancing the Right to Health – The Vital Role of Law. Available at: <https://www.idlo.int/publications/advancing-right-health-vital-role-law>



### 2.3.6.2 Legislation plan

Smoke-free environments will cover the following provisions:

- (a) **Smoke-free environment:** Lists institutions, indoor places and other places or forms of transport where smoking and the use of any tobacco product is totally prohibited. It also provides for duties of owners, such as, to monitor smoking or post of non-smoking signs, etc;
- (b) **No smoking in outdoor places of a school or hospital:** Prohibits the smoking of tobacco products in outdoor places of schools or hospitals;
- (c) **No smoking in outdoor public playground areas for young persons:** Prohibits smoking in a place that is not enclosed but is within a public playground area for young persons;
- (d) **Restricted smoke-free environment:** Prohibits smoking in a restricted smoke-free environment where smoking areas may be designated. A total smoke-free environment cannot be declared as a restricted smoke-free environment;
- (e) **Duties of owners:** Provides for duties of owners of restricted smoke-free environment, such as the duty to place non-smoking signs at areas where smoking is prohibited and at areas where smoking is allowed; and
- (f) **Smoke-free zones:** Provides for the power to declare smoke-free zones in public places, public roads, public parks, and places that the public are allowed to use, such as hotels, as smoke-free zones. It also includes duties of owners to designate smoking areas within the smoke-free zones.

### 2.3.6.3 Suggested draft legislative provisions

Suggested draft legislation in the form of a Tobacco Control Bill is presented in Annex 1. Elements of the Bill specific to smoke-free environments can be found in Division 1 (Smoke-free environment and restricted smoke-free environment) of Part 2 (Reducing demand for tobacco products).

[ [Annex 1 – Tobacco Control Bill](#) | [Part 2 – Reducing demand for tobacco products](#) | [Division 1 – Smoke-free environment and restricted smoke-free environment](#) ]

## 2.3.7 Public education about the harms of smoking and exposure to tobacco product smoke

### 2.3.7.1 Policy objective and rationale

The policy objective is to promote and strengthen public awareness of tobacco control issues. The policy rationale is to:

- (a) provide for matters listed in paragraphs (a) to (f) in Article 12 of the FCTC; and
- (b) ensure that government provides funding and carries out public awareness programmes or initiatives that are specified in Article 12 of the FCTC.

### 2.3.7.2 Legislation plan

The provisions are:

- (a) **Public health function, etc.:** Sets out the statutory functions of government to carry out public awareness campaigns, including programmes about health risks of smoking, inter-sectoral strategies and information on the health effect and risks of smoking; and

- (b) **Research and strategies:** Provides for the power to develop and promote research on tobacco control, to establish tobacco surveillance programmes and to promote exchange of public information on practices of tobacco industry.

### 2.3.7.3 Suggested draft legislative provisions

Suggested draft legislation in the form of a Tobacco Control Bill is presented in Annex 1. Elements of the Bill specific to public education about the harms of smoking can be found in Part 6 (Administration).

[ [Annex 1 – Tobacco Control Bill | Part 6 – Administration](#) ]

## 2.3.8 Illicit trade in tobacco products

### 2.3.8.1 Policy objective and rationale

The main policy objective is to eliminate all forms of illicit trade in tobacco products, including smuggling, illicit manufacturing and counterfeiting. The policy rationale is to:

- (a) eliminate illegal activities relating to production, shipment, receipt, possession, distribution, sale or purchase of tobacco products;<sup>19</sup>
- (b) prevent accessibility and affordability of tobacco products;<sup>20</sup>
- (c) prevent undermining public revenues;<sup>21</sup>
- (d) prevent illicit trade through licensing of production, distribution and sale of tobacco products;<sup>22</sup> and
- (e) state the name of the country of intended sale on the retail packet or label.

A provision to prohibit novel and/or emerging or forms of tobacco use (e-cigarettes, heated tobacco products, water pipes, chewing tobacco) is provided for PICTs to consider adopting. A licensing or registration system can be devised for commercial growing and harvesting of tobacco plants. Growing of tobacco plants for personal or subsistence use should be regulated where possible since these forms of tobacco are often used as substitutes for, or in conjunction with, manufactured tobacco products.

### 2.3.8.2 Legislation plan

The provisions to regulate illicit trade cover the following:

- (a) **Prohibited tobacco products:** Provides for a list of prohibited tobacco products, including smokeless tobacco products, water pipes, heated tobacco products, e-cigarettes or vaping products;
- (b) **Smuggling of tobacco products:** Creates the offence of smuggling of tobacco products to defraud revenue; and
- (c) **Manufacturer to provide information about retailers:** Provides for the power to require a tobacco manufacturer to provide information on the identity of retailers and the amount of tobacco products sold to them.

<sup>19</sup> World Health Organization. 2013. Protocol to Eliminate Illicit Trade in Tobacco Products. Available at: [https://www.who.int/fctc/protocol/illicit\\_trade/protocol-publication/en/](https://www.who.int/fctc/protocol/illicit_trade/protocol-publication/en/)

<sup>20</sup> International Development Law organization. 2017. Advancing the Right to Health – The Vital Role of Law. Available at: <https://www.idlo.int/publications/advancing-right-health-vital-role-law>

<sup>21</sup> International Development Law organization. 2017. Advancing the Right to Health – The Vital Role of Law. Available at: <https://www.idlo.int/publications/advancing-right-health-vital-role-law>

<sup>22</sup> See Article 15.7 of the WHO FCTC.

### 2.3.8.3 Suggested draft legislative provisions

Suggested draft legislation in the form of a Tobacco Control Bill is presented in Annex 1. Elements of the Bill specific to the illicit trade in tobacco products can be found in Division 1 (Prohibited products, smuggling and information) of Part 4 (Reducing supply of tobacco products).

[ [Annex 1 – Tobacco Control Bill | Part 4 – Reducing supply of tobacco products | Division 1 – Prohibited products, smuggling and information](#) ]

## 2.3.9 Tobacco cessation promotion and programmes

### 2.3.9.1 Policy objective and rationale

The policy objective is to provide measures to promote cessation of tobacco product use and measures to treat tobacco dependence.<sup>23</sup> The policy rationale is to:

- (a) design and implement programmes to promote cessation of tobacco product use;
- (b) provide treatment of tobacco dependence and counselling services on cessation of tobacco use;
- (c) establish programmes to diagnose, counsel, prevent and treat tobacco dependence; and
- (d) help accessibility and affordability of treatment for tobacco cessation, including pharmaceutical products.

### 2.3.9.2 Legislation plan

The provision to promote tobacco cessation covers the following:

- (a) **Public health function, etc.:** Includes statutory duty to carry out programmes and measures to prevent the use of tobacco products or to treat dependence on tobacco products.

### 2.3.9.3 Suggested draft legislative provisions

Suggested draft legislation in the form of a Tobacco Control Bill is presented in Annex 1. Elements of the Bill specific to tobacco cessation promotion can be found in Part 6 (Administration).

[ [Annex 1 – Tobacco Control Bill | Part 6 – Administration](#) ]

## 2.4 Other areas for general reform

Other areas for general reform are:

- (a) requirements for objects or purpose clause;
- (b) extending application of legislation outside territorial jurisdiction given the archipelagic status of most PICTs;
- (c) regulating the sale and supply of tobacco products to young persons;
- (d) requirements for packaging and labelling;

<sup>23</sup> See Article 14 of the WHO FCTC.

- (e) regulating testing, contents and emissions;
- (f) strengthening administration; and
- (g) strengthening enforcement.

## 2.4.1 Objectives of the Act

### 2.4.1.1 Policy objective and rationale

The policy objective is to list the purposes or objectives of the Act. The policy rationale is to:

- (a) ensure the Act is linked with the protection of public health under the constitution in order to insulate any constitutional challenge on the Act; and
- (b) facilitate the interpretation of the Act by the courts by providing express provisions on the purposes of the Act.

### 2.4.1.2 Legislation plan

The provision covers the following:

- (a) **Objective of Act:** Expands on the key objectives to: protect the right to health; encourage non-smokers to refrain from smoking; expose the public to the health risks of tobacco use; regulate and monitor the activities of the tobacco industry; and promote the prevention and cessation of smoking.

### 2.4.1.3 Suggested draft legislative provisions

Suggested draft legislation in the form of a Tobacco Control Bill is presented in Annex 1. Elements of the Bill specific to the Objectives of the Act can be found in Part 1 (Preliminary).

[ [Annex 1 – Tobacco Control Bill | Part 1 – Preliminary](#) ]

## 2.4.2 Extra-territorial application

### 2.4.2.1 Policy objective and rationale

The policy objective is to extend the application of the law outside territorial jurisdiction and to the State/Government/Crown. The rationale is to cover any activity outside the territorial jurisdiction, especially in the Exclusive Economic Zone (EEZ). This can cover off-loading of tobacco products within the EEZ or the use of vessels or other floating platforms in the EEZ to manufacture tobacco products.

### 2.4.2.2 Legislation plan

The provision covers the following:

- (a) **Application:** Extends the application of law outside the territorial jurisdiction of the country, including application to the State/Government.

### 2.4.2.3 Suggested draft legislative provisions

Suggested draft legislation in the form of a Tobacco Control Bill is presented in Annex 1. Elements of the Bill specific to the Application of the Act can be found in Part 1 (Preliminary).

## [ Annex 1 – Tobacco Control Bill | Part 1 – Preliminary ]

## 2.4.3 Regulating the sale and supply of tobacco products to young persons

### 2.4.3.1 Policy objective and rationale

The policy objective is to regulate the sale and supply of tobacco products to young persons. The policy rationale is to prevent young persons from taking up smoking and accessing tobacco products.

### 2.4.3.2 Age of smoking

The age of persons to be prohibited from smoking tobacco products should be the same in all PICTs. It is recommended that the age is set to under 21 years, and that this is aligned to the minimum legal age for drinking liquor. The prohibition should cover sale, supply and purchase of a tobacco product.

### 2.4.3.3 Legislation plan

The provisions cover the following:

- (a) **Definitions:** Provides for the definition of terms used specifically in this part of the Bill;
- (b) **Sale to young persons:** Prohibits the sale of tobacco products to persons aged under 21 years. It includes supplying tobacco products to young persons or another person who will supply it to a young person;
- (c) **Licensees liable for acts of employees:** The employer is liable for the same offence committed by an employee whether aged under or over 21 years. An adult employee is also liable for the offence committed by an employee under 21 years;
- (d) **Defence on photographic identification:** It is a defence that an identification of a young person was shown but without suspicion that the young person is an adult person;
- (e) **False identification:** Requires a retailer to check the proof-of-age of a buyer who is suspected to be a young person. The buyer is to be refused purchase of a tobacco product if proof-of-age is not given. It creates an offence to use the proof-of-age of another person;
- (f) **Sale of products resembling tobacco products:** Prohibits selling products, such as confectionery, toys, etc., that resemble tobacco products or have the effect of encouraging young persons to smoke;
- (g) **Sale prohibition sign:** Requires retailers to post a prohibited sale sign at the point-of-sale stating that it is prohibited to sell tobacco products to a young person, or for a tobacco product to be bought on behalf of a young person, or for a retailer to permit a young person to sell tobacco;
- (h) **Smoking in motor vehicle with young persons:** Creates an offence to smoke in a private motor vehicle that is on a public road if a young person is inside the vehicle;
- (i) **Social events:** Prohibits the sale of any tobacco product or smoking, at a place where a social event for young persons is taking place;
- (j) **Duties of owners – social events:** Provides for the duty of owners of places where a social event for young persons is taking place;

- (k) **No smoking signs – social events:** Provides for the duty to display non-smoking signs at places where a social event for young persons is taking place; and
- (l) **Covering vending machines, tobacco advertisements etc., during social events:** Provides for the duty of owners to cover any vending machine or tobacco advertisements at places where a social event for young persons is taking place.

#### 2.4.3.4 Suggested draft legislative provisions

Suggested draft legislation in the form of a Tobacco Control Bill is presented in Annex 1. Elements of the Bill specific to regulating the sale and supply of tobacco products to young persons can be found in Division 2 (Young persons) of Part 4 (Reducing supply of tobacco products).

[ [Annex 1 – Tobacco Control Bill](#) | [Part 4 – Reducing supply of tobacco products](#) | [Division 2 – Young persons](#) ]

## 2.4.4 Labelling and packaging of tobacco products

### 2.4.4.1 Policy objective and rationale

The main policy objective is to give effect to Article 11 of the FCTC to regulate the requirements for the retail packaging and labelling of tobacco products.

The policy rationale is to:

- (a) ensure that persons are informed about the health consequences, addictive nature and mortal threat posed by tobacco product consumption and exposure to tobacco smoke;
- (b) prevent the use of false, deceptive or misleading terms that may cause people to think that some tobacco products are less harmful than others;
- (c) prevent labelling of toxic content quantities which may give the impression that tobacco products with less tar, nicotine, etc., are less harmful (no conclusive epidemiological or scientific evidence that tobacco products with lower machine-generated smoke yields are less harmful than tobacco products with higher smoke emission yields); and
- (d) regulate packaging or labelling (including plain packaging) requirements in order to reduce the surface area on packaging or labelling available to the tobacco industry to make tobacco products more enticing or attractive.

### 2.4.4.2 Legislation plan

The packaging and labelling provisions cover:

- (a) **Mandatory information to appear on packaging and labelling:** Provides for the duty to ensure that retail packaging and labelling displays mandatory information such as health warnings and messages etc.;
- (b) **Costs of packaging or labelling:** Provides for the manufacturer's etc. liability for costs of packaging and labelling;
- (c) **False, misleading and deceptive packaging or labelling:** Prohibits packets and labels that provide false, misleading or deceptive information about a tobacco product's characteristics, health effects etc. Prohibits certain information, such as figures for emission yields, expiry dates etc. to appear on packets or labels;

- (d) **Minimum pack size for cigarettes:** Provides for the minimum number of rolls of cigarettes in a pack; and
- (e) **Restriction on sale of tobacco products in small quantities:** Prohibits the sale of single cigarette rolls or certain grams of loose tobacco.

#### 2.4.4.3 Suggested draft legislative provisions

Suggested draft legislation in the form of a Tobacco Control Bill is presented in Annex 1. Elements of the Bill specific to labelling and packaging of tobacco products can be found in Division 2 (Packaging and labelling) of Part 2 (Reducing demand for tobacco products).

[ [Annex 1 – Tobacco Control Bill](#) | [Part 2 – Reducing demand for tobacco products](#) | [Division 2 – Packaging and labelling](#) ]

## 2.4.5 Regulation of content and emissions including testing

### 2.4.5.1 Policy objective and rationale

The policy objective is to give effect to Article 9 of the FCTC through regulating the contents of tobacco products. The policy rationale is to:

- (a) prevent enhancing the appeal of tobacco products through use of certain ingredients;
- (b) prevent the addition of certain ingredients to any tobacco product;
- (c) prevent designs that promote tendency to ignite if lighted tobacco products are left unattended; and
- (d) provide testing of contents and emissions of tobacco products.

### 2.4.5.2 Legislation plan

The provisions cover the following:

- (a) **Prohibited ingredients:** Prohibits the sale etc. of tobacco products that contain a prohibited ingredient, such as added flavour;
- (b) **Prohibit tendency to ignite:** Prohibits the manufacture etc. of a tobacco product that is not designed to be distinguished by itself when not puffed or left unattended;
- (c) **Duty to test constituents and emissions:** Requires manufacturers and importers to test tobacco products;
- (d) **Further tests:** Requires manufacturers and importers to carry out further tests, if required;
- (e) **Approved laboratory:** Provides for the power to approve laboratory tests to be carried out;
- (f) **Test by government:** Provides for the right of government to carry out tests;
- (g) **Costs:** Requires manufacturers and importers to pay for the costs of carrying of tests, including tests carried out by government;

- (h) **Test reports:** Provides for the duty to send test reports to the government authority;
- (i) **Content – ingredient disclosure:** Requires manufacturers and importers to disclose ingredients of tobacco products to the government authority; and
- (j) **Information on contents, constituents and emissions:** Provides for the duty to send to government authority information about the contents, ingredients, etc. of tobacco products.

#### 2.4.5.3 Suggested draft legislative provisions

Suggested draft legislation in the form of a Tobacco Control Bill is presented in Annex 1. Elements of the Bill specific to regulating contents and emissions of tobacco products can be found in Division 6 (Contents and emissions) of Part 2 (Reducing demand for tobacco products).

[ [Annex 1 – Tobacco Control Bill | Part 2 – Reducing demand for tobacco products | Division 6 – Contents and emissions](#) ]

## 2.4.6 Administration

### 2.4.6.1 Policy objective and rationale

The policy objective is to provide administrative statutory functions, such as the function to carry out awareness, research and other technical assistance as envisaged in the FCTC.

The rationale is to facilitate sustainable funding for carrying out those statutory functions. Administrative functions are determined by government as a matter of policy rather than fixed by legislation. The advantage of a statutory base is to ensure that those functions are properly monitored on a frequent basis and appropriately budgeted for.

### 2.4.6.2 Legislation plan

The provision for statutory functions cover:

- (a) **Public health function, etc.:** Provides the functions to provide awareness, carry out measures to cease use of tobacco product or treat tobacco dependence and provide training in tobacco product control. Also, the details about the function to undertake measures to reduce demand for tobacco product; and
- (b) **Research and strategy:** Provides for the power to develop and promote or coordinate regional and international research programmes on tobacco control. It includes the power to establish tobacco surveillance programmes, including regional and international exchange of information on health indicators. Provides for the duty to establish and strengthen tobacco control strategies, plans and programmes to assist in developing, transferring and acquiring technology and skills, etc. on tobacco control, and to provide expertise, support training and identify methods of tobacco control (including the treatment of nicotine addiction).

### 2.4.6.3 Suggested draft legislative provisions

Suggested draft legislation in the form of a Tobacco Control Bill is presented in Annex 1. Elements of the Bill specific to administration can be found in Part 6 (Administration).

[ [Annex 1 – Tobacco Control Bill | Part 6 – Administration](#) ]



## 2.4.7 Enforcement

### 2.4.7.1 Policy objective and rationale

The policy objective is to provide enforcement provisions to ensure that the legislation is effectively enforced. The rationale is to ensure that necessary provisions are in place to effectively and efficiently enforce the legislation.

### 2.4.7.2 Legislation plan

The provisions for enforcement cover the following:

- (a) **Enforcement officers:** Provides for the appointment of enforcement officers and deems certain public officers, such as police officers, to be enforcement officers;
- (b) **Identity cards:** Provides for issuing identity cards to enforcement officers;
- (c) **Functions:** Provides for the functions of enforcement officers to administer and enforce the Act and carry out other functions specified in the letter of appointments;
- (d) **Entry and search powers:** Provides for the power to enter a place to inspect the place of manufacture of tobacco products, examine tobacco products, take photographs, and require persons to answer questions;
- (e) **Warrant for residential property:** A warrant is required if the place to be entered is a residential property;
- (f) **Power to require identification:** Provides power to enforcement officers to require a person to provide their name and contact details, etc.;
- (g) **Power to issue cease and desist orders:** Empowers enforcement officers to issue cease and desist orders;
- (h) **Product recall:** Provides for the power to recall tobacco product that may be sold contrary to the requirements of the Act;
- (i) **Investigation and prosecution:** Provides for the power of enforcement officers to investigate any offence and conduct prosecution of the offence, subject to any constitutional power for prosecution;
- (j) **Tracking and tracing systems:** Provides for the power of enforcement officers to track and trace supply, etc., of tobacco products;
- (k) **Confiscation and forfeiture:** Requires enforcement officers to confiscate tobacco products that are subject to an offence and the court to order forfeiture;
- (l) **Court order to vary, suspend or cancel the licence:** Provides for the power of the court to order that the licence of the convicted person be varied, suspended or cancelled;
- (m) **General duties of manufacturers on packaging and labelling:** Imposes a duty on manufacturers, etc., to comply with packaging and labelling requirements;
- (n) **Infringement notices for spot fines:** Provides the power to issue infringement notices for spot fines (see Part 3 of the Schedule for the Form), and other supporting provisions. If the spot fine is paid in full, no other proceedings are to be taken for that particular offence;

- (o) **Service of infringement notices:** Provides that notices are to be served pursuant to the court rules and deeming of notices as if it were summons issued by the court;
- (p) **Directors, etc., liability:** If a company commits an offence, the director, etc also commits the same offence unless it is proven that the offence was committed without the director's knowledge;
- (q) **Obstruction etc., of enforcement officers:** Creates an offence to obstruct an enforcement officer while carrying out the duties and powers under the Act;
- (r) **Penalties:** Lists the fixed penalties for spot fines in Part 1 of the Schedule and maximum penalties for the offences in Part 2 of the Schedule;
- (s) **Privacy and confidential information:** Protects information that is confidential information; and
- (t) **Misleading information:** Creates an offence to give misleading information to a person carrying out a duty or power under the Act.

#### 2.4.7.3 Suggested draft legislative provisions

Suggested draft legislation in the form of a Tobacco Control Bill is presented in Annex 1. Elements of the Bill specific to enforcement can be found in Part 7 (Enforcement).

[\[ Annex 1 – Tobacco Control Bill | Part 7 – Enforcement \]](#)

## CHAPTER 3: LIQUOR CONTROL

### 3.1 Overall policy objective and rationale

The overall policy objective is to regulate the manufacture, importation, sale, consumption, advertisement, promotion and sponsorship of liquor to control harmful use.

The policy rationale is to:

- (a) prevent diseases (including liver cirrhosis, cardiovascular diseases and certain types of cancer) and injuries caused by liquor consumption;<sup>24</sup>
- (b) reduce the affordability of liquor through taxes and prices;
- (c) reduce the availability of liquor through regulating sales;
- (d) protect young persons by fixing a minimum age for the consumption of liquor;
- (e) reduce the appeal of liquor by regulating advertising and labelling; and
- (f) prevent road traffic injuries (RTIs) through implementing drink driving deterrence measures.

In this document the terms “liquor” and “alcohol” are used interchangeably. This is not intended to change the term used in the legislation of any particular Pacific Island country or territory.

### 3.2 Policy recommendations

The Pacific MANA Dashboard identified four key legislative strategies for alcohol/liquor control in PICTs. These are:

- (a) restricting liquor advertising;
- (b) requiring liquor licensing (including restrictions on the minimum age for legal sale, days and hours of trade, density and service restrictions);
- (c) increasing alcohol tax;<sup>25</sup> and
- (d) implementing measures to prevent drink driving, including setting a maximum blood alcohol limit for drivers.

The MANA Dashboard indicators also recommended setting an appropriate age for the purchase or consumption of liquor, and measures to reduce the density of liquor retailers.

<sup>24</sup> International Development Law organization. 2017. Advancing the Right to Health – The Vital Role of Law. Available at: <https://www.idlo.int/publications/advancing-right-health-vital-role-law>

<sup>25</sup> Taxation measures related to NCD risk factors are covered in Chapter 8.

## 3.3 Priority areas for reform

### 3.3.1 Advertising and labelling of liquor

#### 3.3.1.1 Policy objective and rationale

The policy objective for regulating liquor advertising is to prohibit the advertisement and promotion of liquor, and any activity that encourages the consumption and sale of alcoholic beverages of any kind, through the media, including social media, in community settings and retail establishments, and to place restrictions on liquor sponsorship of sporting and cultural events. The rationale for this intervention is to:

- (a) reduce the consumption of liquor;
- (b) reduce individual exposure to risks of harms; and
- (c) protect children and adolescents from being influenced by advertisements and exposure, and to reduce harm associated with early initiation to, and high consumption of, liquor.

The policy objective for labelling of liquor is to provide consumers with more information about the contents and risks of drinking, including addiction. The rationale is to ensure that consumers can make an educated and informed decision about what the product is or what it contains. A 2018 Lancet article states that there is “strong support that there is no safe level of alcohol consumption” and that public health policies should prioritise the decrease in the population level consumption of alcohol.<sup>26</sup>

#### 3.3.1.2 Legislation plan

The provisions cover the following:

##### ***Division 1 – Advertising***

- (a) **Unacceptable practices and promotions:** Prohibits licensees from engaging in unacceptable practices or promotions (such as encouraging the irresponsible consumption of liquor or using promotional materials that are likely to be attractive to children);
- (b) **Responsible practices and promotions:** Imposes duties on licensees to engage in practices or promotions that may lead to the responsible consumption of liquor (such as having non-alcoholic or low alcohol beverages available, serving small serves of alcohol and making drinking water available free of charge);<sup>27</sup>
- (c) **Providing a safe environment and preserving amenity:** Requires licensees to provide a safe environment, and to take reasonable steps to ensure that any activity at the licensed premises does not adversely affect the amenity of the surrounding areas;
- (d) **Engaging in prescribed practices:** Imposes an obligation on licensees to comply with prescribed positive practices and not to engage in prescribed unacceptable practices;
- (e) **Advertising:** Prohibits certain advertisements, such as offering free liquor or advertising specials on alcohol;
- (f) **Grounds for issuance of compliance notices:** Sets out the different grounds through which a compliance notice may be issued against a liquor licensee;
- (g) **Giving of notice:** Provides for issuing compliance notices to licensees;

<sup>26</sup> Burton R & Sheron N. 2018, No level of alcohol consumption improves health. Lancet. Available at [https://www.thelancet.com/article/S0140-6736\(18\)31571-X/fulltext](https://www.thelancet.com/article/S0140-6736(18)31571-X/fulltext)

<sup>27</sup> See <https://www.who.int/bulletin/volumes/88/7/10-010710/en/>- WHO does not set particular limits, because the evidence shows that the ideal situation for health is to not drink liquor/alcohol at all.

- (h) **Complying with notice:** Requires licensees to comply with notices;
- (i) **Licensee may apply to amend or revoke notice:** Provides for the right of licensees to apply for the amendment or revocation of compliance notices; and
- (j) **Validity and review of notice:** Provides for the period of validity of the notice, which is until it is revoked. It also provides for the periodic review of the notice.

### **Division 2 – Labelling**

- (a) **Labelling of liquor:** Prohibits the sale of liquor unless the alcohol content appears on the label;
- (b) **Statement of the number of standard drinks:** Prohibits the sale of liquor unless the label states the number of standard drinks; and
- (c) **Representations:** Prohibits certain representations and claims (such as “low alcohol”) unless the alcohol content is below a certain percentage of volume.

#### 3.3.1.3 Suggested draft legislative provisions

Suggested draft legislation in the form of a Liquor Control Bill is presented in Annex 2-1. Elements of the Bill specific to advertising and labelling can be found in Part 5 (Advertisement and labelling).

[ [Annex 2-1 – Liquor Control Bill | Part 5 – Advertisement and labelling](#) ]

## **3.3.2 Licensing authority**

### 3.3.2.1 Policy objective and rationale

The policy objective is to create an authority to issue liquor licences. The rationale for this is to regulate the manufacture, sale and importation of liquor.

### 3.3.2.2 Legislation plan

The provisions for the licensing authority cover:

- (a) **Establishment [and members]:** Creates a licensing authority. Provides for membership, including the requirement for women members;
- (b) **Appointment:** Provides for the appointment of members to the authority, and includes a provision for persons who are not eligible to be members including anyone with any ties to the alcohol, beverage, or hospitality industries;
- (c) **Terms:** Sets out the terms of appointment and other conditions, such as re-appointment and sitting allowances;
- (d) **Resignation:** Provides for the resignation of members;
- (e) **Suspension and termination:** Provides for the power and grounds to suspend or terminate a member;
- (f) **Meetings and declaration of interests:** Provides for the rules of meetings and the requirement for members to declare any interest on a matter before the Board; and
- (g) **Secretary:** Provides for the power to appoint a public officer as secretary of the Board.

### 3.3.2.3 Suggested draft legislative provisions

Suggested draft legislation in the form of a Liquor Control Bill is presented in Annex 2-1. Elements of the Bill specific to licensing can be found in Part 2 (Liquor licensing authority).

[ [Annex 2-1 – Liquor Control Bill](#) | [Part 2 – Liquor licensing authority](#) ]

## 3.3.3 Liquor licensing

### 3.3.3.1 Policy objective and rationale

The policy objective is to license the manufacture, importation and sale of liquor. The rationale is to regulate the manufacture, importation and sale of liquor.

### 3.3.3.2 Legislation plan

The provisions cover the following:

#### ***Division 1 – Obtaining licences***

- (a) **Power to issue liquor licences:** Provides for the power to issue different types of liquor licences;
- (b) **Manufacturing licences:** Authorises the licensee to manufacture liquor to be sold under a retail licence;
- (c) **Import [and export] licences:** Authorises the licensee to import liquor to be sold under a retail licence (or to export liquor);
- (d) **Off-licences:** Sets out the types of off-licences authorising the sale of liquor to be consumed off the premises;
- (e) **On-licences:** Sets out the types of on-licences authorising the sale of liquor to be consumed on the premises;
- (f) **Club licences:** Authorises a club to sell liquor to its members and any guest of a member for consumption on the premises, or in sealed containers for consumption off the premises;
- (g) **Applications for licences:** Provides for the right of a person to apply for a liquor licence;
- (h) **Renewal applications:** Provides for the right of a licensee to apply for the renewal of a licence;
- (i) **Publication of applications:** Requires the applicant to display a notice about the application at the proposed premises to be licensed and also in a newspaper;
- (j) **Report of agencies:** Requires the applicant to send copies of the application for licence to designated authorities for their report on the suitability of the applicant and the premises;
- (k) **Objections:** Provides for the right of a person to make objections about the suitability of the premises and applicant;
- (l) **Hearing/determining applications:** Provides for the process of hearing/determining the application after all the reports are received; and
- (m) **Decisions:** Provides for the grounds to issue or renew the licence.

### ***Division 2 – Other provisions on licences***

- (a) **Conditions of licences:** Provides for conditions to be imposed on licences;
- (b) **Terms of licences:** Sets out the commencement and expiry dates for a licence [a licence expires on 31 December each year];
- (c) **Amendment of licences:** Provides for the power to amend a licence;
- (d) **Transfer and replacement:** Provides for the transfer of a licence to another person or to new premises;
- (e) **Ceasing operations:** Provides for the cancellation of a licence if liquor business operations cease;
- (f) **Suspension of licences:** Provides for the power to suspend a licence;
- (g) **Revocation of licences:** Provides for the power to revoke a licence; and
- (h) **Right to be heard:** Provides for the right of a licensee to be heard if the licence is to be revoked.

#### 3.3.3.3 Suggested draft legislative provisions

Suggested draft legislation in the form of a Liquor Control Bill is presented in Annex 2-1. Elements of the Bill specific to licences can be found in Part 3 (Liquor licences).

[ [Annex 2-1 – Liquor Control Bill | Part 3 – Liquor licences](#) ]

## **3.3.4 Protection of young persons**

### 3.3.4.1 Policy objective and rationale

The policy objective is to prohibit the sale of liquor to young persons. The policy rationale is to reduce access to liquor by young persons and thereby protect them from alcohol-related harm.

### 3.3.4.2 Legislation plan

Provisions designed to protect young persons are:

- (a) **Definition:** Provides for the definition of terms related to the protection of young persons. A “young person” may be defined as a person aged under 21 years or aged under 18 years. It is recommended that the age is aligned to the minimum legal age for the purchase of tobacco products;
- (b) **Sale and supply of liquor:** Prohibits a person from selling liquor to young persons, sending young persons to buy liquor, or for young persons to be in possession of liquor. When accompanied by an adult or guardian, a young person is permitted to enter licensed premises that provide cooked meals, for the purpose of having a meal;
- (c) **Due diligence on age:** Provides for the right of licensees to remove a young person from the premises;
- (d) **False identification:** Creates an offence to use, forge or alter a document of identification to enter licensed premises; and

- (e) **Defence:** A licensee or their agent who supplies liquor to a young person has a defence in circumstances where they inspected and checked the person's document of identification and reasonably concluded that the person was not a young person.

### 3.3.4.3 Suggested draft legislative provisions

Suggested draft legislation in the form of a Liquor Control Bill is presented in Annex 2-1. Elements of the Bill specific to young persons can be found in Part 6 (Protection of young persons).

[ [Annex 2-1 – Liquor Control Bill | Part 6 – Protection of young persons](#) ]

## 3.3.5 Drink driving

### 3.3.5.1 Policy objective and rationale

The policy objective is to regulate drink driving and provide a mechanism to test the level of alcohol in the breath or blood of a driver, including random breath testing, as evidence of a drink driving offence. The rationale is to prevent or deter drivers from driving whilst under the influence of alcohol or drugs, and to prevent RTIs.

These provisions will require an amendment to the traffic or land transport legislation.

### 3.3.5.2 Legislation plan

Drink driving provisions<sup>28</sup> cover the following:

- (a) **Definitions:** Provides for the definition of terms, including the definition of breath alcohol limit, and blood alcohol limit;
- (b) **Driving under the influence of a drug:** Creates the offence of driving under the influence of a drug;
- (c) **Driving exceeding the breath or blood alcohol limit:** Provides for the offence of driving when the driver exceeds the breath or blood alcohol limit;
- (d) **Zero alcohol level:** Sets out classes of driver to whom a zero alcohol breath and blood alcohol limit applies, such as drivers aged under [18] years;
- (e) **Driving disqualification:** Provides for [12 months] automatic disqualification from driving if convicted of an offence of driving under the influence of a drug or liquor;
- (f) **Approved device and instrument:** Provides for the breath testing device and breath analysis instrument for the purpose of a breath test as set out in the Schedule. The Schedule provides that the breath analysis instrument must produce three automatic prints to prescribe the alcohol content of a person after a breath analysis test. Further, every device and instrument must be tested, calibrated and certified by the relevant authority under the national equivalent of the National and Trade Measurement Act;
- (g) **Breath screening test:** Provides for the power of enforcement officers to require drivers to undertake breath screening tests;
- (h) **Evidential breath test or blood test:** Provides for the power of enforcement officers to require drivers to undertake evidential breath tests and blood tests;

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<sup>28</sup> Adapted from the legislative provisions of Samoa and Nauru.



- (i) **Further evidential breath test:** Provides for the power of enforcement officers to require drivers to undertake further breath tests;
- (j) **Right to elect blood test:** Provides for the right of drivers to request a blood test to confirm the level of alcohol in their blood;
- (k) **Who must give blood sample at places other than hospital or surgery?:** Requires drivers to allow a medical practitioner to take a blood specimen;
- (l) **Blood specimen for person under medical care:** Requires a person under medical care to allow a medical practitioner to take a specimen of blood;
- (m) **Taking specimen from an unconscious person:** Allows the medical practitioner in charge of an unconscious person to take a specimen of blood from the unconscious person;
- (n) **Procedure for dealing with blood specimens:** Provides for how blood specimens are dealt with for testing purposes;
- (o) **Private analyst:** Provides for the right of drivers to request for a blood specimen to be analysed by a private analyst;
- (p) **Certificates of blood alcohol in proceedings:** Provides for certificates relating to blood tests to be used as evidence in proceedings for the offence;
- (q) **Certificates of compliance for evidential breath testing devices:** Requires senior police officers to issue a certificate of compliance for breath testing devices, which can also be used as evidence in proceedings for the offence;
- (r) **Presumptions relating to blood specimens:** Creates a presumption that a certificate stating the identity of a person from whom a blood specimen was taken, correctly identifies the driver as the person from whom the blood was taken;
- (s) **Presumptions in relation to alcohol tests:** Creates a presumption that the amount of alcohol that was present in the breath of the driver is the amount indicated by the test;
- (t) **Circumstances in which certificates not admissible in proceedings:** A certificate may not be admissible if the court orders the author to appear as a witness to testify on the matters in the certificate;
- (u) **Failure or refusal to remain at specified place or to accompany [enforcement officer]:** Creates certain offences, such as, failing to remain at the place where the person underwent a breath screening test until the result is ascertained;
- (v) **Failure or refusal to permit blood specimen to be taken:** Creates certain offences, such as, failure to permit a blood specimen to be taken when required to do so;
- (w) **Drivers and other road users to comply with directions of [enforcement officers], etc.:** Creates certain offences for failing to comply with requirements relating to the administration of breath or blood tests;
- (x) **Defences:** Provides defences to certain offences; and
- (y) **Arrest of persons for blood or drug-related offences, or assault on [enforcement officers]:** Empowers enforcement officers to arrest, without a warrant, a person suspected of committing an offence, or assaulting an enforcement officer.

### 3.3.5.3. Suggested draft legislative provisions

Suggested draft legislation in the form of Drink driving provisions is presented in Annex 2-2.

[ [Annex 2-2 – Drink driving provisions](#) ]

## 3.3.6 Permitted hours of sale

### 3.3.6.1 Policy objective and rationale

The policy objective is to ensure that the permitted hours of sale of liquor are stated in the principal legislation. It should not be a discretionary matter to be fixed by the licensing authority. The rationale is to regulate the sale and consumption of liquor and to minimise alcohol abuse.

### 3.3.6.2 Legislation plan

Provisions will cover the following matters:

- (a) **Permitted hours for on-licences and off-licences:** Provides for the permitted operating hours of a liquor licensed business depending on their licence type; and
- (b) **Permitted hours for special licences:** Provides for permitted hours for sale or supply of liquor under a special licence.

### 3.3.6.3 Suggested draft legislative provisions

Suggested draft legislation in the form of a Liquor Control Bill is presented in Annex 2-1. Elements of the Bill specific to hours of sale can be found in Part 4 (Permitted hours).

[ [Annex 2-1 – Liquor Control Bill | Part 4 – Permitted hours](#) ]

## CHAPTER 4: HEALTH PROMOTION

### 4.1 Policy objective and rationale

The policy objective is to establish a Health Promotion Foundation to provide educational and awareness programmes on health promotion, and a Health Promotion Fund to resource health promotion or prevention activities including the early detection of disease, and research and development activities related to health promotion.

The policy rationale is to:

- (a) encourage healthy lifestyles in the community and support activities involving participation in healthy pursuits;
- (b) mobilise new resources for promoting health;
- (c) support research and innovation; and
- (d) strengthen health promotion capacity.

### 4.2 Legislation plan

Part 1 (Preliminary matters) provides for the title, commencement, interpretation and object of the Act.

Part 2 (Health Promotion Foundation) covers the following provisions:

- (a) **Establishment:** Provides for the establishment of the Health Promotion Foundation as a statutory body with legal personality. Instructions are also provided for establishing the Foundation without a legal personality, should this be preferred by individual PICTs;
- (b) **Board:** Establishes the Board of the Foundation, and its members, and provides for the appointing authority;
- (c) **Terms and allowance:** Provides for the terms of appointment of members of the Board and the entitlement to sitting allowances;
- (d) **Resignation, suspension, etc:** Provides for the right of Board members to resign. It also provides for suspension and revocation (including grounds for suspension and revocation) of Board members by the appointing authority;
- (e) **Functions:** Lists the functions of the Foundation relating to health promotion activities;
- (f) **Meetings and declaration of interests:** Provides for the rules of Board meetings and the duty of members to declare their interests on any matter before the Board;
- (g) **Committees:** Provides the Board with the power to appoint committees. The main function of a committee is to advise the Board on the functions, duties and powers of the Foundation;
- (h) **Delegation:** Empowers the Board to delegate any duty or power of the Foundation; and
- (i) **Chief Executive Officer and employees:** Establishes the position of Chief Executive Officer of the Foundation and provides for the appointment of employees.

Part 3 (Health Promotion Fund) covers the following provisions:

- (a) **Establishment and source:** Establishes the Health Promotion Fund and its funding sources;
- (b) **Management of the Fund:** Establishes the obligations of the Board pertaining to the management and control the Fund;
- (c) **Eligible entities:** Lists the entities that are eligible to apply for health promotion funding from the Fund;
- (d) **Granting of funding:** Empowers the Board to grant application for funding from the Fund;
- (e) **Matters to take into account when approving funding:** Lists the matters that the Board are to take into account when considering an application for funding from the Fund;
- (f) **Activities eligible or not eligible for funding:** Lists the activities that are eligible and those that are not eligible for funding;
- (g) **Control of funding:** Provides for the duties of entities that receive funding, such as reporting on how funding is used by the entity. It also provides the functions of the Ministry in safeguarding the Fund;
- (h) **Annual budget:** Provides for the duty of the Board to prepare a draft annual budget for the Fund;
- (i) **Control of the Fund:** Provides for the control of the Fund under the Public Finance Management Act and the Audit Act. It also provides for the duty of the Board to maintain a state of audit readiness of financial records of the Fund;
- (j) **Keeping of financial documents:** Provides for financial documents of the Fund to be kept for a designated number of years;
- (k) **Investment:** Allows for surplus from the Fund to be invested;
- (l) **Tax exemption:** Provides that the Fund is exempt from tax; and
- (m) **Annual reports:** Provides for the duty of the Board to prepare annual reports on the Fund to be tabled or presented in Parliament.

Part 4 (Miscellaneous) covers the following provisions:

- (a) **False information:** Creates an offence for obtaining financial assistance or benefit from the Fund by providing false or misleading information;
- (b) **Personal liability:** Exempts those carrying out duties and powers (such as Board members) from being sued in person;
- (c) **Ministerial directions:** Empowers the Minister to issue general policy directions relating to the Foundation or Act;
- (d) **Regulations:** Provides for the power to make regulations;
- (e) **Consequential amendments:** Provides for consequential amendments to other Acts relating to the establishment of the Health Promotion Foundation; and
- (f) **Transition and saving:** Provides for any transitional or saving matters.

### 4.3. Suggested draft legislative provisions

Suggested draft legislation in the form of a Health Promotion Foundation Bill is presented in Annex 3.

#### [ Annex 3 – Health Promotion Foundation Bill ]

Individual PICTs should consider whether they need this separate legislation to establish the Health Promotion Foundation and Health Promotion Fund, or whether it may be possible to adopt the establishment in existing legislation.

# CHAPTER 5: BREASTFEEDING PROMOTION AND PROTECTION

## 5.1 Overall policy objective and rationale

The overall policy objective is to give effect to, and implement, the WHO International Code of Marketing of Breastmilk Substitutes<sup>29</sup> (the Code) and any relevant subsequent resolutions on the Code by the World Health Assembly.

The policy rationale is:

- (a) to encourage, promote, protect, and support breastfeeding:
  - (i) as vital to primary health care and the healthy growth and development of infants (under six months) and young children (six months to three years);<sup>30</sup>
  - (ii) in order to reduce the risk of infectious diseases in infants and young children and to contribute to the health of mothers (such as, reducing the risk of breast or ovarian cancer and increasing the space between pregnancies);<sup>31</sup> and
  - (iii) in order to ensure and protect the rights of infants to adequate nourishment and the rights of young children and their mothers to attain and maintain their health;
- (b) to regulate:
  - (i) the marketing and promotion of breastmilk substitutes and other food products manufactured for infants and young children and of feeding bottles, teats and pacifiers so that the marketing of such products does not interfere with encouraging, promoting, protecting and supporting breastfeeding;<sup>32</sup>
  - (ii) the use, dissemination and contents of informational and educational materials about feeding infants and young children;
  - (iii) health care facilities and health workers when encouraging, promoting, protecting, and supporting breastfeeding;
  - (iv) the manufacturers and distributors of breastmilk substitutes when marketing and promoting their products, in particular through health facilities or systems and health workers; and
  - (v) the labelling of breastmilk substitutes;
- (c) to provide for objective and consistent information and advice about breastfeeding and the appropriate use of breastmilk substitutes;<sup>33</sup>
- (d) to give effect to, and implement, obligations under Article 24 of the Convention on the Rights of the Child<sup>34</sup> in respecting, protecting, and fulfilling a child's right to attain the highest standard of health; and

<sup>29</sup> World Health Organization. 1981. International Code of Marketing of Breastmilk Substitutes. Available at: [https://www.who.int/nutrition/publications/code\\_english.pdf](https://www.who.int/nutrition/publications/code_english.pdf)

<sup>30</sup> See paragraphs 2, 3 and 5 of Preamble of Code.

<sup>31</sup> See paragraph 4 of Preamble of Code.

<sup>32</sup> See paragraphs 6 and 7 of Preamble of Code.

<sup>33</sup> See paragraph 10 of Preamble of Code.

<sup>34</sup> United Nations Convention on the Rights of the Child. 1990. Available at: <https://www.ohchr.org/en/professionalinterest/pages/crc.aspx>

- (e) to harness political commitment to encourage, promote, protect, and support breastfeeding through policy initiatives and legislation.

## 5.2 Main scheme for the Regulations

The main areas for the Regulations are:

- (a) purpose clause for the Regulations;
- (b) sale, advertisement and promotion of breastmilk substitutes;
- (c) labelling of breastmilk substitutes;
- (d) informational and educational materials;
- (e) health facilities and health workers; and
- (f) administration, monitoring and enforcement.

### 5.2.1 Purpose clause for the Regulations

#### 5.2.1.1 Policy objective and rationale

The policy objective is to list the purpose of the Regulations. The policy rationale is:

- (a) to make a list of general policy statements about regulating the Code;
- (b) to help the courts identify the purpose and intent of the law when interpreting the Regulations; and
- (c) to link the Regulations to the relevant general health grounds stated in the bills of rights provisions under the constitutions of PICTs, including certain human rights issues, such as the Convention of the Rights of the Child.

The purpose clause is part of the preliminary section of the Regulations. It includes a provision stating the right of mothers to breastfeed their babies in public places.

#### 5.2.1.2 Legislation plan

The preliminary section of the Regulations covers the following:

- (a) **Citation and commencement:** Provides for the citation and commencement provisions of the Regulations;
- (b) **Definitions:** Provides definitions for selected terms used in the Regulations;
- (c) **Purpose of Regulations:** Lists the policy intents and purpose of the Regulations;<sup>35</sup> and
- (d) **Right to breastfeed:** Protects the right of mothers to breastfeed their babies in a public place, on public transport and in workplace. It extends to “wet nurses” who breastfeed babies of another mother.

<sup>35</sup> The purpose clause for legislation sets out the general policy intents and purpose of the legislation. It differs from the Scope in Article 2 of the Code which is an application provision.

### 5.2.1.3 Suggested draft legislative provisions

Suggested draft legislation in the form of Food (Breastfeeding Promotion and Protection) Regulations is presented in Annex 4. Elements of the Regulations specific to the purpose clause can be found in Part 1 (Preliminary).

[ [Annex 4 – Food \(Breastfeeding Promotion and Protection\) Regulations | Part 1 – Preliminary](#) ]

## 5.2.2 Sale, advertisement and promotion of breastmilk substitutes

### 5.2.2.1 Policy objective and rationale

The policy objective is to regulate the sale, advertisement and promotion of breastmilk substitutes. The policy rationale is to ensure the safety, quality and appropriate use of breastmilk substitutes.

### 5.2.2.2 Legislation plan

The provisions cover the following:

- (a) **Definitions:** Provides for key terms specific to this part of the Regulations;
- (b) **Infant formula and follow-on formula:** Provides that any person who sells infant formula and follow-on formula must ensure that the formula conforms to standards, is safe, and is suitable for its intended use. It also creates an offence for contravening this provision;
- (c) **Infant formula for special dietary use:** Provides that any person who sells infant formula for special dietary use must comply with requirements set out for infant formula and any other nutritional requirement. It also creates an offence for contravening this provision;
- (d) **Standards for breastmilk substitutes:** Provides that breastmilk substitutes comply with the relevant standards and that any person who manufactures or distributes a breastmilk substitute complies with, and reports on, marketing practices. It also creates an offence for contravening this provision;
- (e) **Sale of breastmilk substitutes:** Creates an offence for any person who sells a product for feeding of infants which is not a breastmilk substitute;
- (f) **Advertisement and promotion:** Establishes strict conditions regarding the advertisement and promotion of breastmilk substitutes; and
- (g) **Declaration of other breastmilk substitutes:** Provides for the power to declare a product as a breastmilk substitute.

### 5.2.2.3 Suggested draft legislative provisions

Suggested draft legislation in the form of Food (Breastfeeding Promotion and Protection) Regulations is presented in Annex 4. Elements of the Regulations specific to the sale, advertisement and promotion of breastmilk substitutes can be found in Part 2 (Breastmilk substitutes).

[ [Annex 4 – Food \(Breastfeeding Promotion and Protection\) Regulations | Part 2 – Breastmilk substitutes](#) ]



## 5.2.3 Labelling of breastmilk substitutes

### 5.2.3.1 Policy objective and rationale

The policy objective is to regulate the labelling of breastmilk substitutes. The policy rationale is to ensure that:

- (a) labels provide warnings about using breastmilk substitutes and the risks of improper use, preparation and storage; and
- (b) labelling does not employ terms or representations that give preference to breastmilk substitutes over breastfeeding, or to imply that breastmilk substitutes are equivalent or equal to breastmilk or breastfeeding.

### 5.2.3.2 Legislation plan

The legislation plan for labelling requirements covers the following matters:

- (a) **General labelling requirements for breastmilk substitutes:** Prohibits the sale of breastmilk substitutes unless they comply with labelling requirements;
- (b) **Labelling of breastmilk substitutes that may be modified for infant feeding:** Provides for labelling of breastmilk substitutes that may be modified to meet the requirements for infant formula;
- (c) **Labelling requirements for infant formula, follow-on formula and young child formula:** Provides the labelling requirements for infant formula and follow-on formula. It also prohibits the sale of items with non-compliant labelling;
- (d) **Labelling requirements for ready-to-feed therapeutic food or complementary food products:** Regulates certain representations (such as pictures of infants) on the labelling of ready-to-feed therapeutic food or complementary food products. It also creates an offence for contravening this provision;
- (e) **Labelling of skimmed or condensed milk and low-fat and standard milk:** Prohibits the sale of skimmed milk, condensed milk and low-fat milk unless the labelling specifies that the product is not to be used for feed infants aged under specified months. It also creates an offence for contravening this provision; and
- (f) **Labelling of feeding bottles, teats and pacifiers:** Specifies labelling requirements for feeding bottles, teats and pacifiers. It also creates an offence for contravening this provision.

### 5.2.3.3 Suggested draft legislative provisions

Suggested draft legislation in the form of Food (Breastfeeding Promotion and Protection) Regulations is presented in Annex 4. Elements of the Regulations specific to the labelling of breastmilk substitutes can be found in Part 3 (Labelling of breastmilk substitutes).

[ Annex 4 – Food (Breastfeeding Promotion and Protection) Regulations | Part 3 – Labelling of Breastmilk substitutes ]

## 5.2.4 Informational and educational materials

### 5.2.4.1 Policy objective and rationale

The policy objective is to regulate the content of information and educational materials (written, audio or visual) on infant feeding and breastmilk substitutes. The policy rationale is to:

- (a) ensure that adequate information and education is provided on the use of breastmilk substitutes and bottle feeding, in order to minimise risks associated with breastmilk substitutes; and
- (b) encourage, promote, protect and support breastfeeding and reduce risks associated with inappropriate feeding practices that are not related to breastmilk substitutes.

In this Part, “information” refers to informational and educational materials relating to breastmilk substitutes.

### 5.2.4.2 Legislation plan

The legislative provisions will cover:

- (a) **Definitions:** Defines terms for this Part of the Regulations;
- (b) **Information on infant feeding:** Provides for the provision of information about the feeding of infants and young children to be correct and clear on the superiority of breastfeeding. Prohibits the use of information that directly or indirectly implies that breastmilk substitutes are superior or equal to breastfeeding or breastmilk;
- (c) **Information on breastmilk substitutes:** Provides for the provision of information on how to safely prepare, store and use breastmilk substitutes, how to feed an infant with a cup, and information on any health risks; and
- (d) **Exempted information:** Provides for the provision of certain types of exempted information (such as scientific or factual information) to be given to professional health workers.

### 5.2.4.3 Suggested draft legislative provisions

Suggested draft legislation in the form of Food (Breastfeeding Promotion and Protection) Regulations is presented in Annex 4. Elements of the Regulations specific to information and educational materials can be found in Part 4 (Informational and educational materials).

[ [Annex 4 – Food \(Breastfeeding Promotion and Protection\) Regulations | Part 4 – Informational and educational materials](#) ]

## 5.2.5 Health facilities and health workers

### 5.2.5.1 Policy objective and rationale

The main policy objective is to ensure that health workers<sup>36</sup> encourage, promote, protect and support breastfeeding. The policy rationale is to:

- (a) ensure that health workers take measures to encourage, promote, protect and support breastfeeding;

<sup>36</sup> It is important to include allied health workers alongside health workers as some PICTs have legislation that regulates allied health workers which is defined to include, inter alia, nutritionists and dietitians. For example, see Fiji's Allied Health Practitioners Act 2011 which defines an allied health worker under section 2 of that Act.

- (b) avoid conflicts of interest and to ensure that health workers do not receive gifts, benefits, or inducements that may affect their duties to encourage, promote, protect and support breastfeeding; and
- (c) ensure that health workers are not involved in the marketing or promotion of breastmilk substitutes.

#### 5.2.5.2 Legislation plan

The provisions about the statutory duties of health facilities and health workers cover the following:

- (a) **Heads of health care facilities:** Provides for the duties of heads of health care facilities (including the duty to encourage, promote, protect and support breastfeeding and to inform other health workers of their duties);
- (b) **Promotion at health care facilities:** Prohibits the promotion of breastmilk substitutes at or by health care facilities;
- (c) **Demonstrations at health care facilities:** Prohibits the demonstration of breastmilk substitutes in health care facilities;
- (d) **Donations to institutions and organisations:** Permits donations of breastmilk substitutes to institutions and organisations;
- (e) **Duties of health workers:** Requires health workers to encourage, promote, protect and support breastfeeding and to know their duties under the Regulations;
- (f) **Health workers not to accept gifts, etc.:** Prohibits health workers from accepting gifts, contributions, sponsorship, giving or accepting samples, and demonstrating the use of infant formula except when explaining the risks of infant formula;
- (g) **Manufacturers and distributors:** Prohibits manufacturers and distributors from giving gifts to health facilities or health workers; and
- (h) **Defence:** Provides for defence against offences for heads of health care facilities and health workers.

#### 5.2.5.3 Suggested draft legislative provisions

Suggested draft legislation in the form of Food (Breastfeeding Promotion and Protection) Regulations is presented in Annex 4. Elements of the Regulations specific to health facilities and health workers can be found in Part 5 (Health facilities and health workers).

[ [Annex 4 – Food \(Breastfeeding Promotion and Protection\) Regulations](#) | [Part 5 – Health facilities and health workers](#) ]

## 5.2.6 Administration, monitoring, enforcement and miscellaneous

### 5.2.6.1 Policy objective and rationale

The objective is to set out the administration and enforcement provisions for the Regulations. The rationale is to ensure that the Regulations are administered, monitored and enforced to achieve the purposes of the Regulations.

The administration, monitoring and enforcement provisions in the Regulations must take into account any similar provisions in the principal Food Act. This will ensure that similar administration, monitoring or enforcement provisions in the principal Food Act are not repeated in the Regulations.

#### 5.2.6.2 Legislation plan

The provisions for administration, monitoring and enforcement cover the following:

##### ***Division 1 - Administration***

- (a) **Definitions:** Defines terms used specifically in these parts of the Regulations;
- (b) **Duties of [CEO/PS Health]:** Sets out duties to administer the Regulations (such as, the duties to make policies relating to the Regulations, to coordinate implementation, and to ensure that the Regulations are enforced); and
- (c) **Committees:** Empowers the Minister to appoint advisory committees, including the functions of committees to advise on national policy for the purpose of the Regulations.

##### ***Division 2 – Enforcement and monitoring***

- (a) **Enforcement officers:** Provides for the power to appoint persons as enforcement officers. It also deems certain public officers, such as police officers, to be enforcement officers;
- (b) **Powers of enforcement officers:** Provides for the powers of enforcement officers relating to enforcement, such as, to enter and inspect places where breastmilk substitutes may be manufactured and sold;
- (c) **Power to issue cease and desist orders:** Empowers enforcement officers to issue cease and desist orders;
- (d) **Warrants for place of residence:** Requires warrants if the place to be inspected is a place of residence;
- (e) **Power to prosecute:** Provides for the power of enforcement officers to conduct proceedings for offences under the Regulations;
- (f) **Consumer complaints:** Provides for consumer complaint mechanisms;
- (g) **Product recall:** Provides for the power to recall breastmilk substitutes that do not comply with the requirements of the Regulations;
- (h) **Obstruction etc. of enforcement officers:** Provides for the offence of obstructing an enforcement officer;
- (i) **Infringement notices for spot fines:** Provides for the power to issue infringement notices for spot fine offences;
- (j) **Service of infringement notices:** Provides for the service of infringement notices;
- (k) **Director's, etc., liability:** A provision that makes directors, officers or relevant persons, of a company liable to the offence that the company commits; and

- (l) **Penalties:** A schedule that sets out:
  - (i) in Part 1, the fixed penalties for spot fines; and
  - (ii) in Part 2, the penalties for offences.

#### **Part 7 (Miscellaneous)**

- (a) **Immunity from personal liability:** Protects any person carrying out their function, duty or power in good faith from being sued personally; and
- (b) **Repeal/consequential amendments:** Covers any repeal or consequential amendments to other regulations if required.

#### 5.2.6.3 Suggested draft legislative provisions

Suggested draft legislation in the form of Food (Breastfeeding Promotion and Protection) Regulations is presented in Annex 4. Elements of the Regulations specific to administration, monitoring and enforcement can be found in Part 6 (Administration, monitoring and enforcement) and Part 7 (Miscellaneous).

[ [Annex 4 – Food \(Breastfeeding Promotion and Protection\) Regulations | Part 6 – Administration, monitoring and enforcement](#) ]

[ [Annex 4 – Food \(Breastfeeding Promotion and Protection\) Regulations | Part 7 – Miscellaneous](#) ]

# CHAPTER 6: REGULATING THE MARKETING OF UNHEALTHY FOODS AND SUGAR-SWEETENED BEVERAGES TO CHILDREN

## 6.1 Policy objective and rationale

The policy objective is to regulate the marketing of unhealthy foods<sup>37</sup> and sugar-sweetened beverages<sup>38</sup> (SSBs) to children.

The rationale is:

- (a) to reduce children's consumption of unhealthy food and SSBs, thereby protecting them from the health risks associated with the consumption of such products;
- (b) to ensure that children and their parents or guardians are aware of the health risks associated with consuming unhealthy foods and SSBs; and
- (c) to create an environment that is conducive to good nutrition for children by reducing their exposure to the marketing of unhealthy foods and SSBs.

## 6.2 Legislation plan

Part 1 (Preliminary provisions) provides for the title, commencement, definitions and purposes of the Regulations.

Part 2 (Marketing of designated products) of the Regulations covers the following areas:

- (a) **Designated products:** Provides for the power to designate unhealthy food and beverages as designated products and list them in Schedule 1. Unhealthy foods and beverages are defined in line with a nutrient profile model adopted/endorsed by the government. If a food or beverage falls above the thresholds established in the model, or if it belongs to a category for which all marketing is prohibited, where no thresholds are established, it is considered "unhealthy";
- (b) **Advertising designated products:** Prohibits certain forms of advertising and promotion of designated products. It further provides for matters to take into account when determining the effect of advertising on children;
- (c) **Appearance of photos, etc., of children in advertising:** Prohibits any arrangement, authorisation, etc., for a child to appear in the advertising of designated products;
- (d) **Use of well-known persons or characters:** Prohibits the use of celebrities or personalities, or film or cartoon characters (well-known or likely to appeal) in advertising to children;
- (e) **Use of games, internet, etc.:** Prohibits the use of games, internet sites, etc., intended to appeal to children when advertising designated products;
- (f) **Broadcast restrictions:** Prohibits the broadcast of advertising for designated products between certain times;<sup>39</sup>

<sup>37</sup> Unhealthy foods are defined as food products that are high in free salt, free sugars, saturated fats and trans-fatty acid.

<sup>38</sup> World Health Organization. 2020. Regional action framework on protecting children from the harmful impact of food marketing in the Western Pacific. Available at: <https://iris.wpro.who.int/handle/10665.1/14501>

<sup>39</sup> The Cook Islands example is between 6am and 6pm.

- (g) **Advertising in schools, etc.:** Prohibits the advertising of designated products in schools;
- (h) **Use of brand:** Prohibits the use of designated product brands on articles for use by children or for children's activities; and
- (i) **Premiums:** Prohibits the supply or offer of premiums to promote designated products or to package designated products in a manner that is directed to children.

Part 3 (Administration) of the Regulations covers the following areas:

- (a) **Functions:** Provides for the functions of the Regulations, including administration, policy formulation and review.

Part 4 (Monitoring and enforcement) of the Regulations covers the following areas:

- (a) **Enforcement officers:** Provides for the power to appoint persons as enforcement officers. It also deems certain public officers, such as police officers and customs officers, to be enforcement officers;
- (b) **Powers of enforcement officers:** Provides for the powers of enforcement officers relating to enforcement, such as, to enter and inspect places where designated products may be manufactured and sold;
- (c) **Power to issue desist orders:** Empowers enforcement officers to issue desist orders;
- (d) **Power to prosecute:** Provides for the power of enforcement officers to conduct proceedings for offences under the Regulations;
- (e) **Warrants for place of residence:** Requires a warrant to enter and inspect residential places;
- (f) **Consumer complaints:** Provides for consumer complaint mechanisms;
- (g) **Product recall:** Provides for the power to recall designated products that contravene the Regulations;
- (h) **Obstruction, etc., of enforcement officers:** Provides for the offence of obstructing an enforcement officer;
- (i) **Infringement notices for spot fines:** Provides the power to issue infringement notices for spot fines;
- (j) **Service of infringement notices:** Provides for the service of infringement notices to be done pursuant to the court rules. It further deems an infringement notice as a summons issued by the courts for initiation of court proceedings for the offences in the infringement notice if the offender denies the offence;
- (k) **Directors, etc., liability:** Makes a director liable for an offence committed by the company unless the director proves that the act was done without their knowledge, connivance or consent; and
- (l) **Penalties:** Provides for fixed and maximum penalties (listed in Schedule 2) for offences against the Regulations.

Part 5 (Miscellaneous) of the Regulations covers the following areas:

- a) **Immunity from personal liability:** Protects any person carrying out their function, duty or power in good faith from being sued personally; and
- b) **Repeal/consequential amendments:** Provides for repeals and amendments to other existing regulations on marketing of unhealthy foods and SSBs.

Schedule 1: Provides for the listing of designated products.

Schedule 2: Provides for the listing of fixed penalties for spot-fine offences (Part 1), maximum penalties for offences (Part 2) and the Infringement Notice Form (Part 3).

## 6.3 Suggested draft legislative provisions

Suggested draft legislation in the form of Food (Marketing of Unhealthy Food and Sugar-sweetened Beverages to Children) Regulations is presented in Annex 5.

[ [Annex 5 – Food \(Marketing of Unhealthy Food and Sugar-sweetened Beverages to Children\) Regulations](#) ]



# CHAPTER 7: REDUCING THE CONSUMPTION OF SALT, SUGAR AND TRANS-FAT

## 7.1 Salt

### 7.1.1 Policy objective and rationale

The policy objective is to regulate the amount of free salt in food products. This can be achieved by regulating salt content across the food supply through:

- (a) adopting standards for the labelling of salt in processed foods;<sup>40</sup>
- (b) setting mandatory maximum levels of salt in processed foods;
- (c) reformulating salt levels in processed food products;
- (d) regulating health claims relating to salt content in foods; and
- (e) developing, implementing and monitoring strategies and policies to reduce the consumption of salt.

The policy rationale is to reduce salt intake to prevent increased risk of developing NCDs, such as heart disease and stroke.

### 7.1.2 Legislation plan

Part 1 (Preliminary) of the Regulations provides for the title, commencement, definitions and purpose of the Regulations.

Part 2 (Salt) of the Regulations covers the following areas:

- (a) **Standards on salt:** Prohibits the sale or supply of salt for food processing or for direct consumption unless the salt complies with Codex standards for food grade salt,<sup>41</sup> Codex guidelines on nutrition labelling,<sup>42</sup> and the Codex guidelines for use of nutrition and health claims;<sup>43</sup>
- (b) **Packaging and storage:** Provides for the proper packaging and storage of salt;
- (c) **Health claims:** Specifies the thresholds required to make health claims related to levels of salt and sodium, such as “low salt”, and creates an offence for contravening the provisions;
- (d) **Mandatory salt limit in processed food products:** Regulates the maximum level of salt in processed food products and creates an offence to sell or supply any processed food product that exceeds the maximum limit of salt;
- (e) **Monitoring of salt content in processed food products:** Provides for the monitoring of salt content in processed food products;

<sup>40</sup> Codex standards for labelling of pre-packaged foods. CXS 1-1985 Revised in 2018.

<sup>41</sup> Codex standards for food grade salt. CODEX STAN 150-1985.

<sup>42</sup> Codex guidelines on nutrition labelling CAC/GL 2-1985. Revised 2017.

<sup>43</sup> Codex guidelines for use of nutrition and health claims. CAC/GL 23-1997. Revised 2013.

- (f) **Reformulation to reduce salt level:** Provides for the process to reformulate processed food products with a high salt level; and
- (g) **Duties of owners of restaurants:** Requires the owners of designated restaurants to display warnings on the health risks associated with consuming excess salt and the duty to not place free salt on food serving tables.

### 7.1.3 Suggested draft legislative provisions

Suggested draft legislation in the form of Food (Salt, Sugar and Trans-fat) Regulations is presented in Annex 6. Elements of the Regulations specific to title, commencement, definitions and purpose can be found in Part 1 (Preliminary). Elements of the Regulations specific to salt can be found in Part 2 (Salt).

[\[ Annex 6 – Food \(Salt, Sugar and Trans-fat\) Regulations | Part 1 – Preliminary \]](#)

[\[ Annex 6 – Food \(Salt, Sugar and Trans-fat\) Regulations | Part 2 – Salt \]](#)

## 7.2 Sugar

### 7.2.1 Policy objective and rationale

The policy objective is to regulate the level of free or added sugar used in food products and to ensure compliance with nutrition labelling standards. The term “sugar” refers to sugar regulated under any Codex standard. Please note that Chapter 6 covers marketing of SSBs to children.

The policy rationale is to reduce or prevent NCDs associated with the high intake of sugar.

### 7.2.2 Legislation plan

Part 3 (Sugar) of the Regulations covers the following areas:

- (a) **Sugar standards:** Prohibits selling or supplying sugar for food processing or for direct consumption unless the sugar complies with Codex standards for sugar;<sup>44</sup>
- (b) **Monitoring of sugar content in processed food products:** Provides for the monitoring of sugar content in processed food products;
- (c) **Mandatory sugar limits in processed food products:** Regulates the maximum level of sugar in processed food products and creates an offence to sell or supply any processed food product that exceeds the maximum limit of sugar;
- (d) **Reformulation to reduce sugar level:** Provides for the process to reformulate processed food products with a high sugar level; and
- (e) **Health claims and Codex Alimentarius:** Specifies the thresholds required to make health claims related to levels of sugar, such as “low sugar”, in compliance with the Codex standards on nutrition labelling and Codex guidelines for use of nutrition and health claims, and creates an offence for contravening the provisions.

<sup>44</sup> Codex standards for sugar CXS 212-1999. Revised 2019.

### 7.2.3. Suggested draft legislative provisions

Suggested draft legislation in the form of Food (Salt, Sugar and Trans-fat) Regulations is presented in Annex 6. Elements of the Regulations specific to sugar can be found in Part 3 (Sugar).

[ [Annex 6 – Food \(Salt, Sugar and Trans-fat\) Regulations | Part 3 – Sugar](#) ]

## 7.3 Trans-fatty acids

### 7.3.1 Policy objective and rationale

The policy objective is to eliminate industrially produced trans-fatty acids (trans-fat) from the national food supply in line with WHO's goal of eliminating industrially produced trans-fatty acids by 2023.<sup>45</sup>

The policy rationale is to reduce or prevent the risk of cardiovascular disease, type 2 diabetes and obesity.

The regulation of industrially produced trans-fat does not include naturally occurring trans-fat in meat or dairy products from ruminant animals such as cattle, sheep, goats and camel.

The recommendation is either to prohibit or strictly limit the use of trans-fat in any food. Each PICT should assess the trans-fat source, the supply chain, stakeholders, regulatory agencies, legal processes<sup>46</sup> and requirements in order to determine the most effective way of regulating trans-fat either by prohibiting or limiting its use in food supply.

The main target for legislative measures is to eliminate partly hydrogenated oils from the food supply.

Limiting trans-fat involves fixing a maximum limit (usually set at two per cent) of trans-fat in vegetable oils and margarines, and a maximum limit (usually set at five per cent) of trans-fat in other processed foods. The process of limitation should be used as a transitional measure leading to a total ban on trans-fat in the food supply.

Each PICT should assess any potential impact of regulating trans-fat under the relevant regional trade and WTO agreements. This should involve notifications of their concerns about the policies before regulations are made.

### 7.3.2 Legislation plan

Part 4 (Trans-fat) of the Regulations covers the following areas:

- (a) **Restrictions:** Provides for the limitation of trans-fat, with designated maximum levels, as a transitional measure in advance of prohibition;
- (b) **Prohibition on the use of trans-fat:** Provides for a total ban on the use of trans-fat in food processing or manufacturing;
- (c) **Mandatory trans-fat limit in processed food products:** Regulates the maximum level of trans-fat in processed food products;

<sup>45</sup> World Health Organization. 2020. Countdown to 2023: WHO report on global trans-fat elimination. Available at: <https://apps.who.int/iris/handle/10665/334170>

<sup>46</sup> World Health Organization. 2019. REPLACE action package, Module 3: Legislate or regulate. How-to guide for trans-fat policy action. Available at: <https://apps.who.int/iris/bitstream/handle/10665/324822/WHO-NMH-NHD-19.14-eng.pdf>

- (d) **Monitoring of trans-fat content of food:** Provides for the monitoring of trans-fat content in processed food products;
- (e) **Reformulation of food products to reduce trans-fat level:** Provides for the process to reformulate processed food products with high level of trans-fat; and
- (f) **Health claims:** Specifies the thresholds required to make health claims related to levels of trans-fat, such as “low in saturated fat”, and creates an offence for contravening the provisions.

### 7.3.3 Suggested draft legislative provisions

Suggested draft legislation in the form of Food (Salt, Sugar and Trans-fat) Regulations is presented in Annex 6. Elements of the Regulations specific to trans-fat can be found in Part 4 (Trans-fat).

[ [Annex 6 – Food \(Salt, Sugar and Trans-fat\) Regulations](#) | [Part 4 – Trans-fat](#) ]

## 7.4 Administration, monitoring, enforcement and miscellaneous

### 7.4.1 Policy objective and rationale

The objective is to set out the administration and enforcement provisions for the Regulations. The rationale is to ensure that the Regulations are administered, monitored and enforced to achieve the purposes of the Regulations.

The administration, monitoring and enforcement provisions in the Regulations must take into account any similar provisions in the principal Food Act. This will ensure that similar administration, monitoring or enforcement provisions in the principal Food Act are not repeated in the Regulations.

### 7.4.2 Legislation plan

The provisions for administration, monitoring and enforcement (and miscellaneous) are outlined below.

Part 5 (Administration) of the Regulations covers the following areas:

- (a) **National policies for salt, sugar and trans-fat:** Provides the duty to prepare national strategies or policies on salt, sugar and trans-fat; and
- (b) **Functions:** Provides for functions under the Regulations.

Part 6 (Monitoring and enforcement) of the Regulations covers the following areas:

- (a) **Enforcement officers:** Provides for the power to appoint persons as enforcement officers. It also deems certain public officers, such as police officers and customs officers, to be enforcement officers;
- (b) **Powers of enforcement officers:** Provides for the powers of enforcement officers relating to enforcement, such as, to enter and inspect places where designated products may be manufactured and sold;
- (c) **Power to issue desist orders:** Empowers enforcement officers to issue desist orders;

- (d) **Power to prosecute:** Provides for the power of enforcement officers to conduct proceedings for offences under the Regulations;
- (e) **Warrants for places of residence:** Requires a warrant to enter and inspect residential places;
- (f) **Consumer complaints:** Provides for consumer complaint mechanisms;
- (g) **Product recall:** Provides for the power to recall products that do not comply with the requirements of the Regulations;
- (h) **Offence of misleading marketing:** Creates an offence for misleading marketing of salt, sugar and trans-fat;
- (i) **Obstruction, etc., of enforcement officers:** Provides for the offence of obstructing an enforcement officer;
- (j) **Offence of making false, etc., claims:** Provides for the offence of making false claims;
- (k) **Infringement notices for spot fines:** Provides for the issuance of infringement notices for spot fines. The form is provided in Part 3 of the Schedule;
- (l) **Service of infringement notices:** Provides for the service of infringement notices;
- (m) **Director also liable for the offence by the company:** Makes a director liable for an offence committed by the company unless the director proves that the act was done without their knowledge, connivance or consent; and
- (n) **Penalty:** Provides for fixed and maximum penalties (listed in Schedule 2) for offences against the Regulations.

Part 7 (Miscellaneous) of the Regulations covers the following areas:

- (a) **Immunity from personal liability:** Protects any person carrying out their function, duty or power in good faith from being sued personally; and
- (b) **Repeal/consequential amendments:** Provides for repeals and amendments to other existing regulations.

Schedule 1: Provides for the listing of processed food items identified for the maximum salt (Part 1), sugar (Part 2), and trans-fat (Part 3) levels.

Schedule 2: Provides for the listing of fixed penalties for spot-fine offences (Part 1), maximum penalties for offences (Part 2) and the Infringement Notice Form (Part 3).

### 7.4.3 Suggested draft legislative provisions

Suggested draft legislation in the form of Food (Salt, Sugar and Trans-fat) Regulations is presented in Annex 6. Elements of the Regulations specific to administration can be found in Part 5 (Administration). Elements of the Regulations specific to monitoring and enforcement can be found in Part 6 (Monitoring and enforcement). Miscellaneous provisions of the Regulations can be found in Part 7 (Miscellaneous).

[\[ Annex 6 – Food \(Salt, Sugar and Trans-fat\) Regulations | Part 5 – Administration \]](#)

[\[ Annex 6 – Food \(Salt, Sugar and Trans-fat\) Regulations | Part 6 – Monitoring and enforcement \]](#)

[\[ Annex 6 – Food \(Salt, Sugar and Trans-fat\) Regulations | Part 7 – Miscellaneous \]](#)

# CHAPTER 8: NCD TAXATION MEASURES

## 8.1 Introduction

The imposition of tax on tobacco products, unhealthy foods, sugar-sweetened beverages and alcohol (liquor) has proven to be one of the most cost-effective measures preventing NCDs. This with other policy measures such as restrictions on marketing for these products helps ensure the effectiveness of tax measures on reducing the consumption of these NCD risk factors.

Such legislative measures are effective as they:

- (a) raise the price and reduce the affordability of such products;
- (b) discourage the consumption of harmful products that cause NCDs and associated harms. For instance, in the case of tobacco tax, higher taxes encourage cessation and prevent initiation of tobacco use or in the case of alcohol it prevents the initiation of drinking, which is an important preventive strategy in low- and middle-income countries that have a high prevalence of lifetime abstainers;<sup>47</sup> and
- (c) raise government revenue.

NCD taxation measures can include the imposition of taxes on tobacco products, alcohol, and unhealthy food and beverages. They may also include reducing or subsidising the tax on healthy foods, in particular fruits and vegetables. However, caution needs to be exercised to ensure that any government tax policy does not discriminate between imported and local products, as required under WTO rules.

Tax legislation is the statutory authority that regulates tax for a country, which is either the excise tax or import tax, including other consumption or sales tax such as a value added tax.

It is important to note that policy and tax measures are usually introduced in the budget of the government of the day, which will be covered in the relevant Minister's budget address, the Bills to reflect the changes proposed, as well as the proposed Budget estimates and narratives.

These Bills will involve, inter alia, amending these tax related legislations:

- (a) Excise Act – if the government wishes to impose an excise duty or tax on locally manufactured goods;
- (b) Customs Tariff Act – if the government wishes to impose an import tax on goods that are imported into the country. This tax can be complicated as it involves examining the World Customs Organization's Harmonised System which includes customs codes and standardisation for the broadest categories of products, inter alia issues. There are rules of origin that may apply as well; and
- (c) Value Added Tax Act (or VAT) if applicable. In some countries it is referred to as a Goods and Services tax.

Note that tax measures can also be introduced in a government's supplementary budget and or in budget due to extraordinary circumstances such as the global COVID-19 pandemic.

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<sup>47</sup> World Health Organization. 2017. Resource tool on alcohol taxation and pricing policies. Available at: <https://apps.who.int/iris/rest/bitstreams/1086244/retrieve>

When designing the content and type of tax, the following elements of a tax legislative provision must be considered:<sup>48</sup>

- (a) the measure or matter to be taxed;

For example, if SSBs are to be taxed, then the exact matter that is taxed needs to be determined, such as whether the nutrient contents or liquid volume, etc., is taxed.<sup>49</sup> Deciding the object is important as it may give rise to consumers moving to another substitute, such as natural fruit juices. Products that have been taxed include confectionery, ice-cream, soft drinks, drinks with added sugar, artificially sweetened drinks, energy drinks, salted snacks, condiments, fruit jam, flavoured alcohol drinks, high energy-dense food, and alcoholic beverages with added sugar.<sup>50</sup>

- (b) the tax rate;

The second element deals with tax rates. The main issue is to fix a rate that will have an effect on changing consumption behaviour. The higher the tax rate, the stronger it will influence behavioural change. A low tax rate will not have strong influence.<sup>51</sup> The relationship between increase in price through tax increases and the effect on the change in demand will be determined by the price elasticity.<sup>52</sup> The effect of change may be difficult to predict because the rates at a certain level will have no or minimal effect on change. The effect of change will be minimal even if the tax rate is high where consumers exit the market at a certain point leaving behind those with strong preferences for the product because of loyalty, habits, etc.<sup>53</sup> Examples of bases of tax rates include volume or weight, sugar content, value (ad valorem), etc.<sup>54</sup> The tax rate is suggested to be generally between 10-20 per cent of the consumer price to have an effect. Research shows that a 10 per cent increase will result in reduction of about 5-8 per cent.<sup>55</sup> The common strategy used in the United States on sugary beverages is excise tax by using a flat rate, volume-based, cents-per ounce approach. A tiered tax<sup>56</sup> approach was used by Massachusetts so that no tax is payable on sugary beverages with less than five grams of sugar per 12 fluid ounce, but one or two cents is payable if they contain more than five grams of sugar per 12 fluid ounces.<sup>57</sup>

- (c) any exception;

The third element covers any matter that is exempted from tax.

- (d) the taxpayer;

The fourth element is about the legal person or entity liable to pay the tax. The potential legal persons for unhealthy food and drinks would be the manufacturers, importers, wholesalers and retailers.

- (e) other circumstances or conditions under which the tax will apply.

The last element deals with the circumstances or conditions in which the tax increase will apply. It refers to the point in time in which the tax becomes imposed on the product, such as, manufacturing, distribution, importation or retail. For example, change may occur if, for example, the SSBs are consumed at a restaurant or bought from a supermarket and consumed

<sup>48</sup> Jensen, JD and Smed, S. 2017. State-of-the-art food taxes to promote public health. Available at: <https://pubmed.ncbi.nlm.nih.gov/29166954/>

<sup>49</sup> Jensen, JD and Smed, S. 2017. State-of-the-art food taxes to promote public health. Available at: <https://pubmed.ncbi.nlm.nih.gov/29166954/>

<sup>50</sup> Denmark, Finland, Norway, France, Mexico, Chile, Fiji, Nauru, French Polynesia.

<sup>51</sup> Jensen, JD and Smed, S. 2017. State-of-the-art food taxes to promote public health. Available at: <https://pubmed.ncbi.nlm.nih.gov/29166954/>

<sup>52</sup> Jensen, JD and Smed, S. 2017. State-of-the-art food taxes to promote public health. Available at: <https://pubmed.ncbi.nlm.nih.gov/29166954/>

<sup>53</sup> Jensen, JD and Smed, S. 2017. State-of-the-art food taxes to promote public health. Available at: <https://pubmed.ncbi.nlm.nih.gov/29166954/>

<sup>54</sup> Jensen, JD and Smed, S. 2017. State-of-the-art food taxes to promote public health. Available at: <https://pubmed.ncbi.nlm.nih.gov/29166954/>

<sup>55</sup> Jensen, JD and Smed, S. 2017. State-of-the-art food taxes to promote public health. Available at: <https://pubmed.ncbi.nlm.nih.gov/29166954/>

<sup>56</sup> Tiered tax is a tax that increases in amount based on the amount of the caloric sweetener contained in a define unit.

<sup>57</sup> Public Health Law Center at Mitchell Hamline School of Law. 2017. State uniformity doctrines and sugary drink taxes. Available at: <https://publichealthlawcenter.org/sites/default/files/resources/State-Uniformity-Sugary-Drink-Taxes-2017.pdf>

at home due to a price difference. Behavioural patterns and responses also have an effect on consumption, such as consumers who never or rarely use the taxed product versus those who frequently use the product.<sup>58</sup> Consumers of taxed products may also respond to the tax change through the availability of substituted products.<sup>59</sup> Substitution depends on the experience of consumers taking into account the family structure, age, education and availability of differing supplies to other consumers. It also covers income and the budget of consumers, where a tight budget is likely to respond to the increase in price.<sup>60</sup>

## 8.2 Tobacco tax

### 8.2.1 Policy objective and rationale

The main policy objective is to give effect to Article 6 of the FCTC on implementing tax policies on tobacco products and to prohibit or restrict sales to and/or importation by international travellers of tax- and duty-free tobacco products.

The policy rationale is to reduce tobacco consumption, and to contribute to health objectives associated with reduced exposure to tobacco and tobacco smoke. Taxing tobacco products also helps to increase government revenue and can be used to fund promotion and awareness campaigns on the health risks associated with smoking.

Research shows that excise tax is the most appropriate tax for tobacco products. However, the excise tax generally applies only to tobacco products that are manufactured in the country. Moreover, tobacco products may also be subject to additional taxes, such as sales tax and/or value added tax (VAT).<sup>61</sup> Imported tobacco products will be subject to customs duty/import tax or tariffs.

### 8.2.2 Types of tobacco tax

Excise tax can be a specific or fixed tax (cost charged per unit) or can be based on the value of the product (*ad valorem*).

Excise tax and customs duty/import tax are indirect taxes. The consumer has the burden of paying the tax which the manufacturer or importer passes on to the retail price of the product.

Annex 8 of the Pacific NCD Roadmap recommends that PICTs:

- (a) take steps to progressively raise the excise duty on tobacco products to at least 70 per cent of their retail price, as recommended by the WHO. The increase can be staggered over a period of up to five years to meet the WHO recommended threshold of 70 per cent;
- (b) ensure that excise duties apply to both imports and locally produced tobacco products;
- (c) achieve the objectives of the Tobacco Free Pacific initiative by 2025;
- (d) anticipate resistance to tobacco tax increases from the tobacco industry on the grounds that it is a regressive tax affecting the poor and may cause loss of employment; and
- (e) communicate with the tobacco industry in a transparent way, but not allow the tobacco industry to interfere with the public health policy of the government.

<sup>58</sup> Jensen, JD and Smed, S. 2017. State-of-the-art food taxes to promote public health. Available at: <https://pubmed.ncbi.nlm.nih.gov/29166954/>

<sup>59</sup> Jensen, JD and Smed, S. 2017. State-of-the-art food taxes to promote public health. Available at: <https://pubmed.ncbi.nlm.nih.gov/29166954/>

<sup>60</sup> Jensen, JD and Smed, S. 2017. State-of-the-art food taxes to promote public health. Available at: <https://pubmed.ncbi.nlm.nih.gov/29166954/>

<sup>61</sup> World Health Organization. 2021. WHO Technical Manual on Tobacco Tax Policy and Administration. Available at: <https://www.who.int/publications/i/item/9789240019188>



The WHO recommended excise tax rate is at least 70 per cent of the retail price. Fixing the rate of tax should take into account a range of factors<sup>62</sup> including:

- (a) overall consumption;
- (b) price of tobacco products;
- (c) price elasticity;<sup>63</sup>
- (d) income levels;
- (e) affordability of tobacco products;
- (f) reaction to demand to tax increases;
- (g) protection of secondhand smokers; and
- (h) accessing public health funding by smokers.

The tax rate should be uniform for all tobacco products.

### 8.2.2.1 Types of indirect tax

A specific tax on tobacco products is a fixed amount that is calculated on quantity such as, pack, weight, sticks or rolls. The advantages and disadvantages of specific tax are detailed in Table 1.

*Table 1. Advantages and disadvantages of specific tax*

Advantages	Disadvantages
<ul style="list-style-type: none"> <li>● Easier to administer</li> <li>● Predictable</li> <li>● Easy to determine the amount of tax</li> <li>● Raises all product prices</li> </ul>	<ul style="list-style-type: none"> <li>● Inflation erodes its value</li> <li>● Can be reduced by changing product characteristics</li> </ul>

An *ad valorem* tax on tobacco products is based on a percentage of the value of the tobacco products. The advantages and disadvantages of *ad valorem* tax are detailed in Table 2.

*Table 2. Advantages and disadvantages of ad valorem tax*

Advantages	Disadvantages
<ul style="list-style-type: none"> <li>● Automatic adjustment for inflation</li> <li>● Higher profit margin is taxed</li> </ul>	<ul style="list-style-type: none"> <li>● Less predictable revenue stream</li> <li>● Difficult to determine the amount of tax</li> <li>● Low prices</li> <li>● Leads to large price differences between products</li> <li>● Difficult to administer</li> </ul>

<sup>62</sup> International Monetary Fund. 2017. How to Design and Enforce Tobacco Excises. Available at: <https://www.imf.org/external/pubs/ft/howtonotes/2016/howtonote1603.pdf>

<sup>63</sup> "A fundamental building block of economic theory is the fact that increasing (or decreasing) the price of a commodity reduces (or increases) demand for that commodity. *Price elasticity of demand* refers to the extent to which use of a product falls or rises after increases or decreases in its price. If price elasticity of demand for a product were very low—that is, if it were *inelastic*—then demand would fall or rise only slightly in response to price changes. For instance, if price elasticity for a particular good were about  $-0.1$ , then demand for that good would fall by only 0.1% for every 1% increase in price. Demand would fall by 1% for a 10% increase in price, by 2% for a 20% price increase and so on. Demand for a good with high price elasticity would fall much more sharply in response to price increases. If price elasticity of demand for a good were about  $-1.0$ , then demand for that good would fall by 1% for every 1% increase in price. Demand would fall by 10% for a 10% price increase, 20% for a 20% price increase, 100% for a 100% price increase, and so on." [Tobacco in Australia: Facts and Issues – [www.tobaccoinaustralia.org.au](http://www.tobaccoinaustralia.org.au)]

Of these two options for the taxation of tobacco products, a specific tax is recommended because it is simple to assess, monitor and enforce. The *ad valorem* system can be challenging because the tax is calculated in the value of the item.

PICTs should also consider reviewing the duty-free sale of tobacco products. The mechanism is to reduce the number of packets that can be bought through duty free sales or only apply it to outgoing passengers rather than incoming passengers.

Tax structures with a high specific tax component have the greatest public health impact. They also produce a more stable, reliable stream of revenue coupled with strong tax administration, effective monitoring and enforcement, tracking and tracing system, and swift, severe penalties.

Governments should seek expert assistance in designing tobacco tax policy that best satisfies these dual goals of tobacco use reduction and revenue generation.

### 8.2.3 Framework policies for tobacco taxes and prices

The tax policy should look at excise tax bases that best suit individual PICT contexts. It is necessary to seek the advice of experts when formulating the policy on tobacco tax and prices.

## 8.3 Alcohol tax

Alcohol tax is an important means through which policymakers can influence price, and is one of the most effective public health strategies for reducing alcohol consumption and related harms.<sup>64</sup> It is particularly cost effective if governments already have an alcohol tariff or excise tax system in place.<sup>65</sup>

### 8.3.1 Policy objective and rationale

The policy objective and rationale for taxing alcohol products is similar to tobacco tax, that is, it reduces liquor consumption and ultimately it reduces or prevents NCDs.

It is recommended that alcohol taxation policy be based on an explicit statement by government, often referred to as an Alcohol Policy. The Alcohol Policy should explain that the objective of proposed alcohol regulations, including alcohol tax, is to influence alcohol consumption rates and to reduce alcohol-related harm.

### 8.3.2 Types of alcohol tax

Alcohol is currently taxed in a number of ways.

#### ***Alcohol import tariffs***

Imported alcohol products are often subject to tariffs as a means of reducing importation, protecting domestic production or traditional beverages, and as a source of revenue for governments. Under trade treaties, barriers to international trade must be removed and import tariffs must be progressively reduced. Import tariffs can be replaced by excise taxes.

<sup>64</sup> Babor, TF, Caetano, R, Casswell, S, et al. 2003. Alcohol: No Ordinary Commodity. Oxford University Press: New York.

<sup>65</sup> World Health Organization. 2004. WHO Global Status Report on Alcohol 2004. Available at: [https://www.who.int/substance\\_abuse/publications/global\\_status\\_report\\_2004\\_overview.pdf](https://www.who.int/substance_abuse/publications/global_status_report_2004_overview.pdf)

## Excise tax

Excise taxes treat imported and domestic products equally. There are four main methods through which alcohol excise tax rates are set:<sup>66</sup>

- (a) a levy on the volume of pure alcohol in the product (specific rate);
- (b) a levy on the volume of each beverage type (unitary rate);
- (c) a levy on price of the alcohol product (*ad valorem*, or by value); and
- (d) a combination of the three methods above (combination rate).

Each method has advantages and drawbacks. For example, a percentage *ad valorem* rate keeps pace with inflation, but it is complicated to administer, as prices vary between beverage types, brands, sales outlets and other market conditions. Excise taxes based on the volume of beverage or the volume of pure alcohol are sometimes argued to be regressive, compared to a tax that is a percentage of the price. That is, the tax weighs more heavily on poor drinkers than it does on rich drinkers. A specific rate reflects the level of pure alcohol consumed in drinking the beverage. The pure alcohol content is an appropriate indicator for risk of intoxication, health impacts and other alcohol-related problems, and also reflects the risk of social costs that may be transferred to communities. Taxes that reflect pure alcohol content will have a proportional effect on beer, wine and spirits.

### 8.3.2.1 Types of indirect tax

Alcohol products are often also subject to indirect taxes. These include sales tax which increases the total price of an alcohol product to the drinker, and company tax which is paid by alcohol producers and sellers.

Mechanisms are necessary to ensure that alcohol tax rates do not slide against inflation or falling costs of import and production and are reviewed regularly to identify whether additional increases may be necessary.

It is important to note that the unrecorded consumption of alcohol (due to the illegal trade of alcohol products as well as home and small-scale artisanal production, such as homebrew) is a significant challenge in some PICTs. Unrecorded alcohol consumption can be regulated through requiring the registration of producers of such alcoholic products, and monitoring products for quality.<sup>67</sup>

Every person is required to pay tax or duty on any purchased alcohol product. However, this is not the case for duty-free alcohol products at an airport or in a port. PICT governments may wish to consider limiting the number of products that a person can purchase within the duty-free zone area, for example one person is entitled to only one 1 or 1.5 litre bottle of alcohol and anything in excess of that the person is required to pay tax. The content of such a policy will be determined by the government of the day. PICTs will need to consider amending their Customs Act if they wish to restrict the number of alcohol and tobacco products that are duty free.

## 8.3.3 Framework policies for alcohol taxes and prices

The import tax/tariff needs to take into account any bilateral or regional trade agreements that safeguards the locally produced liquor. To safeguard against trade agreement disputes (in particular from WTO trade agreements), the rationale for import tax/tariff should focus on safeguarding public health instead of revenue raising or protecting local products. Alternatively, using floor prices ensures that there is no price disparity between imported liquor and locally produced ones.

<sup>66</sup> Richupan, S. 2005. Alcohol product taxation: International experiences and selected practices in Asia. Available at: [http://apapaonline.org/kiwi/data/Regional\\_Data/Other/International\\_Alcohol\\_Taxation.pdf](http://apapaonline.org/kiwi/data/Regional_Data/Other/International_Alcohol_Taxation.pdf)

<sup>67</sup> PICTs may wish to consider Part V of Tuvalu's Alcoholic Drink Act which regulates the consumption of sour toddy as well as Tuvalu's Income Tax Act and Consumption Tax Act.

The global trend in fixing alcohol tax is based on the alcohol content of the beverage instead of the wholesale or retail price.<sup>68</sup> This is because it is the volume of alcohol consumed, on a particular occasion or cumulatively, that increases the risks.

## 8.4 Tax on unhealthy food and sugar-sweetened beverages

### 8.4.1 Policy objective and rationale

Taxing unhealthy foods and sugar-sweetened beverages (“health tax”) has the effect of reducing their consumption. The policy intent is to make these products more expensive, and therefore less attractive, by increasing prices through health taxes. Increasing the price of unhealthy foods or drinks is likely to compel consumers to choose healthy products.<sup>69</sup>

### 8.4.2 Framework policies for unhealthy food and sugar taxes

Health taxes are designed to promote healthy nutrition. The use of health tax is to regulate the supply of unhealthy products so that the real cost is reflected in the market price. As such, the real costs should reflect the production costs and external costs (reduction of side effects).<sup>70</sup> The challenge is finding appropriate strategies to reduce and prevent NCDs. Adopting health taxes is a key strategy in preventing NCDs and raising revenue.<sup>71</sup>

It is important to have separate designs for health taxes on sugary, fatty or salty foods or beverage products. For example, sugar tax schemes may give consumers an incentive to replace sugar-sweetened beverages with naturally sweetened beverages. Some sugar tax regimes target the content of a nutrient.<sup>72</sup>

It should be noted that the food industry is likely to oppose any tax regime on their products on the grounds that health taxes are regressive, result in job losses and are not grounded in evidence.<sup>73</sup>

Health tax schemes should situate health promotion as a primary objective and fiscal revenue as a secondary objective. Matters to take into account include: the content and range of products that must be taxed, noting that ideally it must be in its broadest terms; behavioural adjustment through substitution in consumption and production; the size of tax; and the enforcement mechanisms.<sup>74</sup> Tax experts should be involved in designing a health tax regime that suits the local circumstances and contexts of PICTs.

### 8.4.3 Amending legislation on tax

The legislation on excise or import duty is to be amended by deleting the current tax rate and inserting the increased rate of excise or tariff.

<sup>68</sup> Centre for Social and Health Outcomes Research and Evaluation. 2006. Alcohol Taxation in the Western Pacific Region. Available at: <https://static1.squarespace.com/static/59152c88b8a79bdb0e644f2a/t/599642f4db65943af43fd178/1503019774849/Alcohol+Taxation+in+the+Western+Pacific+Region.pdf>

<sup>69</sup> Jensen, JD and Smed, S. 2017. State-of-the-art food taxes to promote public health. Available at: <https://pubmed.ncbi.nlm.nih.gov/29166954/>

<sup>70</sup> Jensen, JD and Smed, S. 2017. State-of-the-art food taxes to promote public health. Available at: <https://pubmed.ncbi.nlm.nih.gov/29166954/>

<sup>71</sup> Public Health Law Center at Mitchell Hamline School of Law. 2017. State uniformity doctrines and sugary drink taxes. Available at: <https://publichealthlawcenter.org/sites/default/files/resources/State-Uniformity-Sugary-Drink-Taxes-2017.pdf>

<sup>72</sup> Soda tax in Mauritius and saturated fat tax in Denmark.

<sup>73</sup> Jensen, JD and Smed, S. 2017. State-of-the-art food taxes to promote public health. Available at: <https://pubmed.ncbi.nlm.nih.gov/29166954/>

<sup>74</sup> Jensen, JD and Smed, S. 2017. State-of-the-art food taxes to promote public health. Available at: <https://pubmed.ncbi.nlm.nih.gov/29166954/>

## 8.5 Legislation plan

All NCD taxation measures, regardless of whether they target tobacco products, alcohol or unhealthy food and beverages, should cover the following areas:

**Excise tax:** The excise legislation is to be amended to raise the tax rate;

**Import tax:** The Customs tariff legislation is to be amended to raise any import tax;

**Other taxes:** Other legislation dealing with additional tax, such as value added tax, may be amended;

**Tax legislation:** The tax legislation may be amended if earmarking/hypothecation of tax is adopted;

**Enforcement measures (for example, tax stamps):** The amendment may include introduction of measures to strengthen monitoring and enforcement of taxes:

- (a) tax stamps (appropriate instrument is by way of regulations);
- (b) power to require submission of tax returns; and
- (c) power to place tax officers at production facilities to monitor production.

Some of the basic provisions for tax stamps are:<sup>75</sup>

- (a) registration of producers and importers;
- (b) types, procurement, supply and distribution of stamps;
- (c) affixing and record keeping;
- (d) exemptions, accounting of stamps, returns, computation and payment of excise; and
- (e) auditing, inspection and collection.

Legislative provisions cover the following matters:

- (a) **Short title and commencement:** The name of the Act and the commencement date of the tax coming into force;
- (b) **Principal Act:** The name of the relevant Act to be amended; and
- (c) **Schedule:** The relevant Schedule/s to the principal Act specifically the columns in the Schedule to be amended.

## 8.6 Suggested draft legislative provisions

Suggested draft legislation in the form of Tax Measures on Tobacco Products, Alcohol and Sugar-sweetened Beverages is presented in Annex 7.

[ [Annex 7 – Tax Measures on Tobacco Products, Alcohol and Sugar-sweetened Beverages](#) ]

<sup>75</sup> See Tanzania – Films and Music Products (Tax Stamps) Regulations 2013 (made under the Excise (Management and Tariff) Act (Cap.147).

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# ANNEXES

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# ANNEX 1 – TOBACCO CONTROL BILL

## TOBACCO CONTROL BILL

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*Division 6 – Contents and emissions*

#### **PART 3 – LICENSING OF MANUFACTURERS, ETC.**

#### **PART 4 – REDUCING SUPPLY OF TOBACCO PRODUCTS**

*Division 1 – Prohibited products, smuggling and information*

*Division 2 – Young persons*

*Division 3 – Other provisions*

#### **PART 5 – INDUSTRY INTERFERENCE**

#### **PART 6 – ADMINISTRATION**

#### **PART 7 – ENFORCEMENT**

*Division 1 – Appointment of enforcement officers*

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#### **PART 8 – MISCELLANEOUS**

#### **SCHEDULE**

*Part 1 – Fixed penalties*

*Part 2 – Penalties for offences*

*Part 3 – Infringement Notice Form*

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### **[A BILL FOR]**

**AN ACT** to control and regulate tobacco products [and for related purposes]<sup>76</sup>

**ENACTED** by [Parliament...] –

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<sup>76</sup> This is a short form of long title. The long form may be used by expressing the main parts of the Bill i.e. "to regulate and control reducing supply and demand for tobacco products [and to provide for administration and enforcement [and for related purposes]]."

## PART 1 – PRELIMINARY

### [1] Short title and commencement

- (1) This Act may be cited as the Tobacco Control Act [20...].
- (2) This Act commences on a date appointed by [xx], [by Notice in the *Gazette*].

### [2] Interpretation

In this Act:

**“additive”** —

- (a) means any substance that is added (except water) during the manufacture of a tobacco product; and
- (b) includes preservative, humectant, flavour, or processing aid.

**“attractiveness”** —

- (a) means a factor of a tobacco product that is designed to stimulate its use; and
- (b) includes taste, smell or any other sensory attributes, ease of use, flexibility of the dosing system, cost, reputation or image, assumed risk or benefit, or any other characteristic of a tobacco product that is designed to stimulate use.

**“cigarette pack”** means a package in which cigarettes are directly placed for retail sale.<sup>77</sup>

**“cigarette roll”** means a roll of cut tobacco (enclosed in paper) for smoking.<sup>78</sup>

[**“constituent”** means ...]

[**“contaminant”**] means ...]

**“content”** —

- (a) means a constituent of a processed tobacco; and
- (b) includes an ingredient of a tobacco product.

**“contiguous zone”** has the meaning in the [Marine Spaces Act].

**“Convention”** means the World Health Organization Framework Convention on Tobacco Control.

**“design feature”** means a characteristic of the design of a tobacco product that has an immediate causal link with the testing and measuring of any of its contents or emissions, such as, any ventilation hole around the cigarette filter decreases the machine-measured yield of nicotine by diluting the mainstream smoke.

**“effect of promotion”** includes the use of:

- (a) word, design, image, sound or colour; or
- (b) brand name, trademark, logo, name of manufacturer or importer; or
- (c) scheme of colour associated with the tobacco product, manufacturer or importer.

**“emission”** means:

- (a) a substance released when the tobacco product is used as intended (for example, for cigarettes or any other combusted product, the emission is the substance found in the smoke); and

<sup>77</sup> Definition adopted from the Australian Tobacco Control Act.

<sup>78</sup> Definition adopted from the Australian Tobacco Control Act.

- (b) for smokeless tobacco product for oral use, a substance released during the process of chewing or sucking; and
- (c) for nasal use, a substance released by a particle during the process of snuffing.

**"enforcement officer"** means a person appointed or an officer deemed, as such under section [xx].<sup>79</sup>

**"exclusive economic zone"** has the meaning in the [Marine Spaces Act (Fiji)].

**"exporter"** means a person who is licensed under section [xx] to export tobacco product.<sup>80</sup>

**"export licence"** means a licence to export tobacco product issued under section [xx].

**"health warning"** —

- (a) means a health warning or health message about the health effect of smoking or using tobacco products or exposure to tobacco smoke,<sup>81</sup> and
- (b) includes any information, graphic, pictorial or other thing describing a health warning or health message.

**"hospital"** includes a place for providing public or private health care service.

**"hotel"** has the meaning in the [hotel legislation].

**"illicit trade"** of tobacco products:

- (a) means an unlawful practice or conduct relating to the production, shipment, transportation, receipt, possession, distribution, sale or purchase; and
- (b) includes —
  - (i) an unlawful practice or conduct intended to facilitate production, shipment, transportation, receipt, possession, distribution, sale or purchase; or
  - (ii) smuggling, illicit manufacturing or counterfeiting.

**"import licence"** means a licence issued under section [xx].

**"importer"** means a person who is licensed under section [xx] to import a tobacco product.

**"indoor place"** includes a space covered by a roof or enclosed by one or more walls or sides, regardless of:

- (a) the type of material used for the roof, wall or side; or
- (b) whether the structure is permanent or temporary.

**"ingredient"** —

- (a) includes —
  - (i) tobacco; or
  - (ii) a component, such as filter or paper, or a material used to manufacture the component; or
  - (iii) an additive or processing aid; or
  - (iv) a residual substance found in tobacco after storage or processing; or
  - (v) a substance that migrates from the packaging material into the product; but
- (b) does not include a contaminant.

<sup>79</sup> Other designation, such as "enforcement officer" may be used.

<sup>80</sup> Delete definition if the term ("export" or "import") is defined in the Interpretation Act. The term "exporter" or "importer" will be taken to have corresponding meaning or grammatical variation of "export" or "import".

<sup>81</sup> Definition adopted from the Australian Tobacco Control Act

**“insert”** means any communication inside an individual package purchased at retail by consumers, such as a miniature leaflet or brochure.

**“laboratory”** means a laboratory approved under section [xx].

**“liquor place”** means a place licensed under the [liquor legislation] to sell and consume liquor at the place.

**“loose tobacco”** means **fine-cut tobacco**, used to make self-made cigarettes by hand rolling the tobacco into paper or injecting it into filter tubes.

**“manufacturer”** means a person who is licensed under section [xx] to manufacture a tobacco product.

**“manufacturing licence”** means a licence issued under section [xx].

**“non-smoking sign”** means a sign that contains:

- (a) a no smoking symbol in the form of a circle and diagonal line printed in red over a depiction of a cigarette and smoke printed in black, or other symbol that clearly indicates that smoking is not permitted, with the symbol being at least [70mm] in height; and
- (b) the phrase *“No Smoking”* or *“Smoking Prohibited”*, or other wording that clearly indicates that smoking is not permitted, in letters that are at least [20mm] in height.

**“onsert”** means any communication affixed to the outside of an individual package purchased at retail by consumers, such as a miniature brochure beneath the outer cellophane wrapping or glued to the outside of the cigarette package.

**“outside packaging or labelling”** includes a packaging or labelling used in the retail sale of a tobacco product.

**“owner”** —

- (a) means a person who owns, occupies or is in possession of a place; and
- (b) includes a person who manages or is in charge or in control of the place.

**“package”** or **“pack”** —

- (a) means a package of tobacco product or pack of a unit of packet; and
- (b) includes —
  - (i) a package containing units of packets or any outside packaging or labelling; or
  - (ii) any tin, box, pouch, flip-top, slide and shell package, carton, transparent wrapper, clear packaging or a package containing one product unit.

**“packaging or labelling”** of a tobacco product for retail sale:<sup>82</sup>

- (a) means package or pack —
  - (i) in which the tobacco product is directly placed; or
  - (ii) that contains a smaller pack in which the tobacco product is directly placed; and
- (b) includes —
  - (i) a plastic or other wrapper that covers any packaging or pack under paragraph (a); or
  - (ii) a plastic or other wrapper that covers the tobacco product; or
  - (iii) an insert that is placed inside the packaging or pack under paragraph (a) or (b)(i) or (ii); or

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<sup>82</sup> Definition adopted from the Australian Tobacco Control Act

- (iv) a thing affixed or attached to the packaging or labelling (other than the lining of a cigarette pack) that is affixed or attached to the packaging or labelling (within the meaning of any of paragraphs (a) and (b)(i) and (ii).

**“place”** includes any area, facility, premises, building, vehicle or vessel.

**“prescribe”** means to be prescribed by regulations.<sup>83</sup>

**“processed tobacco”** means ...]

**“proof-of-age”** means an identification document of a person setting out:

- (a) the person’s date of birth; and
- (b) a passport size photograph showing the face of the person; and
- (c) any other information necessary to ascertain the age or identity of the person.

**“public playground”** includes:

- (a) a place in a park designed as playground for young persons; or
- (b) a swimming pool; or
- (c) a place during an organised sporting, social, communal or other recreational event for young persons.

**“public officer”**<sup>84</sup> —

- (a) means a person appointed under [public service legislation]; and
- (b) includes —
  - (i) the holder of a public office appointed under the Constitution;<sup>85</sup> or
  - (ii) a government employee, consultant, or contractor; or
  - (ii) ... [*add to the list*].

**“public place”**<sup>86</sup> means a place accessible to the general public or place for collective use, regardless of ownership or right to access.

**“public road”** has the meaning in the [road legislation].

**“public transport”** means any form of land, sea or air conveyance for public transportation.

**“restricted smoke-free environment”** means any of the following places where a smoking area may be designated:

- (a) a place that is licensed to sell liquor to be consumed at the place, such as a liquor bar, nightclub, or restaurant; or
- (b) a place to sell and consume food at that place; or
- (c) a building to wait for public transport, such as a bus station, airport or wharf; or
- (d) a prescribed place.

**“retailer”** means a person who is licensed under section [xx].

**“retail licence”** means a licence issued under section [xx].

<sup>83</sup> Delete definition if the term is defined in interpretation legislation.

<sup>84</sup> Check and compare with Interpretation Act if that term is defined in that Act, and if so, it can be deleted.

<sup>85</sup> Check as some holders of public offices are appointed under the Constitution.

<sup>86</sup> Check and compare with Interpretation Act if that term is defined in that Act.

**“school”** —

- (a) means a school [regulated or registered] under the [Education Act]; and
- (b) includes a centre for early childhood learning or a day care facility for children under the age of five.<sup>87</sup>

**“second-hand tobacco smoke”** means the smoke emitted from the burning end of a tobacco product, usually in combination with the smoke exhaled by the smoker.

**“sell”** includes to supply or distribute for sale.

**“smoke”** —

- (a) means to smoke a tobacco product; and
- (b) includes —
  - (i) to possess or control a lit tobacco product regardless of whether the smoke is being actively inhaled or exhaled;
  - (ii) to use a tobacco product in any other way, other than to smoke it.

**“smoke-free environment”** means a place specified in section [xx]:

- (a) where smoking and any use of a tobacco product is totally prohibited; and
- (b) for which air (including air in which tobacco smoke cannot be seen, smelled, sensed or measured) within that place is 100 per cent tobacco smoke free.

**“smoke-free zone”** means a place declared as smoke-free zone under section [xx] and for which air (including air in which tobacco smoke cannot be seen, smelled, sensed or measured) within that zone is 100 per cent tobacco smoke free.

**“smoking area”** means an area designated under section [xx or xx] where smoking is permitted.

**“smoking sign”** means a sign, diagram or photograph in a smoking area that clearly indicates that smoking is permitted.

**“tobacco company”** means a person who manufactures, sells by wholesale, imports [or exports], any tobacco product.

**“tobacco control”** means any supply, demand, or harm reduction strategy to improve human health by eliminating or reducing consumption of tobacco products or exposure to tobacco smoke.

**“tobacco product”**

- (a) means a product (entirely or partly made of tobacco leaf as raw material) which is manufactured to be used for smoking, sucking, chewing or snuffing; and
- (b) includes [e-cigarette]<sup>88</sup> or any other form of use or consumption of the tobacco product.

**“tobacco product advertisement”** —

- (a) means<sup>89</sup> any direct or indirect form of advertisement to promote or publicise a tobacco product or its use, such as —
  - (i) smoking or using a tobacco product; or
  - (ii) selling or buying of a tobacco product; or
  - (iii) using the trade mark for the tobacco product or for any other goods or articles that include the tobacco product; or

<sup>87</sup> This is to cover other educational or childcare facilities not regulated or registered under the Education legislation.

<sup>88</sup> To be deleted if e-cigarette is listed as a prohibited tobacco product or if separate rules for e-cigarettes are included i.e. can be a matter to be covered in the legislation on drugs and poisons or in the Regulations under this Bill.

<sup>89</sup> Adapted from the Vanuatu Tobacco Control Act 2008.

- (iv) using the name of the manufacturer, importer or seller of the tobacco product; or
  - (v) using the name of any other person whose name appears on, or on the packaging of, the tobacco product; or
  - (vi) using any other word, (such as, the whole or a part of a trademark) , or combination of words or trademark, that are closely associated with the tobacco product with other products; and
- (b) includes —
- (i) any form of commercial communication, recommendation or action with the aim, effect or likely effect of promoting a tobacco product or tobacco use either directly or indirectly; or
  - (ii) an arrangement for sale or distribution; or
  - (iii) any marketing communication that involves an integrated approach to advertising or promoting the purchase or sale of a tobacco product, such as any direct marketing, public relations, sales promotion, personal selling or online interactive marketing method; or
  - (iv) any sale or distribution arrangement; or
  - (v) any hidden form of advertising or promotion, such as the insertion of a tobacco product or tobacco use in any media content; or
  - (vi) the association of a tobacco product with an event or with another product in various ways; or
  - (vii) a promotional packaging or a product design feature; or
  - (viii) the production or distribution of an item, such as any sweets or toy or other product that resembles a cigarette or any other tobacco product; or
  - (ix) the display or sponsorship of a smoking accessory, such as any cigarette paper, filter or equipment for rolling a cigarette or an imitation of a tobacco product.

**“tobacco product promotion”** includes promoting or publicising a tobacco product:

- (a) in a manner that is deceiving or misleading about the tobacco product’s character, property, toxicity, composition, merit or safety; or
- (b) that does not display, in the prescribed form and manner, the information required under this Act about the tobacco product or its emissions, health hazards or effects arising from the use of the product or from its emission or other health-related warnings, such as, an advice on how to quit smoking; or
- (c) through any means of promotion that can be viewed from outdoors; or
- (d) using any matter, item (other than a tobacco product), place or means of land, sea or air conveyance, which bears the trademark (alone or in conjunction with any other word); or
- (e) using any sports or game or any musical, artistic or any other social or cultural event, or any entry or team in an event, in the trademark (alone or in conjunction with any other word).

**“tobacco product sponsorship”** —

- (a) means a form of contribution (whether financial or otherwise or regardless of how or whether the contribution is acknowledged or publicised):
  - (i) to an event or activity; or
  - (ii) to an individual,

for the purpose of promoting or publicising a tobacco product or tobacco use or smoking, either directly or indirectly, in exchange for a benefit, right or reward to another person, including sponsorship, scholarship, gift, or price; and

- (b) includes —
  - (i) any measure used by a tobacco company to make a contribution to a deserving cause or to promote the social responsibility of the company business practices; or
  - (ii) any financial or in-kind contribution to any other person, organisation or group, either directly or through another legal entity; or
  - (iii) any socially responsible business practice such as good employee-employer relations or environmental stewardship, which do not involve contribution to any other person; or
  - (iv) any promotion to the public of any commendable activity (except for any corporate reporting, such as an annual report, or business administration, such as a recruitment purpose or communication to a supplier); or
  - (v) any public education campaign, such as campaign to prevent youth smoking.

**“trademark”** —

- (a) means a mark (by virtue of manufacture, selection, certification, dealing with or offering for sale) used for or connected with a tobacco product to indicate the ownership or possession or control of the tobacco product; and
- (b) includes a design, device, brand, heading, label, ticket, name, signature, word, letter or numeral.

**“variant of brand”** of tobacco product, means the name used to distinguish that kind of tobacco product from any other tobacco product that is supplied under the same brand, business or company name, by reference to the following:

- (a) containing or not containing menthol; or
- (b) being otherwise differently flavoured; or
- (c) purporting to differ in strength; or
- (d) having or not having filter or other tips; or
- (e) being of different length or mass.

**“vehicle”** has the meaning in the [Traffic legislation].

**“vessel”** has the meaning in the [Shipping legislation].

**“wholesaler”** means a person licensed under section [xx] to sell tobacco products by wholesale.

**“workplace”**<sup>90</sup> —

- (a) means a place used for any paid or unpaid work; and
- (b) includes —
  - (i) an attached or associated place, such as a corridor, lift, stairwell, lobby, joint facility, cafeteria, toilet, lounge, lunchroom or an outbuilding such as a shed or hut; or
  - (ii) any vehicle, vessel, aircraft, or other structure, which is used as a workplace; or
  - (iii) a place of residence, which is also a workplace, such as, a prison, mental health institution or nursing home.

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<sup>90</sup> Also check whether your employment or occupational health legislation defines the term. If so, you can make a cross-referential definition i.e. “has the meaning in the [XX] Act.”



“**young person**” means a person aged under [21]<sup>91</sup> years.

### [3] Application

- (1) This Act extends to the [the contiguous zone<sup>92</sup> and] exclusive economic zone.
- (2) This Act binds the [State/Republic/Government/Crown].

### [4] Objectives of Act

The objectives of this Act<sup>93</sup> are:

- (a) to protect the right to public health and ensure the highest standard of health against —
  - (i) the dangers or health risks of tobacco smoking or exposure to second-hand tobacco smoke; and
  - (ii) the diseases caused by tobacco products; and
- (b) to encourage non-smokers to refrain from smoking and protect them from persuasion or inducements to use tobacco products and consequent dependence on tobacco products; and
- (c) to enhance public awareness of the dangers or health risks of tobacco use by ensuring the effective communication of accurate and relevant information to consumers of tobacco products; and
- (d) to encourage and assist smokers to quit smoking and to promote healthy lifestyles and prevention of illness; and
- (e) to reduce some of the harmful effects of tobacco products by monitoring and regulating the presence of harmful constituents and emissions in tobacco products and in tobacco smoke; and
- (f) to reduce the social approval of tobacco product use by prohibiting advertising, promotion, sponsorship of tobacco products; and
- (g) to protect the health of young persons by restricting access to tobacco products; and
- (h) to enhance awareness of the dangers or health risks of using tobacco products and exposure to second-hand tobacco smoke by ensuring the effective communication of accurate and relevant information about the use and exposure; and
- (i) to reduce some of the harmful effects of tobacco products by monitoring and regulating the presence of harmful constituents and emissions in tobacco products; and
- (j) to promote the prevention and cessation of smoking.

## PART 2 – REDUCING DEMAND FOR TOBACCO PRODUCTS

### *Division 1 – Smoke-free environment and restricted smoke-free environment*

#### [5] Smoke-free environment

- (1) A person must not smoke in:
  - (a) a school or hospital; or
  - (b) a public transport; or
  - (c) an indoor workplace; or
  - (d) an indoor place for use by the public; or

<sup>91</sup> PICTs which ban smoking at the age of 18 should consider increasing it to 21 years.

<sup>92</sup> Only for PICTs that have contiguous zones. Also it is important to extend the law to the EEZ since it will cover sea transport also.

<sup>93</sup> Adapted from Tuvalu and Vanuatu Tobacco Control Acts.

- (e) any other prescribed place or transport.
- (2) The owner of a smoke-free environment must:
  - (a) monitor any smoking within it and prevent, stop or remove a person who is smoking; and
  - (b) post a non-smoking sign in it; and
  - (c) discourage a person from smoking in it, including by:
    - (i) asking the person to stop smoking or to leave the place; or
    - (ii) discontinuing any service to the person; or
    - (iii) reporting the matter to [an enforcement officer].
- (3) A non-smoking sign must include:
  - (a) a statement to report any smoking; and
  - (b) any contact details or instructions about where to report smoking.
- (4) A Regulation that prescribes a smoke-free environment under subsection (1) as a restricted smoke-free environment is void.
- (5) A person commits an offence who:
  - (a) contravenes subsection (1); or
  - (b) being the owner, fails to post a non-smoking sign; or
  - (c) obstructs or prevents the owner from taking any action stop smoking under this section.

**[6] No smoking in outdoor places of a school or hospital<sup>94</sup>**

- (1) A person must not smoke in a place that is:
  - (a) not enclosed; and
  - (b) within a school or hospital.
- (2) A person must not smoke at, or within [4] metres of any part of, a pedestrian access point to:
  - (a) a school; or
  - (b) a hospital; or
  - (c) an indoor work place or indoor place for use by the public.<sup>95</sup>
- (3) A person commits an offence who contravenes subsection (1) or (2).

**[7] No smoking in outdoor public playground areas for young persons**

- (1) A person must not smoke:
  - (a) in a place that is —
    - (i) not enclosed; but
    - (ii) is within a public playground area for young persons; or
  - (b) at, or within [4] metres of any part of, a pedestrian access point to the public playground.
- (2) A person commits an offence who contravenes subsection (1).

<sup>94</sup> Adapted from the Tobacco Act 1987 of the State of Victoria, Australia available from <http://www.legislation.vic.gov.au>

<sup>95</sup> PICTs to consider whether it should be extended to indoor workplace, etc.

**[8] Restricted smoke-free environment**

- (1) A person must not smoke in a designated non-smoking area of a restricted smoke-free environment. This includes:
  - (a) places licensed to sell liquor (bars, nightclubs, restaurants); and
  - (b) restaurants and places that sell food; and
  - (c) bus stations, airports and wharves.
- (2) Regulations may prescribe any other matter on the designation of a non-smoking area or of a smoking area.
- (3) A person commits an offence who contravenes subsection (1) or (2).

**[9] Duties of owners**

- (1) The owner of a restricted smoke-free environment must:
  - (a) provide a non-smoking sign in a designated non-smoking area; and
  - (b) provide a smoking sign in a designated smoking area; and
  - (c) remove from a non-smoking area any item, such as ashtrays, for smoking; and
  - (d) monitor any smoking in a designated non-smoking area; and
  - (e) prevent or stop a person from smoking in a designated non-smoking area; and
  - (f) discourage a person from using tobacco product in a designated non-smoking area, including:
    - (i) asking the person to stop smoking or to leave the non-smoking area; or
    - (ii) asking the person to smoke in a designated smoking area; or
    - (iii) discontinuing or not providing any service to the person; or
    - (iv) reporting the matter to [an enforcement officer].
- (2) The owner must ensure that a non-smoking sign or a smoking sign includes:
  - (a) a statement to report smoking in a designated non-smoking area; and
  - (b) any contact details or instructions about where to report smoking in a designated non-smoking area.
- (3) Regulations may be made to provide other requirements:
  - (a) for marking or identifying designated smoking areas or designated non-smoking areas; or
  - (b) for the format or any information to be included in the non-smoking sign or smoking sign.
- (4) The owner commits an offence who fails to provide the smoking sign in a designated smoking area or the non-smoking sign in a designated non-smoking area.

**[10] Smoke-free zones<sup>96</sup>**

- (1) The [Minister] may, [with the approval of Cabinet], declare, as a smoke-free zone, any open public place, such as, a public road, public park or hotel.
- (2) The owner of a smoke-free zone must:
  - (a) monitor smoking in a smoke-free zone and prevent, stop or remove a person smoking in a smoke-free zone; and

<sup>96</sup> The provision has been adopted in Singapore by declaring a public road in the city, and in Malaysia by declaring a tourist area, a smoke-free zones.

- (b) provide any non-smoking sign in a designated non-smoking area; and
  - (c) discourage smoking in a designated non-smoking area of a smoke-free zone, including —
    - (i) asking a person to stop smoking or to leave the smoke-free zone, or to go into a designated smoking area to smoke; or
    - (ii) discontinuing or not to provide, any service to the person; or
    - (iii) reporting the matter to [an enforcement officer].
- (3) A non-smoking sign or a smoking sign must include:
- (a) a statement to report any smoking in a designated non-smoking area; and
  - (b) a contact (whether the name of a person, a position or other means of communication) to report smoking in a designated non-smoking area.
- (4) Regulations may be made to provide other requirements:
- (a) for marking or identifying the smoke-free zone specified under subsection (1); or
  - (b) for the format and information for a smoking sign or a non-smoking sign.
- (5) A person commits an offence who smokes in a non-smoking area of a smoke-free zone.
- (6) The owner commits an offence who fails to provide a non-smoking sign in at the designated non-smoking area.

## ***Division 2 – Packaging and labelling***

### **[11] Mandatory information to appear on packaging and labelling**

- (1) A person must not manufacture, import or sell a tobacco product unless the packaging or labelling displays the following information:
- (a) the health warnings; and
  - (b) the constituents and emissions of the product (except constituents prohibited under section [xx]); and
  - (c) the name of manufacturer; and
  - (d) the name of the country of intended sale of the tobacco product; and
  - (e) any other prescribed information.
- (2) A person commits an offence who contravenes subsection (1).

### **[12] Costs of packaging or labelling**

A person who manufactures, imports or sells a tobacco product is liable for the costs of:

- (a) packaging or labelling on the tobacco product; and
- (b) incorporating information on the packaging or labelling.

### **[13] False, misleading and deceptive packaging or labelling**

- (1) A person must not manufacture, import or sell a tobacco product if its packet or label promotes the tobacco product by means that are:
- (a) false, misleading, or deceptive; or
  - (b) likely to create an erroneous or false impression,

about the characteristic, health effects, hazards or emissions, including any term, descriptor, trademark or figurative or other sign that directly or indirectly creates the false impression that a particular tobacco product is less harmful than others.

- (2) The packaging or labelling (including when used as part of a brand name or trademark) must not display:
  - (a) figures for emission yields (such as tar, nicotine and carbon monoxide); or
  - (b) any expiry date; or
  - (c) any other prescribed matter.
- (3) A person commits an offence who contravenes subsection (1).
- (4) In this section:
 

“**term**” includes any term (such as low tar, light, extra, ultra, ultra-light or mild) that creates a false impression or misleads consumers;

“**expiry date**” includes best-by date or any other expression that misleads or deceives consumers into concluding that tobacco products are safe to be consumed at any time.

#### **[14] Minimum pack size for cigarettes**

- (1) A person must not manufacture or sell any cigarettes unless the cigarettes are manufactured, sold, supplied or distributed in sealed packets of not less than [20] cigarette rolls.
- (2) A person commits an offence who contravenes subsection (1).

#### **[15] Restriction on sale of tobacco products in small quantities**

- (1) A person must not sell:
  - (a) cigarettes in individual cigarette roll; or
  - (b) loose tobacco in a pack of less than [20] grams of tobacco.
- (2) A person commits an offence who contravenes subsection (1).

### ***Division 3 – Plain packaging of tobacco products***

#### **[16] Retail packaging**

The packaging or labelling must comply with the following requirements:

- (a) the outer surfaces and inner surfaces of the packaging or labelling must not have any irregularities of shape or texture, or any other embellishments, such as decorative ridges, embossing or bulges, other than as permitted by the Regulations; and
- (b) any adhesives, such as glues used in manufacturing the packaging or labelling must be transparent and not coloured.

#### **[17] Cigarette package**

- (1) A cigarette package must comply with the following requirements:
  - (a) the package must be rigid and made of cardboard, and only cardboard (subject to section [xx] (1)(b) and subsection (2)(d));
  - (b) when the package is closed —
    - (i) each outer surface of the package must be rectangular; and
    - (ii) the surfaces of the package must meet at firm 90 degree angles;

- (c) all edges of the package must be rigid, straight and not rounded, bevelled or otherwise shaped or embellished in any way, other than as permitted by the Regulations.
- (2) A cigarette pack must comply with the following requirements:
  - (a) the dimensions of the pack must comply with the prescribed requirements;
  - (b) the only opening to the pack must be afliptop lid which must —
    - (i) be hinged only at the back of the pack; and
    - (ii) have straight edges;
  - (c) the inside lip of the cigarette pack must have straight edges, other than corners which may be rounded, and neither the lip, nor the edges of the lip, may be bevelled or otherwise shaped or embellished in any way;
  - (d) if the pack contains lining, the lining of the pack must be made only of foil backed with paper, or any other prescribed material.
- (3) For subsection (2)(b)(ii), the lid or the edges of the lid must not be rounded, bevelled or otherwise shaped or embellished in any way.

**[18] Colour and finish of retail packaging**

- (1) This section applies to the following things:
  - (a) all outer surfaces and inner surfaces of the packaging (within the meaning of paragraph (a) or (b) of the definition of “**packaging or labelling**”); and
  - (b) both sides of any lining of a cigarette pack.
- (2) The things mentioned in subsection (1):
  - (a) must have a matt finish; and
  - (b) except as provided by subsection (3) —
    - (i) if Regulations are in force prescribing a colour, must be that colour; and
    - (ii) otherwise, must be [drab dark brown].
- (3) The following are not required to be the colour mentioned in subsection (2)(b):
  - (a) the health warnings;
  - (b) the text of —
    - (i) the brand, business or company name, or variant name (if any), for the tobacco products; and
    - (ii) the relevant legislative requirements (other than the health warnings).
- (4) Regulations may be made under section [xx] on the following:
  - (a) requirements for health warnings, including graphics to cover not less than [70% of the front and 90% of the back] of the pack; and
  - (b) prohibited or permitted use of trademarks of tobacco products or use in the packaging or labelling such as, company name, brand variant, etc.; and
  - (c) requirements for trademark, business, company or variant name on the package; and
  - (d) requirements for wrappers; and
  - (e) prohibition on the packaging or labelling on inserts; and
  - (f) prohibition on packaging or labelling to produce noise or scent; and
  - (g) prohibition on change in packaging or labelling after retail sale.

**[19] Offence**

A person commits an offence who manufactures, imports or sells any tobacco product that does not comply with a requirement of this Division.

**Division 4 – Health warnings****[20] Health warnings**

- (1) A person must not manufacture, import or sell a tobacco product if the packaging or labelling does not contain the required health warning.
- (2) A health warning must:
  - (a) be in the [prescribed/approved] form; and
  - (b) comply with regulations on the designs of health warnings.
- (3) When [prescribing/approving] the form of health warnings, the following are to be taken into account:
  - (a) the different forms that may be used for different types of tobacco products; and
  - (b) the application to a type or shape of packaging or labelling, such as tin, box, pouch, flip-top, slide or shell package, carton, transparent wrapper, clear packaging or labelling or packages containing one product unit; and
  - (c) a design that targets a particular group, such as youths, and adapting the number of health warnings and their rotation accordingly; and
  - (d) the form or means of any public consultation approved by [the Minister].
- (4) The [State/Republic/Crown] owns the copyright or any pictorial, on health warnings.
- (5) A person commits an offence who contravenes subsection (1).

**[21] Location of health warnings**

- (1) The health warnings must be large, clear, visible and legible.
- (2) The location or layout of any health warning on a package must:
  - (a) ensure maximum visibility;
  - (b) be positioned:
    - (i) on both the front and back (or on all main faces if there are more than two) of each unit packet and package, rather than just one side, to ensure that health warnings are highly visible; and
    - (ii) recognising that the frontal display area is the one most visible to the user for most package types; and
    - (iii) on principal display areas and, in particular, at the top of the principal display areas rather than at the bottom to increase visibility; and
    - (iv) in such a way that normal opening of the package does not permanently damage or conceal the text or image of the health warning;
  - (c) include further health warnings on all sides of a package, as well as on package inserts and onserts; and
  - (d) ensure that any marking does not obstruct any part of the health warning when establishing the size and position of other markings, such as tax stamps and markings required under Article 15 of the Convention.

- (3) The health warnings must not be obstructed by other required packaging and labelling markings or ban any commercial insert or onsert.
- (4) The health warnings may include new innovative measures regarding location, including, but not limited to, requiring health warnings to be printed on:
  - (a) the filter overwrap portion of cigarettes; or
  - (b) any other related material, such as the package of cigarette tubes, filters or papers or any other instruments, such as those used for water pipe smoking.

#### **[22] Size of health warnings**

- (1) The health warning must:
  - (a) be [50%/70%/90%] or more, but no less than [30%], of the principal display area of the packaging or labelling; and
  - (b) be in bold print in an easily legible font size and in a specified style or colour that enhance overall visibility and legibility.
- (2) If a border is required, the space dedicated to framing health warnings from the size of the health warning itself must:
  - (a) be excluded when calculating the percentage of display area occupied by them, that is to say, the space dedicated to the frame should be added to the total percentage of space occupied by the health warnings; and
  - (b) exclude the space within the border.

#### **[23] Use of pictorials in health warnings**

- (1) The health warnings on tobacco product packaging or labelling may:
  - (a) be in the form of or include, a picture or pictogram;
  - (b) use any pictorial health warning on both principal display areas (or on all main faces if there are more than two) of the packaging or labelling;
  - (c) comply with regulations that deal with how any text, picture or pictogram of health warnings should actually appear on packaging (including specification of location, wording, size, colour, font, layout, print quality).
- (2) The [Government/State/Crown] owns any copyright of an image it creates for use in health warnings.

#### **[24] Use of colour in health warnings**

- (1) The health warnings must be in full colour (four-colour printing), rather than black and white, for any pictorial element of health warnings.
- (2) The colour selected must be contrasting colours for the background of the text in order to enhance noticeability or maximise the legibility of any text-based element of health warnings.

#### **[25] Rotation of health warnings**

- (1) The health warnings must be rotated after every [12/24/36] months.
- (2) The rotation may be done by having multiple health warnings appearing concurrently.
- (3) The [Minister] must approve the number of health warnings that are to appear concurrently.
- (4) The health warnings in a specified series must be printed so that each appears on an equal number of retail packages, not just for each brand family but also for each brand within the brand family for each package size and type.
- (5) The [Minister] must:
  - (a) approve two or more sets of health warnings, specified from the outset, for rotation; and



- (b) by [Notice in the Gazette], nominate a date —
  - (i) after which to change the content of the health warning;
  - (ii) for the new health warnings and messages to appear on the tobacco products.
- (6) During a transition period to rotate health warnings, the [Minister] may, by Notice in the Gazette, appoint a phase-in period of up to [12/24] months for rotation between an old set and a new set of health warnings, during which time both sets may be used concurrently.

#### **[26] Message content of health warnings**

- (1) The health warnings may address different issues for tobacco use, in addition to harmful health effects or the impact of exposure to tobacco smoke, such as:
  - (a) any advice on smoking cessation, including any source for the cessation help, such as a website address, a toll-free telephone or a quit-line telephone number;
  - (b) the addictive nature of tobacco;
  - (c) any adverse economic or social outcome (such as, the annual cost of purchasing tobacco products); and
  - (d) the impact of smoking or exposure to smoking, on others (such as, the premature illness of a parent due to smoking or death of a loved one).
- (2) The content of health warnings may include any innovative content for other messages, such as any adverse environmental outcome or any practice of a tobacco company.
- (3) The health warnings must:
  - (a) be conveyed in an effective manner; and
  - (b) be authoritative and informative; and
  - (c) be presented in simple, clear and concise language that is culturally appropriate.
- (4) The health warnings may be presented in various formats, such as testimonials and positive and supportive information.
  - (a) if they generate negative emotions such as fear, be effective, particularly when combined with information designed to increase motivation and confidence in tobacco users in their ability to quit.

#### **[27] Language**

- (1) The health warnings and other textual information must appear on:
  - (a) each unit packet and package of tobacco products; and
  - (b) any outside packaging and labelling of the tobacco products, -  
in the [xx] language or [xx] languages.
- (2) If there is more than one principal language, health warnings may be displayed on each principal display area:
  - (a) in more than one language; or
  - (b) a different language can be used for different principal display areas; and
  - (c) where appropriate, different languages or language combinations may also be used in different parts of [xx].

#### **[28] Source attribution**

- (1) The health warnings on tobacco product packaging may include the source for health warnings.

- (2) If a source attribution statement is required, it must:
  - (a) be located at the end of the health warning, in a smaller font size than the rest of the warning; and
  - (b) specify a credible expert source; and
  - (c) be small enough not to detract from the overall noticeability and impact of the attribution message, while being large enough to be legible.

#### **[29] Information on constituents and emissions**

- (1) This section is in addition to the requirements of health warnings.
- (2) A packet must:
  - (a) contain information on relevant constituents and emissions of tobacco products; and
  - (b) display a relevant qualitative statement.
- (3) The information on the packet may be shown:
  - (a) on parts of the principal display areas; or
  - (b) on an alternative display area (such as the side of packaging) not occupied by health warnings.
- (4) A statement on the packet about tobacco constituents and emissions must not imply that one brand is less harmful than another, such as:
  - (a) the tar, nicotine or carbon monoxide figures; or
  - (b) a statement, such as *"these cigarettes contain reduced levels of nitrosamines"*.
- (5) In this section:

**"packet"** means:

- (a) a unit packet and package of tobacco products; or
- (b) an outside packaging and labelling of the tobacco products.

**"statement"** includes a quantitative or qualitative statement, such as, *"smoke from cigarettes contains benzene, a known cancer-causing substance"* or *"smoking exposes you to more than 60 cancer-causing chemicals"*.

#### **[30] Obscuring health warnings**

- (1) Any adhesive label, sticker, case, cover, sleeve, wrapping or tobacco manufacturers' promotional insert or onsert must not obscure, obliterate or undermine the health warnings.
- (2) However, an adhesive label may be allowed only if it cannot be removed or it is used only on a metal or wood package that holds a product other than cigarettes.

#### **[31] Pre-marketing testing**

- (1) Subject to resources and time, pre-marketing testing of the health warnings may be undertaken:
  - (a) to assess effectiveness on the intended target population;
  - (b) to identify unintended effects, such as inadvertently increasing the craving to smoke, and assessment of their cultural appropriateness.
- (2) A pre-marketing testing:
  - (a) must —
    - (i) involve civil society or non-governmental organisations and other regional or international agencies, which are not affiliated with the tobacco industry; and

(ii) not be long, complex or expensive.

(b) may be undertaken in parallel with the drafting of laws to avoid undue delay in implementation.

**[32] Display for sale<sup>97</sup>**

- (1) A person who sells a tobacco product by retail must display at a point of sale a sign to the effect that “smoking kills”.
- (2) The sign must be:
  - (a) in a form and manner approved by [CEO/PS]; and
  - (b) in [xx] and [xx] languages; and
  - (c) printed in dark coloured words on a white background; and
  - (d) in capital letters, clear and legible, and take up at least [90%] of the full area of the sign; and
  - (e) at least the area of an [A3] size of paper.
- (3) The sign:
  - (a) may include the attribution [“Ministry of Health Warning” or “Government Health Warning”] in [xx] and [xx] languages, printed after the sign; and
  - (b) the attribution must be of a print size that is no greater than one-half the print size of the sign.
- (4) Regulations may prescribe other forms, manner or requirements of the sign and the manner it is to be displayed at the point of sale.
- (5) A person commits an offence who contravenes subsections (1) or (2).

***Division 5 – Advertising, promotion and sponsorship***

**[33] Tobacco product advertising<sup>98</sup>**

- (1) A person must not (through any medium, manner or form or any material or matter) publish, undertake or carry out any tobacco product advertisement.
- (2) Subsection (1) applies to:
  - (a) any tobacco product advertisement that originates in [xx] but used in another country or originates in another country but used in [xx]; or
  - (b) the sale or distribution of a material or matter (such as film, video, Compact Disc, document, leaflet) that contains or that is, a tobacco product advertisement; or
  - (c) the printing or publishing of a tobacco product advertisement in any material or matter that is intended for the public; or
  - (d) a tobacco product advertisement done on behalf of another person.
- (3) This section does not apply to:
  - (a) a tobacco product advertisement that is an accidental or incidental accompaniment to a film or video; or
  - (b) a tobacco product advertisement included in a book, magazine, or newspaper printed in another country, or in a radio transmission or a television transmission originating in another country, or a film, video recording, or visual disk originating in another country, provided that the principal purpose is not to promote tobacco use.
- (4) A person commits an offence who contravenes subsection (1).

<sup>97</sup> Adapted from the Tuvalu Tobacco Control Act. It has been placed close to health warning provision as it deals with other health messages.

<sup>98</sup> Adapted from the Tobacco Control Decree 2010 (Fiji)

### [34] Tobacco product promotion<sup>99</sup>

- (1) A person must not:
  - (a) promote a tobacco product through direct or indirect means, including promoting of any other person, service, place, transport, or event; or
  - (b) promote any other person, a tobacco product, unless allowed under this Act; or
  - (c) directly, target any other person with promotional material, including informational material, such as, direct mail, telemarketing, consumer survey, or research or person-to-person conversation by a tobacco product business or a person who is acting to further the interest of the business.
- (2) A person commits an offence who contravenes subsection (1).

### [35] Tobacco product sponsorship<sup>100</sup>

- (1) A person must not undertake or carry out any form or manner of tobacco product sponsorship.
- (2) A person commits an offence who contravenes subsection (1).
- (3) In this section:

**"tobacco product"** includes:

  - (a) the trademark or brand name (or part of it) of a tobacco product; or
  - (b) the name or interests of a manufacturer or wholesaler of a tobacco product (whether or not that manufacturer or wholesaler also manufactures or distributes a product other than the tobacco product).

### [36] Free samples and incentive to smoke

- (1) A person must not, offer, give or distribute free sample of a tobacco product to another person in order to induce or promote the sale of a tobacco product.
- (2) A person must not provide any direct or indirect incentive that encourages another person to smoke or use a tobacco product.
- (3) A person commits an offence who contravenes subsection (1) or (2).

### [37] Competition<sup>101</sup>

- (1) This section applies to the use of a tobacco product in a competition connected with the selling or promoting the sale or use of a tobacco product.
- (2) A person must not:
  - (a) supply to another person any benefit, such as a prize or gift, or any other thing, as part of the competition; or
  - (b) conduct a prescribed scheme to promote the sale of tobacco products or to promote smoking generally; or
  - (c) permit a person to redeem a prize, coupon, token, voucher or ticket under which a person becomes entitled to a benefit, on a tobacco product.
- (3) A person commits an offence who contravenes subsection (2).
- (4) In this section:

**"benefit"** includes:

<sup>99</sup> Adapted from the FSM Tobacco Control Act. Subsection (1)(c) is moved to the definition so that it does not clutter the substantive provision.

<sup>100</sup> Adapted from the Tonga Tobacco Control Act 2000

<sup>101</sup> Adapted from the Fiji Tobacco Control Decree 2010.

- (a) a stamp, coupon, token, voucher or ticket under which another person may become entitled to, or may qualify for a benefit (whether the entitlement or qualification is absolute or conditional); or
- (b) a matter which (or a copy or facsimile of which) is a necessary prerequisite to participate in, or is likely to confer a benefit or advantage in, any game, contest or other activity in which a participant may become entitled to, or may qualify for, a benefit (whether the entitlement or qualification is absolute or conditional);
- (c) a reward or shopper loyalty scheme that provides benefits to customers.

### **[38] Brand stretching and reverse brand stretching<sup>102</sup>**

- (1) A person must not:
  - (a) use a tobacco brand name in connection with a non-tobacco product or service in such a way that the tobacco product and the non-tobacco product or service are likely to be associated; or
  - (b) use a brand name on a non-tobacco product or service in connection with a tobacco product or tobacco company in such a way that the tobacco product or company and the non-tobacco product or service are likely to be associated; or
  - (c) display on a building any name or writing which is commonly identified with a tobacco product.
- (2) Subsection (1)(c) does not apply to the business place of a manufacturer or seller whose sole or principal business is either the manufacture or sale of tobacco products.
- (3) A person commits an offence who contravenes a provision of subsection (1).
- (4) In this section:

**“advertise”** includes:

- (a) to sell, distribute or promote; or
- (b) to display for sale, distribution or promotion;

**“brand name”** includes emblem, trademark, logo or trade insignia or any other distinctive feature (including distinctive colour combinations);

**“building”** includes other structures or places, such as, a club, restaurant or stadium;

**“commonly identified”** includes any matter associated with, or is likely to be identified or associated with any goods, service or tobacco product;

**“goods which are not a tobacco product”** includes clothes, caps, bags, umbrellas, ashtrays, matches, lighters, coasters, dishes, sporting equipment, personal items, or any other similar items;

**“writing”** includes picture, image, graphic, logo, message, colour or other matter, in whole or part.

### **[39] Corporate social responsibility**

- (1) A tobacco company must not:
  - (a) make a financial or in-kind contribution to an organisation, such as a community, health, welfare or environmental organisation, either directly or through any other person; or
  - (b) undertake or promote any of its socially responsible business practices, such as good employee-employer relations, environmental stewardship, or public dissemination of the undertaking or promotion; or
  - (c) undertake any public education campaign, such as a youth smoking prevention campaign.
- (2) A company that contravenes a provision of subsection (1) commits an offence.

<sup>102</sup> Adapted from Fiji and Tuvalu tobacco control laws.

## **Division 6 – Contents and emissions**

### **[40] Prohibited ingredients**

- (1) A person commits an offence who manufactures, imports or sells a tobacco product that contains a prohibited ingredient.
- (2) In this section:  
“**prohibited ingredient**” —
  - (a) means an ingredient that is used to increase palatability in a tobacco product; and
  - (b) includes —
    - (i) any added sugar or sweetener (including glucose, molasses, honey or sorbitol);
    - (ii) any flavouring substance (including benzaldehyde, maltol, menthol and vanillin);
    - (iii) any spice or herb (including cinnamon, ginger or mint);
    - (iv) any attractive colouring, colouring agent, ink, or pigment, to a component of tobacco product, such as, imitation cork pattern on tipping paper or titanium dioxide in filter material;
    - (v) any vitamin, fruit or vegetable (including a matter or substance from processed fruit or vegetable), amino acid or fatty acid;
    - (vi) any energy or vitality, substance or matter that increases mental alertness or physical performance (including caffeine, guarana, taurine or glucuronolactone); but
  - (c) does not include a colouring agent for health warnings or other markings required under this Act.

### **[41] Prohibit tendency to ignite**

- (1) A person must not manufacture, import or sell a tobacco product that is not designed to be extinguished by itself when it is left unattended or is not puffed.
- (2) A person commits an offence who contravenes subsection (1).

### **[42] Duty to test constituents and emissions**

- (1) A manufacturer or importer must, at its own expense, carry out a test to determine:
  - (a) the additives, the constituents and the design features of each brand of the product manufactured or imported; and
  - (b) the quantities of the additives or constituents; and
  - (c) if the product is intended for smoking —
    - (i) the emissions of the smoke of each brand of the product manufactured or imported; and
    - (ii) the quantities of those constituents.
- (2) The test is to be carried out:
  - (a) on an annual basis; and
  - (b) pursuant to the prescribed procedures; and
  - (c) at a laboratory.
- (3) The manufacturer or importer must separately test variants of a brand.
- (4) A person commits an offence who contravenes subsection (1).

**[43] Further tests**

- (1) If a test has been carried out under section [42], the [xx] may, in writing, direct a manufacturer or importer to carry out a further test on the matters specified in that section.
- (2) The manufacturer or importer must, at its own expense, carry out the further test:
  - (a) under the prescribed procedures; and
  - (b) by an independent laboratory.
- (3) A person commits an offence who fails to carry out a further test required under subsection (1).

**[44] Approved laboratory**

- (1) The [Minister] may approve a laboratory (either in [xx] or another country) in which a test required under this Act may be carried out.
- (2) A test is to be carried out under the International Organisation for Standardisation.
- (3) A test is void if it is not carried out in an approved laboratory.

**[45] Test by Government**

- (1) The [Minister] may carry out any test at:
  - (a) a laboratory; or
  - (b) any other independent laboratory that is not directly or indirectly owned or controlled by the tobacco industry.
- (2) The person whose tobacco product is being tested under this section is liable to the Government for cost of the test.

**[46] Test reports**

- (1) The manufacturer or importer must, within [20 working days<sup>103</sup>] of receiving a report under section [xx or xx], send a copy to the [Minister].
- (2) The [Minister] must, within [20 working days] of receiving a report under section [xx], send a copy of the report under section [xx] to the manufacturer or importer.

**[47] Content – ingredient disclosure**

- (1) This section applies to a person who manufactures or imports tobacco products.
- (2) A person must disclose to [CEO/PS]:
  - (a) any information on the ingredients used in the manufacture of their tobacco products at specified intervals, by product type and for each brand within a brand family; or
  - (b) any ingredient used in the manufacture of each of their tobacco products and their quantities per unit of each tobacco product, including those ingredients present in the product's components (for example, filter, papers, glue), for each brand within a brand family; or
  - (c) further information on the characteristics of the tobacco leaves they used, for example —
    - (i) the type of tobacco leaves and the percentage of each type used in the tobacco product;
    - (ii) the percentage of reconstituted tobacco used;
    - (iii) the percentage of expanded tobacco used;
  - (d) any change to tobacco product ingredients when the change is made;
  - (e) a statement setting out the purpose of the inclusion of an ingredient in the tobacco product and other relevant information;

<sup>103</sup> PICTs to decide appropriate time required taking into account their territorial geography. This applies to similar provisions that fix a time.

- (f) a statement setting out the name, address and other contact information of each ingredient's supplier to facilitate direct disclosure to Government by the supplier, where appropriate, and for compliance monitoring purposes.

#### **[48] Information on contents, constituents and emissions**

- (1) A manufacturer or importer must, before [31 July] each year, send to [xx] the [prescribed] information about the contents, ingredients and emissions of any manufactured or imported tobacco product.
- (2) The [xx] must, as soon as practicable, publish the information in the [official publication, such as Gazette] or other media approved by [xx] except any information:
  - (a) that is a trade secret of the manufacturer or importer/exporter;
  - (b) decided by [xx] not to be released to the public; or
  - (c) claimed by a manufacturer or importer to be confidential.
- (3) A failure to comply with subsection (1) is a ground to cancel the licence to manufacture, import, or export tobacco product.
- (4) A person commits an offence who fails to provide information required under subsection (1).
- (5) In this section:

**"brand family"** means a group of brands that fall under the same parent brand, are marketed under the same parent brand and carry the same set of values as the parent brand;

**"information"** means information about:

- (a) the type of tobacco product, brand, or brand family; or
- (b) any ingredient used in manufacturing the tobacco product; or
- (c) the quantity in each unit of the tobacco product; or
- (d) any other ingredient present in a component of the tobacco product, such as filter, paper or glue, for each brand within a brand family; or
- (e) any characteristic of tobacco leaves used, including the type and percentage of each type of leaves used; or
- (f) the percentage of reconstituted or expanded tobacco used; or
- (g) any other prescribed matter;

**"expanded tobacco"** means tobacco that has been expanded in volume by quick volatilisation of a medium such as dry ice;

**"reconstituted tobacco"** means a paper-like sheet material comprised mainly of tobacco.

## **PART 3 – LICENSING OF MANUFACTURERS, ETC.**

### **[49] Licences to manufacture, import/export or sell tobacco products<sup>104</sup>**

- (1) A person must not:
  - (a) manufacture a tobacco product except under a manufacturing licence issued under section [xx]; or
  - (b) import a tobacco product except under an import licence issued under section [xx]; or
  - (c) export a tobacco product except under an export licence issued under section [xx];<sup>105</sup> or

<sup>104</sup> Only one authority (license) is proposed rather than having different authorities (license, registration, permit, etc.).

<sup>105</sup> Only relevant to PICTs that export tobacco products.



- (d) sell a tobacco product (including [zuki/brus/xx]<sup>106</sup>) by wholesale except under a wholesale licence issued under section [xx]; or
  - (e) sell a tobacco product (including [zuki/brus/xx]) by retail except under a retail licence issued under section [xx].
- (2) A person commits an offence who contravenes subsection (1).
  - (3) A person commits an offence who provides economic incentives or payments to a retailer to purchase, stock or sell tobacco products.

#### **[50] Number of manufacturing licences<sup>107</sup>**

*[No more than [2] manufacturing licences may be issued].*

#### **[51] Restrictions on import licences**

- [(1) The purpose of this section is to restrict importation of tobacco products for the purpose of protecting smoke-free environments, public health and restricting supply.*
- (2) The [XX] may issue no more than [2] import licences per year.*
- (3) When deciding an application for an import licence [XX] must take into account the following:*
  - (a) the purpose of this section; and*
  - (b) the need to ensure that the issuing of an import licence is fair to all other applicants; and*
  - (c) whether or not the applicant was the import licensee in the previous year; and*
  - (d) whether or not the applicant has applied previously or is applying for the first time; and*
  - (e) any matter it considers necessary to decide the application.]*

#### **[52] Manufacturing prohibition**

*[A person must not manufacture tobacco.*

*A person who manufactures any tobacco product commits an offence.]*

#### **[53] Power to issue licences**

- (1) The [xx] may, upon application, issue any of the following licences:
  - (a) manufacturing licence authorising the manufacturing of a tobacco product specified on the licence, including the sale of the manufactured tobacco product to a wholesale licensee or a retail licensee;<sup>108</sup>
  - (b) import licence authorising the importing of a tobacco product specified on the licence, including the sale of the imported tobacco product to a wholesale licensee or a retail licensee;
  - (c) [export licence authorising the exporting of a tobacco product specified on the licence;]<sup>109</sup>
  - (d) wholesale licence authorising the sale to retail licensees of tobacco products specified on the licence;
  - (e) retail licence authorising the retail sale of tobacco products specified on the licence.
- (2) A licensee commits an offence if:
  - (a) for a manufacturing licensee, the licensee distributes a tobacco product to a person who is not a wholesale licensee or retail licensee; or

<sup>106</sup> Use local name of tobacco. It is referred to as 'zuki' in Fiji and 'brus' in PNG.

<sup>107</sup> PICTs may, in order to control supply, consider limiting the number of manufacturing or import licenses or a total ban on manufacturing, including limiting number of import licenses.

<sup>108</sup> PICTs to consider whether manufacturing licenses should be subject to the prior approval of Cabinet. Also whether it is a quantitative restriction under the TBT (Agreement on Technical Barriers to Trade).

<sup>109</sup> Depends on whether your PICT allows the export of tobacco products

- (b) for an import licensee, the licensee distributes a tobacco product to a person who is not a wholesale licensee or retail licensee; or
- (c) for a wholesale licensee, the licensee distributes a tobacco product to a person who is not a retail licensee.

#### **[54] Applications**

- (1) A person may apply to [xx] for a licence.
- (2) The application must:
  - (a) be made in the [prescribed form/approved form];<sup>110</sup> and
  - (b) include the [prescribed/approved] fees; and
  - (c) contain any other prescribed information.

#### **[55] Register of licences**

- (1) The [xx] must establish and maintain a register of licences to record the following:
  - (a) the name of the licensees; and
  - (b) the business and residential address and other contact information of the licensee; and
  - (c) the type of licence and what it authorises; and
  - (d) the term and expiry date of the licence; and
  - (e) any other information approved by [xx].
- (2) A person is entitled to inspect the register and access and obtain any information in it, subject to payment of [prescribed/approved] fee.
- (3) The [xx] may refuse access to any information if [xx] is satisfied that the information is confidential or relates to private matters of the licensee.

#### **[56] Notification of change of name, address, etc.**

- (1) A licensee must send a notice to the [xx] of any change that affects the records relating to:
  - (a) a licensee's name and address and other contacts; or
  - (b) a licensee's employment or position; or
  - (c) any other detail requiring notification under this Act.
- (2) The notice must be:
  - (a) made within [20 working days] of the change; and
  - (b) made in a [prescribed/approved] form; and
  - (c) be accompanied by a copy of the licence.
- (3) The failure to comply with subsection (1) is a ground to suspend the licence.

#### **[57] Term and renewal of licence**

- (1) A licence is valid for [12 months] from the date of issue or renewal of the licence.<sup>111</sup>
- (2) A licensee may, within [3 months] before expiry of the licence, apply to [xx] to renew the licence.

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<sup>110</sup> The devised application forms will provide for names, addresses and other contact information.

<sup>111</sup> PICTs to consider whether different licences (manufacturing licence, import licence, etc.) should have different terms.

**[58] Conditions of licence**

- (1) The [xx] may:
  - (a) when issuing a licence, impose any condition of the licence; or
  - (b) vary, suspend or revoke any current condition; or
  - (c) impose new conditions; or
  - (d) impose any prescribed conditions.
- (2) Regulations may prescribe other conditions of licences.

**[59] Variation, suspension and revocation of licence**

- (1) The [xx] may:
  - (a) vary a licence if the [xx] is satisfied that the licence should be varied; or
  - (b) suspend a licence, for up to [3] months (subject to further extension), if the licensee is alleged to have breached this Act; or
  - (c) revoke a licence if the licensee has been convicted of an offence under this Act or if it is in the interest of public health to revoke the licence.
- (2) A licensee has the right to be heard on any proceeding to revoke the licence.

**[60] Transfer of licence**

- (1) The licensee must not transfer the licence to another person.
- (2) A transfer to another person is void.

**[61] Appeal**

- (1) In this section:
 

**“decision”** means a decision:

  - (a) not to issue a licence; or
  - (b) not to renew a licence; or
  - (c) to revoke a licence.
- (2) A person may appeal the decision to [xx<sup>112</sup>].
- (3) The [xx] may hear and determine the appeal.
- [(4) *The appeal panel comprises:*
  - (a) *a lawyer with at least [5] years legal experience; and*
  - (b) *[2] other members.*]

**PART 4 – REDUCING SUPPLY OF TOBACCO PRODUCTS*****Division 1 – Prohibited products, smuggling and information*****[62] Prohibited tobacco products**

- (1) In this Part, a prohibited tobacco product means:
  - (a) smokeless forms of tobacco;
  - (b) chewing tobacco;

<sup>112</sup> Each PICT to consider the appropriate appeal body. If the licensing authority is the CEO/PS health, the Minister can be the appeal authority. If the Minister is the licensing authority then a panel of three persons can be established as the appeal authority. Also the lower courts (e.g. magistrates) can be considered.

- (c) water pipes or similar products;
  - (d) e-cigarettes or vaping products; and
  - (e) heated tobacco products.
- (2) A person must not manufacture, import, sell, or supply a prohibited tobacco product.
- (3) If the [xx] suspects that a person is manufacturing, importing, selling or supplying a prohibited tobacco product, the [xx] may order:
- (a) the person to cease the activity; and
  - (b) the confiscation and forfeiture of the prohibited tobacco product; and
  - (c) the prohibited product to be destroyed in a proper manner.
- (4) A person commits an offence who contravenes subsection (2).

### **[63] Smuggling of tobacco products<sup>113</sup>**

- (1) A person commits an offence who:
- (a) imports a tobacco product (whether or not manufactured legally), with the intention to defraud revenue; or
  - (b) manufactures a tobacco product (whether or not with the authorisation of the trademark holder) with the intent to defraud revenue; or
  - (c) conveys, distributes, sells or possesses a tobacco product that the person knows was imported or manufactured with intent to defraud revenue.
- (2) For the purposes of sub-section 1(c) it is not necessary for the prosecution to prove the identity of the person who imported or manufactured the tobacco product.

### **[64] Manufacturer to provide information about retailers**

- (1) The [xx] may require a manufacturer to provide information:
- (a) sufficient to identify the retailer to whom the manufacturer sells tobacco products or to locate the business place of the retailer; or
  - (b) about the quantity of tobacco products sold by the manufacturer to a retailer.
- (2) A manufacturer must comply with a requirement under subsection (1).
- (3) A person commits an offence who fails to provide information required under subsection (1).
- (4) In this section:  
**“manufacturer”** includes an importer or wholesaler.

## **Division 2 – Young persons**

### **[65] Definitions**

In this Division:

**“covered”** means:

- (a) for a vending machine, covered by an opaque material or some other means in such a way that none of the top, front, back and sides of the machine or its contents are visible;

<sup>113</sup> PICTs to determine whether smuggling offence should be in their customs/excise legislation.

- (b) for a tobacco advertisement or display of tobacco products, covered by an opaque material or some other means in such a way that the advertisement or products are not visible;

“**post**” includes any other means of obtaining a tobacco product without the buyer being present in person in order to verify proof-of-age;

“**social event**” means an event that:

- (a) is predominantly organised or intended for, or predominantly attended by, young persons; and
- (b) is open to members of the public (whether with or without payment); and
- (c) takes place in a location other than a private residence;

“**young person**” means any person below [21] years.<sup>114</sup>

### [66] Sale to young persons

- (1) A person must not sell a tobacco product to a young person.
- (2) A person must not supply, whether by gift or other means, a tobacco product to:
  - (a) a young person; or
  - (b) another person whom the person knows, or ought reasonably to know, will supply the product to a young person.
- (3) A person must not buy a tobacco product for use by a young person.
- (4) It is irrelevant under subsection (1) that the young person was buying the tobacco product for or on behalf of an adult.
- (5) A person commits an offence who contravenes subsection (1), (2) or (3).

### [67] Licensees liable for acts of employees

- (1) If a retailer’s adult employee sells a tobacco product to a young person, the retailer is taken to also commit the same offence against section [xx](1).
- (2) If a retailer’s employee who is a young person sells a tobacco product to another person:
  - (a) the employee does not commit an offence against section [xx](1); and
  - (b) the retailer is taken to commit the same offence against section [xx](1); and
  - (c) if, at the time of the sale, the young person employee was being supervised by an adult employee of the retailer, the adult employee is taken to also commit the same offence against section [xx](1).
- (3) It is prohibited to permit a young person to sell a tobacco product.

### [68] Defence on photographic identification

It is a defence for an offence under section [xx, xx, or xx] if the defendant<sup>115</sup> proves:

- (a) that, immediately before the sale, supply or offer to buy the tobacco product, the person who sold, supplied or offered to sell the tobacco product was shown photographic identification indicating that the sale or supply was being made to an adult; and
- (b) that, at that time, a reasonable person would have had no reason to suspect that the photographic identification was false or related to another person.

<sup>114</sup> A “young person” may be defined as a person aged under 21 years or under 18 years. It is recommended that the age threshold defined here matches the age threshold defined for consuming alcohol products.

<sup>115</sup> Check proper term whether “accused” or “offender” in your jurisdiction.

### **[69] False identification**

- (1) A person who is not sure about the age of a buyer of a tobacco product must:
  - (a) ask the buyer to provide proof-of-age;<sup>116</sup> and
  - (b) refuse the sale if —
    - (i) the proof-of-age is not provided; or
    - (ii) it is suspected that the proof-of-age is false.
- (2) A person commits an offence if the person, with intent to obtain a tobacco product, uses a proof-of-age:
  - (a) of another person; or
  - (b) that is false.
- (3) A person commits an offence who fails to check proof-of-age required under subsection (1) and the buyer who was sold the tobacco product was a young person.

### **[70] Sale of products resembling tobacco products**

- (1) A person must not sell a product, such as confectionery or toys, designed or marketed for consumption or use by young persons if the product:
  - (a) resembles, or is packaged to resemble, a tobacco product; or
  - (b) has or is likely to have the effect of encouraging young persons to smoke (whether it is intended to have that effect or not).
- (2) A person commits an offence who contravenes subsection (1).

### **[71] Sale prohibition sign**

- (1) A retailer must provide a sign at the point-of-sale stating that it is prohibited:
  - (a) to sell a tobacco product to a young person, or to buy a tobacco product for a young person; or
  - (b) to permit a young person to sell or buy, a tobacco product.
- (2) A person must not sell a tobacco product by retail if a prohibition sign is not displayed at the point of sale.
- (3) A person commits an offence who contravenes subsection (1) or (2).

### **[72] Smoking in motor vehicle with young persons<sup>117</sup>**

- (1) A person commits an offence if:
  - (a) the person smokes in a motor vehicle; and
  - (b) the motor vehicle is on a public road or in a public place; and
  - (c) a young person is in the motor vehicle.
- (2) In proceedings for an offence against subsection (1), if it is proved that the other person appeared to be a young person, the person is presumed to be under [21] years unless there is contrary evidence.
- (3) If an enforcement officer has reason to suspect that a person in a motor vehicle is committing or has committed an offence against section [xx], the enforcement officer may:
  - (a) require the driver of the motor vehicle to stop the motor vehicle; or
  - (b) require the person to stop smoking.

<sup>116</sup> See definition of "proof-of-age".

<sup>117</sup> This is a new trend in some states in Australia. The ages are between 16 and 18. The proposal is to use the 21 years as the age to prohibit sale of tobacco products.

**[73] Social events**

- (1) Any person who sells or smokes any tobacco product in a place while a social event is taking place there commits an offence.
- (2) If an enforcement officer or police officer has any ground to believe that a person smokes contrary to subsection (1), the officer may, on producing the officer's identity card, direct the person to cease smoking.
- (3) A person given a direction under subsection (2) must comply with the direction.

**[74] Duties of owners – social events**

- (1) The owner of the place where the social event takes place commits an offence if section [xx] is contravened [+ penalty].
- (2) It is a defence for the offence under subsection (1) to prove that the defendant did not provide an ashtray, matches, a lighter or any other thing designed to facilitate smoking where the contravention occurred and that:
  - (a) the defendant was not aware, and could not reasonably be expected to have been aware, that the contravention was occurring; or
  - (b) the defendant —
    - (i) requested the person contravening to stop smoking; and
    - (ii) informed the person that the person was committing an offence.

**[75] No smoking signs – social events**

- (1) The owner of a place must:
  - (a) display a non-smoking sign at the place where a social event takes place; and
  - (b) display it in a manner that ensures that a person is reasonably likely to see one or more of them either on entering the place or from within the place.
- (2) An owner commits an offence who, without reasonable excuse, contravenes subsection (1) [+ penalty].

**[76] Covering vending machines, tobacco advertisements etc., during social events<sup>118</sup>**

An owner must ensure that the following are removed or covered at all times while the social event is taking place:

- (a) a vending machine in the place;<sup>119</sup>
- (b) a tobacco advertisement in the place;
- (c) a display of tobacco products in the place.

**Division 3 – Other measures****[77] Vending machines<sup>120</sup>**

- (1) A person must not sell a tobacco product through a vending machine.
- (2) A person commits an offence who contravenes subsection (1).

**[78] Sales through the post, internet, etc.**

- (1) A person must not sell or buy a tobacco product through the post or the internet or by using a telecommunications device.

<sup>118</sup> Only required if vending machines for tobacco products or advertisement are permitted.

<sup>119</sup> Does not apply to jurisdictions that totally prohibit the use of vending machines to sell tobacco products.

<sup>120</sup> Some allow for sale through vending machine at places where young persons do not access. The proposal is the total prohibition of sale of tobacco products through vending machines.

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

#### [79] Visible displays of tobacco products

- (1) A person who sells tobacco products must ensure that they are not displayed in such a manner (such as, placed on shelves for public display) that the tobacco products are directly accessible to or visible by consumers, from inside or outside the premises.
- (2) A person commits an offence who contravenes subsection (1).

## PART 5 – INDUSTRY INTERFERENCE

### [80] Definitions

In this Part:

**“employee”** of a manufacturer, includes a person engaged by the industry as a consultant or advisor or similar capacity or a person employed or engaged by an entity acting on behalf or to further the interest of the tobacco industry;

**“Ministry”** includes any branch or organ of the [State/Crown/Republic] or a government agency or body or a State-owned corporation or entity;

**“manufacturer”** means any of the following persons<sup>121</sup> who is involved in the tobacco industry:

- (a) a person who manufactures or produces tobacco products; or
- (b) a person —
- (i) who distributes tobacco products, by wholesale; or
  - (ii) who imports tobacco products for wholesale or retail sale; or
  - (ii) whose work involves furthering the interests of the manufacturer, wholesaler or importer, such as an employee or agent;

**“partnership”** includes a memorandum of understanding, non-binding or non-enforceable agreement or voluntary arrangement;

**“public officer”** —

- (a) means a public officer whose duties involve dealing, directly or indirectly, with public health policies or matters relating to tobacco products; and
- (b) includes any person engaged by a Ministry as an employee, consultant or contractor.

### [81] Purpose of this Part

The purpose of this Part is to protect public health policies on tobacco control from commercial or other vested interests of manufacturers, in particular:

- (a) to protect the formulation and implementation of public health policies on tobacco control from the manufacturers; and
- (b) to ensure that any interaction between government and manufacturers about tobacco control or public health is accountable and transparent; and
- (c) to ensure that the manufacturers provide government with information for effective implementation of this Act; and
- (d) to treat any government preferential treatment of manufacturers to be in conflict with the tobacco control policy.<sup>122</sup>

<sup>121</sup> Each PICT should review the definition to take into account the persons regarded as the tobacco industry within it.

<sup>122</sup> Other purposes may be added.



**[82] Functions**

- (1) The functions of the [Minister] are:
  - (a) to raise awareness about —
    - (i) the addictive and harmful nature of tobacco products; and
    - (ii) the interference of manufacturers with tobacco control policies, including through corporate social responsibility programs; and
  - (b) in consultation with the Public Service Commission, to formulate, adopt and implement —
    - (i) a policy on the disclosure and management of conflicts of interest that applies to public officers involved in setting and implementing public health policies on tobacco control; and
    - (ii) a policy that requires a public officer who has or had a role in setting and implementing public health policies on tobacco control:
      - (A) to inform the Minister the about any intention to engage in an occupational activity within the tobacco industry, whether gainful or not, within a specified period of time after leaving service; or
      - (B) to declare any current or previous occupational activity with the tobacco industry whether gainful or not; and
    - (iii) a code of conduct for public officers, prescribing the standards with which they should comply in their dealings with the tobacco industry;
  - (c) to establish measures to limit government interactions with the manufacturers, including the following:
    - (i) ensuring that a contract for carrying out any work on public health policies is not awarded to a person who has a conflict of interest as a result of their existing or past work with a manufacturer; and
    - (ii) requiring an applicant for any employment with the Ministry, relating to public health policies, to declare any current or previous occupational activity with a manufacturer whether gainful or not; and
    - (iii) requiring that a public officer who has or has had a role in public health policies to inform their Ministry about any intention to engage in an occupational activity within a manufacturer, whether gainful or not, within a period of one year after leaving service; and
    - (iv) requiring a public officer to declare any direct or indirect interest in a manufacturer and divest such an interest accordingly; and
    - (v) prohibiting public officers from accepting payments, gifts, or services, either monetary or in kind, from a manufacturer;
  - (d) to ensure that the Government does not support, endorse, or advocate for the business interests of the tobacco industry (whether within or outside of [country]); and
  - (e) to take necessary steps to monitor and ensure compliance with this Part.

**[83] Interaction with manufacturers**

- (1) A Ministry must not interact with a manufacturer except to effectively regulate the manufacturer and tobacco products.
- (2) An interaction specified in subsection (1) must:
  - (a) be conducted transparently; and
  - (b) where possible, be conducted in public, for example, through public hearings, public notice of interaction, disclosure of records of the interaction to the public.

(3) Any contract entered into contrary to this section is void.

**[84] Prohibitions on partnerships, etc.**

(1) A Ministry must not enter into, accept, support or endorse:

- (a) a contract, a partnership with a manufacturer or any entity or person working to further an interest of the manufacturer; or
- (b) a manufacturer organising, promoting, participating in, or performing, youth, public education or an initiative that is directly or indirectly related to tobacco control; or
- (c) a voluntary code of conduct or instrument drafted by the manufacturer that is offered as a substitute for legally enforceable tobacco control measures; or
- (d) an offer for assistance or proposed tobacco control legislation or policy drafted by, or in collaboration with, the tobacco industry.

(2) Any act or conduct that is contrary to subsection (1) is void.

**[85] Support, endorsement, etc.**

(1) A manufacturer must not:

- (a) enter into any contract, agreement or partnership to develop or implement tobacco control measures for, or on behalf of, the government; or
- (b) develop any educational, instructional or training resources on any tobacco control topic, policy matter or legislation for use —
  - (i) by the Government; or
  - (ii) by retailers; or
  - (iii) by other persons who are subject to this Act,

although this prohibition shall not prevent internal training manuals for use by a manufacturer in its own operations; or

- (c) offer to negotiate or to enter into any kind of partnership with the Government or to host or sponsor any activities for the pursuit of tobacco control or public health goals; or
- (d) participate in any manner in any initiative, campaign, programme or activity about tobacco control or public health, including any other education programme or other initiative on tobacco control or public health.

(2) A manufacturer must not give or offer any kind of benefit to [a current or former public officer].

(3) A current or former [public officer], must not accept any benefit under subsection (2).

(4) A manufacturer commits an offence who contravenes subsections (1) or (2).

(5) In this section:

“**benefit**” includes any monetary or in-kind payment, gift, service, research funding, or any other facility or provision.

**[86] Interests and contracts**

(1) A person who:

- (a) applies for a government position connected with tobacco control, must disclose to the appointing authority any current engagement or former engagement within the last [4] years, (whether or not for remuneration) with a manufacturer; and
- (b) is a public officer intending to be engaged (whether or not for remuneration) with a manufacturer, must, within [30 days] before taking up the engagement, inform the [xx] about the engagement.

- (2) A Ministry must not:
  - (a) award contracts for carrying out any work related to setting and implementing public health policies on tobacco control to candidates or tenderers who have conflicts of interest with established tobacco control policies; or
  - (b) have any financial interests in a manufacturer.
- (3) A public officer must:
  - (a) declare and divest himself or herself of direct interests in a manufacturer; and
  - (b) if the officer intends to be engaged (whether or not gainful) with a manufacturer, within [30 days] before taking up the engagement, inform the [CEO or Permanent Secretary of their department/ministry] about the engagement.
- (4) A person commits an offence who contravenes subsection (1) or (3).
- (5) A contract or interest that is made contrary to subsection (2) is void.

**[87] Disqualifications to government boards, etc.**

- (1) A person employed or engaged (whether or not gainful) by a manufacturer is not eligible:
  - (a) to be appointed to any government statutory or non-statutory board, committee or group dealing with any matter relating to tobacco products or manufacturers; or
  - (b) to be nominated or engaged to represent the Government —
    - (i) to attend meetings of the Conference of the Parties to the WHO Framework Convention on Tobacco Control, its subsidiary bodies or any other bodies established pursuant to decisions of the Conference of the Parties; or
    - (ii) any national, regional or international meeting relating to tobacco control or manufacturers.
- (2) An appointment or representation under subsection (1) is void.

**[88] Contribution to political parties**

- (1) A manufacturer must not make any contribution (financial or otherwise) to a political party or candidate for election to Parliament, whether national, provincial or local [Parliament/local [or provincial] government].<sup>123</sup>
- (2) A manufacturer commits an offence who contravenes subsection (1).
- (3) An agreement or arrangement for contribution under this section is void.
- (4) This section also applies to:
  - (a) a person who lobbies on behalf of the manufacturer; or
  - (b) a person acting on behalf of tobacco growers; or
  - (c) the agent of the person.

**[89] Disclosure of information on business operations**

- (1) If required, a manufacturer must:
  - (a) disclose any information about its business operations or activities to the [CEO/PS]; and
  - (b) do so before or by 30 June each year.

<sup>123</sup> An alternative provision is to disclose the contribution. The total prohibition is the better alternative because of the provision on the industry with public health policies.

- (2) The [CEO/PS]:
  - (a) must keep and maintain information provided under this section; and
  - (b) on written application, may allow a person to access the information.
- (3) A manufacturer commits an offence who:
  - (a) fails to disclose the information required under subsection (1); or
  - (b) discloses any information under subsection (1) that is false, misleading or deceptive. [+ penalty].
- (4) In this section:
 

**“information”** means information that the manufacturer has been requested to provide about:

  - (a) the business practices of the tobacco manufacturer, including any actions taken to promote or advertise its products; or
  - (b) the production or manufacturer of tobacco or tobacco products by the manufacturer, the market share of the manufacturer, and marketing expenditure or revenue; or
  - (c) any corporate social responsibility activities; or
  - (d) any other activities, including any matters relating to lobbying, philanthropy, or political or campaign contributions.
- (5) Regulations may be made to prescribe other matters for the purpose of this section.

**[90] Industry not entitled to government incentives**

- (1) A manufacturer is not entitled to any government incentive.
- (2) An incentive given contrary to subsection (1):
  - (a) is void; and
  - (b) must be returned by the manufacturer to [xx].
- (3) In this section:
 

**“incentive”** includes:

  - (a) a privilege or benefit; or
  - (b) a tax exemption, incentive or benefit; or
  - (c) research grants, or any other mechanism designed to support the establishment, expansion, or financial viability of the tobacco industry.

**[91] State interests**

- (1) The State must not own or operate any business of a manufacturer, importer, wholesaler or retailer, including having any share, investment or interest in the business.
- (2) Any business, share or interest of the State contrary to subsection (1) is void.
- (3) In this section:
 

**“State”** includes the Government, or any branch of the State, or agent, company or other legal entity of the Government.

**[92] Corporate social responsibility**

- (1) The [CEO/PS] must ensure that all Ministries and the public are informed and made aware of the true purpose and scope of the corporate social responsibility activities of a manufacturer.

- (2) A [CEO/PS] must not:
- (a) endorse, support, form a partnership with or participate in a corporate social responsibility activity of a manufacturer; or
  - (b) allow public disclosure by a manufacturer of its corporate social responsibility activities or expenditures, except for disclosures permitted by this Act; or
  - (c) allow acceptance by any other Ministry or the public sector of political, social, financial, educational, community or other contributions from a manufacturer, except for any matter authorised by law.

- (3) In this section:

**“corporate social responsibility”** means any activity or strategy for marketing or public relations that falls within the meaning of advertising, promotion or sponsorship of tobacco product.

## PART 6 – ADMINISTRATION

### [93] Public health function, etc.

- (1) The [xx] has the following functions:
- (a) to provide educational and public awareness programmes and training on the health risks (including addictive characteristics) of tobacco consumption and exposure to tobacco smoking, including the following —
    - (i) programmes about the health risks of smoking or exposure to tobacco smoke, including its addictive characteristics;
    - (ii) programmes for public and private sector participation to develop and implement inter-sectoral programmes and strategies;
    - (iii) providing information about the adverse effects of tobacco products and consumption on health, the economy or environment, including access to information on the tobacco industry.
  - (b) to carry out measures to cease tobacco product use or to treat dependence on tobacco products, including the following —
    - (i) any programmes to promote ceasing tobacco product use;
    - (ii) any programme or treatment of tobacco dependence or counselling services on cessation of tobacco use, including programmes to diagnose, counsel, prevent and treat tobacco dependence;
    - (iii) any assistance in the accessibility and affordability of treatment for tobacco dependence, including pharmaceutical products;
    - (iv) any programme on the health risks on tobacco consumption and exposure to tobacco smoke;
    - (v) any other measure or programme to give effect to Article 14 of the Convention.
  - (c) to provide training in tobacco control (including sensitisation and awareness programmes) for public health officials, other relevant public officers, including media professionals and other interested tobacco control stakeholders.
- (2) The [xx] functions on the demand reduction measures concerning tobacco dependence and cessation are:
- (a) to design and implement programmes aimed at ceasing and reducing tobacco dependence;

- (b) to design and implement programmes (including counselling services) to diagnose, treat prevent and provide counselling on, tobacco dependence;
  - (c) to assist in affordable access to treatment (including pharmaceutical products) for tobacco dependence.
- (3) Where it is appropriate and helpful to the carrying out of its functions under this Act, the [xx] may involve or consult the private sector (excluding the tobacco industry) and any non-governmental or civil society organisation or group.

**[94] Research and strategies**

- (1) The [xx] may:
- (a) develop and promote research or coordinate regional and international research programmes in the field of tobacco control —
    - (i) to conduct, cooperate, promote or encourage research or scientific assessment that addresses the determinants and consequences of tobacco consumption or exposure to tobacco smoke, including identifying alternative crops; or
    - (ii) to promote and strengthen training and support for those involved in tobacco control activities; and
  - (b) establish tobacco surveillance programmes (magnitude, patterns, determinants or consequences of tobacco consumption and exposure to tobacco smoke) —
    - (i) to analyse and compare epidemiological surveillance data on tobacco consumption and exposure to tobacco smoke and related social, economic and health indicators; or
    - (ii) to provide regional and international exchange of information on health indicators; or
    - (iii) to cooperate with the World Health Organization on guidelines or procedures to collect, analyse and disseminate tobacco-related surveillance data; and
  - (c) promote and facilitate the exchange of public information on the practices of tobacco industries and cultivation of tobacco:
    - (i) to provide a database on updated legislation on tobacco control, enforcement and law; or
    - (ii) to cooperate in developing programmes for regional and international tobacco control; or
    - (iii) to establish and maintain updated data from national surveillance; or
    - (iv) to cooperate at the regional and international level to establish and maintain a system to collect and disseminate information on tobacco production, manufacture and activities of the tobacco industry which impact on tobacco control activities.
- (2) The [xx] must establish and strengthen tobacco control strategies, plans and programmes, in particular:
- (a) to assist in developing, transferring and acquiring technology, skills and capacity and expertise on tobacco control; and
  - (b) to provide technical, scientific and legal expertise to establish and strengthen tobacco control strategies, plans and programmes, including —
    - (i) assisting in developing strong laws, policies and technical programmes, including preventing, initiating, and promoting cessation of tobacco consumption and protecting people from exposure to tobacco smoke; or

- (ii) assisting tobacco workers to develop viable alternative livelihoods; or
- (iii) assisting tobacco growers to shift production to alternative crops; and
- (c) to support training for the purpose of this Act of public health officials, other relevant public officers and other interested tobacco control stakeholders; and
- (d) to provide materials, equipment, supplies (logistics) for tobacco control strategies, plans and programmes; and
- (e) to identify methods of tobacco control, including the affordable treatment of nicotine addiction.

## **PART 7 – ENFORCEMENT**

### ***Division 1 – Appointment of enforcement officers***

#### **[95] Enforcement officers**

- (1) The [xx] may appoint in writing:
  - (a) a person to be an enforcement officer; or
  - (b) a class of persons to be enforcement officers.
- (2) The following are taken to be enforcement officers:
  - (a) a police officer; or
  - (b) a public officer responsible for tobacco control; or
  - (c) any other public officers designated in writing by [xx].

#### **[96] Identity cards**

- (1) The [xx] must issue to an enforcement officer (except a police officer) an identity card:
  - (a) that specifies the name and appointment of the enforcement officer; and
  - (b) on which there is a recent photograph and the signature of the enforcement officer.
- (2) A person who ceases to be an enforcement officer must, in the absence of reasonable excuse, return his or her identity card to the [xx] as soon as practicable after ceasing to hold that appointment.
- (3) A person commits an offence who uses an identity card after ceasing to hold the appointment.

### ***Division 2 – Enforcement functions and powers***

#### **[97] Functions**

The functions of an enforcement officer are:

- (a) to administer and enforce this Act; and
- (b) to perform any other function specified in the letter of appointment.

#### **[98] Entry and search powers**

- (1) An enforcement officer may enter a place if the enforcement officer believes tobacco products are being manufactured, packaged, sold or displayed for sale.
- (2) An enforcement officer who enters a place under subsection (1) may do any of the following:
  - (a) enter and inspect the place and any machines found in or on the place;
  - (b) enter and collect —
    - (i) from a manufacturing, wholesale, or retail place, the sample of a tobacco product or other ingredient of tobacco products required for testing; or

- (ii) from a manufacturer, importer or retailer, a sample to be tested to ascertain whether a tobacco product has the tendency to ignite when not puffed or left unattended;
  - (c) examine any tobacco product, and any package that is or is intended to be used for packaging tobacco products, found at the place;
  - (d) take any measurement of the place or a thing found at the place;
  - (e) take a photograph, film or audio, video or other recordings of the place;
  - (f) if the enforcement officer has reason to believe that an offence under this Act has been or is being committed, seize any goods or thing or take a sample of goods or things to be used as evidence in a prosecution for the offence;
  - (g) take a copy of, or extract, from a document found at the place;
  - (h) require a person at the place to —
    - (i) answer any question or provide information; or
    - (ii) make available any document kept at or on the place; or
    - (iii) provide any reasonable assistance to the enforcement officer when carrying out the power under this section;
  - (i) test and verify an ingredient of a tobacco product, including having direct access to a raw material or a finished tobacco product or observing the manufacturing process;
  - (j) carry out any audit at the manufacturing facility to ensure that information received by the Government from the manufacturer about the tobacco product is complete and accurate;
  - (k) ensure that an offence under this Act is investigated as soon as practicable;
  - (l) carry out on-the-spot checks on any manufacturing, importation or retail facility to check, on a regular basis, the packaging or labelling or the health warning on a tobacco product;
- (3) For subsection (2)(f), the enforcement officer must give a receipt for the goods, things or samples to:
- (a) the owner or a person apparently-in-charge of the place; or
  - (b) the person who the enforcement officer reasonably believes was in possession of the goods, things or samples.
- (4) The following provisions apply to any goods, things or samples seized under subsection (2)(f):
- (a) if the prosecution for an offence under this Act was instituted within [12] months after the seizure and the defendant is convicted, the court may order that —
    - (i) the goods, things or samples be forfeited to the State; or
    - (ii) the defendant pays to the State an amount equal to the market value (determined by the court) of the goods, things or samples when seized;
  - (b) the enforcement officer must release the goods, things or samples to the owner or the person from whom they were seized if —
    - (i) the prosecution for an offence under this Act is not instituted within [12] months after the seizure; or
    - (ii) the prosecution is instituted within 12 months but the defendant is not found guilty or the court does not make an order under paragraph (a).
- (5) An enforcement officer may conduct the following regular inspections:
- (a) inspection of tobacco products at manufacturing, importing or retailing business premises to ensure compliance with this Act; and
  - (b) inspection of tobacco products at point of sale.



**[99] Warrant for residential property**

- (1) This section applies if a residential place is to be entered and inspected under section [xx].
- (2) An enforcement officer may apply to [a magistrate] for a warrant to enter and inspect the place, and if necessary to seize items from the place.
- (3) The warrant may authorise other matters required to give effect to the purpose of entry and inspection.

**[100] Power to require identification**

- (1) This section applies if an enforcement officer has a reason to believe that:
  - (a) a person whose name, address or age is not known to the officer; and
  - (b) that person may assist the officer to investigate an offence against this Act.
- (2) The officer:
  - (a) may require the person to give —
    - (i) their full and correct name and age; and
    - (ii) their correct contact details, including residential address, work address and other communication contacts, such as telephone, email; and
    - (iii) without delay, proof-of-age; and
  - (b) must warn the person that it is an offence not to comply with paragraph (a).
- (3) A person commits an offence who fails to give the officer the information required under subsection (2)(a).

**[101] Power to issue cease and desist orders**

- (1) This section applies if an enforcement officer has reason to believe that a person:
  - (a) has contravened or is contravening this Act; or
  - (b) is distributing, selling or supplying any product that does not comply with a requirement of this Act.
- (2) An enforcement officer may issue a person with a notice to show cause stating:
  - (a) the facts constituting the allegation under subsection (1); and
  - (b) a period of at least 10 working days within which to show good cause, in writing, why a cease and desist order ("**desist order**") should not be made.
- (3) An enforcement officer:
  - (a) must consider any written representation received under subsection (2)(b); and
  - (b) may issue a desist order if the officer is satisfied that the allegation under subsection (1) has been proven.
- (4) The person issued with a notice to show cause may provide other documents or sworn statements of other persons to support the allegation in the notice.
- (5) An enforcement officer must issue a desist order if:
  - (a) no written representation is received under subsection (2)(b); and
  - (b) the officer is satisfied that the person has been served with the notice to show cause.
- (6) An enforcement officer must serve the desist order on the person:
  - (a) personally; or
  - (b) by sending it through registered post or email or other electronic address provided by the person.
- (7) The person who is issued with a desist order must comply with the order.

### **[102] Product recall**

- (1) This section applies if:
  - (a) tobacco products available for wholesale or retail sale do not comply with a requirement of this Act, such as packaging, labelling, health warnings; or
  - (b) other products are sold contrary to this Act.
- (2) The [Minister] may, by order, recall the product with the costs borne by the manufacturer, wholesaler or retailer.
- (3) The order is also treated as the authority to enter and remove the products that are subject of the order.
- (4) The [Minister] may approve the means and methods to dispose of any recalled product.

### **[103] Investigation and prosecution**

- (1) An enforcement officer may:
  - (a) investigate an offence under this Act; and
  - (b) institute and conduct prosecution of the offence in a [District Court/Magistrate's Court<sup>124</sup>]; and
  - (c) carry out any other duties and powers relating to paragraphs (a) and (b).
- (2) This section is subject to the powers of the [Director of Public Prosecutions/Attorney-General]<sup>125</sup> under section [xx]<sup>126</sup> of the Constitution.

### **[104] Tracking and tracing systems**

An enforcement officer may use a tracking or tracing system<sup>127</sup> approved by [the Minister/Commissioner of Police] for any of the following purposes:

- (a) to track the supply, transportation or distribution of a tobacco product suspected of being manufactured or imported illegally; or
- (b) to assist in the investigation of the tobacco product.

### **[105] Confiscation and forfeiture<sup>128</sup>**

If a tobacco product, a piece of equipment, or a matter used in the manufacture of the tobacco product is the subject of an offence under this Act:

- (a) an [an enforcement officer] may confiscate it; and
- (b) a court may order it to be forfeited to the [State/Crown]; and
- (c) it must be destroyed in an environmentally-friendly manner [approved by [xx]/as prescribed].

### **[106] Court order to vary, suspend or cancel the licence**

- (1) This section applies to a licensee who is convicted of an offence under this Act.
- (2) The court may, by order:
  - (a) vary the licence, as it deems fit; or
  - (b) suspend or cancel the licence —
    - (i) for first offence, for a period of up to six months;

<sup>124</sup> Replace with the subordinate court of your country.

<sup>125</sup> Commissioner of Police can be added if they have constitutional functions to carry out the investigation of offences.

<sup>126</sup> Some PICTs refer to it as 'Article', such as Samoa.

<sup>127</sup> Delete if your country provides for tracking under the Police Powers Act or other crime procedure legislation.

<sup>128</sup> Clause to be deleted for PICTs that have proceeds of crime legislation.

- (ii) for second offence, for a period not less than six months and not more than [12] months;
- (iii) for third or subsequent offence, for a period of not less than [12] months but not more than [5] years.

(3) An order under this section is in addition to the imposition of any fine or imprisonment.

#### **[107] General duties of manufacturers on packaging and labelling**

- (1) A person who manufactures, imports, sells by wholesale or retail any tobacco products must comply with packaging and labelling measures.
- (2) A person commits an offence who fails to comply with any packaging and labelling measure.

#### **[108] Infringement notices for spot fines**

- (1) This section applies:
  - (a) if a person (“**defendant**”) commits an offence under this Act; and
  - (b) to the imposition of administrative penalties by an enforcement officer pursuant to an infringement notice.
- (2) An enforcement officer may issue infringement notice [in a prescribed/approved form<sup>129</sup>] requiring the defendant to pay the fixed penalty specified in the notice.
- (3) When a defendant is served with an infringement notice, the defendant may:
  - (a) pay the spot fines (in full) before the specified date for payment of fixed penalty, if the defendant admits the offence by endorsing, in writing, the admission on the notice; or
  - (b) appear before the court on a date specified in the notice for appearance in court if the defendant denies the offence.
- (4) In a proceeding, a certificate signed by an enforcement officer that the spot fine has or has not been paid, unless the contrary is proved, is evidence of the matters stated in the certificate.
- (5) No further proceeding is to be instituted against the defendant for offences for which the spot fines have been fully paid.
- (6) The defendant who is convicted in court on an infringement notice:
  - (a) is not subject to the fixed penalty specified in the notice; but
  - (b) is subject to the penalty prescribed for that offence.

#### **[109] Service of infringement notices**

- (1) An infringement notice is to be:
  - (a) served pursuant to the rules of the court; and
  - (b) filed before the court specified in the notice.
- (2) An infringement notice that is filed under subsection (1)(b) is treated for all purposes as a summons issued pursuant to the [criminal procedure/magistrates’ courts legislation].

#### **[110] Directors, etc., liability**

- (1) This section applies if a body corporate commits an offence.
- (2) A director of the body corporate also commits the same offence.
- (3) It is a defence if the director proves that the offence was committed without the director’s knowledge, connivance or consent.

<sup>129</sup> See Part 3 of the Schedule for a form.

(4) In this section:

“**director**” includes an officer who manages or supervises the operations of the body corporate.

#### **[111] Obstruction etc. of enforcement officers**

A person commits an offence who, without reasonable excuse:

- (a) obstructs or hinders an enforcement officer or any other person when carrying out a function, duty or power under this Act; or
- (b) fails a requirement or direction of an enforcement officer to comply with this Act.

#### **[112] Penalties**

- (1) The fixed penalties for infringement notices are set out in Part 1 of the Schedule.
- (2) The penalties for a person convicted of an offence are set out in Part 2 of the Schedule.

### **Division 3 – Information**

#### **[113] Privacy and confidential information**

- (1) This section applies to confidential information obtained or claimed under this Act.
- (2) A person must not release confidential information to another person except if the information is released:
  - (a) with the consent of the person who provides that information; or
  - (b) under a law or court order; or
  - (c) after the information becomes public information; or
  - (d) for official use under this Act.
- (3) A person commits an offence who contravenes subsection (2).

#### **[114] Misleading information**

- (1) A person commits an offence who:
  - (a) gives information or any document that the person knows to be misleading; and
  - (b) gives it to another person who is carrying out a function, duty or power under this Act.
- (2) Subsection (1) does not apply if the person, when giving the document:
  - (a) draws the misleading aspect of the document to the attention of the enforcement officer; and
  - (b) to the extent to which the person can reasonably do so, gives the relevant officer the information necessary to remedy the misleading aspect of the document.
- (3) In this section:  
“**misleading information**” means information that is misleading in a material particular or because of the omission of a material particular.

## **PART 8 – MISCELLANEOUS**

#### **[115] Immunity from personal liability**

- (1) A person is not personally liable for carrying out in good faith a function, duty or power under this Act.
- (2) Subsection (1) does not affect any liability that the State would, but for that subsection, have for an act or omission.

**[116] Publication of names of offenders**

- (1) This section applies if a person:
  - (a) has been convicted of an offence under this Act; or
  - (b) has been subject to an infringement notice under section [108] and has paid the penalty in full.
- (2) The [CEO/PS for Health] must publish the name of the person and the nature of the offence, twice in a newspaper having wide circulation to public.

**[117] Regulations**

The [Minister] may make Regulations to give effect to or for the purposes of this Act, and in particular may make any of the following Regulations:

- (a) to prescribe fees and forms;<sup>130</sup>
- (b) to further prescribe the information on the content, ingredient or emission of the tobacco product, including standards for materials designed to reduce tendency to ignite;
- (c) to prescribe procedures samples and testing of a tobacco product or ingredients used in the product;
- (d) to regulate the design of health warnings, including designs for different types of tobacco product, different target groups and methods for carrying out prior consultation on and research on the effectiveness of the designs;
- (e) to regulate giving of rewards or incentives to members of the public for reporting breach of this Act;
- (f) to provide further procedures for spot fines, including offences and their fixed penalty amounts;
- (g) to regulate and control tobacco growing;
- (h) to regulate marks, such as tax stamps, on packages or labels to show evidence of payment of tax on tobacco products;
- (i) to provide other matters to regulate the plain packaging of tobacco products;
- (j) to provide other matters to give effect to, or for the purposes of, enforcement of this Act;
- (k) to prescribe other matters for the purpose of appeal;
- (l) to amend Part 1 of the Schedule;<sup>131</sup>
- (...) ... [add other matters].

**[118] Approved forms**

The [Minister] may approve forms for the purpose of this Act.<sup>132</sup>

**[119] Review of Act<sup>133</sup>**

- (1) The [Minister] must review this Act not later than:
  - (a) [4] years from its commencement; and
  - (b) [4] years from the date of the last review.
- (2) A review must include:
  - (a) any new design or form of health warnings; and
  - (b) any provision on advertisement, promotion and sponsorship.

<sup>130</sup> Delete 'forms' if your jurisdiction allows for approved forms instead of prescribing the forms by Regulations.

<sup>131</sup> Penalties in Part 2 of the Schedule should only be amended by Parliament.

<sup>132</sup> Clause to be deleted if forms are to be prescribed by Regulations.

<sup>133</sup> The practice in some jurisdiction is to place this in the Preliminary provisions.

- (3) Any review of health warnings must take into account the following:
- (a) the experience in using their packaging and labelling measures;
  - (b) the experiences of other jurisdictions;
  - (c) the industry practices in packaging and labelling;
  - (d) any weaknesses and loopholes and highlight areas in which the language used should be clarified.
- (4) Subsection (1) does not prevent an amendment to this Act that may be made before the next review.

#### **[120] Repeals and consequential amendments**

*[Check repeals and consequential amendments]*

#### **[121] Saving and transition**

*[Check matters to be covered by saving and transition]*

## **SCHEDULE**

### **Penalties**

#### **PART 1 – FIXED PENALTIES<sup>134</sup>**

<b>Section</b>	<b>Individual (first offence)</b>	<b>Individual (second or subsequent offence)</b>	<b>Company (first offence)</b>	<b>Company (second or subsequent offence)</b>

#### **PART 2 – PENALTIES FOR OFFENCES**

<b>Section</b>	<b>Individual (first offence)</b>	<b>Individual (second or subsequent offence)</b>	<b>Company (first offence)</b>	<b>Company (second or subsequent offence)</b>

<sup>134</sup> Fixed penalties should be tagged at around 20–25% of the fines fixed for that offence in Part 2 of the Schedule.

PART 3 – INFRINGEMENT NOTICE FORM<sup>135</sup>

<b>TOBACCO CONTROL ACT [...] INFRINGEMENT NOTICE</b>	
<b>1</b>	<b>Date of Notice:</b> [date] [...month...] [20.....]
<b>2</b>	<b>Defendant:</b> <ul style="list-style-type: none"> <li>• Name (In full):</li> <li>• Residential address:</li> <li>• Other contact details:</li> </ul>
<b>3</b>	<ul style="list-style-type: none"> <li>• Regulation contravened:</li> <li>• Statement of offence:</li> <li>• Details of offence:</li> </ul>
<b>4</b>	<b>The fixed penalty is [\$....]</b>
<b>5</b>	<p><b>Admitting the offence</b></p> <p>If you admit the offence in 3 above:</p> <ul style="list-style-type: none"> <li>• You must: <ul style="list-style-type: none"> <li>o <b>sign</b> the admission declaration in 7 below; <ul style="list-style-type: none"> <li>▪ immediately when this completed Notice is given to you; or</li> <li>▪ otherwise, no later than 20 working days from the date in 1 above; and</li> </ul> </li> <li>o <b>pay</b> the fixed penalty in 4 above (either paid in a lump sum or part payment, before 20 working days above expires) to: <ul style="list-style-type: none"> <li>▪ [nearest ...Ministry Office]</li> <li>▪ [add other places for payment]</li> </ul> </li> </ul> </li> </ul> <p>When you have paid <b>ALL</b> the fixed penalty in 4 above, no other action relating to the offence in 2 above will be taken against you.</p> <p>If you fail to pay <b>ALL</b> the fixed penalty within 20 working days above, you are treated as having denied the offence and you will be served with the Notice to Attend Court in 9 below.</p>
<b>6</b>	<p><b>Denying the offence</b></p> <p>If you deny the offence in 2 above you:</p> <ul style="list-style-type: none"> <li>• must <b>sign</b> the Denial Declaration in 8 below: <ul style="list-style-type: none"> <li>o immediately after the completed Infringement Notice is given to you; or</li> <li>o otherwise, no later than 20 working days from the date in 1 above; and</li> </ul> </li> <li>• will be served with the Notice to Attend court in 9 below;</li> <li>• if convicted by the court, will be liable to penalty for the offences as set out in Part 2, of the Schedule (including any costs of the proceedings in court) and not the fixed penalty in 4 above;</li> <li>• may, before that 20 working days expire, admit the offence, sign the admission declaration and pay the fixed penalty of [\$....] in 4 above.</li> </ul>
<b>7</b>	<p><b>Admission declaration</b></p> <p>I, [...name of defendant...] of [...address...] declare that I:</p> <ul style="list-style-type: none"> <li>• have received this Notice from the person stated in 11 below;</li> <li>• admit committing the offence in 3 above (without any coercion or force from another person), as such will pay the fixed penalty of [\$.....] in 4 above.</li> </ul> <p>..... [Signature]</p>
<b>8</b>	<p><b>Denial declaration</b></p> <p>I, [...name of defendant...] of [...address...] declare that I:</p> <ul style="list-style-type: none"> <li>• deny committing the offence in 3 above; and</li> <li>• will defend the offence in court.</li> </ul> <p>..... [Signature]</p>

<sup>135</sup> Can be left to be devised by Regulations.

<p><b>9</b></p>	<p><b>Notice to attend court</b>  To: The Defendant (details in 2 above)</p> <ol style="list-style-type: none"> <li>1. You are required to attend before [a magistrate/judge<sup>136</sup>] at [.....] on [date] at ..... am/pm to answer charges specified in 3 above.</li> <li>2. You may appear in person or through a lawyer.</li> <li>3. If you fail to appear in court, the court will treat that as an admission of the charges and the court may impose the penalty for the offence against you in your absence.</li> <li>4. If the court enters judgment in your absence, you have 10 working days to apply to the court to reverse the default judgment and to proceed for trial.</li> </ol> <p>Dated the.....day of.....20....  .....  <i>Court official designation and stamp/seal</i></p>
<p><b>10</b></p>	<p><b>Affidavit of service of notice to attend court</b>  I, ....., ..... (occupation), of ..... swear that:</p> <ol style="list-style-type: none"> <li>1. I am authorised to serve any court processes.</li> <li>2. I served this Infringement Notice, including the signed the Notice to attend Court on the above Defendant on ... day of.....20.... At [...place...]</li> <li>3. The Defendant was served in person.</li> </ol> <p>Sworn before me:..... [Server's signature]  at [...place....] on [.... date ....]</p> <p>.....  [Lawyer/JP, etc] - Witness</p>
<p><b>11</b></p>	<p><b>This Notice is issued by:</b></p> <ul style="list-style-type: none"> <li>• Designation and ID No (if any):</li> <li>• Name:</li> <li>• Phone &amp; other contact:</li> </ul> <p>Signature: .....</p>

<sup>136</sup> Judge of the lower courts, such as District Courts in the case of Samoa.



# ANNEX 2-1 – LIQUOR CONTROL BILL

## LIQUOR CONTROL BILL

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### **[A BILL FOR]**

**AN ACT** to control and regulate liquor [and for related purposes]<sup>137</sup>

**ENACTED** by [Parliament...] –

### **PART 1 – PRELIMINARY**

#### **[1] Short title and commencement**

(1) This Act may be cited as the Liquor Control<sup>138</sup> Act [20...].

(2) This Act commences on [...]<sup>139</sup>

#### **[2] Interpretation/Definition**

In this Act:<sup>140</sup>

“**bar**” means an area of the off-licensed premises where the predominant activity at the licensed times is to serve liquor to be consumed at the premises.

<sup>137</sup> This is a short form of long title. The long form may be used by expressing the main parts of the Bill i.e. “to regulate and control the supply and demand for liquor [and to provide for administration and enforcement [and for related purposes]]”.

<sup>138</sup> PICTs to decide name of the Bill – whether “liquor” or “alcohol” (alcoholic beverages). However, “liquor” refers to beverages containing alcohol.

<sup>139</sup> Either “on a date [appointed/nominated] by the Minister, [by notice in the Gazette]” or “[a fixed date]”. The date should be retroactive (future date) not retrospective (past date).

<sup>140</sup> Other terms to be added.

**“bottle shop”** means an off-licence issued under section [xx – LA to issue licence].

**“licensed time”** means the time specified in the licence for which liquor may be sold at the licensed premises.

**“liquor”**<sup>141</sup> —

- (a) means a beverage that, at 20 degrees Celsius, has more than [1.15 per cent] alcohol by volume; and
- (b) includes —
  - (i) any spirit, wine, ale, beer, porter, cider, berry, hop beer or any liquor of a strength exceeding [3 per cent] of proof spirit except methylated spirits; or
  - (ii) any other substance that comprises, makes up, contains or may be converted into a beverage under paragraph (a); or
  - (iii) any other liquid that contains ethanol (ethyl alcohol) that is intended for drinking.

**“nightclub”** means a premises where the predominant activity at the licensed times is dancing and entertainment.

**“off-licence”** means a licence issued under section [xx– LA to issue licence].

**“on-licence”** means a licence issued under section [xx– LA to issue licence].

**“Liquor business”** includes a business that manufactures, supplies or sells liquor for commercial gain, and includes an industry association that represents hotel and bar owners, liquor manufacturers, wholesalers or retailers, or other businesses that hold a liquor licence.

### [3] Objects of Act

- (1) The objects of this Act are:
  - (a) to protect the right of others to public health;
  - (b) to reduce harm associated with the consumption of liquor and drink driving;
  - (c) to discourage or deter others who do not consume alcohol from consuming it;
  - (d) to prevent consumption of liquor by young persons;
  - (e) to protect others from exposure to liquor advertisements or sponsorships or exposure to liquor generally;
  - (f) to ensure that liquor is properly labelled;
  - (g) to enhance awareness of the risks associated with the consumption of alcohol and drink driving;
  - (h) to facilitate the responsible development of the liquor and hospitality industries in a way that takes into account community safety; and
  - (i) to ensure that consumers are responsible —
    - (i) when consuming liquor; and
    - (ii) for their behaviour if it is affected by consuming liquor.
- (2) A decision made under this Act must have regard to the following principles on harm minimisation and community safety:
  - (a) protection of public health as the paramount consideration;

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<sup>141</sup> This is adapted from the current PICT liquor laws.

- (b) responsible attitudes and practices towards the sale, supply, promotion and consumption of liquor should be encouraged;
- (c) community safety should not be jeopardised;
- (d) the liquor industry should be regulated in a way that minimises harm caused by liquor, including —
  - (i) adverse effects on health; and
  - (ii) personal injury; and
  - (iii) property damage; and
  - (iv) violent or anti-social behaviour; and
- (e) community amenity, social harmony and wellbeing should be protected and enhanced through the responsible sale, supply, promotion and consumption of liquor; and
- (f) the safety, health and welfare of people using licensed premises should be paramount; and
- (g) noise from licensed premises should not be excessive; and
- (h) licensed premises should not be located where they would be likely to cause undue disturbance, inconvenience or offence to people —
  - (i) lawfully at adjacent or nearby premises; or
  - (ii) because of the premises' proximity to a place of public worship, a hospital or a school; and
- (i) licences should only be issued to people who comply with the law, and are likely to continue to comply with the law; and
- (j) licences should only be issued for premises that comply with the law, and are likely to continue to comply with the law.

#### **[4] Application**

This Act extends to the exclusive economic zone [and contiguous zone].<sup>142</sup>

#### **[5] Exemptions from liquor licences**

This Act does not apply to the following:

- (a) the dispensing or sale of liquor in medicines supplied by a doctor or pharmacist;
- (b) the supply, possession, consumption or purchase of liquor that is authorised by any other enactment;
- (c) the sale and supply of liquor at a mess or other outlets for military, police or prison officers;
- (d) the sale of liquor by an auctioneer under an auction;
- (e) the sale of liquor seized, confiscated or forfeited by law;
- (f) any other prescribed sale, purchase, supply, possession or consumption.

## **PART 2 – LIQUOR LICENSING AUTHORITY**

### **[6] Establishment [and members]**

- (1) The [Licensing Authority] (LA) is established.<sup>143</sup>

<sup>142</sup> Use cross-referential definitions to your marine spaces legislation e.g. Marine Spaces Act [Fiji] – “EEZ” has the meaning in the [Marine Spaces Act].

<sup>143</sup> Most PICTs have non-legal personality status.

- (2) The members<sup>144</sup> of the [LA/Board<sup>145</sup>] are: ...
- (3) At least [...] members are to be women.

#### **[7] Appointment**

- (1) The [Minister] may appoint members.
- (2) The following persons are not eligible to be appointed:
  - (a) a person who is or in the last [2] years was<sup>146</sup> employed in or engaged by a liquor business;
  - (b) ...

#### **[8] Terms**

- (1) A member is:
  - (a) appointed for a term of up to [3] years; and
  - (b) eligible to be re-appointed; and
  - (c) entitled to a sitting allowance fixed by the [Minister].
- (2) If the term of a member expires, the member continues in office until re-appointed or the date of appointment of a new member.

#### **[9] Resignation**

A member may resign in writing to the [LA].

#### **[10] Suspension and termination**

- (1) The [Minister] may suspend a member if the member:
  - (a) is alleged to have committed misconduct in office;
  - (b) is being investigated for a crime;
  - (c) ...
- (2) The [Minister] may terminate the appointment of a member if the member:
  - (a) commits misconduct in the office; or
  - (b) fails to disclose any interest relating to the issuing of a licence; or
  - (c) contravenes a provision of this Act; or
  - (d) purchases or attempts to purchase liquor from any licensee at a special or discounted cost, including any complimentary item or gifts; or
  - (e) fails to perform their functions, powers and duties under this Act due to illness, incapacity or any other reason.
- (3) The [Minister] must give a member the right to be heard before deciding to suspend or terminate the appointment of the member.
- (4) The appointment of a member is automatically terminated:
  - (a) from the date of conviction if the member is convicted of an offence; or
  - (b) from the date the member acquires a share or interest in the business of a licensee.

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<sup>144</sup> The precedent in other some countries (such as Samoa) is to have some public officers (Police, etc.) as members also.

<sup>145</sup> For a statutory corporation it should be referred to as Board of the LA.

<sup>146</sup> Consider whether it is a blanket (total) prohibition or to tag it for a certain number of years.

**[11] Meetings and declaration of interests**

- (1) The following applies to a meeting of the [LA/Board]:
  - (a) the chairperson convenes and presides at meetings; and
  - (b) if the chairperson is absent, a member elected by the members present presides at that meeting; and
  - (c) [...] members constitutes a quorum; and
  - (d) the Board may, by resolution, determine other rules and procedures of meetings.
- (2) A member who has an interest in a matter before the Board:
  - (a) must immediately declare the interest to the Board; and
  - (b) must not be present when the Board deliberates or votes on the matter.

**[12] Secretary**

The [xx] may appoint a public officer as secretary to the [LA] to carry out secretarial functions for the [LA].

**PART 3 – LIQUOR LICENCES*****Division 1 – Obtaining licences*****[13] Power to issue liquor licences**

The [LA] may issue the following licences:

- (a) a manufacturing licence;
- (b) an import licence;
- (c) an export licence;
- (d) any type of off-licence;
- (e) any type of on-licence;
- (f) a club licence;
- (g) a special licence.

**[14] Manufacturing licences**

A manufacturing licence authorises the licensee:

- (a) to manufacture liquor at the single licensed premises; and
- (b) to sell the manufactured liquor to a retail licensee.

**[15] Import [and export<sup>147</sup>] licences**

- (1) An import licence authorises the licensee to import liquor to be sold under a retail licence.
- [(2) *An export licence authorises the licensee to export liquor*].

**[16] Off-licences**

- (1) The types of off-licences are:
  - (a) wholesale licence for licensed wholesale premises; and
  - (b) retail licence for licensed retail premises; and

<sup>147</sup> Only relevant if your jurisdiction also manufactures and exports liquor.

- (c) [bottle-shop] licence for licensed bottle-shop premises; and
  - (d) any other prescribed type of off-licence.
- (2) An off-licence authorises the licensee to sell liquor:
- (a) at the single licensed premises; and
  - (b) in a sealed container for consumption off the premises; and
  - (c) at the licensed times.

#### **[17] On-licences**

- (1) The types of on-licences are:
- (a) bar licence for licensed bar premises; and
  - (b) nightclub licence for licensed nightclub premises; and
  - (c) restaurant licence for licensed restaurant premises; and
  - (d) special event licence for licensed event premises; and
  - (e) vessel or aircraft licence; and
  - (f) any other prescribed type of on-licence.
- (2) An on-licence authorises the licensee to sell liquor:
- (a) at the single licensed premises; and
  - (b) in an open container for consumption at the premises; and
  - (c) at the licensed times.

#### **[18] Club licences**

- (1) A club licence authorises the club to sell liquor:
- (a) in stated parts of the single licensed premises; and
  - (b) in —
    - (i) open containers for consumption at the premises; or
    - (ii) sealed containers for consumption off the premises; and
  - (c) at the licensed times.
- (2) The club must only sell liquor to a person aged [21] or over:
- (a) who is a member of the club; or
  - (b) who is at the licensed premises as a temporary member of the club; or
  - (c) who is —
    - (i) at the licensed premises at the invitation of a member (aged [21] years or over) of the club who is also at the premises; and
    - (ii) authorised by the club to be at the premises.

#### **[19] Applications for licences**

- (1) A person may apply to the [LA] for a licence in [an approved form/a prescribed form].
- (2) The form must:
- (a) state the type of licence; and
  - (b) include complete details about —

- (i) the applicant and any licensee associate; and
- (ii) the proposed licensed premises; and
- (c) include a police certificate (dated not earlier than [3] months before the date of the application) for the applicant and any licensee associate; and
- (d) include evidence that the operation of the business at the premises under the proposed licence complies with the lease where the premises are located; and
- (e) include —
  - (i) the final floor plans of the premises approved by the planning authority in the development approval for the premises; and
  - (ii) the occupancy or ownership certificate of the premises; and
- (f) include a risk-assessment management plan for the premises, covering occupational safety and health, noise, security and any prescribed other matter; and
- (g) include the application fee.

#### **[20] Renewal applications**

- (1) A licensee may apply to the [LA] for renewal of the licence.
- (2) The application is:
  - (a) to be in a [prescribed/approved form]; and
  - (b) to be filed [insert time]; and
  - (c) to include the application fees and any other prescribed matters.
- (3) Sections [xx – publication] and [xx – reports] apply to this section, with necessary modifications.

#### **[21] Publication of applications**

- (1) The applicant must:
  - (a) display a notice about the application at the proposed licensed premises; and
  - (b) publish the notice in [a newspaper or any other prescribed manner]; and
  - (c) display or publish the notice within [5 working] days of filing the application.
- (2) The notice must set out:
  - (a) the name, address and contact of the applicant; and
  - (b) the type of licence applied for; and
  - (c) the address of the proposed licensed premises; and
  - (d) any other prescribed information.
- (3) The [LA] must not process the application if notice under subsection (1) is not given.

#### **[22] Report of agencies**

- (1) The applicant must also send a copy of the application to the following government agencies:
  - (a) the Police for a police report; and
  - (b) the Ministry of Health for a health report; and
  - (c) [the provincial/local/town authority for planning report;]
  - [(d) ...]

- (2) An agency under subsection (1) must:
  - (a) inspect the proposed premises to be licensed; and
  - (b) discuss the application with —
    - (i) the applicant; or
    - (ii) the applicant associate; or
    - (iii) any other person who may provide information that is relevant to the application or relates to the applicant or the licensee associate; and
  - (c) obtain any view or recommendation of the fire authority for the fire safety measures of the proposed premises; and
  - (d) prepare a written report to the [LA].
- (3) The police report must include the following matters:
  - (a) suitability, safety or security of the premises, including any security personnel arrangements; and
  - (b) security of display or storage areas for liquor; and
  - (c) any criminal record of the applicant or licensee associate; and
  - (d) any other prescribed matters.
- (4) The health report must include the following matters:
  - (a) health and sanitary conditions of the premises; and
  - (b) fire safety conditions of the premises, with the views and recommendations of the fire authority on any cooking facilities; and
  - (c) any other matters relating to health and the public interest including the desirability of reducing or limiting the number of liquor licences within a given area; the desirability of ensuring the secure storage of liquor; and the desirability of protecting the amenity of the local area and preventing public disturbances and intoxication on the premises.

### **[23] Objections**

- (1) After a notice is given under section [xx – publication of applications], a person may give written objections to the [LA] about the:
  - (a) suitability of the premises to be licensed; or
  - (b) suitability of the applicant or licensee associate.
- (2) The [LA] must take into account any objection that is relevant to the matters referred to in subsection (1) when deciding a new or renewal application.

### **[24] Hearing/determining applications**

- (1) This section applies when the police report and health report are received.
- (2) The [LA] may [hear and<sup>148</sup>] determine the application when the police report and the health report are both received.
- (3) The [LA] must issue a notice of [hearing/determining] of the application setting out:
  - (a) the applicant and any reference to the application and licence type; and
  - (b) the place, address, date and time of [hearing/determination] of an application; and
  - (c) any other prescribed matter.

<sup>148</sup> “[hear and]” to be included if the process of determining applications requires a hearing.



- (4) The [LA] must serve the notice on:
- (a) the applicant; and
  - (b) any person making an objection under section [xx – objections]
- (5) Regulations may prescribe any other matter about [hearing/determining] of applications.

### **[25] Decisions**

- (1) The [LA] must issue or renew a licence only if satisfied that:
- (a) the age for an individual applicant is aged over [21] years; and
  - (b) the applicant is suitable to be licensed; and
  - (c) the associate is suitable to be involved with the licence; and
  - (d) if the [LA] requires the applicant to give information about the associate, the information does not affect the applicant's suitability to hold the licence; and
  - (e) the proposed premises —
    - (i) are suitable premises for the licence; and
    - (ii) comply with this Act; and
  - (f) the applicant complies, and is likely to continue to comply, with the requirements of this Act.
- (2) The [LA] must:
- (a) decide the application, not later than [40] working days after all the reports under section [xx – reports] are received; and
  - (b) tell the applicant about the decision on the application, within [10] working days of date of the decision; and
  - (c) give reasons if the application is refused.

### ***Division 2 – Other provisions on licences***

#### **[26] Conditions of licences**

- (1) A licence is subject to:
- (a) the condition that the licensee —
    - (i) complies with this Act; and
    - (ii) must ensure that the licensed premises continues to comply with this Act; and
  - (b) any other condition —
    - (i) imposed by the [LA] when the licence is issued, renewed, transferred or amended; or
    - (ii) prescribed by Regulation.
- (2) Without limiting subsection (1)(b)(i), the [LA] may impose one or more of the following conditions on a licence:
- (a) that stated inspection requirements must be complied with;
  - (b) that stated reporting requirements must be complied with;
  - (c) that stated records must be kept;
  - (d) that security measures (including security personnel) must be provided generally or for stated events;
  - (e) that staff and any security personnel must be trained to a required level of competency;

- (f) that people must not be allowed to enter the licensed premises after a stated time;
- (g) for an on-licence, that after midnight —
  - (i) liquor must not be served in glass; and
  - (ii) shots of liquor must not be served;
- (h) that the licensee keeps a register, in a form approved by the [LA] that records details of any violence or anti-social behaviour occurring on the premises;
- (i) that other security measures, such cameras, must be provided on the licensed premises or in other areas under the control of the licensee in the vicinity of the licensed premises;
- (j) that stated requirements about security measures must be complied with.

(3) A Regulation may prescribe requirements for security measures mentioned in subsection (2).

### **[27] Terms of licences**

A licence:<sup>149</sup>

- (a) commences on the date the new or renewed application is granted; and
- (b) expires on [31 December] following the date of granting the new or renewed licence.

### **[28] Amendment of licences**

- (1) The [LA] may, with or without conditions, amend a licence:
  - (a) on its own initiative; or
  - (b) on application by the licensee setting out the nature of amendment.
- (2) The [LA] must first notify and hear the licensee before making any amendment under subsection (1)(a).

### **[29] Transfer and replacement**

- (1) The [LA] may, on application by the licensee, approve the transfer of the licence to another person or new premises.
- (2) Section [xx], requiring the provision of reports by government agencies, applies to the transfer of licences.
- (3) The [LA] may, on application of the licensee, replace the licence if the licence is damaged or lost.

### **[30] Ceasing operations**

- (1) A licensee who intends to cease operating the licence must first apply to the [LA] to cancel the licence.
- (2) The licensee must surrender the cancelled licence to the [LA].

### **[31] Suspension of licences**

- (1) The [LA] may suspend a licence if the licensee is:
  - (a) alleged to have contravened or is being investigated for contravening the licence or a condition of the licence; or
  - (b) is charged with an offence under this Act.
- (2) The licence is suspended until:
  - (a) the final determination of the contravention of the licence or a condition of the licence; or
  - (b) revoked under section [xx – revocation].

<sup>149</sup> Consider whether certain licences dealing with supply and not consumption on premises (for example, manufacturing, off-licences, etc.) could be granted for a longer period (for example, up to five years) subject to annual inspections.

**[32] Revocation of licences**

The [LA] may revoke a licence if the licensee has been proven to have breached the licence or a condition of the licence or has been convicted of an offence under this Act or any other law.

**[33] Right to be heard**

The [LA] must give the licensee the right to be heard before a decision to suspend or revoke the licence is made.

**PART 4 – PERMITTED HOURS****[34] Permitted hours for on-licences and off-licences**

The permitted times for the sale of liquor under each licence type are:

	<b>Licence type</b>	<b>Opening hour</b>	<b>Closing hour</b>
(a)	Off-licence		
(b)	Bar		
(c)	Nightclub		
(d)	Vessel		
(e)	Club		
(f)	Restaurant		

**[35] Permitted hours for special licences**

The LA must specify the permitted hours for sale or supply of liquor under a special licence.

**PART 5 – ADVERTISEMENT<sup>150</sup> AND LABELLING*****Division 1 – Advertising*****[36] Unacceptable practices and promotions**

- (1) A licensee must not engage in, or allow another person to engage in, an unacceptable practice or promotion in the conduct of business on the licensed premises.
- (2) For subsection (1), each of the following is an **“unacceptable practice or promotion”**:
  - (a) a practice or promotion that encourages the rapid, irresponsible or excessive consumption of liquor;
  - (b) a practice or promotion that discourages a customer from monitoring or controlling the customer’s consumption of liquor;
  - (c) a practice or promotion that appeals to children, for example, because of the use of a design, name, motif or character that is likely to be attractive to children;
  - (d) a practice or promotion that is indecent or offensive;
  - (e) a practice or promotion that uses an emotive description that is likely to encourage the irresponsible consumption of liquor;
  - (f) a practice or promotion that involves providing free drinks, or providing drinks at discounts, in a way that encourages customers to consume excessive amounts of liquor or consume liquor more rapidly than they would otherwise do;
  - (g) a prescribed practice or promotion.

<sup>150</sup> Adapted from the Queensland liquor law.

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

**[37] Responsible practices and promotions**

- (1) A licensee must ensure that, in the conduct of business on the licensed premises, the consumption of liquor is sold in a manner which is consistent with the law, which shall include the following measures:
- (a) for licensees of an on-licence, having non-alcoholic and low alcohol beverages available;
  - (b) supplying liquor in standardised quantities that can be recognised by customers;
  - (c) serving customers half-measures of spirits on request;
  - (d) any other prescribed practice or promotion that encourages the responsible consumption of liquor.
  - (e) ensuring that drinking water is available at all times free of charge for customers.
- (2) Failure to comply with subsection (1) is a ground to revoke the licence.

**[38] Providing a safe environment and preserving amenity**

- (1) A licensee must, in the conduct of business on the licensed premises:
- (a) provide and maintain a safe environment in and around the licensed premises; and
  - (b) take all reasonable steps to ensure the use of the premises does not adversely affect the amenity of the area in which the premises are located; and
  - (c) take all reasonable steps to ensure the behaviour of persons entering or leaving the premises does not adversely affect the amenity of the area in which the premises are located.
- (2) If a licensee knows or has a reason to believe that a licence offence is being, or is about to be, committed in or around the licensed premises, the licensee must take reasonable steps to stop or prevent the commission of the offence.
- (3) For subsection (2), an offence is a **“licence offence”** if the commission of the offence may reasonably be expected to have an adverse impact on:
- (a) the health or safety of a person in or around the licensed premises; or
  - (b) the amenity of the area in which the premises are located.
- (4) Failure to comply with subsection (1) or (2) is a ground to revoke the licence.
- (5) For the purposes of subsection (1) and (2), the amenity of the area in which the premises is located may be adversely affected as a result of excess noise, litter, excess crowding and obstruction of road and foot traffic in the areas adjacent to the licensed premises.

**[39] Engaging in prescribed practices**

- (1) A licensee:
- (a) must, in the conduct of business on the licensed premises, engage in a prescribed positive practice; and
  - (b) must not, in the conduct of business on the licensed premises, engage in, or allow another person to engage in, a prescribed unacceptable practice.
- (2) For subsection (1), a Regulation may prescribe a practice to be a positive practice or an unacceptable practice for the purposes of:
- (a) providing and maintaining a safe environment in or around licensed premises; and
  - (b) ensuring the use of the premises does not adversely affect the amenity of the areas in which they are located.
- (3) Failure to comply with subsection (1)(a) or (1)(b) is a ground to revoke the licence.

- (4) A licensee commits an offence who contravenes subsection (1)(a) or (1)(b).

#### **[40] Advertising**

- (1) A licensee must not advertise or allow any other person to advertise:
- (a) the availability of the following for consumption at the licensed premises —
    - (i) free liquor; or
    - (ii) multiple quantities of liquor, such as two drinks for the price of one; or
  - (b) the sale price of liquor at the on-licensed premises; or
  - (c) a promotion (such as, happy hours or all you can drink) that is likely to indicate to an ordinary person the availability of liquor, for consumption on the on-licensed premises, at a price less than that normally charged for the liquor.
- (2) A person does not contravene subsection (1) if:
- (a) the advertising happens only within the licensed premises; and
  - (b) the advertisement is not visible or audible to a person who is outside the licensed premises.
- (3) A licensee must not advertise or allow any other person to advertise anything that is, or would be if it were engaged in, an unacceptable practice or promotion under section [37].
- (4) A licensee commits an offence who contravenes subsection (1) or (3).
- (5) In this section:
- “advertise”** —
- (a) means to advertise in any way or means including, in any of the following ways —
    - (i) by signage (including a billboard or poster);
    - (ii) in print (including a newspaper or magazine);
    - (iii) orally;
    - (iv) electronically (including television, radio, cinema or the internet); and
  - (b) includes any form of commercial communication or message that is designed to increase or has the effect of increasing the recognition, appeal or consumption of liquor.

#### **[41] Ground for issuance of compliance notices**

- (1) The [LA] may issue a compliance notice if the [LA] has a reason to believe a licensee:
- (a) is engaging in an unacceptable practice or promotion that contravenes section [37]; or
  - (b) has engaged in an unacceptable practice or promotion that contravenes section [37] in circumstances that make it likely the contravention will continue or be repeated; or
  - (c) is advertising in a manner that contravenes section [40]; or
  - (d) has advertised in a manner that contravenes section [40] in circumstances that make it likely the contravention will continue or be repeated.
- (2) The [LA] may issue a compliance notice if the [LA]:
- (a) has a reason to believe a licensee —
    - (i) is engaging in a practice or promotion in the conduct of business on the licensed premises; or
    - (ii) has engaged in a practice or promotion in the conduct of business on the licensed premises in circumstances that make it likely the practice or promotion will continue or be repeated; or

- (iii) is advertising a matter relating to the business conducted on the licensed premises; or
  - (iv) has advertised a matter relating to the business conducted on the licensed premises in circumstances that make it likely the advertisement will continue or be repeated; and
- (b) considers that, having regard to the purposes of this Act, the practice, promotion or advertisement is contrary to the public interest.
- (3) A Regulation may be made about practices, promotions or advertisements that may be considered to be contrary to the public interest for subsection (2).

#### **[42] Giving of notice**

- (1) The [LA] may give to the licensee a notice ("**compliance notice**") stating the following:
- (a) that the [LA] —
    - (i) holds the belief mentioned in section [41](1); or
    - (ii) holds the belief mentioned in section [41](2)(a) and considers the practice, promotion or advertisement is contrary to the public interest;
  - (b) a description of the practice, promotion or advertisement;
  - (c) briefly —
    - (i) for section [41](1), how it is believed section [37] or [40] is being contravened or has been contravened; or
    - (ii) for section [41](2), why the [LA] considers the practice, promotion or advertisement is contrary to the public interest;
  - (d) whichever of the following that applies in the circumstances —
    - (i) that the licensee must not engage, or continue to engage, in the practice or promotion;
    - (ii) that the licensee must not continue or repeat the advertisement;
    - (iii) that the licensee must take particular action to remedy the contravention, or avoid further contravention, of section [37] or [40];
  - (e) that it is an offence to fail to comply with the compliance notice unless the licensee has a reasonable excuse.
- (2) For subsection (1)(d)(iii), the compliance notice may require the licensee to ensure stated harm minimisation measures are in place whenever a licensee engages in a particular practice.

#### **[43] Complying with notice**

- (1) The licensee must comply with the compliance notice issued under section [42] unless the licensee has a reasonable excuse.
- (2) The compliance notice may state other matters the [LA] considers appropriate.
- (3) Failure to comply with a compliance notice is a ground to revoke the licence.

#### **[44] Licensee may apply to amend or revoke notice**

The licensee given a compliance notice may, at any time while the notice is in force, apply to the [LA] to amend or revoke the notice.

#### **[45] Validity and review of notice**

- (1) A compliance notice continues to have effect until it is revoked, unless the compliance notice states otherwise.
- (2) While a compliance notice remains in force, the [LA] must review it at [1 yearly interval] to ensure it remains appropriate.

## Division 2 – Labelling

### [46] Labelling of liquor<sup>151</sup>

- (1) A person must not sell or supply liquor unless the label states:
  - (a) the alcohol content in [mL/100 g, mL/100 mL] or as the percentage of alcohol by volume, if liquor contains at least [1.15%] alcohol by volume; or
  - (b) the alcohol content in words to the effect 'CONTAINS NOT MORE THAN X% ALCOHOL BY VOLUME' if the liquor contains —
    - (i) up to [1.15%] alcohol by volume; or
    - (ii) at least [0.5%] and up to [1.15%] alcohol by volume; and
  - (c) the health warning relating to harm caused by or effect of liquor consumption;
  - (d) any other prescribed matter.
- (2) The statement on the label must be accurate to within:
  - (a) for beer, cider or perry, [0.3%] alcohol by volume;
  - (b) for spirits, liqueurs, fortified wine, fortified fruit or vegetable wine, and all other alcoholic beverages containing more than [1.15%] alcohol by volume, [0.5%] alcohol by volume;
  - (c) for wine and fruit wine (including sparkling forms), and wine products and fruit or vegetable wine products containing more than [6.5%] alcohol by volume, [1.5%] alcohol by volume.
- (3) A person commits an offence who contravenes subsection (1).

### [47] Statement of the number of standard drinks

- (1) This section applies if the label states the number of standard drinks in the bottle or package of liquor and the liquor contains more than [0.5%] alcohol by volume, measured at [20°C].
- (2) A person must not sell or supply the liquor unless the label on the liquor accurately states the number of standard drinks in the bottle or package of liquor.
- (3) The statement in the label must be accurate to:
  - (a) the first decimal place, for up to [10 standard drinks]; or
  - (b) the nearest whole number of standard drinks, for more than [10 standard drinks].
- (4) In this section:
 

**“standard drink”**, for a liquor, means the amount which contains [10 grams] of ethanol when measured at 20°C.
- (5) A statement is not required for liquor packaged prior to [date].
- (6) A person commits an offence who contravenes subsection (2).

### [48] Representations

- (1) A person must not sell or supply liquor that:
  - (a) contains more than [1.15%] alcohol by volume; and
  - (b) is represented as a low alcohol beverage.
- (2) A person must not sell or supply liquor with a label that states that the liquor:

<sup>151</sup> Adapted from the Australia and New Zealand Food Standards Code – Standard 2.7.1 – Labelling of alcoholic beverages and food containing alcohol. Available at: <https://www.legislation.gov.au/Details/F2016C00176>

- (a) is more than 0.5% alcohol by volume; and
  - (b) includes the words “non intoxicating” or words of similar meaning.
- (3) A person must not sell or supply a food product that:
- (a) contains liquor; and
  - (b) is represented in a form which expressly or by implication suggests that the product is a non-alcoholic confection or non-alcoholic beverage.
- (4) A person commits an offence who contravenes subsection (1), (2) or (3).

## PART 6 – PROTECTION OF YOUNG PERSONS

### [49] Definition<sup>152</sup>

In this Part:

“**young person**” means a person aged under [21] years.<sup>153</sup>

### [50] Sale and supply of liquor

- (1) A person must not:
- (a) sell or supply liquor to a young person; or
  - (b) send a young person to purchase or collect liquor from a licensed premises; or
  - (c) give possession or control of liquor at the licensed premises to a young person; or
  - (d) allow a young person to possess or control liquor at the licensed premises.
- (2) A person commits an offence who contravenes subsection (1).

### [51] Presence of young persons on licensed premises

- (1) A licensee must not allow a young person into the licensed premises unless:
- (a) the licensed premises provide cooked meals; and
  - (b) the young person —
    - (i) is accompanied by a responsible adult; and
    - (ii) is at the licensed premises to have a meal only.
- (2) A young person has the right to be in a licensed restaurant to have a meal only.
- (3) A person commits an offence who contravenes subsection (1).

### [52] Due diligence check on age

- (1) This section applies:
- (a) if there is a doubt about the age of a person who is buying or is intending to buy or to be supplied with liquor; or
  - (b) to licensed premises.
- (2) A young person must not:
- (a) for subsection (1)(a) or (b), be sold or supplied with liquor; or
  - (b) for subsection (1)(b), enter or remain in licensed premises unless the young person —

<sup>152</sup> Definitions may be moved to the general definition clause

<sup>153</sup> A “young person” may be defined as a person aged under 21 years or under 18 years. It is recommended that the age threshold defined here matches the age threshold defined for smoking tobacco products.



- (i) is accompanied by a responsible adult for a purpose other than the consumption or supply of liquor; or
  - (ii) is a licensee's employee aged between [18 and 21]<sup>154</sup> years when working in the premises.
- (3) A licensee may remove from licensed premises a young person who enters or remains at the premises contrary to subsection (2)(b).
- (4) A licensee commits an offence who contravenes subsection (2)(a) or (b).

### **[53] False identification**

A person commits an offence who uses another person's document of identification, or who forges or fraudulently alters one's own document of identification or the document of another person in order to:

- (a) enter or remain (or both) in licensed premises; or
- (b) buy or be supplied liquor.

### **[54] Defence**

It is a defence to an offence committed by the licensee or their agent under section [50](1)(a), section [50](1)(d), section [51], or section [52](2)(a) if the document of identification of the young person was produced, inspected and checked by the licensee or their agent, who reasonably concluded that the person producing it was not a young person.

## **PART 7 – OFFENCES**

### **[55] Offences by licensees**

- (1) A licensee commits an offence if the licensee:
- (a) sells liquor from a place that is not licensed premises; or
  - (b) sells liquor outside the times the licensee is licensed to sell liquor; or
  - (c) contravenes a condition of the licence.
- (2) A liquor placed anywhere in the licensed premises is presumed to be for sale unless proven that it is not for sale.

### **[56] Licensee to ensure responsible sale and service of liquor**

- (1) A licensee must not allow a person to sell or serve liquor under the licence unless the person:
- (a) has successfully completed a course approved by the [LA]; or
  - (b) has been engaged in the sale or serving of liquor for up to [3] months and is —
    - (i) undertaking an approved course; or
    - (ii) formally enrolled in an approved course to be undertaken within [3] months from the day on which the person is permitted to sell or serve the liquor.
- (2) The [LA] may direct an applicant to undertake an approved course.
- (3) A licensee must:
- (a) keep records on the approved course and the names of persons under subsection (1) who have completed it, or who are or will be undertaking it; and
  - (b) produce the records if required by the [LA].
- (4) The [LA] may exempt the licensee of a [special licence] from the requirements of this section.

<sup>154</sup> PICTs to check range.

- (5) A licensee commits an offence if the licensee:
- (a) contravenes subsection (1); or
  - (b) fails to keep, or maintain, or produce records under subsection (3).

**[57] Control of business**

- (1) A licensee must exercise effective control of the liquor business at any off-licensed premises or on-licensed premises.
- (2) A licensee who contravenes subsection (1) commits an offence.

**[58] Bar restrictions**

- (1) It is an offence to sell at a bar:
- (a) liquor to a person who has already purchased a reasonable quantity of liquor yet to be consumed; or
  - (b) more than one drink of liquor at a time to a person to be consumed by the person.
- (2) In subsection (1)(b):
- “one drink of liquor”**, for ale, beer, stout, porter or hop beer, means a bottle, jug or glass containing not more than [forty-two fluid ounces or 1.2 litres].

**[59] Use of licensed premises to commit offences**

- (1) The licensee of the on-licensed premises commits an offence who, intentionally or deliberately, allows the licensed premises to be used to commit an offence under this Act or another Act.
- (2) A conviction under this section is a ground to suspend or cancel the licence.

**[60] Intoxicated persons**

- (1) This section applies to:
- (a) a person at any on-licensed premises; or
  - (b) a licensee or a licensee’s associate; or
  - (c) any other person engaged in the sale, supply, service or promotion of liquor at the on-licensed premises.
- (2) A person commits an offence who:
- (a) being a licensee, authorises an intoxicated person to sell or serve liquor on the licensed premises; or
  - (b) while being intoxicated, sells or serves liquor on the licensed premises.
- (3) A person commits an offence if the person:
- (a) sells liquor to an intoxicated person; and
  - (b) purchases liquor for another person who is intoxicated.
- (4) It is a defence to prove that all reasonable steps were taken to prevent the intoxicated person from obtaining liquor.

**[61] Preserving order**

- (1) The licensee of an on-licensed premises:
- (a) must ensure that order is maintained at the on-licensed premises; and
  - (b) must not —

- (i) permit intoxication at the on-licensed premises; or
  - (ii) allow into the on-licensed premises a person if the licensee has reason to believe that the person is intoxicated.
- (2) The licensee:
- (a) must, remove from the on-licensed premises an intoxicated person, with the assistance of a police officer if necessary; and
  - (b) may, with the assistance of employees or a police officer, use reasonable force, as may be necessary, to remove the intoxicated person.
- (3) An intoxicated person commits an offence if the person:
- (a) is requested by the licensee to leave the premises; and
  - (b) refuses or fails to leave voluntarily.
- (4) It is a defence to prove that all reasonable steps were taken to prevent intoxication.
- (5) In this section:

**“intoxication”** means a person’s speech, balance, co-ordination or behaviour is noticeably affected, and it is reasonable in the circumstances to believe that the affected speech, balance, co-ordination or behaviour is the result of the consumption of liquor;

**“request by licensee”** includes a request by a licensee’s employee or police officer.

#### **[62] Name of manager, etc., to be displayed**

- (1) A licensee must display in a conspicuous place at the licensed premises:
- (a) the name of —
    - (i) the licensee’s associate who manages the licensed premises; or
    - (ii) for a club, the secretary of the club;
  - (b) the licence (including a special event licence); or
  - (c) any additional conditions that apply to the licensed premises; or
  - (d) the prohibition or restriction of entry of young persons; or
  - (e) any prohibition order against a person.
- (2) A licensee must replace the display if it is defaced, obliterated, destroyed or removed.
- (3) The [LA] may, by order, close the licensed premises until the licensee complies with subsection (1) or (2).

#### **[63] Liquor to be received and stored only at licensed premises**

- (1) A licensee (including an employee or agent) must not receive or store liquor at any other place except at the licensed premises.
- (2) A licensee commits an offence who contravenes subsection (1) [+ penalty].

#### **[64] Disturbance or disorderly conduct from licensed premises**

- (1) A licensee must ensure that the sale or consumption of liquor on the licensed premises does not:
- (a) unduly annoy or disturb persons who —
    - (i) reside or work in the neighbourhood of the licensed premises; or
    - (ii) are customers or clients of any other business in the neighbourhood of the licensed premises; or

- (iii) are at a religious service or at an institution for education or training in the neighbourhood of the premises; or
  - (iv) are lawfully at the licensed premises; or
- (b) cause disorderly conduct —
  - (i) at the licensed premises; or
  - (ii) in the neighborhood of the licensed premises.
- (2) A licensee who contravenes subsection (1) commits an offence [+ penalty].

**[65] Alteration of licensed premises**

- (1) A licensee:
  - (a) must first apply to the [LA] for approval to alter the licensed premises; and
  - (b) must give the [LA] detailed information or a plan that explains the proposed alteration.
- (2) The application is to be made:
  - (a) in the [prescribed/approved form]; and
  - (b) at least [30] days before the alteration is to be made.
- (3) The [LA] may give written notice to the licensee to alter the area of the licensed premises.
- (4) The licensee must:
  - (a) comply with the [LA's] notice of alteration; and
  - (b) give the [LA] written notice within [14] days of completion of the alteration.
- (5) A licensee who makes an alteration without approval or fails to comply with the [LA's] notice of alteration commits an offence.

**[66] Consumption restrictions at off-licensed and on-licensed premises**

- (1) A person commits an offence who:
  - (a) being a licensee, allows liquor to be purchased and consumed at the off-licensed premises; or
  - (b) purchases and consumes liquor at the off-licensed premises.
- (2) A person commits an offence who:
  - (a) allows liquor to be purchased at the on-licensed premises to be consumed off the on-licensed premises; or
  - (b) purchases liquor at the on-licensed premises to be consumed off the on-licensed premises.

**[67] Restrictions on access to licensed premises outside permitted times**

- (1) A person must not enter or remain at the licensed premises where liquor is normally sold between:
  - (a) [15 minutes] after the permitted closing time of the licensed premises; and
  - (b) the next permitted opening time of the licensed premises.
- (2) Subsection (1) does not apply to:
  - (a) the licensee or a licensee's associate, employee or family member;
  - (b) a resident of the licensed premises;
  - (c) any other person required to be at the licensed premises in the course of employment or providing other services.
- (3) A person commits an offence who contravenes subsection (1).

**[68] Absence from licensed premises**

- (1) This section applies if the licensee will be absent from the licensed premises for at least [14 days].
- (2) The licensee must give written notice to the [LA] stating:
  - (a) period of absence; and
  - (b) the name and address of the licensee's associate.
- (3) A licensee who fails to give notice under subsection (1) commits an offence.

**[69] Duty of licensees to prevent offences on licensed premises**

- (1) This section applies if the licensee knows or has reason to believe that an offence under this Act is being, or is about to be, committed on the licensed premises.
- (2) The licensee must:
  - (a) take immediate action that is reasonable to prevent the offence that is being, or is about to be, committed; and
  - (b) immediately report the offence to the Police.

**[70] Liquor not to be brought onto licensed premises**

A person commits an offence who brings liquor onto the licensed premises without the consent of the licensee.

**[71] Prohibited behavior and language at licensed premises**

- (1) This section applies to a person who, when at the licensed premises;
  - (a) is violent, intoxicated, quarrelsome or acts in a disorderly manner;
  - (b) is smoking in a smoke-free area;
  - (c) is in possession of a prohibited drug or substance.
- (2) A person must leave the licensed premises if requested by:
  - (a) the licensee or the licensee's associate or employee; or
  - (b) a police officer.
- (3) The person must not re-enter the licensed premises within [24 hours] of leaving or removal from the premises if the person:
  - (a) had voluntarily left the licensed premises under subsection (1); or
  - (b) was removed from licensed premises.
- (4) A person who contravenes subsection (1), (2) or (3) commits an offence.
- (5) A police officer may:
  - (a) arrest without a warrant a person who is committing, or whom the police officer has a reason to suspect has committed, an offence under subsection (4); and
  - (b) use force that is necessary and reasonable in the circumstances to remove the person from the vicinity of the licensed premises.

**[72] Sanitary conditions**

- (1) A licensee must keep:
  - (a) any sanitary appliance in the licensed premises in good sanitary condition;
  - (b) the licensed premises in a clean and sanitary condition.

- (2) The [LA] must suspend the licence and the sale and supply of liquor at the licensed premises if the licensee fails to comply with subsection (1).

**[73] Liquor sale or storage without licence**

- (1) A person commits an offence who:
  - (a) sells liquor —
    - (i) without a licence; or
    - (ii) from any unlicensed premises; or
  - (b) supplies liquor in bulk to any unlicensed premises to be sold;
  - (c) stores liquor in bulk without a licence or at any unlicensed premises.
- (2) This section applies to the owner, or occupier or the tenant of the unlicensed premises.

**[74] Signs on unlicensed premises**

- (1) This section applies to a person who owns, or occupies, or is a tenant, of any unlicensed premises.
- (2) A person commits an offence if a sign or notice at the premises shows, or implies, or gives a reasonable belief that the premises are licensed.
- (3) This section does not apply to posting of a notice of application in the proposed licensed premises.

**[75] Public places<sup>155</sup>**

A person commits an offence who consumes liquor in a public place.

**[76] Obstruction of duties**

A person commits an offence who:

- (a) hinders an enforcement officer when carrying out the officer's duties under this Act; or
- (b) fails to comply with a reasonable requirement of an enforcement officer made under this Act; or
- (c) being a licensee, fails to provide an enforcement officer with reasonable assistance when exercising a power under this Act.

**[77] False or misleading statement**

- (1) This section applies:
  - (a) to a statement or information contained in an application made under this Act; or
  - (b) any information given to the [LA] or any person carrying out any duties or powers under this Act;
  - (c) to any other information required under this Act.
- (2) A person commits an offence who, knowingly, makes or gives a statement or information that is false or misleading.

**[78] Adulterated liquor**

- (1) A person commits an offence who:
  - (a) adulterates liquor; or
  - (b) supplies or offers to supply any adulterated liquor.
- (2) The court may, on conviction of the person, order the disposal of the adulterated liquor, including its containers.

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<sup>155</sup> Check whether "public place" is defined in your general interpretation legislation.

**[79] Offence by corporation**

- (1) This section applies to an officer of a corporation when the corporation commits an offence under this Act.
- (2) An officer:
  - (a) also commits the same offence; and
  - (b) is liable to be jointly or severally charged with the corporation or any other officer; and
  - (c) is taken to have been convicted also, on conviction of the corporation.
- (3) It is a defence for the officer charged to prove:
  - (a) that the corporation committed the offence without the officer's knowledge, consent or connivance; and
  - (b) that reasonable precaution or due diligence was taken to prevent the corporation from committing the offence.
- (4) In this section:
 

**"officer"** includes:

  - (a) a director or secretary; or
  - (b) chief executive officer; or
  - (c) any other employee who manages or supervises the affairs of the corporation.

**PART 8 – ENFORCEMENT****[80] Enforcement officers**

- (1) The [xx] may appoint in writing:
  - (a) a person to be an enforcement officer; or
  - (b) a class of persons to be enforcement officers.
- (2) The following are taken to be enforcement officers:
  - (a) a police officer;
  - (b) a public officer responsible for liquor control;
  - (c) a public officer designated in writing by [xx].

**[81] Identity cards**

- (1) The [xx] must issue to an enforcement officer (other than a police officer) an identity card:
  - (a) that specifies the name and appointment of the enforcement officer; and
  - (b) on which there is a recent photograph and the signature of the enforcement officer.
- (2) A person who ceases to be an enforcement officer must, in the absence of reasonable excuse, return his or her identity card to the [xx] as soon as practicable after ceasing to hold that appointment.
- (3) A person commits an offence who uses an identity card after the expiry of his or her appointment.

**[82] Functions**

The functions of an enforcement officer are:

- (a) to administer and enforce this Act; and
- (b) to perform any other function specified in the letter of appointment.

### [83] Entry and search powers

- (1) An enforcement officer may, at all reasonable times, enter a place if the enforcement officer believes liquor is being manufactured or packaged or sold, or displayed for sale.
- (2) An enforcement officer who enters a place under subsection (1) may do any of the following:
  - (a) enter and inspect the place and any machines found at the place;
  - (b) take measurements of the place or a thing found at the place;
  - (c) take photographs, films or audio, video or other recordings of the place;
  - (d) if the enforcement officer believes on reasonable grounds that an offence under this Act has been, or is being committed, seize any liquor and any other material or thing that the enforcement officer reasonably believes could assist in the prosecution of the offence;
  - (e) take a copy of or extract from a document found at the place;
  - (f) require a person at the place to —
    - (i) answer questions or provide information; or
    - (ii) make available documents kept at or on the place; or
    - (iii) provide reasonable assistance to the enforcement officer in relation to the exercise of his or her powers under this section;
  - (g) carry on-the-spot checks on any manufacturing, importation or retail facilities to check the packaging or labelling of liquor.
- (3) For subsection (2)(d), the enforcement officer must give a receipt for the liquor, things or samples to:
  - (a) the owner or a person apparently in charge of the place; or
  - (b) the person who the enforcement officer reasonably believes was in possession of the goods, things or samples.
- (4) The following provisions apply in relation to goods, things or samples seized under subsection (2)(d) and 2(f):
  - (a) if a prosecution for an offence under this Act is instituted within [12] months after the seizure and the defendant is guilty, the court may order that —
    - (i) the goods, things or samples be forfeited to the State; or
    - (ii) the defendant pays to the State an amount equal to the market value of the goods, things or samples when seized, being the value determined by the court;
  - (b) if —
    - (i) a prosecution for an offence under this Act is not instituted within [12] months after the seizure; or
    - (ii) on prosecution being instituted within that period, the defendant is not guilty or the court does not make an order under paragraph (a),the enforcement officer must release the goods, things or samples to the owner or the person from whom they were seized.
- (5) An enforcement officer who takes action under subsection (2) must ensure that any offence committed under this Act is investigated and prosecuted, or referred for prosecution, as soon as practicable.



**[84] Warrant required for residential property**

- (1) This section applies if a residential place is to be entered and inspected under section [83].
- (2) An enforcement officer may apply to [a magistrate] for a warrant to enter and inspect the place, and if necessary, to seize items from the place.
- (3) The warrant may authorise other matters required to give effect to the purpose of entry and inspection.

**[85] Power to require identification**

- (1) This section applies if an enforcement officer has a reason to believe that a person whose name, address or age is not known to the officer may be able to assist the officer in inquiries in connection with an offence against this Act that has been, may have been, is being or may be committed.
- (2) The officer:
  - (a) may require the person to give the person's —
    - (i) full and correct name and age; and
    - (ii) details of residential address, including contact details, such as a telephone number; and
    - (iii) without delay, proof of his or her age; and
  - (b) must warn the person that it is an offence if the person fails to comply with paragraph (a).
- (3) A person commits an offence who fails to give the officer the information required under subsection (2)(a).

**[86] Power to issue cease and desist orders**

- (1) This section applies if an enforcement officer has reason to believe that a person:
  - (a) has contravened or is contravening this Act; or
  - (b) is distributing, selling or supplying any product that does not comply with a requirement of this Act.
- (2) An enforcement officer may issue a person with a notice to show cause stating:
  - (a) the facts constituting the allegation under subsection (1); and
  - (b) a period of at least 10 working days within which to show good cause, in writing, why a cease and desist order ("**desist order**") should not be made.
- (3) An enforcement officer:
  - (a) must consider any representation received during the 10 days period under subsection (2)(b); and
  - (b) may issue a desist order if the officer is satisfied that the allegation under subsection (1) has been proven.
- (4) The person issued with a notice to show cause may provide other documents or sworn statements of other persons to defend the allegation in the notice.
- (5) An enforcement officer must issue a desist order if:
  - (a) no written representation is received under subsection (2)(b); and
  - (b) the officer is satisfied that the person has been served with the notice to show cause.
- (6) An enforcement officer must serve the desist order on the person:
  - (a) personally; or
  - (b) by sending it through registered post or email or other electronic address provided by the person.

(7) The person who is issued with a desist order must comply with the order.

#### **[87] Product recall**

- (1) This section applies if:
  - (a) liquor available for wholesale or retail sale does not comply with a requirement this Act, such as labelling; or
  - (b) other liquor products are sold contrary to this Act.
- (2) The [Minister] may, by order, recall the liquor product with the costs of doing so to be borne by the manufacturer, wholesaler or retailer.
- (3) The order is also treated as the authority to enter and remove the liquor products that are subject of the order.
- (4) The [Minister] may approve the means and methods to dispose of any liquor product recalled.

#### **[88] Investigation and prosecution**

- (1) An enforcement officer may:
  - (a) investigate an offence under this Act; and
  - (b) institute and conduct any legal proceedings in relation to the offence in a [Magistrate's Court].<sup>156</sup>
- (2) This section does not prevent the [Director of Public Prosecutions]<sup>157</sup> from carrying out his or her powers under section [xx]<sup>158</sup> of the Constitution.

#### **[89] Tracking and tracing system<sup>159</sup>**

An enforcement officer may use a tracking or tracing system approved by [the Minister/Commissioner of Police] for any of the following purposes:

- (a) to track the supply, transportation or distribution of any liquor product suspected of being manufactured or imported illegally; or
- (b) to assist in the investigation of the liquor product.

#### **[90] Confiscation and forfeiture<sup>160</sup>**

A liquor product, any equipment, or any matter or substance used in the manufacture of the product that is the subject of an offence under this Act:

- (a) is to be confiscated by [an enforcement officer]; and
- (b) is forfeited to the [State/Crown] by the order of a court; and
- (c) must be destroyed in an environmentally-friendly manner [approved by [xx]/as prescribed].

#### **[91] Court order to vary, suspend or cancel the licence**

- (1) This section applies to a licensee who is convicted of an offence under this Act.
- (2) The court may, by order:
  - (a) vary the licence, as it deems fit; or
  - (b) suspend or cancel the licence —
    - (i) for the first offence, for a period of up to 6 months;
    - (ii) for the second offence, for a period not less than 6 months and not more than [12] months;

<sup>156</sup> Replace with the subordinate court of your country.

<sup>157</sup> Commissioner of Police can be added if they have constitutional functions to carry out the investigation of offences.

<sup>158</sup> Some PICTs, such as Samoa, refer to it as "Article".

<sup>159</sup> Delete if your country provides for tracking under the Police Powers Act or other crime procedure legislation.

<sup>160</sup> Clause to be deleted for PICTs that have proceeds of crime legislation.

- (iii) for the third or subsequent offence, for a period of not less than [12] months but not more than [5] years.
- (3) An order under this section is in addition to any fine or imprisonment imposed by the court in respect of the offence.

#### **[92] Infringement notices for spot fines**

- (1) This section applies:
  - (a) if a person (“**defendant**”) commits an offence under this Act; and
  - (b) to the imposition of administrative penalties by an enforcement officer pursuant to an infringement notice.
- (2) An enforcement officer may issue an infringement notice [in a prescribed/approved form] requiring the defendant to pay the fixed penalty specified in the notice.
- (3) When a defendant is served with an infringement notice, the defendant may:
  - (a) pay the spot fine (in full) before the specified date for payment of the fixed penalty, if the defendant admits the offence by endorsing, in writing, the admission on the notice; or
  - (b) appear before the court on a date specified in the notice for appearance in court if the defendant denies the offence.
- (4) In a proceeding, a certificate signed by an enforcement officer indicating that the spot fine has or has not been paid, unless the contrary is proved, is evidence of the matters stated in the certificate.
- (5) No further proceeding is to be instituted against the defendant for the offence for which a spot fine has been fully paid.
- (6) The defendant who is convicted in court on an infringement notice:
  - (a) is not subject to the fixed penalty specified in the notice; but
  - (b) is subject to the penalty prescribed for that offence.

#### **[93] Service of infringement notices**

- (1) An infringement notice is to be:
  - (a) served pursuant to the rules of the court; and
  - (b) filed before the court specified in the notice.
- (2) An infringement notice that is filed under subsection (1)(b) is treated for all purposes as a summons issued pursuant to the [criminal procedure/magistrates’ courts legislation].

#### **[94] Directors, etc., liability**

- (1) This section applies if a body corporate commits an offence.
- (2) A director of the body corporate also commits the same offence.
- (3) It is a defence if the director proves that the offence was committed without the director’s knowledge, connivance or consent.
- (4) In this section:
 

“**director**” includes an officer who manages or supervises the operations of the body corporate.

#### **[95] Obstruction etc. of enforcement officers**

A person commits an offence who, without reasonable excuse:

- (a) obstructs or hinders an enforcement officer or any other person when carrying out a function, duty or power under this Act; or

- (b) fails to comply with a requirement or direction of an enforcement officer to comply with this Act.

**[96] Penalties**

- (1) The fixed penalties for infringement notices are set out in Part 1 of the Schedule.
- (2) The penalties for a person convicted of an offence are set out in Part 2 of the Schedule.

**[97] Misleading information**

- (1) A person commits an offence who:
  - (a) gives information or a document that the person knows to be misleading to another person who is carrying out a function, duty or power under this Act [+penalty];
- (2) Subsection (1) does not apply if the person, when giving the document:
  - (a) draws the misleading aspect of the document to the attention of the enforcement officer; and
  - (b) to the extent to which the person can reasonably do so – gives the relevant officer the information necessary to remedy the misleading aspect of the document.
- (3) In this section:

“**misleading information**” means information that is misleading in a material particular or because of the omission of a material particular.

**PART 9 – MISCELLANEOUS**

**[98] Regulations**

The [xx] may make Regulations to give effect to or for the purposes of this Act, and in particular may make Regulations:

- (a) to...

**[99] Saving and transition**

*[Deals with saving and transitional matters]*

**SCHEDULE**

**PENALTIES**

**PART 1 – FIXED PENALTIES<sup>161</sup>**

Section	Individual (first offence)	Individual (second or subsequent offence)	Company (first offence)	Company (second or subsequent offence)

<sup>161</sup> Fixed penalties should be tagged at around 20–25% of the fines fixed for that offence in Part 2 of the Schedule.

## PART 2 – PENALTIES FOR OFFENCES

Section	Individual (first offence)	Individual (second or subsequent offence)	Company (first offence)	Company (second or subsequent offence)

## PART 3 – INFRINGEMENT NOTICE FORM<sup>162</sup>

LIQUOR CONTROL ACT [...] INFRINGEMENT NOTICE	
<b>1</b>	<b>Date of Notice:</b> [date] [...month...][20.....]
<b>2</b>	<b>Defendant:</b> <ul style="list-style-type: none"> <li>• Name (In full):</li> <li>• Residential address:</li> <li>• Other contact details:</li> </ul>
<b>3</b>	<ul style="list-style-type: none"> <li>• Regulation contravened:</li> <li>• Statement of offence:</li> <li>• Details of offence:</li> </ul>
<b>4</b>	The fixed penalty is [\$....]
<b>5</b>	<p><b>Admitting the offence</b></p> <p>If you admit the offence in 3 above:</p> <ul style="list-style-type: none"> <li>• You must: <ul style="list-style-type: none"> <li>o <b>sign</b> the admission declaration in 7 below; <ul style="list-style-type: none"> <li>▪ immediately when this completed Notice is given to you; or</li> <li>▪ otherwise, no later than 20 working days from the date in 1 above; and</li> </ul> </li> <li>o <b>pay</b> the fixed penalty in 4 above (either paid in a lump sum or part payment, before 20 working days above expires) to: <ul style="list-style-type: none"> <li>▪ [nearest ...Ministry Office]</li> <li>▪ [add other places for payment]</li> </ul> </li> </ul> </li> </ul> <p>When you have paid <b>ALL</b> the fixed penalty in 4 above, no other action relating to the offence in 2 above will be taken against you.</p> <p>If you fail to pay <b>ALL</b> the fixed penalty within 20 working days above, you are treated as having denied the offence and you will be served with the Notice to Attend Court in 9 below.</p>
<b>6</b>	<p><b>Denying the offence</b></p> <p>If you deny the offence in 2 above you:</p> <ul style="list-style-type: none"> <li>• must <b>sign</b> the Denial Declaration in 8 below: <ul style="list-style-type: none"> <li>o immediately after the completed Infringement Notice is given to you; or</li> <li>o otherwise, no later than 20 working days from the date in 1 above; and</li> </ul> </li> <li>• will be served with the Notice to Attend court in 9 below;</li> <li>• if convicted by the court, will be liable to penalty for the offences as set out in Part 2, of the Schedule (including any costs of the proceedings in court) and not the fixed penalty in 4 above;</li> <li>• may, before that 20 working days expire, admit the offence, sign the admission declaration and pay the fixed penalty of [\$....] in 4 above.</li> </ul>

<sup>162</sup> Can be left to be devised by Regulations.



## ANNEX 2-2 – DRINK DRIVING PROVISIONS

### [1] Definitions

“**admissibility**” means admissibility of evidence on a proceeding relating to an offence under this Act.

“**alcohol**” has the meaning in the [liquor legislation].

“**approved analyst**” means an analyst approved under section [12 or 13].

“**blood alcohol limit**” means [50] milligrams of alcohol per [100] millilitres of blood.

“**blood sample**” means a person’s blood specimen taken under section [9 or 10] for use only for the purpose of this Act.

“**blood test**” means a test under section [6] to determine the blood alcohol limit in a person’s blood.

“**breath alcohol limit**” means 250 micrograms of alcohol per 100 ml of breath.

“**breath screening test**” means a preliminary screening test taken under section [5] to determine the breath alcohol limit in a person’s breath.

“**certificate**” includes a certified copy of the original certificate.

“**defence**” means a defence to an offence.

“**drive**” includes attempt to drive.

“**driving a motor vehicle**” includes attempting to drive or being in charge of, a motor vehicle.

“**drug**” has the meaning in the [illicit/dangerous drug legislation].

“**enforcement officer**” means a person appointed as such under section [xx];<sup>164</sup>

“**evidential breath test**” means a test under section [6] to determine the breath alcohol limit in a person’s breath.

“**heavy load vehicles**” means vehicles greater than a prescribed number [13.9] of tonnes.

“**lawyer**” means a person admitted as a barrister [and/or] solicitor under the [Legal Practitioners Act].

“**medical care**” means a medical examination, care or treatment in a hospital or other health care facility of a person injured as a result of a motor vehicle accident.

“**medical practitioner**” has the meaning in the [Medical and Dental Practitioner Act].<sup>165</sup>

“**passive breath testing device**” means a device that is placed near the person’s mouth to determine whether or not there is any alcohol in the person’s breath.

“**road**” includes other public places.

“**test place**” means the place at which a person is required to undergo a breath test and to remain in it until the test result is determined.

“**young person**” means a person aged under [21] years.

### [2] Driving under the influence of a drug

A person commits an offence who drives a vehicle under the influence of a drug.

### [3] Driving exceeding the breath or blood alcohol limit

A person commits an offence who drives a vehicle while the proportion of alcohol:

<sup>164</sup> Check Act whether enforcement officers are involved in enforcement of Act.

<sup>165</sup> Replace with your legislation for registration of doctors

- (a) in the person's breath exceeds the breath alcohol limit that is confirmed after a test under section [6]; or
- (b) in the person's blood exceeds the blood alcohol limit that is confirmed under section [9 or 10].

### **[3A] Zero alcohol level**

- (1) This section applies to the following persons:
  - (a) a young person;
  - (b) a person who holds a [provisional driving licence];
  - (c) a person aged over [70] years;
  - (d) a person while driving a [public service vehicle] when transporting the public;
  - (e) a person who drives heavy load vehicles.
- (2) A person commits an offence who drives a vehicle while the proportion of alcohol:
  - (a) in the person's breath, exceeds [0] micrograms of alcohol per [100] millilitres of breath that is confirmed after a test under section [6]; or
  - (b) in the person's blood exceeds [0] milligrams of alcohol per [100] millilitres of blood that is confirmed under section [9] or [10].

### **[4] Driving disqualification**

- (1) A person who is convicted of an offence under section [2], [3] or [3A] is automatically disqualified from driving a motor vehicle for [12] months from the date of conviction.
- (2) However, the court may:
  - (a) reverse the [12-month] automatic disqualification in subsection (1) if there are compelling circumstances; and
  - (b) make another order to reduce or increase the period of disqualification.
- (3) The person's driving licence is suspended during the period of disqualification.

### **[5] Approved device and instrument**

- (1) The prescribed breath testing device and breath analysis instrument for the purpose of a breath test are set out in the Schedule.
- (2) The prescribed breath analysis instrument set out in the Schedule must produce three automatic printouts to prescribe the alcohol content of a person after a breath analysis test.
- (3) Every device and instrument used for breath tests and analysis must be tested, calibrated and certified by the head of the [national equivalent of the National and Trade Measurement Act] before being used for the first time.

### **[6] Breath screening test**

- (1) This section applies if [an enforcement officer] has a reason to suspect that:
  - (a) a person:
    - (i) is driving a motor vehicle on a road; and
    - (ii) has alcohol in the person's body; or
  - (b) a person —
    - (i) has been driving a motor vehicle on a road while having alcohol in the person's body; and
    - (ii) still has alcohol in the person's body; or



- (c) a person —
    - (i) is or has been driving a motor vehicle on a road; and
    - (ii) has committed a traffic offence while the vehicle was in motion; or
  - (d) a person —
    - (i) is or has been driving a motor vehicle; and
    - (ii) the motor vehicle was involved in an accident on a road.
- (2) An [enforcement officer]:
- (a) may —
    - (i) require a person to undergo a breath screening test, without delay; and
    - (ii) if necessary, also require that person to undergo a test using a passive breath testing device;
  - (b) must require the person to remain and wait for the result of the breath test; and
  - (c) may arrest and detain the person for the purpose of paragraph (b).
- (3) A person must not undergo a breath screening test if the person:
- (a) was involved in a motor vehicle accident; and
  - (b) was the driver or the [enforcement officer] has reason to suspect the person was the driver of the vehicle; and
  - (c) is admitted to a hospital, or other medical facility, for treatment of any life-threatening injury resulting from the vehicle accident.
- (4) A test under a passive breath testing device does not invalidate a breath screening test.

**[7] Evidential breath test or blood test**

- (1) This section applies if a person:
- (a) has undergone a breath screening test that appears to show the person's breath exceeding the breath alcohol limit; or
  - (b) fails or refuses to undergo a breath screening test when required under section [5]; or
  - (c) could not be tested under section [5] because —
    - (i) a breath screening device is not readily available; or
    - (ii) for any other reason, a breath screening test cannot then be carried out; and
    - (iii) there is reason to suspect that the person has consumed alcohol.
- (2) An [enforcement officer] may require the person to undergo either or both of the following tests:
- (a) an evidential breath test;
  - (b) a blood test.
- (3) For subsection (2), the person must go with the [enforcement officer]:
- (a) to the place directed by the [enforcement officer] to carry out the test, without delay; or
  - (b) instead, to another place to carry out the test, without delay, if it is not possible to carry out the test at the place in paragraph (a); and
  - (c) must remain at the place until —
    - (i) the evidential breath test or a blood test is carried out; and
    - (ii) for the evidential breath test, result of that test is determined.

- (4) The [enforcement officer]:
  - (a) may, without a warrant, arrest and detain the person for the purpose of subsection (3); and
  - (b) must release the person after the test unless the person is arrested or detained for any other offence.
- (5) A person must not undergo a test required under this section if the person:
  - (a) was involved in a motor vehicle accident; and
  - (b) was the driver or the [enforcement officer] has reason to suspect the person was the driver of the vehicle; and
  - (c) is admitted to a hospital, or other medical facility, for treatment of any life-threatening injury resulting from the vehicle accident.

#### **[8] Further evidential breath test**

- (1) This section:
  - (a) applies if a person was required to undergo an evidential breath test under section [6]; and
  - (b) the evidential breath test fails, for any reason, to produce a result.
- (2) An [enforcement officer] may require:
  - (a) the person to undergo, without delay, a further evidential breath test; or
  - (b) the person's blood specimen to be taken under section [7](2)(b).

#### **[9] Right to elect blood test**

- (1) This section applies if the result of a person's evidential breath test:
  - (a) is over [250] micrograms of alcohol per litre of breath; but
  - (b) under [50] micrograms of alcohol per 100 millilitres of breath.
- (2) The person may, within [10] minutes of being advised under section [7](3)(c)(i), request to undergo a blood test to confirm the proportion of alcohol in the person's blood.

#### **[10] Who must give blood sample at places other than hospital or surgery?**

- (1) This section applies:
  - (a) to a person who fails or refuses to undergo an evidential breath test; or
  - (b) to a person who has undergone an evidential breath test that —
    - (i) appears to the [enforcement officer] to have exceeded the breath alcohol limit; and
    - (ii) the person has, pursuant to section [7](3)(c)(i), requested the [enforcement officer] to undergo a blood test to determine their blood alcohol level; or
  - (c) if an evidential breath testing device is not readily available to carry out the test at the place —
    - (i) under section [6] (whether or not at the time the requirement was made it was likely that the person could undergo an evidential breath test at that place); or
    - (ii) to which the person has been taken under arrest; or
    - (iii) to which an evidential breath test cannot, for any other reason, be taken; or
  - (d) if the [enforcement officer] has arrested a person on reasonable suspicion of having committed an offence against any of sections [3 to 9] and either —
    - (i) a medical practitioner has examined the person and has reason to believe that the person may be under the influence of alcohol or drug, or both; or

- (ii) the person has refused to be examined by a medical practitioner for the purpose of subparagraph (i).
- (2) A person must, when required to do so by the [enforcement officer], without delay allow a medical practitioner to take the person's blood specimen.
- (3) The person is required to give a blood specimen:
  - (a) at the place where the person has been taken; or
  - (b) at another place accompanied by the [enforcement officer], if it is not practicable or possible to take the blood sample at the place under paragraph (a).
- (4) If a blood specimen taken under this section is insufficient to be divided into two parts under section [12] or [13]:
  - (a) the person from whom the specimen was taken must permit a medical practitioner or medical officer to take a further blood specimen immediately after being requested to do so by the medical practitioner or medical officer; and
  - (b) a further blood specimen so taken is to be treated as part of the original blood specimen taken from the person.
- (5) An [enforcement officer] may arrest a person without warrant if the person:
  - (a) fails or refuses to accompany an [enforcement officer] to a place when required to do so under this section; or
  - (b) having accompanied an [enforcement officer] to a place under this section, fails or refuses to remain at that place until the person's blood specimen has been taken under this section.

**[11] Blood specimen for person under medical care**

- (1) A person who is under medical care must allow the person's blood specimen to be taken by:
  - (a) the medical practitioner who is in immediate charge of the person's medical care; or
  - (b) another medical practitioner.
- (2) The medical practitioner who is in immediate charge of the person's medical care:
  - (a) may authorise another medical practitioner to take the specimen; and
  - (b) must take the person's blood specimen or authorise another medical practitioner to take the person's blood specimen, when requested by [an enforcement officer]; and
  - (c) may take a further blood specimen to be part of the original blood specimen in order for the person's blood specimen to be sufficient for the purpose of section [12] or [13].
- (3) The person's blood specimen may be taken under subsection (2) even if the person has not given or is not capable of giving, consent.
- (4) Despite subsection (2)(b), a person's blood specimen may be taken only if the medical practitioner:
  - (a) has reason to suspect that the person is in medical care for injuries caused by an accident involving a vehicle;
  - (b) has examined the person and is satisfied that the taking of a blood specimen would not be prejudicial to the person's proper medical care; and
  - (c) explains to the person (unless the person is unconscious) that the blood specimen is being or was taken as evidence.
- (5) A person who takes a blood sample from a person or requires it to be taken is not liable for doing so despite the fact that the person did not consent or was not capable of giving consent to the taking of the blood specimen.

- (6) Subsection (5) does not apply to liability for negligence resulting from the taking, or requiring, of blood specimen.

**[12] Taking specimen from an unconscious person**

- (1) This section applies if the person under medical care is unconscious.
- (2) The person's blood specimen must be taken by:
  - (a) the medical practitioner who is in immediate charge of the examination, care, or treatment of the person; or
  - (b) another medical practitioner.
- (3) The medical practitioner who took the specimen must, as soon as possible, notify the person in writing and any immediate family member that the specimen was taken and of its purpose as evidence.

**[13] Procedure for dealing with blood specimens**

- (1) A blood specimen is to be divided into two parts, each of which must be placed in a separate bottle and then the bottles properly and securely sealed.
- (2) One or more preservative substances and anti-coagulant substances may be added to a blood specimen by placing them in the bottle, whether before or after the specimen is taken and placed in the bottle.
- (3) For a blood specimen taken under section [9], [an enforcement officer] must, within [5] working days after the date on which the specimen was taken:
  - (a) deliver or cause to be delivered (whether by courier or otherwise), or
  - (b) post by registered post or cause to be posted by registered post, -both parts of the blood specimen to an analyst (approved by the [Commissioner of Police]) for the analysis of one of those parts and the custody of the other.
- (4) For a blood specimen taken under section [10], the medical practitioner by whom the specimen was taken must:
  - (a) within [5] working days after the date on which the specimen was taken —
    - (i) deliver or cause to be delivered (whether by courier or otherwise) or
    - (ii) post or cause to be posted by registered post, -both parts of the blood specimen to an approved analyst for the analysis of one of those parts and the custody of the other; and
  - (b) give written notice of it to the [Commissioner] —
    - (i) identifying the approved analyst to whom the parts of the blood specimen were (or are being) delivered or posted; and
    - (ii) naming the person from whom the blood specimen was taken.
- (5) An approved analyst may dispose of the blood specimen in his or her possession after [12] months from the date it was received unless the proceedings relating to it is still pending in court.

**[14] Private analyst**

- (1) This section applies if the person from whom a blood specimen was taken:
  - (a) wishes to have the specimen analysed by a private analyst; and
  - (b) applies to the [Commissioner] to approve the specimen to be sent to a private analyst for analysis.
- (2) The [Commissioner] may approve or refuse the application.

- (3) If the application is approved, the [Commissioner] (or another [enforcement officer] authorised by the [Commissioner]) must send a copy of the application to the approved analyst who has the specimen.
- (4) The approved analyst must send by registered post, personal delivery, or delivery by courier one part of that blood specimen to the private analyst specified in the application.
- (5) The person (or the person's lawyer) may:
  - (a) apply in writing to the [Commissioner], not later than [28] consecutive days after —
    - (i) the date on which the summons for the offence for which the blood specimen was taken is served on the defendant; or
    - (ii) if the defendant<sup>166</sup> is arrested for that offence, the date of arrest of the defendant; or
    - (iii) in any other case (other than subparagraph (i) or (ii)), the date on which the defendant is first charged for that offence; and
  - (b) state the full name and address and the occupation of the person and the date that the offence was alleged to have been committed; and
  - (c) state the name and address of the private analyst to whom the part of the blood specimen is to be sent.

#### **[15] Certificates of blood alcohol in proceedings**

- (1) This section applies to proceedings for an offence of driving under the influence of a drug, or driving while exceeding the applicable blood alcohol limit.
- (2) Except as provided in section [18] a certificate to which this subsection applies is sufficient evidence, in the absence of proof to the contrary, of:
  - (a) the matter stated in the certificate; and
  - (b) the authority and qualifications of the person who made the certificate; and
  - (c) for a certificate in subsection (5), the person who carried out the analysis.
- (3) Subsection (2) applies to a certificate certifying that:
  - (a) a specimen of venous blood was taken pursuant to normal medical procedures from a person named in the certificate; and
  - (b) the specimen was divided into two parts, including the taking of a further specimen; and
  - (c) the specimen or each part of the specimen was placed and sealed in a separate bottle; and
  - (d) each separate bottle was received in a sealed blood specimen collecting kit; and
  - (e) each of the separate bottles was given to [an enforcement officer] named in the certificate.
- (4) Subsection (2) applies to a certificate certifying that:
  - (a) the person was in medical care; and
  - (b) the practitioner was in immediate charge of that person and took or authorised the taking of a person's blood specimen under section [10 or 11];
  - (c) at the time the blood specimen was taken from the person, the practitioner had reason to suspect that the person was in medical care as a result of an accident involving a vehicle; and
  - (d) before taking the blood specimen or causing the blood specimen to be taken from the person, the practitioner examined the person and was satisfied that the taking of the blood specimen would not be prejudicial to the person's proper care or treatment; and

<sup>166</sup> Check term used (suspect/offender) in your jurisdiction.

- (e) the practitioner either —
  - (i) told the person that the blood specimen was being or had been taken under section [10 or 11] for evidential purposes; or
  - (ii) if the person was unconscious when the specimen was taken, notified the person in writing as soon as practicable that the blood specimen was taken under section [10 or 11] for evidential purposes.
- (5) Subsection (2) applies to a certificate certifying that:
  - (a) all the matters in subsection (2)(a) to (d); and
  - (b) the date, manner and form in which the specimen was sent to the approved analyst; and
  - (c) that the [Commissioner of Police] was notified in writing of the approved analyst who was given the specimen.
- (6) Subsection (2) applies to a certificate certifying:
  - (a) that a blood specimen in a sealed bottle was delivered on a date, and in a manner and form to be received by, or on behalf of, an approved analyst for analysis;
  - (b) the proportion of alcohol or of a drug in the specimen after analysing the specimen; and
  - (c) that a deterioration or congealing was not found as would prevent a proper analysis.
- (7) Subsection (2) applies to a certificate certifying that, following an application under section [12] or [13], a part of a blood specimen was sent in the manner and form described to the address of the private analyst given in the application.
- (8) It is not necessary for the maker of a certificate to specify the entitlement to give the certificate if the certificate indicates that the person belongs to the class of persons required to make a certificate.

**[16] Certificates of compliance for evidential breath testing devices**

- (1) The [Commissioner of Police or a senior police officer authorised by the Commissioner] must issue a certificate of compliance of any device for evidential breath testing before it is used.
- (2) When required, a police officer must produce to the court a certified copy of the certificate of compliance and state that it is a true copy of the original certificate.
- (3) Subject to subsection (4), a certificate of compliance:
  - (a) is evidence of the matters stated in the certificate; and
  - (b) cannot be challenged, called into question or put in issue before the court about the matters in the certificate including the excess breath alcohol recorded by the device.
- (4) If there is no contrary proof, the signature on a certificate of compliance is evidence of the authority of the person who signed the certificate unless contrary proof is given.
- (5) The [Minister] may approve for each kind of evidential breath testing device the matters that are required to be stated in a certificate of compliance.
- (6) Without limiting subsection (5):
  - (a) for a device approved after this section commences, the approval under subsection (5) is to be given in conjunction with the notice approving that kind of device;
  - (b) an approval under subsection (5) must —
    - (i) specify the maximum period of service for the relevant kind of device; and
    - (ii) require a certificate of compliance to specify the date on which period in subparagraph (i) began or begins or the certificate of compliance in subparagraph (ii) was issued;
    - (iii) require a certificate of compliance to include a statement to the effect that the device is being maintained within the manufacturer's specifications.

**[17] Presumptions relating to blood specimens**

- (1) In proceedings for an offence under this Act, it is presumed, in the absence of proof to the contrary, that if:
  - (a) a certificate in section [14] states the defendant having the same name, address, and occupation as the person from whom the specimen of blood was taken, the specimen was taken from the defendant;
  - (b) a certificate is signed by an approved analyst, the analyst had the authority to sign it; and
  - (c) the bottle in which a blood specimen (or part of it) was placed was received by a medical practitioner in a sealed blood specimen collecting kit, the bottle contained a substance (whether or not a combination or mixture of two or more substances) and that substance was a preservative and anti-coagulant.
- (2) The prosecutor must, on a request of the person (or the person's lawyer) whose blood specimen has been taken under section [9], [10], or [11], give the person a copy of the certificate referred to in subsection (1) that relates to that person's blood specimen.

**[18] Presumptions in relation to alcohol tests**

- (1) This section applies to a proceeding for an offence under this Act in respect of which:
  - (a) the defendant underwent an evidential breath test; or
  - (b) a blood specimen was taken from the defendant under section [9], [10], or [11],
- (2) For a proceeding to which subsection (1) applies, it is presumed that:
  - (a) the proportion of alcohol in the defendant's breath at the time of the alleged offence was the same as the proportion of alcohol in the defendant's breath as indicated by the test; or
  - (b) the proportion of alcohol in the defendant's blood at the time of the alleged offence was the same as the proportion of alcohol in the blood specimen taken from the defendant.
- (3) Except as provided in subsection (4), the result of a positive evidential breath test is not admissible in evidence in proceedings for an offence against any of sections [3 to 9], if:
  - (a) the person who underwent the test is not advised by [an enforcement officer], without delay after the result of the test is ascertained, that the test was positive and that, if the person does not request a blood test within [10] minutes, for a positive test that indicates that the proportion of alcohol in the person's breath exceeds the breath alcohol limit, the test could of itself be evidence to lead to that person's conviction for an offence against this Act; or
  - (b) the person who underwent the test —
    - (i) advises [an enforcement officer], within [10] minutes of being advised of the matters specified in paragraph (a), that the person wishes to undergo a blood test; and
    - (ii) complies with section [9](2).
- (4) Subsection (3)(a) does not apply if the person who underwent the test fails or refuses to remain at the place where the person underwent the test until the person can be advised of the result of the test.
- (5) The result of a positive evidential breath test is not rendered inadmissible under subsection (3) if:
  - (a) the test was carried out by means of a conclusive evidential breath testing device; and
  - (b) the test indicated that the proportion of alcohol in the breath of the person who underwent the test exceeded [50] micrograms of alcohol per 100 millilitres of breath.
- (6) If it is proved in proceedings for an offence against section [19] that the defendant failed or refused to comply with section [21] without reasonable cause, that failure or refusal may be treated as:
  - (a) supporting any evidence given on behalf of the prosecution; or

- (b) rebutting any evidence given on behalf of the defendant, -  
concerning the defendant's condition at the time of the alleged offence.

**[19] Circumstances in which certificates not admissible in proceedings**

- (1) A certificate referred to under section [15(3),(4) or (5)] is not admissible in proceedings if the court orders that the person who signed it shall appear as a witness, on application by the defendant made no later than [10] working days from the date of the hearing.
- (2) A certificate in section [15] on the proportion of alcohol or a drug in a blood specimen is not admissible if:
  - (a) an application was been made under section [14] for a part of the blood specimen to be sent to a private analyst; and
  - (b) that part of the specimen has not been sent to the private analyst in compliance with the application.
- (3) Subsection (2) does not apply to a specimen disposed of under section [12(6)] before the date of application.
- (4) This subsection applies to:
  - (a) a certificate under section [15(6)] by an approved analyst on the proportion of alcohol, a drug, or both, in a blood specimen; or
  - (b) a certificate by an approved analyst sending one part of a blood specimen to a private analyst.
- (5) A certificate specified in subsection (4) is not admissible if the court, on application by the defendant made not less than [10] working days before the date of hearing, orders that the person appear at a witness at the hearing:
  - (a) for subsection (4)(a) —
    - (i) the person who analysed the blood specimens; or
    - (ii) the approved analyst who signed the certificate; or
  - (b) for subsection (4)(b) —
    - (i) the person who posted or delivered the part of the specimen; or
    - (ii) the person who gave the part of the specimen to the courier; or
    - (iii) the approved analyst who signed the certificate.
- (6) The court may not make an order under subsection (5) unless the application made by the defendant under that subsection is accompanied by an affidavit, sworn by the private analyst who is specified in the defendant's application under section [13], to the effect that:
  - (a) since the date given as the date on which an application was made under section [13] to send part of the blood sample relating to the defendant to a private analyst, the analyst has not received that specimen; or
  - (b) the defendant's blood sample received by the private analyst —
    - (i) was not suitable for analysis; or
    - (ii) was suitable for analysis but, for specified reasons, that analysis was not carried out; or
    - (iii) was suitable for analysis and that analysis was carried out but, for specified reasons, the results of the analysis are not available; or
  - (c) the defendant's blood sample received by the private analyst has been analysed and found not to exceed the blood alcohol limit; or



- (d) the defendant's blood sample received by the private analyst has been analysed and found to contain [20 milligrams or more of alcohol per 100 millilitres of blood more or less than the proportion of alcohol per 100 millilitres of blood specified in the certificate referred to in section [14].
- (7) The admissibility of a certificate relating to a blood sample signed by an approved analyst is not affected by the subsequent disposal of the blood specimen under section [12(5)].

**[20] Failure or refusal to remain at specified place or to accompany [enforcement officer]**

- (1) A person commits an offence who:
- (a) fails or refuses to remain at the place where the person underwent a breath screening test under section [5] until after the result of the test is ascertained; or
  - (b) fails or refuses to accompany without delay [an enforcement officer] to a place when required to do so under section [6]; or
  - (c) having accompanied [an enforcement officer] to a place under a requirement under section [6] or [9] —
    - (i) fails or refuses to remain at that test place until the person is required either to undergo an evidential breath test or a blood test under this Act; or
    - (ii) fails or refuses to accompany [an enforcement officer] to another place under either of those sections; or
  - (d) having undergone an evidential breath test under section [6], fails or refuses to remain at the test place.
- (2) A person convicted of an offence under subsection (1) is liable to [penalty].
- (3) In addition to a penalty imposed under subsection (2), the court may disqualify the person from holding or obtaining a driver licence for up to [12 months].

**[21] Failure or refusal to permit blood specimen to be taken**

- (1) A person commits an offence if the person:
- (a) fails or refuses to permit a blood specimen to be taken after having been required to do so under section [9] by [an enforcement officer]; or
  - (b) fails or refuses to permit a blood specimen to be taken without delay after having been requested to do so under section [9] by a medical practitioner or medical officer; or
  - (c) is a person from whom a medical practitioner or medical officer may take a blood specimen under section [10 or 11] and refuses or fails to permit such a person to take a blood specimen.
- (2) A person convicted of an offence under subsection (1) is liable to [penalty].
- (3) In addition to a penalty imposed under subsection (2), the court may disqualify the person from holding or obtaining a driver licence for at least 12 months.

**[22] Drivers and other road users to comply with directions of [enforcement officers], etc.**

- (1) A person commits an offence who:
- (a) fails to comply with a requirement in section [5, 6, 7, 9, 10 or 11] relating to the administration of breath screening tests, evidential breath tests, or blood tests); or
  - (b) fails to comply with a requirement, direction, or request by [an enforcement officer] under section [5, 6, 7, 9, 10 or 11]; or
  - (c) fails to comply with a lawful requirement or request made by a medical practitioner under section [9, 10 or 11] relating to the administration of a blood test.
- (2) A person convicted of an offence under subsection (1) is liable to [penalty].

### **[23] Defences**

- (1) It is a defence under section [20] for failing or refusing to supply a blood specimen if the court is satisfied, on the evidence of a medical practitioner, that the taking of a blood specimen from the defendant would have been prejudicial to the defendant's health.
- (2) It is not a defence if any of the sections [5 to 15, and 17] have not been strictly complied with, provided they have been applied with reasonable diligence.
- (3) This subsection applies to a proceeding for an offence under section [19](1) arising out of circumstances in which:
  - (a) [an enforcement officer] exercised powers under section [5, 6 or 9]; and
  - (b) a person was required to undergo a breath screening test or an evidential breath test or a blood test.
- (4) It is not a defence under subsection (3) that:
  - (a) the breath screening test or evidential breath test indicated that the proportion of alcohol in the person's breath did not exceed the breath alcohol limit; or
  - (b) the results of a blood test indicate that the proportion of alcohol in the person's blood did not exceed the blood alcohol limit.
- (5) It is no defence to proceedings for an offence against section [20] (which relates to failing or refusing to supply a blood specimen) that:
  - (a) there was or may have been an error in the result of the breath screening test or evidential breath test; or
  - (b) the occurrence or likely occurrence of any such error did not entitle or empower a person to request or require an evidential breath or a blood test.
- (6) It is not a defence for an offence relating to the proportion of alcohol in a person's breath that:
  - (a) there was or may have been an error in the result of the breath screening test or evidential breath test; or
  - (b) the occurrence or likely occurrence of the error did not entitle or empower a person to request or require an evidential breath test.

### **[24] Arrest of persons for alcohol or drug-related offences, or assault on [enforcement officers]**

- (1) An [enforcement officer] may, without a warrant, arrest a person:
  - (a) whom the officer has reason to suspect —
    - (i) has committed an offence under section [3, 19, 20 or 21]; or
    - (ii) has assaulted any other [enforcement officer] who was carrying out their duties under this Act; or
  - (b) is committing an offence under section [3, 19, 20 or 21] in the presence of [the enforcement officer]; or
  - (c) who assaulted [the enforcement officer] while carrying out their duties under this Act.
- (2) This section is in addition to any other powers of arrest under this or any other enactment.

## **SCHEDULE**

### **Part 1 – Approved breath testing devices**

The following are the approved breath testing devices for the purpose of a breath test:

*[List the devices]*

### **Part 2 – Approved breath analysis instruments**

The following are the approved breath analysis instruments producing three automatic printouts:

*[List the instruments]*

# ANNEX 3 – HEALTH PROMOTION FOUNDATION BILL

## HEALTH PROMOTION FOUNDATION BILL

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#### PART 4 – MISCELLANEOUS

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### [A BILL FOR]

**AN ACT** to establish the Health Promotion Foundation and the Health Promotion Fund and for related purposes

**ENACTED** by [Parliament...] –

### PART 1 – PRELIMINARY MATTERS

#### [1] Short title and commencement

- (1) This Act may be cited as the Health Promotion Foundation Act [20...].
- (2) This Act commences on [...].

#### [2] Interpretation

In this Act:

**“Foundation”** means the Health Promotion Foundation established by section [4].

**“Fund”** means the Health Promotion Fund established by section [13].

**“health promotion”** —

- (a) means the process of enabling persons to increase control over their health and its determinants to improve their health; and
- (b) includes preventative health or prevention and control of non-communicable diseases;

**“objects”** means the objects listed in section [3].

**“preventative health”** means any measure taken to prevent disease or the use of processes, such as health screening, counselling or maintenance to prevent future illness or treatment.

**“school”** includes tertiary institutions.<sup>167</sup>

*[Add other definitions if required]*

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<sup>167</sup> If the term “school” is defined in your Education Act, then the definition should read: “school” has the meaning in the Education Act [...], and includes tertiary institutions.

**[3] Objects**

- (1) The objects of the Foundation are:
  - (a) to promote and encourage health promotion under the public health policies of the Government; and
  - (b) to fund activities about the promotion of good health, safety or about the prevention and early detection of diseases; and
  - (c) to carry out awareness activities and programmes to promote good health; and
  - (d) to encourage healthy lifestyles and support participation in healthy pursuits; and
  - (e) to fund or conduct studies or research on health promotion, including to encourage study, research, training or organising meetings to support its objects; and
  - (f) to monitor, evaluate and build evidence relating to preventative health; and
  - (g) to establish a partnership, alliance, agreement or arrangement for workplace, community and school interventions; and
  - (h) to assist in developing and strengthening health promotion at workplaces, schools or in the community;<sup>168</sup> and
  - (i) to coordinate and implement a national approach to social marketing for preventative health programmes.
- (2) Regulations may prescribe other objects.

**PART 2 – HEALTH PROMOTION FOUNDATION****[4] Establishment**

- (1) The Health Promotion Foundation is established.<sup>169</sup>
- (2) The Foundation:
  - (a) is a body corporate with perpetual succession; and
  - (b) may sue and be sued; and
  - (c) may enter into contracts, agreements or other arrangements; and
  - (d) may own and deal with property; and
  - (e) has all other legal rights, duties and powers to carry out its objects, functions, duties and powers under this Act.
- [(3) Section [xx/Part xx] of the [Interpretation Act] applies to the Foundation]<sup>170</sup>

**[5] Board**

- (1) The Board of the Foundation is established comprising:<sup>171</sup>
  - (a) a Chairperson; and
  - (b) [3] other members.<sup>172</sup>
- (2) The Board reports to the Minister.
- (3) The [xx] may appoint [suitable and experienced] persons as members.

<sup>168</sup> Paragraphs (g) to (h) are taken from the Australian National Preventive Health Agency Act 2010. PICTs may add to the list of objectives or reduce the list to suit their circumstances.

<sup>169</sup> The proposed draft is based on a statutory body with legal personality. However, a PICT may decide to establish it without a legal personality. If that is the case, then delete subclauses (2) and (2A), clauses 4 and 5 to be consolidated as clause 4 "The HPF is established comprising the following members: (a)...". References to "Board" to be deleted and replaced with "Foundation".

<sup>170</sup> This subsection is the alternative for PICTs whose Interpretation Acts provide standard provisions for corporate powers of statutory corporations, such as Part VII of the Interpretation and General Provisions Act of Solomon Islands.

<sup>171</sup> PICTs to decide membership, including public office holders.

<sup>172</sup> It is suggested that the members are no more than five in order to facilitate frequent meetings as it is always easier to convene a small number of members.

- (4) At least [1] member is to be a woman.
- (5) A person is not eligible to be appointed if the person:
  - (a) is, or was in the last [2] years, an employee of, or engaged by, a company that manufactures, imports or sells any tobacco product, liquor, unhealthy foods or sugar-sweetened beverages;  
or
  - (b) is, or was in the last [2] years, the owner, a director or manager of a company that manufactures, imports or sells any tobacco product, liquor, unhealthy foods or sugar-sweetened beverages.

#### **[6] Terms and allowances**

A member is:

- (a) appointed for a term of up to [...] years; and
- (b) eligible for re-appointment; and
- (c) entitled to sitting allowances fixed by [the Minister].

#### **[7] Resignation, suspension, etc.**

- (1) A member may resign in writing to [the Minister].
- (2) The [...] may suspend a member if the member:
  - (a) is alleged to have committed misconduct in office —
    - (i) of a member of the Foundation; or
    - (ii) as the holder of a public office; or
  - (b) is being investigated of having committed an offence under this Act or other laws; or
  - (c) ...
- (3) The [...] may revoke the appointment of a member if the member:
  - (a) is proven to have committed a misconduct in office as —
    - (i) a member of the Foundation; or
    - (ii) a holder of a public office;
  - (b) fails to disclose any interest; or
  - (c) contravenes a provision of this Act; or
  - (d) is convicted of a crime; or
  - (e) fails to perform functions, powers and duties under this Act due to illness or incapacity.

#### **[8] Functions**

The Foundation has the following functions:

- (a) to promote its objects; and
- (b) for the purposes of its objects —
  - (i) to carry out and provide funding for any activities, facilities, projects or research programmes; and
  - (ii) to sponsor any event, including any sports or art or cultural activity; and
  - (iii) to keep statistics, information or other records and reports; and
  - (iv) to advise the [Minister] on any matter in this Act referred to it by the [Minister]; and
- (c) to coordinate advocacy work and amplify efforts on health promotion; and

- (d) to raise public awareness for policies, laws, and regulation, ensuring that health promotion activities reach communities; and
- (e) to provide those whose health is affected by disease with a voice in the policies and health care services that affect them; and
- (f) to highlight gaps in services for those most excluded from accessing health care and, when needed, deliver health promoting and lifesaving services; and
- (g) to carry out advocacy, awareness, access, and accountability on health promotion; and
- (h) to facilitate Government engagement with civil society at the national level; and
- (i) to assist Government with accountability by establishing inclusive and transparent national accountability mechanisms to foster independent accountability efforts on health promotion; and
- (j) to consult regularly with any other relevant government Ministry or agency and to liaise with any other citizen or non-citizen or a national, regional or international body or organisation; and
- (k) to seek and secure funds for the Foundation from a national, regional or international body or organisation.

#### **[9] Meetings and declaration of interests**

- (1) The following applies to a meeting of the Board:
  - (a) the Board must meet at least once every [3] months; and
  - (b) the Chairperson convenes and presides at meetings; and
  - (c) if the Chairperson is absent, a member elected by the members present presides at that meeting; and
  - (d) [...] members constitute a quorum; and
  - (e) the Board may, by resolution, determine other rules and procedures of meetings.
- (2) A member who has an interest on any matter before the Board:
  - (a) must immediately declare the interest to the Board; and
  - (b) must not be present when the Board deliberates and votes on the matter.
- (3) If the Board is unable to meet under subsection (1)(a), the Minister may act as the Board and carry out the powers and duties of the Board for that particular occasion.
- (4) The Board may invite a person to its meeting, but the person does not have the right to vote on a matter before the Board.
- (5) A decision is void if a member was involved in the deliberation of the Board without disclosure of the interest.
- (6) In this section:
 

**“interest”** means a direct or indirect financial, personal or other interest on a matter before the Board for its deliberation or any interest in a business on tobacco, alcohol or unhealthy food or sugar-sweetened beverages.

#### **[10] Committees**

- (1) The Board may appoint committees of the Board comprising no fewer than [3] and not more than [7] members.
- (2) The Board may appoint committee members to represent Government and civil society groups.

- (3) A committee may invite other members from Government or from other civil society groups that are not represented in the committee. An invitee has no right to vote on a matter for deliberation of the committee.
- (4) The function of a committee is to advise the Board on matters, specified in the terms of reference, relating to the objects, functions, duties or powers of the Foundation.
- (5) The Board may issue terms of reference to a committee setting out the matters for the committee and other terms and conditions of the members of the committee.
- (6) In this section:  
“**civil society group**” includes any non-governmental organisation, community group, patient group, consumer group, women’s group, indigenous group, youth organisation, faith-based organisation, professional society, foundation or research or tertiary institution.

#### **[11] Delegation**

- (1) The Board:
  - (a) may delegate to a member or other qualified person any of its duties or powers or of the functions of the Foundation; and
  - (b) despite the delegation, may carry out any delegated duty, power or function; but
  - (c) must not delegate the power under this section.
- (2) Any delegation of the power under this section is void.

#### **[12] Chief Executive Officer and employees<sup>173</sup>**

- (1) The position of Chief Executive Officer (CEO) of the Foundation is established.
- (2) The [Minister/Board] may appoint a person as the CEO who has qualifications, experience and skills in the area of health, administration or finance.
- (3) The duties of the CEO are:
  - (a) to manage the operations of the Foundation, subject to the supervision and directions of the Board; and
  - (b) to manage the staff; and
  - (c) to carry out other duties or functions assigned in writing by the Board.
- (4) The [Board/CEO] may appoint suitably qualified persons as employees, including consultants or advisers, of the Foundation.
- (5) The power to appoint in this section, includes the power:
  - (a) to determine or amend any terms of employment; or
  - (b) to promote, discipline, suspend or terminate.

## **PART 3 – HEALTH PROMOTION FUND**

### ***Division 1 – Establishment***

#### **[13] Establishment and source**

- (1) The Health Promotion Fund is established comprising:
  - (a) any money appropriated to the Fund by Parliament; and

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<sup>173</sup> This clause may be deleted if the Foundation is not a statutory corporation. For non-statutory corporations, the statutory body will operate under the Government system not as an independent statutory corporation.



- (b) any grant made by the Government to the Fund; and
  - (c) [tax or levy earmarked or hypothecated for health promotion]; and
  - (d) any other money received by or on behalf of the Foundation, including any grant from the Government or [dividend on any investment under section xx].
- (2) The Fund:
- (a) is a [special fund/specific fund] under the Constitution and as such is not part of the [Consolidated Fund]; and
  - (b) is treated as a trust fund for charitable purposes for health promotion.
- (3) The Fund is not to be used for other services of Government except for any health promotion activity or programme of the Foundation.

### **Division 2 – Management and use**

#### **[14] Management of the Fund**

- (1) The functions of the Board are:
- (a) to manage and control the Fund; and
  - (b) to approve budget estimates and the use of the Fund; and
  - (c) to formulate, review, endorse and monitor any annual operating plan for the Fund; and
  - (d) to approve and administer grant programmes; and
  - (e) to assess gaps and needs for grants and use of the Fund; and
  - (f) to regularly monitor the work plan and grant allocations to ensure appropriate use of the Fund; and
  - (g) to ensure that any document on its activities and financial reports is accurate and complete.
- (2) An eligible entity that receives a grant from the Fund must:
- (a) account for the funding pursuant to financial management and control under this Act or otherwise under the [Public Financial Management Act]; and
  - (b) keep receipts of all financial transactions of the fund; and
  - (c) submit receipts to the Ministry; and
  - (d) raise requisitions to reflect activities indicated in an annual operating plan and any funding requested for activities not included in the plan, must be first approved by the Board; and
  - (e) send detailed accounting records kept and maintained by the Ministry for review by the Board at its next meeting.
- (3) The Board must, before [31 March] each year, earmark the whole Fund as follows:
- (a) not more than [...%] for the prevention and control of tobacco; and
  - (b) not more than [...%] for the prevention and control of liquor; and
  - (c) not more than [...%] for the prevention and control of unhealthy foods (containing salt, sugar, trans-fat) and regulating the marketing of breastmilk substitutes and unhealthy food and sugar-sweetened beverages to children; and
  - (d) not more than [...%] for other matters related to health promotion approved by the Board.
- (4) The Board may, during the year, review the division of Fund under subsection (3).

### **[15] Eligible entities**

- (1) The following are eligible entities for funding:
  - (a) a Ministry; or
  - (b) a committee appointed under section [xx]; or
  - (c) non-governmental, faith-based, civil society, or community-based organisations with a partnership arrangement or memorandum of understanding with the Board or the Ministry; or
  - (d) any other entity approved by the [Cabinet].
- (2) An individual is not eligible for funding.

### **[16] Granting of funding**

- (1) The Board may grant an application for funding from an eligible entity, taking into account the requirements and criteria in this Act.
- (2) An eligible entity may apply in writing to the Board, setting out the funding proposal and the activity or programme to be funded.

### **[17] Matters to take into account when approving funding**

When approving a grant from the Fund, the Board must take into account the following:

- (a) the nature of the activity or programme and its long-term substantial effect on reducing NCD risk factors; and
- (b) the sustainability of the activity or programme; and
- (c) the activity or programme targets a health need that has not been met; and
- (d) the priority funding is given to activities or programmes designed for marginalised members of the community; and
- (e) the activity or the programme is not funded from any other source, subject to section [xx](2); and
- (f) whether the activity or programme is likely to be a success and achieve its objectives; and
- (g) the activity or programme will have minimal effect on the environment; and
- (h) the activity or programme is targeted to preventative measures against health risks; and
- (i) the activity or programme is consistent with, or gives effect to, any relevant national sustainable development plan.

### **[18] Activities eligible or not eligible for funding**

- (1) The Fund may be used for funding of the following activities:
  - (a) any programmes for community health and wellness, including health fairs; or
  - (b) the funding for staff to develop a government policy that supports national health objectives; or
  - (c) any multimedia campaign; or
  - (d) the establishment of cross-sectoral partnerships or systems; or
  - (e) any initial funding to implement any new policy or programme on healthy lifestyles or health promotion, including communications to relevant stakeholders; or
  - (f) any promotional material that increases awareness and is long-lasting, visible, well-designed and likely to have a positive health impact; or
  - (g) any activity consistent with, or which will give effect to, a relevant national sustainable development plan; or

- (h) any activity, awareness programme, research, promotion, training, workshop, capacity building or report specified or required under the Articles 12, 14, 20, 21 and 22 of the WHO Framework Convention on Tobacco Control (FCTC).
- (2) The Fund must not be used to fund any of the following activities:
- (a) normal recurrent or capital expenditure of the Government; or
  - (b) fundraising activities or events; or
  - (c) activity that is inconsistent with national health promotion priorities; or
  - (d) political lobbying or contribution to political parties; or
  - (e) bad debts or losses; or
  - (f) fines, compensation and other monetary penalties; or
  - (g) family or individual use; or
  - (h) procurement of pharmaceutical products; or
  - (i) other prescribed activity.

### **[19] Control of funding**

- (1) An eligible entity who receives funding must comply with any reporting and financial requirements, including submission of quarterly and final reports outlining activities, outcomes and all financial records and receipts.
- (2) The functions of the Ministry are:
- (a) to safeguard the Fund; and
  - (b) to maintain the Fund within good control and ensure the Fund is used solely for authorised purposes; and
  - (c) to ensure that cheques paid to the account are recorded and deposited immediately to the Fund account; and
  - (d) to maintain an up-to-date accounting or ledger of additions and withdrawals to the account; and
  - (e) to ensure that the bank account is reconciled monthly by a staff other than the one who signed the cheque and
  - (f) to ensure that petty cash is used at a minimum and entrusted to a staff of the Ministry, and used for pre-approved incidentals relating to this Act and expenses documented and reviewed at a meeting of the Board; and
  - (g) to ensure that any cheque is to be issued only if an approved invoice or proforma is provided; and
  - (h) to ensure that any payment is made only to the legitimate, pre-approved vendor and in compliance with procurement limits, such as limits for catering; and
  - (i) to ensure that account is kept within applicable ledger.
- (3) The Chairperson:
- (a) must first vet and sign a requisition before it is counter-signed by designated signatories; and
  - (b) may authorise another member or senior officer of the Ministry to vet and sign a requisition during the Chairperson's absence.

### **Division 3 – Control of the Fund**

#### **[20] Annual budget**

- (1) The Board must, before [date], prepare a draft annual budget and submit it to the [xx] for approval.
- (2) The Board may, during a financial year, submit a draft supplementary budget to [xx] for approval.

#### **[21] Control of the Fund**

- (1) The [Public Finance Management Act and the Audit Act] apply to the Fund.
- (2) The Board must maintain a state of audit readiness that records matters relevant to the Fund and is readily accessible for audit.
- (3) The auditors of the Ministry must conduct an informal audit on the Fund every six months.

#### **[22] Keeping of financial documents**

- (1) A financial document (whether electronic or hardcopy) is to be kept for [3] years from the date of submission to the Ministry.
- (2) In this section:  
“**financial document**” includes invoice, payment, cancelled cheque, contract, travel report, donor letter, in-kind contribution report or personal activity report.

#### **[23] Investment**

- (1) The Board may, with the approval of the Ministers, invest any surplus money in the Fund.
- (2) The surplus money may only be invested if the surplus will not affect the normal annual financial operation of the Foundation.
- (3) In this section:  
“**Ministers**” means the Minister responsible for finance and the Minister responsible for health.

#### **[24] Tax exemption**

The Foundation is exempt from paying any tax on its income or on the money in the Fund.<sup>174</sup>

#### **[25] Annual reports**

- (1) The Board must:
  - (a) prepare an annual report of the operations of the Foundation; and
  - (b) submit the annual report to the [Minister] no later than [...].
- (2) The Minister must, as soon as is practicable, table the annual report in Parliament.
- (3) The annual report must include the audited financial report of the Fund.

## **PART 4 – MISCELLANEOUS**

#### **[26] False information**

- (1) Any person who obtains financial assistance or a benefit from the Fund under a document or statement that the person knows is false or misleading commits an offence.
- (2) The court may, in addition to any fine, order the convicted offender to pay the Foundation the amount that is the subject of the offence.
- (3) If a body corporate commits the offence, any of its directors also commit the same offence unless the director proves that it was committed without his or her knowledge, connivance or consent.

<sup>174</sup> Check tax legislation as some PICTs, such as Samoa, require the exemption to be also expressed in the tax legislation. If that is the case, then consequential amendment to the tax legislation will be required.

(4) In subsection (3):

“**director**” includes a manager, secretary or other similar officer who is or was responsible for or assisted in managing the body corporate.

**[27] Personal liability**

A person is not personally liable for carrying out, in good faith, any object, function, duty or power under this Act.

**[28] Ministerial directions**

The Minister may issue general policy directions to the Board on matters relating to the Foundation or this Act.

**[29] Regulations**

The [xx] may, [acting on/with the approval of [xx]], make Regulations to give effect to or for the purposes of this Act, and in particular:

*[(a) insert specific regulations if needed].*

**[30] Consequential amendments**

*[Insert any consequential amendment].*<sup>175</sup>

**[31] Transition and saving**

*[Insert any saving].*

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<sup>175</sup> Amend the Tax legislation if it requires that any exemption to tax be made under the Tax legislation.

# ANNEX 4 – FOOD (BREASTFEEDING PROMOTION AND PROTECTION) REGULATIONS

FOOD [... ACT 20...]

FOOD (BREASTFEEDING PROMOTION AND PROTECTION) REGULATIONS [20...]

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**IN** exercise of the powers conferred upon me by section [xx] of the Food [... Act 20...], I make these Regulations –

## **PART 1 – PRELIMINARY**

### **[1] Citation and commencement**

- (1) These Regulations may be cited as the Food (Breastfeeding Promotion and Protection) Regulations [20...].
- (2) These Regulations commence on [insert date].

### **[2] Definitions**

In these Regulations:

**“advertise”** —

- (a) means to promote the sale or use of a breastmilk substitute through any means of communication or representation; and
- (b) includes to promote the sale or use of a breastmilk substitute through —
  - (i) a written publication, television, radio, film or any other electronic transmission such as the internet, social media, video, telephone or mobile application; or

- (ii) the display of a sign, billboard or notice; or
- (iii) the exhibition of a picture or model;

**“brand name”** —

- (a) means the name, trademark, or mark of a breastmilk substitute; and
- (b) includes —
  - (i) any word, mark or design associated with a breastmilk substitute or with its manufacturer or distributor; or
  - (ii) the logo of the product or the name of the manufacturer or distributor of a breastmilk substitute;

**“breastmilk substitute”** —

- (a) means a product that, partially or totally, replaces breastmilk, whether or not suitable for that purpose; and
- (b) includes —
  - (i) an infant formula, a young child formula or a follow-on formula; or
  - (ii) a ready-to-use therapeutic food or a complementary food product; or
  - (iii) any other product marketed or represented as suitable for feeding infants aged up to 6 months; and
  - (iv) any equipment (such as a feeding bottle or a teat or a pacifier) for containing or delivering breastmilk substitutes for infants or young children;
  - (v) any product designated under Regulation [xx];

**“breastfeeding”** means the process by which the mother expels or expresses milk from her breast after childbirth to feed the infant or young child for their healthy growth and development.

**“breastmilk”** means milk for breastfeeding produced by the breast of a mother after childbirth.

**“bottle feeding”** means feeding liquid or semi-solid food from a bottle with a nipple.

**“caregiver”** means [a person (other than a mother) who cares for the infant or young child or the mother].

**“Code”** —

- (a) means the International Code of Marketing of Breastmilk Substitutes adopted by the World Health Assembly of the World Health Organization in 1981; and
- (b) includes any related World Health Assembly Resolution made after the Code;

**“Codex”** —

- (a) means the relevant Codex Alimentarius International Food Standard for breastmilk substitutes for infants or young children; and
- (b) includes —
  - (i) any other standards recommended by the Codex Alimentarius Commission for any breastmilk substitute for infants or young children; and
  - (ii) any other standard on breastmilk substitutes for infants or young children, prescribed by Regulations under the Act;

**“complementary food”** means a breastmilk substitute suitable or represented as suitable as an addition to breastmilk, infant formula or follow-on formula for infants (aged 6 to [12months])<sup>176</sup> and young children.

<sup>176</sup> PICTs to determine upper age limit

**“complementary food product”** means a breastmilk substitute processed for commercial purposes.

**“container”**—

- (a) means a form of packaging of a breastmilk substitute for the sale of the product as a retail unit; and
- (b) includes a wrapper;

**“cross-promote”** means to promote another product, such as to use a similar brand name, packaging design, label, text, image, colour scheme, symbol or slogan.

**“designated product”** means a product declared as such under Regulation [xx].

**“distributor”** means a person who engages in the business of marketing a breastmilk substitute, whether by wholesale or retail.

**“exempted information”** means any information exempted under Regulation [xx](1).

**“feeding bottle”** means an appliance with an artificial teat, which is used to feed infants or young children.

**“follow-on formula”**—

- (a) means the milk or milk-like product of animal or vegetable origin —
  - (i) formulated industrially under the standard relating to the follow-on formulas; and
  - (ii) marketed or represented as suitable for the feeding of infants (aged 6 to [12] months) or young children; and
- (b) includes —
  - (i) a follow-on formula for special medical purposes or dietary requirement; or
  - (ii) a ready-to-use therapeutic food that is a follow-on milk product for acutely malnourished infants or young children;

**“gift”** includes —

- (a) a benefit, contribution or sponsorship (financial or otherwise and of whatever value); or
- (b) a grant for fellowship or research; or
- (c) funding for a meeting, seminar, continuing education course or conference or other similar matter;

**“health care facility”** —

- (a) means a facility (whether public or private) that, directly or indirectly, provides a health care service or health care education or training; and
- (b) includes a facility (such as a day-care centre or a nursery) for the care of infants or young children;

**“health”** in the context of health claim, means a state of complete physical, mental and social wellbeing, other than merely the absence of disease or infirmity.

**“health claim”** —

- (a) means a representation that states, suggests, or implies that a relationship exists between —
  - (i) a breastmilk substitute or its constituent; and
  - (ii) the health, growth or development of the human body or the physiological role of a nutrient in the growth, development or normal function of the human body; and



- (b) includes —
- (i) a nutrient function claim that describes the physiological role of the nutrient in the growth or development or normal function of the human body; or
  - (ii) any other function claim about a specific beneficial effect of consuming any breastmilk substitute or its constituent that relates to a positive contribution to health or an improvement of a function or to any modification or preservation of health; and
  - (iii) a reduction of disease risk claim on consuming a breastmilk substitute or its constituent, in the context of the total diet or a reduction of the risk of developing a disease or a health-related condition;

**“health worker”** means a person who is engaged in any capacity (such as professional, non-professional or administration or clinical support) to provide a health or related service in a health care facility or any other place or area, whether public or private.

**“infant”** means a child aged under 12 months.

**“infant formula”** —

- (a) means a milk or milk-like product of animal or vegetable origin —
  - (i) formulated industrially under the standard relating to infant formulas; and
  - (ii) intended to satisfy, by itself, the nutritional requirements of infants from birth or during the first 6 months of life; and
- (b) includes —
  - (i) a product that continues to meet part of an infant’s nutritional requirements after the first 6 months of birth;
  - (ii) a formula for a special medical purpose or dietary requirement; or
  - (iii) a ready-to-use therapeutic food that is a milk product for acutely malnourished children; or
  - (iv) follow-on formula or infant formula for special dietary use for infants aged 12 months or under;

**“infant formula for special dietary use”** means an infant formula that is specifically formulated to meet the dietary needs of:

- (a) a premature or low birth weight infant; or
- (b) an infant who has a metabolic, immunological, renal, hepatic or mal-absorptive condition;

**“informational or educational material”** means:

- (a) any information (whether in written, audio or visual form) that refers to a breastmilk substitute; or
- (b) an educational material or message, such as —
  - (i) any written or audio-visual material intended for the general public; or
  - (ii) any flyer, brochure, book, newspaper article, radio broadcast, or any information from the internet or social media that purports to give guidance on the appropriate use of breastmilk substitutes;

**“label”** —

- (a) means a descriptive matter, such as a tag, mark or pictorial, appearing in any form (whether written, printed, stencilled, marked, embossed or attached) on the container of a breastmilk substitute; and

- (b) includes —
  - (i) for [regulation x(2) or (3), or x], a packaging or an insert;
  - (ii) a matter (whether written, printed or in graphic form) that —
    - (A) appears on the label; or
    - (B) accompanies the breastmilk substitute; or
    - (C) is displayed near the breastmilk substitute; or
    - (D) promotes the sale or disposal of the breastmilk substitute;

**“logo”** means a matter (such as an emblem, picture or symbol) by means of which a company or a breastmilk substitute is identified.

**“manufacturer”** —

- (a) means a person who engages in the business of manufacturing a breastmilk substitute; and
- (b) includes a person who engages in that business through an agent, or a person controlled by or under an agreement;

**“market”** —

- (a) means to promote, distribute, sell, or advertise a breastmilk substitute; and
- (b) includes to provide public relations or product information for a breastmilk substitute;

**“mother”** —

- (a) means the mother of an infant or young child; and
- (b) includes a pregnant woman;

**“nutrition claim”** —

- (a) means a representation which states, suggests or implies that a breastmilk substitute has a particular nutritional property, such as the energy value, the content of a protein, fat or carbohydrate, the content of a vitamin or mineral or any other nutritional food property; but
- (b) does not include —
  - (i) a substance in the list of ingredients; or
  - (ii) a nutrient as a mandatory part of nutrition labelling; or
  - (iii) an amount or quality of a certain nutrient or ingredient on the label, if required by the Act;

**“pacifier”** means an artificial teat for infants or young children to suck.

**“packaging”** means [...].

**“place”** includes any area, facility, premises, building, vehicle or vessel.

**“promote”** means to use a method of directly or indirectly encouraging a person or a health facility to purchase or use a breastmilk substitute whether or not there is reference to a brand name, including —

- (a) to cross-promote; or
- (b) to sell or promote through a sale device such as, special display, discount coupon, premium, rebate, special sale, loss-leader, tie-in sale, prize or gift; or
- (c) to give a sample; or

- (d) to donate or distribute any information about feeding of infants or young children or to perform an educational function about feeding of infants or young children, except an exempted information; or
- (e) to use a health claim or a nutrition claim on the label of a breastmilk substitute or in any information about feeding of infants or young children, except any exempted information;

**“public place”** includes any road, street, building or place to which the public have or may have access.

**“ready-to-use therapeutic food”** means a breastmilk substitute specifically designed to treat severe acute malnutrition in infants aged 6 to [12] months and young children, such as energy-dense food, vitamin-enriched food or mineral-enriched food.

**“sample”** means a single or small amount, provided without cost, of a breastmilk substitute.

**“sell”** —

- (a) means to sell by any means or method, such as by wholesale or retail; and
- (b) includes —
  - (i) to barter, exchange, offer or attempt to sell, or receive for sale, or have in possession for sale, or expose for sale, or send or deliver for sale, or cause or permit to be sold, offered, or exposed for sale; or
  - (ii) to supply whether or not for commercial gain (such as donations, gifts) or to offer to supply or distribute or attempt or expose to supply or to cause or permit to supply;

**“sponsorship”** means an assistance, whether financial, in-kind or free.

**“standard”** means the Codex standard or standard prescribed under the Act [or any other law].

**“trademark”** or **“mark”** has the meaning in the [Trademarks Act].

**“vehicle”** has the meaning in the [traffic legislation].

**“vessel”** has the meaning in the [shipping legislation].

**“workplace”** [has the meaning in the [Employment Relations/Labour Act]].

**“young child”** means a child aged between 12 and [36] months.

**“young child formula”** means an industrially formulated milk or milk-like product of animal or vegetable origin that is marketed or represented as suitable for feeding young children.

### [3] Purpose of Regulations

The purpose of these Regulations is:

- (a) to encourage, promote, protect and support exclusive breastfeeding of infants aged up to 6 months, followed by providing a safe and appropriate complementary food, with continued breastfeeding for up to [2] years of age or beyond, as the ideal nutrition for growing and developing infants and young children; and
- (b) to protect the rights of adequate nourishment of infants and young children and their mothers in order to attain and maintain their health; and
- (c) to encourage, promote, protect and support breastfeeding, as vital to primary health care for the purpose of promoting healthy growth and development of infants and young children; and
- (d) to give effect to the child’s right to attain the highest standard of health under the United Nations Convention on the Rights of the Child 1989; and

- (e) to regulate the sale, advertisement, promotion and labelling of breastmilk substitutes; and
- (f) to ensure the proper use of breastmilk substitutes, when necessary, on the basis of adequate information and through appropriate marketing and distribution; and
- (g) to implement the recommendations in the Code, including the global goals and targets to increase the rate of exclusive breastfeeding in the infant's first 6 months after birth.<sup>177</sup>

#### [4] Right to breastfeed

- (1) A mother has the right to breastfeed her baby at a public place or workplace or in a public land, sea or air transport.
- (2) A person commits an offence who prohibits, or interferes with, or prevents a mother from exercising her right under subregulation (1).
- (3) In this Regulation:  
**"mother"** includes a mother who breastfeeds the baby of another woman.

## PART 2 – BREASTMILK SUBSTITUTES

#### [5] Definitions

In this Part:

**"event"** includes a telephone counselling line, campaign, programmes or similar event;

**"material"** includes:

- (a) any equipment or service; or
- (b) any other material, such as, a pen, calendar, poster, note pad, growth chart or toy.

#### [6] Infant formula and follow-on formula

- (1) A person who sells an infant formula or a follow-on formula must ensure that the formula:
  - (a) is safe and suitable for the intended use; and
  - (b) conforms to the standard relating to infant formulas or follow-on formulas.
- (2) Any ready-to-use therapeutic milk product for acutely malnourished children is to be administered under medical supervision.
- (3) A person commits an offence who contravenes subregulation (1).

#### [7] Infant formula for special dietary use

- (1) A person who sells an infant formula for special dietary use must ensure that the formula:
  - (a) is safe and suitable; and
  - (b) conforms to the standard for infant formula or for the follow-on formula; and
  - (c) meets any other nutritional requirement, -  
 to support the growth, development and dietary management of the infants for whom they are intended.
- (2) The breastmilk is the primary reference to determining the composition of infant formula for special dietary use.
- (3) A person commits an offence who contravenes subregulation (1).

<sup>177</sup> Add any other relevant purposes if required by your country.

**[8] Standards for breastmilk substitutes**

- (1) A person must not sell a breastmilk substitute unless it complies with the standards and guidelines under Codex Alimentarius.
- (2) A person who manufactures or distributes a breastmilk substitute for sale must:
  - (a) monitor his or her marketing practices in order to comply with the marketing of breastmilk substitutes; and
  - (b) prepare and give an annual written report on the marketing practices to the [CEO/PS/DG for Health].
- (3) A person commits an offence who contravenes subregulation (1) or fails to give a report under subregulation (2).

**[9] Sale of breastmilk substitutes**

- (1) A person must not sell a product for feeding of infants or young children unless the product is a breastmilk substitute.
- (2) A person commits an offence who contravenes subregulation (1).

**[10] Advertisement and promotion**

- (1) Subject to subregulation (2), a person must not:
  - (a) in any form, manner or means, advertise or promote a breastmilk substitute, including incentive programme, fellowship, study tour, research grant, professional conference, product sample, sponsorship of health and scientific meeting, donation of equipment or any other service, such as supporting infrastructure; or
  - (b) donate a breastmilk substitute to a health worker or a health care facility; or
  - (c) waive payment (through any means) or provide at lower than any published wholesale price, and if no wholesale price, lower than 80% of the retail price, of a breastmilk substitute to a health worker or a health care facility; or
  - (d) provide a health care facility or health care worker with any material; or
  - (e) offer or give a gift to a health worker (including any association of health workers) engaged in maternal health and the health of infants and young children;
  - (f) sponsor an event about reproductive health, pregnancy, childbirth, feeding of infants or young children or related areas or matters; or
  - (g) directly or indirectly, establish any relationship with parents or caregivers through any means, such as a baby club, social media group, child care class, or contest; or
  - (h) include the volume of sales of breastmilk substitutes —
    - (i) to calculate any remuneration or bonus for employees; or
    - (ii) to set quotas for the sale of a breastmilk substitute.
- (2) A person may advertise or promote a complementary food product if:
  - (a) the advertisement or promotion is carried out in a place other than a health care facility; and
  - (b) the material used to advertise or promote a complementary food product includes a statement in characters<sup>178</sup> on —
    - (i) the importance of exclusive breastfeeding for the first 6 months of life and of continued breastfeeding for up to 2 years or beyond; and

<sup>178</sup> [...insert particulars relating to character size, placement, appearance, etc. For example, "no less than one-third the size of the characters in the product name, and in no case less than 2mm in height"]

- (ii) the recommended age of introduction of 6 months and over and a statement that early introduction of a complementary food product negatively affects breastfeeding.
- (3) Despite subregulation (2), a person must not advertise or promote a complementary food product through any means under [Regulation x (2)].
- (4) A person who contravenes subregulation (1) commits an offence [+ penalty].

#### **[11] Declaration of other breastmilk substitutes**

The Minister may, by Notice [in the Gazette], declare a product as a breastmilk substitute.

### **PART 3 – LABELLING OF BREASTMILK SUBSTITUTES**

#### **[12] General labelling requirements for breastmilk substitutes**

- (1) The [manufacturer or distributor] of a breastmilk substitute must ensure that its label:
  - (a) provides the necessary information about the appropriate use of the product; and
  - (b) provides warning about the risk of intrinsic contamination of powdered formula with micro-organisms;
  - (c) does not include information to discourage breastfeeding; and
  - (d) states all the following —
    - (i) the ingredients used;
    - (ii) the composition or analysis of the product;
    - (iii) the storage conditions required;
    - (iv) the batch number and the date before which the product is to be consumed, taking into account the climatic and storage conditions of the country concerned.
- (2) The [manufacturer or distributor] of a breastmilk substitute must ensure that the container or the label does not have:
  - (a) a picture of an infant; or
  - (b) any other picture or text which may idealise the use of infant formula; or
  - (c) the term “humanised” or “maternalised” or similar term.
- (3) The container or label may have graphics for:
  - (a) easy identification of the breastmilk substitute as a breastmilk substitute; and
  - (b) illustrating methods of preparation or cleaning.
- (4) Subject to subregulations (2) and (3), an insert with additional information about a breastmilk substitute and its proper use may be included in the package or retail unit.
- (5) This Regulation applies if a label gives any instruction to modify a product into infant formula.

#### **[13] Labelling of breastmilk substitutes that may be modified for infant feeding**

- (1) A breastmilk substitute marketed for infant feeding, which does not meet the requirements of an infant formula, but which can be modified to do so, must carry on the label a warning that the unmodified product should not be the sole source of nourishment of an infant.
- (2) The label of sweetened condensed milk must not contain any instructions on how to modify it for the purpose of infant formula.

#### **[14] Labelling requirements for infant formula, follow-on formula and young child formula**

- (1) A labelling requirement in this Regulation is in addition to those required under Regulation [xx - general] and the Act.

- (2) A person must not sell any infant formula or follow-on formula unless its label:
- (a) contains the following (with necessary modifications in plain language) —
 

**“IMPORTANT NOTICE”** (in bold and capital letters)

*“Breastmilk is the best food for your baby. Breastmilk is important for your baby to grow healthy and to develop. It protects your baby against sickness, such as diarrhoea”* in characters;<sup>179</sup>
  - (b) contains the following (with necessary modifications in plain language) —
 

**“WARNING”** (in bold and capital letters)

*“If you decide to use this product to add to or replace giving your baby breastmilk, first ask a doctor for advice. It is **VERY IMPORTANT** that you carefully follow the instructions to prepare this product exactly. Carefully following the how to prepare instruction is very important for your baby’s health. Your baby may refuse to feed from the breast if you use a feeding bottle. Using a cup to feed your baby with this product is better and cleaner and more hygienic.”* in characters;<sup>180</sup>
  - (c) has preparation instructions for infant formula in powdered form stating that —
    - (i) powdered formula is not sterile and may be contaminated with pathogenic micro-organisms during the manufacturing process or may become contaminated during preparation; and
    - (ii) it is necessary for the formula to be prepared one feed at a time using water first boiled and then cooled to not less than 70 °C; and
    - (iii) any unused milk must be discarded immediately after each feed;
  - (d) includes a feeding chart in the preparation instructions; and
  - (e) specifies the source of the protein; and
  - (f) for follow-on formula, states in characters that it is not be used for infants aged under 6 months or as the sole source of nutrition of infants over six months.<sup>181</sup>
- (3) A person must not sell:
- (a) an infant formula or follow-on formula if its label uses a term —
    - (i) to compare the infant formula or follow-on formula with or that the formula is similar to breastmilk, such as, maternalised or humanised; or
    - (ii) that may tend to discourage breastfeeding; or
  - (b) a formula for young children if the label states that the formula is to be used —
    - (i) to feed infants; or
    - (ii) as the sole source of nutrition for young children.
- (4) A person commits an offence who contravenes subregulation (2) or (3).

### **Alternative draft for Regulation 14**

#### ***[[14A] Labels for infant formula***

- (1) *The manufacturer or distributor of infant formula or follow-on formula must ensure that the container of the formula has a clear, conspicuous, and easily readable and understandable message printed on it, or on a label which cannot readily become separated from it, in an appropriate language.*

<sup>179</sup> Insert particulars relating to character size, placement, appearance, etc. For example, “no less than one-third the size of the characters in the product name, and in no case less than 2mm in height

<sup>180</sup> Insert particulars relating to character size, placement, appearance, etc.

<sup>181</sup> Insert particulars relating to character size, placement, appearance, etc.

- (2) *The message under subregulation (1) must include all the following:*
- (a) *the words “Important Notice” or their equivalent;*
  - (b) *a statement of the superiority of breastfeeding;*
  - (c) *a statement that the product should be used only on the advice of a health worker as to the need for its use and the proper method of use;*
  - (d) *instructions for appropriate preparation, and a warning against the health hazards of inappropriate preparation.*
- (3) *A manufacturer or distributor commits an offence who contravenes subregulation (1).]*

**[15] Labelling requirements for ready-to-feed therapeutic food or complementary food products**

- (1) A labelling requirement in this Regulation is in addition to those required under Regulation [xx – general] and the Act.
- (2) A person must not sell a ready-to-feed a therapeutic food or a complementary food product (“**product**”) if its label contains any of the following:
- (a) a representation that suggests the suitability of the product for infants aged under 6 months including, any reference to a development milestone clearly reached before 6 months of birth or the use of pictures of infants appearing to be younger than 6 months of birth;
  - (b) a representation that idealises the product or is likely to undermine or discourage breastfeeding or to create a belief that the product is equivalent or superior to breastmilk;
  - (c) a representation that undermines or discourages appropriate complementary feeding or that may suggest that the product is inherently superior to home-prepared complementary food products;
  - (d) a recommendation to feed the product in a bottle or to promote the use of bottle feeding;
  - (e) an endorsement, or anything that may be conveyed or construed as an endorsement by a health professional, an association of health professional or other body; and
  - (f) an element that allows for cross-promotion of any other breastmilk substitute.
- (3) A person must not sell a ready-to-feed therapeutic food or a complementary food product unless the label contains the following information:
- (a) a statement in characters [...] <sup>182</sup> on —
    - (i) the importance of exclusive breastfeeding for the first 6 months and of continued breastfeeding up to [2] years or beyond; and
    - (ii) the recommended age of introduction of 6 months or over and a statement that the early introduction of complementary food products negatively affects breastfeeding; and
  - (b) any instruction for preparation, storage, handling and use; and
  - (c) a feeding chart showing the appropriate ration or serving size consistent with any guiding principle issued by the World Health Organization.
- (4) A person commits an offence who contravenes subregulation (2) or (3).

**[16] Labelling of skimmed or condensed milk and low-fat and standard milk**

- (1) A person must not sell:
- (a) any milk skimmed or condensed milk in powder or liquid form, unless its label contains words (including characters) to the effect that the product is not to be used for feed infants aged under specified months.

<sup>182</sup> [...] insert particulars relating to character size, placement, appearance, etc. For example, “no less than one-third the size of the characters in the product name, and in no case less than 2mm in height”...



- (b) low-fat milk, standard milk or other alternative milk products (in powder or liquid form), unless its label contains words (including characters) to the effect that that the product is not to be used to feed infants under specified months.

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

#### [17] Labelling of feeding bottles, teats and pacifiers

(1) A labelling requirement in this Regulation is in addition to those required under Regulation [xx – general] and the Act.

(2) A person must not sell:

- (a) a feeding bottle or teat unless its package or label indicates in a clear, conspicuous and easily readable manner, in [... language], the following particulars —

- (i) the following statement —

**“IMPORTANT NOTICE”** (in capital letters and bold):

*“Breastfeeding is best. Breastmilk is the ideal food for your baby to grow healthy and develop. It protects your baby from sickness, such as against diarrhoea”* in characters [...];<sup>183</sup> and

- (ii) the following statement —

**“WARNING:** *The health of your baby is important. Carefully follow the instructions on how to clean and sterilise this product. Your baby may no longer want to feed from the breast if you use a feeding bottle”* in characters [...];<sup>184</sup> and

- (iii) the instructions for cleaning and sterilisation in words and graphics; and

- (iv) a statement explaining that feeding with a cup is more hygienic than bottle feeding; and

- (v) a warning that young children should not be left to self-feed for long periods of time because extended contact with sweetened liquids, including infant formula, may cause severe tooth decay; and

- (vi) the name and national address of the manufacturer or the distributor;

- (b) a pacifier unless its label has the words —

**“WARNING:** *If your baby uses a pacifier it can interfere with breastfeeding”* in characters [no less than one-third the size of the characters in the product name, and in no case less than 1.5mm in height”...]<sup>185</sup>.

(3) A person commits an offence who contravenes subregulation (2).

## PART 4 – INFORMATIONAL AND EDUCATIONAL MATERIALS

### [18] Definitions

In this Part:

**“contaminated”** means contaminated:

- (a) during the manufacturing process with a pathogenic micro-organism; or
- (b) when it is prepared;

**“health risk”** includes a health risk related to using feeding bottles or improper preparation or use of a breastmilk substitute;

**“image”** includes a picture, graphic, text or similar matter.

<sup>183</sup> [...insert particulars relating to character size, placement, appearance, etc. ...]

<sup>184</sup> [...insert particulars relating to character size, placement, appearance, etc. ...]

<sup>185</sup> [...insert particulars relating to character size, placement, appearance, etc. ...]

### **[19] Information on infant feeding**

- (1) This Regulation applies to a manufacturer, distributor, retailer or any other person who is required to provide any information about feeding of infants or young children.
- (2) A person must ensure that the information:
  - (a) be written in the [...] language;<sup>186</sup> and
  - (b) be correct and current; and
  - (c) clearly and conspicuously explain all of the following matters —
    - (i) the benefits and superiority of breastfeeding;
    - (ii) the value of exclusive breastfeeding for 6 months followed by sustained breastfeeding for at least [2] years;
    - (iii) how to initiate and maintain exclusive and sustained breastfeeding;
    - (iv) why it is difficult to reverse a decision not to breastfeed;
    - (v) the importance of introducing complementary food product from the age of 6 months;
    - (vi) how and why any introduction of breastmilk substitute, the use of feeding bottle or the early introduction of complementary food product negatively affects breastfeeding;
    - (vii) that complementary food product can easily be prepared at home using local ingredients.
- (3) A person must ensure that the information does not:
  - (a) use an image that —
    - (i) encourages use of a breastmilk substitute; or
    - (ii) discourages breastfeeding or using of breastmilk; or
  - (b) give an impression or create a belief that a breastmilk substitute is equivalent to, comparable with or superior to breastmilk or breastfeeding;
  - (c) contain a brand name.
- (4) This Regulation does not apply to exempt information or information that is already made public.
- (5) A person commits an offence who contravenes subregulation (2) or (3).

### **[20] Information on breastmilk substitutes**

- (1) This Regulation applies:
  - (a) to a manufacturer, distributor, retailer or any other person who is required to provide any information about breastmilk substitutes; and
  - (b) if Regulation [xx – infant feeding] includes any information about breastmilk substitutes.
- (2) A person must ensure that the information includes all of the following matters:
  - (a) instruction on how to properly prepare, store or use breastmilk substitutes or to clean and sterilise a feeding utensil;
  - (b) instruction on how to feed an infant with a cup;
  - (c) the health risks of breastmilk substitutes;
  - (d) the approximate cost of feeding an infant or a young child with the recommended amount of breastmilk substitutes;
  - (e) that it is not a necessary practice to provide a follow-on formula or young child formula;

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<sup>186</sup> May include vernacular language of a PICT.

- (f) an instruction that —
  - (i) a powdered formula is not sterile and may be contaminated; and
  - (ii) it is necessary for powdered formula to be prepared one feed at a time using water first boiled and then cooled to not less than 70°C; and
  - (iii) any unused milk is to be discarded immediately after each feed.
- (3) The information must not include a health claim or nutrition claim unless the information is exempt information.
- (4) A person commits an offence who contravenes subregulation (2) or (3).

#### **[21] Exempted information**

- (1) The manufacturer or distributor of a breastmilk substitute may give a professional health worker any of the following exempted information about the breastmilk substitute:
  - (a) any scientific or factual information or matter about the technical aspect or method to use the breastmilk substitute; or
  - (b) any reference information or matter provided for a study that is published or peer-reviewed to support a representation or claim that states or suggests that a relationship exists between the breastmilk substitute or its constituent and the health, growth or development of human body; or
  - (c) information provided under [Regulation x or x].
- (2) A manufacturer or distributor commits an offence who makes or gives any information (other than exempted information) in contravention of these Regulations.

## **PART 5 – HEALTH FACILITIES AND HEALTH WORKERS**

#### **[22] Heads of health care facilities**

- (1) The head of a health care facility must:
  - (a) take measures to encourage, promote, protect and support breastfeeding; and
  - (b) inform or advise any other health workers about their duties under these Regulations; and
  - (c) ensure that the health care facility is not used to market, promote or sponsor a breastmilk substitute; and
  - (d) ensure that a health worker who is employed or engaged by the facility does not market, promote or sponsor a breastmilk substitute; and
  - (e) ensure that a person (whether paid or not) who is engaged by a manufacturer or distributor does not —
    - (i) provide a professional service or any other health service about a breastmilk substitute; or
    - (ii) have any, direct or indirect, contact with a parent or caregiver; and
  - (f) ensure that any other health worker is familiar with any information under [Regulations x to x]
- (2) The head of a health care facility commits an offence who contravenes a provision of subsection (1).
- (3) It is a defence for an offence under subregulation (2) to prove that the head of the facility:
  - (a) took all reasonable steps to prevent the commission of the offence; or
  - (b) could not have known about the conduct that constitutes the offence.

### **[23] Promotion at health care facilities<sup>187</sup>**

- (1) A person must not promote a breastmilk substitute at a health care facility.
- (2) This Regulation does not apply to:
  - (a) a donation of any informational or educational equipment or material by a manufacturer or distributor approved, upon written request, by the [Minister/CEO/PS/DG]; or
  - (b) exempted information.
- (3) Any equipment or material under subregulation (2):
  - (a) may bear the donating company's name or logo and be distributed only through the health care system; but
  - (b) must not refer to a breastmilk substitute.
- (4) A person commits an offence who contravenes subregulation (1).
- (5) In this Regulation:  
"promote" includes:
  - (a) to display a breastmilk substitute; or
  - (b) to use any placard or poster showing a breastmilk substitute; or
  - (c) to distribute a material provided by a manufacturer or distributor.

### **[24] Demonstrations at health facilities**

- (1) A health facility must not be used by a person, such as a professional service representative or mothercraft nurse who is provided, paid or engaged by a manufacturer or distributor of a breastmilk substitutes.
- (2) A person must not demonstrate feeding with infant formula to a mother or the mother's family member unless the person is a health worker or, if necessary, a community worker.
- (3) An explanation on the demonstration must include a clear and simple demonstration on any hazard of improper use.

### **[25] Donations to institutions or organisations**

- (1) An institution or organisation may be donated (including sold at low-price) any breastmilk substitute to be used or distributed to infants who have to be fed or to use the breastmilk substitute.
- (2) Any donation or low-price sale must not be used as a sale inducement.
- (3) If the donation is to be distributed outside of the institution or organisation, the institution or organisation must ensure that the donation continues as long as the infants concerned need them.
- (4) The donated product may bear the name or logo of the manufacturer or distributor except that it must not refer to the breastmilk substitute.

### **[26] Duties of health workers**

- (1) A health worker must:
  - (a) encourage, promote, protect or support breastfeeding; and
  - (b) know and understand these Regulations, in particular the nature of duties of health workers; and
  - (c) know and understand any information under Regulations [xx to xx]; and

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<sup>187</sup> See Article 6 of the International Code of Marketing of Breastmilk Substitutes. Available at: [https://www.who.int/nutrition/publications/code\\_english.pdf](https://www.who.int/nutrition/publications/code_english.pdf)

- (d) discourage or eliminate any practice that obstructs the starting and continuing breastfeeding, such as a pre-lacteal feed; and
  - (e) give the [head of the health facility] a written report about —
    - (i) any sample, gift or other benefit received by or offered to the health worker; or
    - (ii) a breach of these Regulations.
- (2) The [head of the health facility] must, as soon as possible, send the written report to the [xx].

**[27] Health workers not to accept gifts, etc.**

- (1) A health worker engaged in maternal health or health of infants or young children must not:
- (a) directly or indirectly, accept a gift, contribution, sponsorship or benefit (whether financial or otherwise) of whatever value; or
  - (b) give or, directly or indirectly, accept a sample; or
  - (c) demonstrate the use of infant formula other than to mothers or caregivers who have decided to use infant formula.
- (2) Subregulation (2)(c) does not apply to a demonstration by a health worker to mothers or members of the family in very special cases of clinical need, and in such cases, the health worker must give:
- (a) a clear explanation about a risk in using infant formula; and
  - (b) any other information required by Regulations [xx to xx].
- (3) A person commits an offence who, for anything specified in subregulation (1):
- (a) gives it to a health worker; or
  - (b) being a health worker, accepts or receives it from the person.

**[28] Manufacturers and distributors**

- (1) A person who manufactures or distributes any breastmilk substitute must not provide a health worker with a sample of the product or with a gift.
- (2) A person commits an offence who contravenes subregulation (1).

**[29] Defence**

It is a defence for an offence against the head of a health care facility or a health worker that he or she:

- (a) demonstrates that all reasonable steps were to comply with the conduct constitutes the offence; or
- (b) could not have known about the conduct that constitutes the offence.

## **PART 6 – ADMINISTRATION AND ENFORCEMENT**

### ***Division 1 – Administration***

**[30] Definitions**

In this Part:

**“by any means”** includes any form or manner of communication or technology, including the internet, social media, telephone or other similar matter;

**“head of health care facility”** means the person who:

- (a) is the executive or administrative head of a health care facility; or
- (b) manages the day-to-day operation of the facility; or
- (c) is designated, in writing, by [xx] as head of the facility for the purpose of these Regulations.

### **[31] Duties of [CEO/PS Health]**

The duties of the [CEO/PS Health] are:

- (a) to administer and implement these Regulations; and
- (b) to develop, formulate and settle policies for approval by Cabinet; and
- (c) to coordinate the administration and implementation of these Regulations with any other Ministry or government body or person; and
- (d) to ensure that there are measures to encourage and protect breastfeeding and that appropriate information and advice are given to health workers about their duties under the Act and these Regulations;
- (e) to ensure that these Regulations are enforced; and
- (f) to carry out other duties to give effect to or for the purposes of these Regulations or the Code.

### **[32] Committees**

- (1) The [Minister] may appoint a committee of [3 to 5] members to advise the [Minister] on matters relating to the administration and implementation of these Regulations.
- (2) A committee may comprise members appointed from government Ministries or agencies, regional or international bodies or organisations, and civil society and non-governmental organisations.
- (3) At least [2] members must be women.
- (4) A person is not eligible to be appointed to a committee if the person has a financial or other interest (including as an employee) in a company that manufactures, imports, distributes, supplies or sells breastmilk substitutes.
- (5) The [Minister] may approve the terms of reference of a committee.
- (6) A terms of reference may include the following functions:
  - (a) to advise on national policy for the encouragement, promotion, protection and supporting of breastfeeding and on the Code; and
  - (b) to advise on designing a strategy for —
    - (i) developing communication and public education programmes to encourage, protect, promote, and support breastfeeding; or
    - (ii) informational and educational materials on the feeding of infants and young children; or
    - (iii) continuing education for health workers on lactation management and the requirements of these Regulations; or
    - (iv) curricula for students in the health professions that include lactation management; and
  - (c) to review breach or other matters relating to these Regulations; and
  - (d) to scrutinise any material or an appropriate action to implement these Regulations.

## ***Division 2 – Enforcement and monitoring***

### **[33] Enforcement officers<sup>188</sup>**

- (1) The [Minister/CEO/PS] may appoint suitably qualified and experienced persons as enforcement officers.

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<sup>188</sup> Delete if the Act provides for the appointment of enforcement officers/enforcement officers, etc.

- (2) The following persons must not be appointed as enforcement officers:
  - (a) a person who has any direct or indirect financial interest in a business relating to a breastmilk substitute; or
  - (b) a person who is or was in the last [2] years, engaged or employed in a business relating to a breastmilk substitute.
- (3) The appointment of a person disqualified under subregulation (2) is void.
- (4) The following public officers are deemed to be enforcement officers:<sup>189</sup>
  - (a) police officers;
  - (b) ...etc.
- (5) The [Minister/CEO/PS] may issue identification card to enforcement officers to be shown when carrying out their powers under these Regulations.

#### **[34] Powers of enforcement officers**

- (1) An enforcement officer may:
  - (a) during business hours, enter and inspect a place where any breastmilk substitute is imported, manufactured, sold, stocked, exhibited for sale, advertised, or otherwise promoted, and all relevant records;
  - (b) require a person within the place to assist in the inspection, including answering any question by the enforcement officer.
- (2) The enforcement officer must first show the officer's identification card to the owner or person-in-charge of the place before entering the place.
- (3) After each inspection, the enforcement officer must:
  - (a) prepare an inspection report (including any breach of these Regulations) and submit the report to the [Minister]; and
  - (b) seek further instructions on the necessary action to be taken for the contravention.

#### **[35] Power to issue cease and desist orders**

- (1) This Regulation applies if an enforcement officer has reason to believe that a person:
  - (a) has contravened or is contravening these Regulations; or
  - (b) is distributing, selling or supplying any product that does not comply with a requirement of these Regulations.
- (2) An enforcement officer may issue a person with a notice to show cause stating:
  - (a) the facts constituting the allegation under subsection (1); and
  - (b) a period of at least 10 working days within which to show good cause, in writing, why a cease and desist order ("**desist order**") should not be made.
- (3) An enforcement officer:
  - (a) must consider any written representation received under subregulation (2)(b); and
  - (b) may issue a desist order if the officer is satisfied that the allegation under subregulation (1) has been proven.

<sup>189</sup> PICTs may decide to deem certain public officers as enforcement officers.

- (4) The person issued with a notice to show cause may provide other document or sworn statements of other persons to support the allegation in the notice.
- (5) An enforcement officer must issue a desist order if:
  - (a) no written representation is received under subregulation (2)(b); and
  - (b) the officer is satisfied that the person has been served with the notice to show cause.
- (6) An enforcement officer must serve the desist order on the person:
  - (a) personally; or
  - (b) by sending it through registered post or email or other electronic address provided by the person.
- (7) The person who is issued with a desist order must comply with the order.

### **[36] Warrants for place of residence**

- (1) This section applies if the place to be entered is a place of residence.
- (2) An enforcement officer may apply to [a magistrate/District Court judge] for a warrant to enter and inspect the place, and if necessary to seize items from the place.
- (3) The warrant may authorise other matters required to give effect to the purpose of entry and inspection.

### **[37] Power to prosecute**

- (1) An enforcement officer may investigate and institute proceedings in the [magistrates'/District courts] for offences under these Regulations.
- [(2) *The power to prosecute in subregulation (1) does not affect the prosecution power of the [Director of Public Prosecutions/Attorney General under [section/article xx of the Constitution.]]<sup>190</sup>*

### **[38] Consumer complaints**

- (1) A person may complain in writing to an enforcement officer about any breastmilk substitute.
- (2) The [Minister/CEO/PS/DG] may hear and decide the complaint, including giving the right to the complainant and the respondent to be heard.
- (3) The [Minister/CEO/PS/DG] may:
  - (a) dismiss the complaint; or
  - (b) require the respondent to remedy the matter complained of.
- (4) The enforcement officer must give a copy of the decision to the complainant and the respondent.
- (5) In this Regulation:
 

**"enforcement officer"** includes the [CEO/PS/Secretary/DG].

### **[39] Product recall**

- (1) This section applies if a breastmilk substitute:
  - (a) does not comply with a requirement these Regulations, such as labelling or information on it; or
  - (b) is manufactured, distributed or sold contrary to these Regulations or the standard in the Codex;
  - (c) appears to the Minister to cause or may cause injury or death to a person or for any reason is not safe to be used or consumed.
- (2) The [Minister] may, by order, recall the breastmilk substitute, with the costs borne by the manufacturer, distributor or retailer of the breastmilk substitute.

<sup>190</sup> Relevant to PICTs with the constitutional prosecution powers of the Director of Public Prosecutions/Attorney General.



- (3) The order is also treated as the authority:
  - (a) to enter and inspect the place where the breastmilk substitute is kept or believed to be kept; and
  - (b) to seize and remove the breastmilk substitute specified in the order.
- (4) The [Minister] may approve the means and methods to dispose of any recalled breastmilk substitute.

#### **[40] Obstruction etc. of enforcement officers**

A person commits an offence who, without reasonable excuse:

- (a) obstructs or hinders an enforcement officer who is carrying out a function, power or duty under these Regulations; or
- (b) fails to comply with a requirement or direction of an enforcement officer.

#### **[41] Infringement notices for spot fines**

- (1) This section applies if a person ("**defendant**") has contravened a provision of these Regulations for which an infringement notice is issued.
- (2) An enforcement officer may issue an infringement notice, (in the form in Part 3 of the Schedule] requiring the defendant to pay the fixed penalty specified in the notice.
- (3) When a defendant is served with an infringement notice, the defendant may:
  - (a) pay the spot fine (in full) before the specified date for payment of fixed penalty, if the defendant admits the offence by endorsing, in writing, the admission on the notice; or
  - (b) appear before the court on a date specified in the notice for appearance in court if the defendant denies the offence.
- (4) In a proceeding, a certificate signed by an enforcement officer indicating that the spot fine has or has not been paid, unless the contrary is proved, is evidence of the matters stated in the certificate.
- (5) No further proceeding is to be instituted against the defendant for the offence for which the spot fine has been duly paid in accordance with subregulation (3).
- (6) The defendant who is convicted in court pursuant to an infringement notice:
  - (a) is not subject to the fixed penalty specified in the notice; but
  - (b) is subject to the penalty prescribed for that offence.

#### **[42] Service of infringement notices**

- (1) An infringement notice is to be:
  - (a) served pursuant to the rules of the court; and
  - (b) filed before the court specified in the notice.
- (2) An infringement notice that is filed under subsection (1)(b) is treated for all purposes as summons issued pursuant to the [criminal procedure/magistrates'/District courts legislation].

#### **[43] Director's, etc., liability**

- (1) This section applies if a body corporate commits an offence.
- (2) A director of the body corporate also commits the same offence.
- (3) It is a defence if the director proves that the offence was committed without the director's knowledge, connivance or consent.
- (4) In this section:
 

"**director**" includes the secretary of the body corporate, or an officer or employee who manages or supervises the operations of the body corporate.

#### [44] Penalties

- (1) A person served with an infringement notice is liable to pay the fixed penalties listed in Part 1 of the Schedule.
- (2) A person convicted of an offence under these Regulations is liable to the penalties in listed Part 2 of the Schedule.

### PART 7 – MISCELLANEOUS

#### [45] Immunity from personal liability

- (1) A person is not personally liable for carrying out in good faith a function, duty or power under these Regulations.
- (2) Subregulation (1) does not affect any liability that the [State/Crown/Republic] would, but for that subsection, have for an act or omission.

#### [46] Repeal/consequential amendments

[Repeal or amend existing regulations]

## SCHEDULE

(regulation xx)

### PENALTIES AND INFRINGEMENT NOTICE FORM

#### PART 1 – FIXED PENALTIES<sup>191</sup>

1. Regulation	2. Individual (first offence)	3. Individual (second or subsequent offence)	4. Company (first offence)	5. Company (second or subsequent offence)

#### PART 2 – PENALTIES FOR OFFENCES

1. Regulation	2. Individual (first offence)	3. Individual (second or subsequent offence)	4. Company (first offence)	5. Company (second or subsequent offence)

#### PART 3 – INFRINGEMENT NOTICE FORM

FOOD ACT [...] FOOD (BREASTFEEDING PROMOTION AND PROTECTION) REGULATIONS 20... INFRINGEMENT NOTICE	
1	Date of Notice: [date] [...month...][20.....]
2	Defendant: <ul style="list-style-type: none"><li>• Name (In full):</li><li>• Residential address:</li><li>• Other contact details:</li></ul>

<sup>191</sup> Fixed penalties should be tagged at around 20–25% of the fines fixed for that than offence in Part 2 of the Schedule. It should be an amount fixed by law and not an official.



<p><b>10</b></p>	<p><b>Affidavit of service of notice to attend court</b>  I, ....., ..... (occupation), of ..... swear that:</p> <ol style="list-style-type: none"> <li>1. I am authorised to serve any court processes.</li> <li>2. I served this Infringement Notice, including the signed the Notice to attend Court on the above Defendant on ... day of.....20.... At [...place...]</li> <li>3. The Defendant was served in person.</li> </ol> <p>Sworn before me: ..... [Server's signature]  at [...place....] on [... date ....]</p> <p>.....  [Lawyer/JP, etc] - Witness</p>
<p><b>11</b></p>	<p><b>This Notice is issued by:</b></p> <ul style="list-style-type: none"> <li>• Designation and ID No (if any):</li> <li>• Name:</li> <li>• Phone &amp; other contact:</li> </ul> <p>Signature: .....</p>

# ANNEX 5 – FOOD (MARKETING OF UNHEALTHY FOOD AND SUGAR-SWEETENED BEVERAGES TO CHILDREN) REGULATIONS

FOOD [... ACT...]

FOOD (MARKETING OF UNHEALTHY FOOD AND SUGAR-SWEETENED BEVERAGES TO CHILDREN) REGULATIONS [20...]

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**SCHEDULE 1**

**SCHEDULE 2**

*Part 1 – Fixed penalties*

*Part 2 – Maximum penalties for offences*

*Part 3 – Infringement Notice Form*

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FOOD [... ACT...]

**FOOD (MARKETING OF UNHEALTHY FOOD AND SUGAR-SWEETENED BEVERAGES TO CHILDREN) REGULATIONS [20...]**

IN exercise of the powers conferred on me by section [xx] of the [Food ... Act 20...], I make these Regulations –

## **PART 1 – PRELIMINARY**

### **[1] Citation and commencement**

- (1) These Regulations may be cited as the Food (Marketing of Unhealthy Food and Sugar-sweetened Beverages to Children) Regulations [20...].
- (2) These Regulations commence on [insert date].

### **[2] Definitions**

In these Regulations:

**“advertisement”** —

- (a) means —
  - (i) a public presentation of a designated product or service; and
  - (ii) the public presentation is intended to bring the designated product or service to the attention of children through any means of media channel; and
- (b) includes marketing of a designated product or service;

**“brand”** —

- (a) means —
  - (i) the brand for a designated product; or
  - (ii) the brand for a range of designated products; and
- (b) includes —
  - (i) the brand symbol, device, design or the name of the manufacturer or distributor of a designated product;
  - (ii) the name of a range of designated products, including any word, design or image relating to the range;

**“character”** includes any cartoon or film character.

**“child”** means a person aged [18]<sup>193</sup> years or under.

**“designated product”** means any unhealthy food that is high in free salt, free sugar, unsaturated fat or trans-fatty acid or sugar-sweetened beverages, designated under Regulation [xx];

**“marketing”** —<sup>194</sup>

- (a) means any form of commercial communication of message that is designed to, or has the effect of, increasing the recognition, appeal or consumption of a designated product or service; and
- (b) includes anything that acts to market a designated product or service;

**“media channel”** includes any broadcast or cable television, radio, print, billboards, the internet or personal contact.

**“nutritional content”** includes the high level or presence of saturated fat, trans-fatty acids, free or added sugar or salt.

**“place”** includes an area, facility, premises, building, vehicle or vessel.

**“premium”** means a promotional item that can be received for a small fee when redeeming proof of purchase which comes with or on the retail product.

**“sugar-sweetened beverage” or “SSB”** means any sugar-sweetened beverage or product declared as a designated product under Regulation [xx].

**“vehicle”** has the meaning in the [traffic legislation].

**“vessel”** has the meaning in the [shipping legislation].

### [3] Purpose of Regulations

The purpose of these Regulations is:

- (a) to ensure that children are protected against the effect of marketing of designated products in order for them to grow and develop in an environment that promotes or encourages healthy dietary choices or maintenance of healthy weight; and
- (b) to regulate the marketing of designated products; and
- (c) to protect children from the health risks of unhealthy diets relating to designated products, including educating children and their families on the importance of healthy diets; and
- (d) to provide programmes and awareness about the health risks arising from consuming designated products.

<sup>193</sup> Each PICT to decide the age limit

<sup>194</sup> Definition recommended in World Health Organization. 2012. A framework for implementing the set of recommendations on the marketing of foods and non-alcoholic beverages to children. Available at: <https://apps.who.int/iris/handle/10665/80148>

## PART 2 – MARKETING OF DESIGNATED PRODUCTS

### [4] Designated products<sup>195</sup>

- (1) The [xx] may declare any food product or class or any sugar-sweetened beverage (SSB) or class, as a designated product:
  - (a) if the nutritional content of the product or beverage makes the consumption of that food or beverage detrimental to the health of children; and
  - (b) the product or beverage is only suitable for occasional consumption.
- (2) Parts 1 and 2 of Schedule 1 list food products and SSBs that are taken to be designated products.<sup>196</sup>
- (3) The [xx] may:
  - (a) publish criteria for declaring designated products, taking into account any or all of the following —
    - (i) the nutritional content of the product or beverage;
    - (ii) the presence of any food additive in the product or beverage;
    - (iii) any production technique used;
    - (iv) any other matters that the [xx] considers appropriate; or
  - (b) adopt criteria developed by any national or international body.

### [5] Advertising designated products

- (1) A person must not:
  - (a) if an advertisement of a designated product is likely to affect the health or education of children, when considering factors in subregulation (2), as to the importance of a healthy and balanced diet —
    - (i) publish, or arrange for any other person to publish, the advertisement;
    - (ii) arrange or undertake the advertisement; or
  - (b) publish or arrange for the publication of an advertisement for a designated product or its brand name to children;
  - (c) undertake or arrange for the advertisement of a designated product or its brand name to children.
- (2) The advertisement factors to be considered under subregulation (1)(a) include any or all of the following:
  - (a) the nature of the product to be designated, including the level of any nutritional content of the product and likely health effect when consumed by children;
  - (b) the theme, content, presentation or design of the advertisement;
  - (c) the age of a person participating in the advertisement;
  - (d) any image, graphic, language, sound, music, object, animal, personality, character, activity, game or sports in the advertisement.
- (3) An advertisement is taken to be targeting children if any of the following applies:
  - (a) it is likely to appeal to children;
  - (b) it is organised or published at any time, place, situation or in a medium where the percentage of children in the audience, or as likely recipients of the advertisement, is likely to exceed [30%].

<sup>195</sup> Adapted from the Cook Islands Food Regulations (Part 7).

<sup>196</sup> PCITs to identify unhealthy food and SSBs in their respective jurisdictions and complete the list. Listing on specific items will facilitate enforcement. The power to designate other products can be exercised when new products are introduced into the market.

- (4) A person commits an offence who contravenes subregulation (1).

**[6] Appearance of photos, etc., of children in advertising**

- (1) A person must not arrange for, or permit or authorise the photograph or image of a child to appear or be used in the advertisement of any designated product, or in association with the brand of a designated product.
- (2) A person commits an offence who contravenes subregulation (1).

**[7] Use of well-known persons or characters**

- (1) A person must not arrange for, or permit, or authorise the use of any person or character well known or likely to appeal to children for the purpose of advertising a designated product or its brand.
- (2) A person commits an offence who contravenes subregulation (1).

**[8] Use of games, internet, etc**

- (1) A person must not arrange for, or permit, or authorise the use of any game or any internet site or other electronic or communication medium intended to appeal to children for the purpose of advertising a designated product or its brand.
- (2) A person commits an offence who contravenes subregulation (1).

**[9] Broadcast restrictions**

- (1) A person must not broadcast any advertisement for a designated product between [6 am and 9 pm<sup>197</sup>].
- (2) A person commits an offence who contravenes subregulation (1).

**[10] Advertising in schools, etc.**

- (1) A person must not advertise a designated product or its brand at a school or within the vicinity of [200] metres of the school.
- (2) A person must not sell, supply or distribute a designated product at a school.
- (3) A person commits an offence who contravenes subregulation (1) or (2).
- (4) In this Regulation:
- “**school**” includes a place or facility where children are likely to gather, such as a health facility, child care or day care facility, wellness clinic, playground.

**[11] Use of brand**

- (1) A person must not:
- (a) use the brand of a designated product —
- (i) on any article or thing intended for sale or supply to, or use by, children, other than on the package of a designated product; or
- (ii) to advertise any article or thing that is not a designated product, any service, activity or event or a scholarship, fellowship or any other educational benefit; or
- (b) use a designated product or its brand in association with an activity for children.
- (2) A person commits an offence who contravenes subregulation (1).

**[12] Premiums**

- (1) A person must not:
- (a) provide a designated product as a gift or sample to a child or a school; or

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<sup>197</sup> Cook Islands rule.



- (b) supply or offer a premium to market a designated product to a child; or
  - (c) pack a designated product, or cause or permit or authorise the packaging of a designated product, in a manner which is directed to a child.
- (2) A person commits an offence who contravenes subregulation (1).

## PART 3 – ADMINISTRATION

### [13] Functions

The functions of [CEO/PS Health] are:

- (a) to administer these Regulations; and
- (b) to develop, formulate and settle any policy on the marketing of unhealthy food and SSBs to children; and
- (c) to undertake programmes for awareness and education on matters relating to these Regulations; and
- (d) to review these Regulations every [2] years; and
- (e) to carry out other functions to give effect to, or for the purposes of, these Regulations.

## PART 4 – MONITORING AND ENFORCEMENT

### [14] Enforcement officers<sup>198</sup>

- (1) The [Minister/CEO/PS] may appoint suitably qualified or experienced persons as enforcement officers.
- (2) A person must not be appointed as an enforcement officer if the person:
  - (a) has any direct or indirect financial interest in a business relating to a designated product; or
  - (b) in the last [2] years, was engaged or employed in a business relating to a designated product.
- (3) The appointment of a person disqualified under subregulation (2) is void.
- (4) The [Minister/CEO/PS] may issue an identification card to enforcement officers to be shown when carrying out their powers under these Regulations.
- (5) The following public officers are deemed to be enforcement officers:<sup>199</sup>
  - (a) police officers;
  - (b) ...etc.

### [15] Powers of enforcement officers

- (1) An enforcement officer may:
  - (a) during business hours, enter and inspect a place where any designated product is imported, manufactured, sold, stocked, exhibited for sale or for advertisement, and all relevant records;
  - (b) require a person within the place to assist in the inspection, including answering any questions by the enforcement officer;
- (2) The enforcement officer must first show their identification card to the owner or person-in-charge of the place before entering the place.
- (3) After each inspection, the enforcement officer must:
  - (a) prepare an inspection report (including any breach of these Regulations) and submit the report to the [Minister]; and

<sup>198</sup> Delete if the Act provides for the appointment of enforcement officers/enforcement officers, etc.

<sup>199</sup> PICTs may decide to deem certain public officers as enforcement officers.

- (b) seek further instructions on the necessary action to be taken for the contravention.

#### **[16] Power to issue desist orders**

- (1) This Regulation applies if an enforcement officer has reason to believe that a person:
  - (a) has contravened, or is contravening, these Regulations; or
  - (b) is distributing, selling or supplying any product that does not comply with a requirement of these Regulations.
- (2) An enforcement officer may issue a person with a notice to show cause stating:
  - (a) the facts constituting the allegation under subsection (1); and
  - (b) a period of at least 10 working days within which to show good cause, in writing, why a cease and desist order ("**desist order**") should not be made.
- (3) An enforcement officer:
  - (a) must consider any written representation received under subregulation (2)(b); and
  - (b) may issue a desist order if the officer is satisfied that the allegation under subregulation (1) has been proven.
- (4) The person issued with a notice to show cause may provide other documents or sworn statements of other persons to support the allegation in the notice.
- (5) An enforcement officer must issue a desist order if:
  - (a) no written representation is received under subregulation (2)(b); and
  - (b) the officer is satisfied that the person has been served with the notice to show cause.
- (6) An enforcement officer must serve the desist order on the person:
  - (a) personally; or
  - (b) by sending it through registered post or email or other electronic address provided by the person.
- (7) The person who is issued with a desist order must comply with the order.

#### **[17] Power to prosecute**

- (1) An enforcement officer may investigate and institute proceedings in the [magistrates' courts] for offences under these Regulations.
- [(2) *The prosecution power in subregulation (1) does not affect the prosecution power of the [Director of Public Prosecutions/Attorney General under [section/article xx of the Constitution.]]<sup>200</sup>*

#### **[18] Warrants for place of residence**

- (1) This section applies if the place to be entered or inspected is a place of residence.
- (2) An enforcement officer may apply to [a magistrate] for a warrant to enter and inspect the place, and if necessary, to seize designated product from the place.
- (3) The warrant may authorise other matters required to give effect to the purpose of entry and inspection.

#### **[19] Consumer complaints**

- (1) A person may complain in writing to an enforcement officer about any designated product.
- (2) The [Minister/CEO/PS/DG] may hear and decide the complaint, including giving the right to the complainant and the respondent to be heard.

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<sup>200</sup> Relevant to PICTs with the constitutional prosecution powers of the Director of Public Prosecutions/Attorney General.

- (3) The [Minister/CEO/PS/DG] may:
  - (a) dismiss the complaint; or
  - (b) require the respondent to remedy the matter complained of.
- (4) The enforcement officer must give a copy of the decision to the complainant and the respondent.
- (5) In this Regulation:
 

“**enforcement officer**” includes the [CEO/PS/Secretary/DG].

#### **[20] Product recall**

- (1) This section applies if a designated product:
  - (a) does not comply with a requirement of these Regulations, such as any labelling or information on the designated product; or
  - (b) is manufactured, imported, distributed or sold contrary to these Regulations or the Codex;
  - (c) appears to the Minister to cause or may cause injury or death to a person or for any reason is not safe to be used or consumed.
- (2) The [Minister] may, by order, recall the designated product with costs borne by the manufacturer, wholesaler or retailer.
- (3) The order is also treated as the authority:
  - (a) to enter and inspect the place where the designated product is kept or is suspected or believed to be kept; and
  - (b) to seize and remove the designated product or any other matter specified in the order.
- (4) The [Minister] may approve the disposal of any recalled designated product or seized matter.

#### **[21] Obstruction etc. of enforcement officers**

A person commits an offence who, without reasonable excuse:

- (a) obstructs or hinders an enforcement officer when carrying out a function, power or duty under these Regulations; or
- (b) fails to comply with a requirement or direction of an enforcement officer.

#### **[22] Infringement notices for spot fines**

- (1) This section applies if a person (“**defendant**”) commits an offence under these Regulations for which an infringement notice is required to be issued.
- (2) An enforcement officer may issue an infringement notice [in a prescribed/approved form] requiring the defendant to pay the fixed penalty on a date specified in the notice.
- (3) When a defendant is served with an infringement notice, the defendant may:
  - (a) pay the spot fine (in full) before the specified date for payment of fixed penalty, if the defendant admits the offence by endorsing, in writing, the admission on the notice; or
  - (b) appear before the court on a date specified in the notice for appearance in court if the defendant denies the offence.
- (4) In a proceeding, a certificate signed by an enforcement officer indicating that the spot fine has or has not been paid, unless the contrary is proved, is evidence of the matters stated in the certificate.
- (5) No further proceeding is to be instituted against the defendant for the offence for which a spot fine has been fully paid.

- (6) A defendant who is convicted in a court for an offence specified in the infringement notice:
  - (a) is not subject to the fixed penalty specified in the notice; but
  - (b) is subject to the penalty prescribed for that offence.

**[23] Service of infringement notices**

- (1) An infringement notice is to be:
  - (a) served pursuant to the rules of the court; and
  - (b) filed before the court specified in the notice.
- (2) An infringement notice that is filed under subregulation (1)(b) is treated for all purposes as summons issued pursuant to the [criminal procedure/magistrates' courts legislation].

**[24] Directors, etc., liability**

- (1) This section applies if a body corporate commits an offence.
- (2) A director of the body corporate also commits the same offence.
- (3) It is a defence if the director proves that the offence was committed without the director's knowledge, connivance or consent.
- (4) In this section:  
"director" includes the secretary of the body corporate, or an officer or employee who manages or supervises the operations of the body corporate.

**[25] Penalties**

- (1) A person served with an infringement notice is liable to pay the fixed penalties listed in Part 1 of the Schedule 2.
- (2) A person convicted of an offence under these Regulations is liable to the maximum penalties in listed in Part 2 of Schedule 2.

## **PART 5 – MISCELLANEOUS**

**[26] Immunity from personal liability**

- (1) A person is not personally liable for carrying out in good faith a function, duty or power under these Regulations.
- (2) Subregulation (1) does not affect any liability that the State would, but for that subsection, have for an act or omission.

**[27] Repeal/consequential amendments**

*[Repeal or amend existing regulations]*

**SCHEDULE 1****(Regulation xx)  
DESIGNATED PRODUCTS**

PART 1 – UNHEALTHY FOOD		
PART 2 – SUGAR-SWEETENED BEVERAGES		

**SCHEDULE 2****(Regulation xx)  
PENALTIES****PART 1 – Fixed penalties**

Regulation	Individual (first offence)	Individual (second or subsequent offence)	Company (first offence)	Company (second or subsequent offence)

**PART 2 – PENALTIES FOR OFFENCES**

Regulation	Individual (first offence)	Individual (second or subsequent offence)	Company (first offence)	Company (second or subsequent offence)

**PART 3 – Infringement Notice Form**

<b>FOOD ACT [...] FOOD (MARKETING OF UNHEALTHY FOODS AND SUGAR SWEETENED BEVERAGES TO CHILDREN) REGULATIONS 20... INFRINGEMENT NOTICE</b>	
<b>1</b>	<b>Date of Notice:</b> [date] [...month...][20.....]
<b>2</b>	<b>Defendant:</b> <ul style="list-style-type: none"> <li>• Name (In full):</li> <li>• Residential address:</li> <li>• Other contact details:</li> </ul>
<b>3</b>	<ul style="list-style-type: none"> <li>• Regulation contravened:</li> <li>• Statement of offence:</li> <li>• Details of offence:</li> </ul>
<b>4</b>	The fixed penalty is [\$....]



<p><b>10</b></p>	<p><b>Affidavit of service of notice to attend court</b>  I, ....., ..... (occupation), of ..... swear that:</p> <ol style="list-style-type: none"> <li>1. I am authorised to serve any court processes.</li> <li>2. I served this Infringement Notice, including the signed the Notice to attend Court on the above Defendant on ... day of.....20.... At [...place...]</li> <li>3. The Defendant was served in person.</li> </ol> <p>Sworn before me: ..... [Server's signature]  at [...place...] on [... date ...]</p> <p>.....  [Lawyer/JP, etc] - Witness</p>
<p><b>11</b></p>	<p><b>This Notice is issued by:</b></p> <ul style="list-style-type: none"> <li>• Designation and ID No (if any):</li> <li>• Name:</li> <li>• Phone &amp; other contact:</li> </ul> <p>Signature: .....</p>

# ANNEX 6 – FOOD (SALT, SUGAR AND TRANS-FAT) REGULATIONS

FOOD [... ACT...]

FOOD (SALT, SUGAR AND TRANS-FAT) REGULATIONS [20...]

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**FOOD (SALT, SUGAR AND TRANS-FAT) REGULATIONS [20...]**

IN exercise of the powers conferred on me by section [xx] of the [Food ... Act 20...], I make these Regulations

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## **PART 1 – PRELIMINARY**

### **[1] Citation and commencement**

- (1) These Regulations may be cited as the Food (Salt, Sugar and Trans-fat) Regulations [20...].
- (2) These Regulations commence on [insert date].

### **[2] Definitions**

In these Regulations:

**“claim”** —

- (a) means a health claim that states, suggests or implies that a relationship exists between any food category or food or one of its constituents and health; and
- (b) includes a health claim likely to have the same meaning for consumers;



**“designated product”** means foods or beverages high in fat, salt or sugar according to the stated criteria.

**“iodised salt”** means salt used for food to which iodide has been added in the form of cuprous iodide or potassium iodide standard under the Codex standard or otherwise standard prescribed under the Act.

**“place”** includes an area, facility, premises, building, vehicle or vessel.

**“restaurant”** means a place where food is sold or supplied to be consumed at the place or elsewhere.

**“salt”** means added or free salt but does not include salt as a natural constituent of food.

**“standard”** —

- (a) means a Codex standard for salt, sugar or trans-fat; and
- (b) includes any standard under any Regulation under the Act [or other Act<sup>202</sup>] on salt, sugar or trans-fat;

**“sugar”** means added or free sugar but does not include sugar as a natural constituent of the food.

**“trans-fat”** —

- (a) means industrially produced trans-fatty acid, including —
  - (i) partially hydrogenated oil, vegetable oil or fish oil converted from a liquid state into a solid state through the addition of hydrogen; or
  - (ii) oils and fats that have been hydrogenated, but not to complete or near complete saturation, and with an iodine value greater than 4,<sup>203</sup> but
- (b) does not include naturally occurring content of trans-fatty acids in animal fats or products;

**“vehicle”** has the meaning in the [traffic legislation].

**“vessel”** has the meaning in the [shipping legislation].

### [3] Purpose of Regulations

The purpose of these Regulations is:

- (a) to regulate the safe level of salt and sugar in food preparation and processing in order to protect the health of persons;
- (b) to prohibit the use of trans-fat in processing or manufacturing of food.

### [4] Relationship with other regulations

- (1) These Regulations are to be read as one with, or in addition to, any other regulations dealing with salt, sugar or trans-fat.
- (2) If there is any inconsistency, these Regulations prevail.

## PART 2 – SALT

### [5] Standards on salt<sup>204</sup>

- (1) A person must not sell or supply salt for processing of food or for direct consumption unless the salt meets the standards and guidelines under Codex Alimentarius.
- (2) In addition to general requirements on labelling, the following provisions apply -
  - (a) salt labelled as “iodised”, “fortified” or “enriched” must identify the ingredients added for fortification purposes and specify the concentration in which it is present in the final product; and

<sup>202</sup> Some PICTs cover product standards under other legislation, such as Cook Islands.

<sup>203</sup> Definition (paragraph (b) in the United States Food and Drug Administration.

<sup>204</sup> Adapted from the Fiji Food Regulations – Salt Standards.

(b) reduced sodium mixture is to declare the sodium and potassium content, expressed per [100g] (this does not constitute a nutrition claim).

(3) A person commits an offence who contravenes subregulation (1) or (2).

#### **[6] Packaging and storage**

(1) A person who manufactures, distributes or sells salt must ensure that the salt is properly packaged and stored in order to maintain its quality.

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

#### **[7] Health claims<sup>205</sup>**

(1) A person must not make a claim that a food product is low in sodium or salt unless the food product contains no more than [0.12g] of sodium, or the equivalent value for salt, per [100g or per 100 ml] (for waters, other than natural mineral waters, the maximum value is [2mg of sodium per 100ml]).

(2) A person must not make a claim that a food product (excluding natural mineral waters and other waters) is very low in sodium or salt unless the food product contains no more than 0.04g of sodium, or the equivalent value for salt, per 100g or per 100ml.

(3) A person must not make a claim that a food product is sodium free or salt free unless the food product contains no more than 0.005g of sodium, or the equivalent value for salt, per 100g.

(4) A person commits an offence who contravenes subregulation (1), (2) or (3).

(5) In this section:

“**person**” means a person who manufactures, processes, imports, exports, distributes or sells the food product.

#### **[8] Mandatory salt limit in processed food products**

(1) The [Minister/CEO/PS] may declare the maximum limit of salt used in processed food.

(2) This Regulation does not prevent any voluntary agreement to reduce the contents of salt in the processed food.

(3) The processed food products listed in Part 1 of Schedule 1 are taken to be declared under subregulation (1).

(4) The [Minister/CEO/PS] may fix a period in which to comply with this Regulation.

(5) A person commits an offence who sells or supplies any processed food product that exceeds the maximum limit of salt.

#### **[9] Monitoring of salt content in processed food products**

(1) The [Minister/CEO] may monitor the salt content in processed food products by:

(a) undertaking a baseline survey of salt levels in food products; or

(b) requiring a person who manufactures or distributes food products to provide a report that analyses the salt level of the products.

(2) The data on the baseline survey must be published in an official publication or on the Ministry’s website.

(3) The monitoring may be undertaken annually, or at such times as the Minister determines, or when new food products are sold or supplied.

#### **[10] Reformulation to reduce salt level**

(1) The [Minister/CEO] may undertake consultations with the food industry and other persons on the reformulation of food products that are high in salt.

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<sup>205</sup> Adapted from the EU Food Nutrients Standards - REGULATION (EC) No 1924/2006.

- (2) The reformulation process must include:
  - (a) consultation with food industry representatives and other relevant stakeholders on how to reduce salt levels in the food products;
  - (b) an action plan, prepared in consultation with industry and other relevant stakeholders, containing time-limited targets for achieving reductions in salt levels in specified categories of food products, including interim targets where appropriate;
  - (c) an action plan detailing any other measures to reduce sugar levels;
  - (d) regular follow-up meetings or consultations with the food industry on the reformulation process, including progress towards achieving the salt reduction targets.

#### **[11] Duty of owners of restaurants**

- (1) The [Minister] may, by Notice in the Gazette, declare a restaurant to which this Regulation applies.
- (2) The following restaurants are taken to be declared under subregulation (1):
  - (a) any restaurant that is licensed to sell liquor under the [Liquor legislation];
  - (b) any international chain restaurant;
  - (c) [...].
- (3) The owner of a restaurant must:
  - (a) place a notice, about the health effect of excess intake of salt on health of persons, at a place in the restaurant that is conspicuous to customers; or
  - (b) only provide free salt on the serving table if requested by the customer.
- (4) The owner of a restaurant may offer to a customer any food without added salt.
- (5) The [CEO/PS Health] may approve the form of notice and wording (including diagrams).
- (6) A person commits an offence who contravenes subregulation (3).

### **PART 3 – SUGAR**

#### **[12] Sugar standards**

- (1) A person must not sell or supply sugar for the processing of food or for direct consumption unless the sugar meets the standards and guidelines under Codex Alimentarius.
- (2) A person commits an offence who contravenes subregulation (1).

#### **[13] Monitoring of sugar content of food**

- (1) The [Minister/CEO] may monitor the sugar content of food products by:
  - (a) undertaking a baseline survey of sugar levels in food products; or
  - (b) requiring a person who manufactures or distributes food products to provide a report that analyses the sugar level of the products.
- (2) The data on the baseline survey must be published in an official publication or on the Ministry's website.
- (3) The monitoring may be undertaken annually, or at such times as the Minister determines, or when new food products are sold or supplied.

#### **[14] Mandatory sugar limit in processed food**

- (1) The [Minister/CEO/PS] may declare the maximum limit of sugar used in processed food products.
- (2) The processed food products listed in Part 2 of Schedule 1 are taken to be declared under subregulation (1).

- (3) The [Minister/CEO/PS] may fix a period in which to comply with this Regulation.
- (4) A person commits an offence who sells or supplies any processed food product that exceeds the maximum limit of sugar.

#### **[15] Reformulation of food products to reduce sugar level**

- (1) The [Minister/CEO] may undertake consultations with the food industry and other persons on the reformulation of food products that are high in sugar.
- (2) The reformulation process must include:
  - (a) consultation with food industry representatives and other relevant stakeholders on how to reduce sugar levels in the food products;
  - (b) an action plan, prepared in consultation with industry and other relevant stakeholders, containing time-limited targets for achieving reductions in sugar levels in specified categories of food products, including interim targets where appropriate.
  - (c) an action plan detailing any other measures to reduce sugar levels;
  - (d) regular follow-up meetings or consultations with the food industry on the reformulation process, including progress towards achieving the sugar reduction targets.

#### **[16] Health claims and Codex Alimentarius<sup>206</sup>**

- (1) This Regulation applies to a person who manufactures, processes, imports, exports, distributes or sells a food product that contains free sugar.
- (2) A person must not make a claim that a food product is low in sugar unless the food product contains no more than [5g of sugars per 100g for solids or 2.5g of sugars per 100ml for liquids].<sup>207</sup>
- (3) A person must not make a claim that a food product is sugar-free unless the food product contains no more than [0.5g of sugars per 100g or 100ml].<sup>208</sup>
- (4) A person must not make a claim that sugars have not been added to a food product unless the food product does not contain any added monosaccharides or disaccharides or any other caloric food used for its sweetening properties except non-caloric sweetener.
- (5) If sugars are naturally present in the food product, the label must state words to the effect that the food product contains naturally occurring sugars.
- (6) A person commits an offence who contravenes subregulation (2), (3), (4) or (5).

## **PART 4 – TRANS-FAT**

#### **[17] Restrictions**

- (1) This Regulation applies to:
  - (a) a person who —
    - (i) manufactures or produces food;
    - (ii) retails food;
  - (b) any outlet for sale or supply of food, such as, an institution, catering establishment, restaurants or bakeries.
- (2) After [6 months]<sup>209</sup> from commencement of these Regulations, a person must not sell:
  - (a) any fat, vegetable oil or margarine, if it contains more than [2%] trans-fat by 100g or 100 ml of fat; or

<sup>206</sup> Adapted from the EU Food Nutrients Standards - REGULATION (EC) No 1924/2006.

<sup>207</sup> PICTs to decide the appropriate amount.

<sup>208</sup> PICTs to decide the appropriate amount.

<sup>209</sup> PICTs to decide appropriate period.

(b) any other food, including processed non-alcoholic beverages, if it contains more than [5%] of trans-fatty acids by 100g or 100ml of fat.

(3) A person commits an offence who contravenes subregulation (2).

[(4) *This Regulation expires from 31 December 20....*]<sup>210</sup>

**[18] Prohibition on the use of trans-fat**<sup>211</sup>

(1) This Regulation applies to:

(a) a person who —

(i) manufactures or produces food; or

(ii) retails food;

(b) any outlet for sale or supply of food, such as, an institution, catering establishment, restaurants or bakeries.

(2) A person must not:

(a) use any trans-fat when —

(i) manufacturing any food product; or

(ii) preparing, cooking or supplying any food to be sold in any outlet for sale or supply of food, such as, an institution, catering establishment, restaurants or bakeries; or

(b) sell or supply a food product that contains trans-fat; or

(c) sell or supply any trans-fat.

(3) A person commits an offence who contravenes subregulation (2).

[(4) *This Regulation commences on 1 January 20...*]

**[19] Mandatory trans-fat limit in processed food products**

(1) The [Minister/CEO/PS] may declare the maximum limit of trans-fat used in processed food.

(2) The processed food products listed in Part 3 of Schedule 1 are taken to be declared under subregulation (1).

(3) The [Minister/CEO/PS] may fix a period in which to comply with this Regulation.

(4) A person commits an offence who sells or supplies any processed food product that exceeds the maximum limit of trans-fat.

**[20] Monitoring of trans-fat content of food**

(1) The [Minister/CEO] may monitor the trans-fat content of food products by:

(a) undertaking a baseline survey of trans-fat levels in food products; or

(b) requiring a person who manufactures or distributes food products to provide a report that analyses the trans-fat level of the products.

(2) The data on the baseline survey must be published in an official publication or on the Ministry's website.

(3) The monitoring may be undertaken annually, or at such times as the Minister determines, or when new food products are sold or supplied.

<sup>210</sup> PICTs are required to decide the appropriate period for transition from limitation of trans-fat to the total prohibition. The period needs to be synchronised with the next Regulation on prohibition.

<sup>211</sup> This does not prevent a PICT from allowing restrictions on the use of trans-fat.

### **[21] Reformulation of food products to reduce trans-fat level**

- (1) The [Minister/CEO] may undertake consultations with the food industry and other persons on the reformulation of their food products that are high in trans-fat.
- (2) The reformulation process must include:
  - (a) consultation with food industry representatives and other relevant stakeholders on how to reduce trans-fat levels in the food products;
  - (b) an action plan, prepared in consultation with industry and other relevant stakeholders, containing time-limited targets for achieving reductions in trans-fat levels in specified categories of food products, including interim targets where appropriate;
  - (c) an action plan detailing any other measures to reduce trans-fat levels;
  - (d) regular follow-up meetings or consultations with the food industry on the reformulation process, including progress towards achieving the trans-fat reduction targets.

### **[22] Health claims<sup>212</sup>**

- (1) This Regulation applies to a person who manufactures, processes, imports, exports, distributes or sells a food product that contains trans-fat.
- (2) A person must not make a claim that a food product is low in fat unless the food product contains no more than [3g<sup>213</sup> of fat per 100g for solids or 1.5g of fat per 100ml for liquids (1.8g of fat per 100ml for semi-skimmed milk)].
- (3) A person must not make a claim that a food product is fat-free unless the product:
  - (a) contains not more than [0.5g of fat per 100g or 100ml] of trans-fat; or
  - (b) contains [...%] fat-free.
- (4) A person must not make a claim that a food product is low in saturated fat unless:
  - (a) the sum of saturated fatty acids [and trans-fatty acids] in the food product does not exceed [1.5g per 100g for solids or 0.75g/100 ml] for liquids; or
  - (b) in either case, the sum of saturated fatty acids [and trans-fatty acids] does not provide more than [10%] of energy.
- (5) A person must not make a claim that a food product does not contain saturated fat unless the sum of saturated fat [and trans-fatty acids] does not exceed [0.1g of saturated fat per 100g or 100 ml].
- (6) A person commits an offence who contravenes subregulation (2), (3), (4) or (5).

## **PART 5 – ADMINISTRATION**

### **[23] National policies for salt, sugar and trans-fat**

- (1) The [Minister] must prepare one or more national policies for salt (including elimination of iodine deficiency), sugar and trans-fat.
- (2) The [Minister] may appoint a committee to prepare the policies under subregulation (1).
- (3) The members of a committee are to include suitably qualified or experienced persons to undertake research.
- (4) The [Minister] must approve the terms of reference of a committee, including the matters and issues to be covered and the time within which the policy is to be completed.

<sup>212</sup> Adapted from the EU Food Nutrients Standards - REGULATION (EC) No 1924/2006.

<sup>213</sup> PICTs to decide the appropriate amount in this Regulation.

- (5) A policy must:
- (a) include —
    - (i) reduction measures for salt and sugar and elimination of trans-fat;
    - (ii) national targets for intake of salt and sugar;
    - (iii) specific activities and implementation programmes;
  - (b) include initiatives through community settings, such as, schools, workplaces and hospitals; and
  - (c) be operative for a period of not more than [5] years; and
  - (d) after it is approved by [Cabinet/Minister], be tabled as soon as practicable in [Parliament] by the [Minister]; and
  - (e) be reviewed within [12 months] before expiry of the 5 year term in paragraph (c).

#### **[24] Functions**

The functions of [CEO/PS/DH] on these Regulations are:

- (a) to administer these Regulations; and
- (b) to monitor and implement any programme or recommendation in a national strategy;
- (c) to review these Regulations every [2] years; and
- (d) to carry out any programme for public awareness and education on the use, consumption, risks and any other related matters about salt, sugar or trans-fat;
- (e) to carry out other functions to give effect to, or for the purposes of, these Regulations.

## **PART 6 – MONITORING AND ENFORCEMENT<sup>214</sup>**

### **[25] Enforcement officers<sup>215</sup>**

- (1) The [Minister/CEO/PS] may appoint suitably qualified or experienced persons as enforcement officers.
- (2) A person must not be appointed as an enforcement officer if the person:
  - (a) has any direct or indirect financial interest in a business relating to a designated product; or
  - (b) in the last [2] years, was engaged or employed in a business relating to a designated product.
- (3) The appointment of a person disqualified under subregulation (2) is void.
- (4) The [Minister/CEO/PS] must issue identification cards to enforcement officers.
- (5) The following public officers are deemed to be enforcement officers:<sup>216</sup>
  - (a) police officers;
  - (b) ... (etc.).

### **[26] Powers of enforcement officers**

- (1) An enforcement officer may:
  - (a) during business hours, enter and inspect a place where any designated product is imported, manufactured, sold, stocked, exhibited for sale or for advertisement, and all relevant records;
  - (b) require a person within the place to assist in the inspection, including answering any questions asked by the enforcement officer.

<sup>214</sup> Check that the enforcement provisions in these Regulations are not repeated in the parent Act.

<sup>215</sup> Delete if the Act provides for the appointment of enforcement officers/enforcement officers, etc.

<sup>216</sup> PICTs may decide to deem certain public officers as enforcement officers.

- (2) The enforcement officer must first show the officer's identification card to the owner or person-in-charge of the place before entering the place.
- (3) After each inspection, the enforcement officer must:
  - (a) prepare an inspection report (including any breach of these Regulations) and submit the report to the [Minister]; and
  - (b) seek further instructions on the necessary action to be taken for the contravention.

#### **[27] Power to issue desist orders**

- (1) This Regulation applies if an enforcement officer has reason to believe that a person
  - (a) has contravened or is contravening these Regulations; or
  - (b) is distributing, selling or supplying any product that does not comply with a requirement of these Regulations.
- (2) An enforcement officer may issue a person with a notice to show cause stating:
  - (a) the facts constituting the allegation under subsection (1); and
  - (b) a period of at least 10 working days within which to show good cause, in writing, why a cease and desist order ("**desist order**") should not be made.
- (3) An enforcement officer:
  - (a) must consider any written representation received under subregulation (2)(b); and
  - (b) may issue a desist order if the officer is satisfied that the allegation under subregulation (1) has been proven.
- (4) The person issued with a notice to show cause may provide other documents or sworn statements of other persons to support the allegation in the notice.
- (5) An enforcement officer must issue a desist order if:
  - (a) no written representation is received under subregulation (2)(b); and
  - (b) the officer is satisfied that the person has been served with the notice to show cause.
- (6) An enforcement officer must serve the desist order on the person:
  - (a) personally; or
  - (b) by sending it through registered post or email or other electronic address provided by the person.
- (7) The person who is issued with a desist order must comply with the order.

#### **[28] Power to prosecute**

- (1) An enforcement officer may investigate and institute proceedings in the [magistrates' courts] for offences under these Regulations.
- [(2) *The prosecution power in subregulation (1) does not affect the prosecution power of the [Director of Public Prosecutions/Attorney General under [section/article xx of the Constitution.]*<sup>217</sup>

#### **[29] Warrants for places of residence**

- (1) This section applies if the place to be entered or inspected is a place of residence.
- (2) An enforcement officer may apply to [a magistrate/District Court judge] for a warrant to enter and inspect the place, and if necessary to seize designated product from the place.
- (3) The warrant may authorise other matters required to give effect to the purpose of entry and inspection.

<sup>217</sup> Relevant to PICTs with the constitutional prosecution powers of the Director of Public Prosecutions/Attorney General.



**[30] Consumer complaints**

- (1) A person may complain in writing to an enforcement officer about any designated product.
- (2) The [Minister/CEO/PS/DG] may hear and decide the complaint, including giving the right to the complainant and the respondent to be heard.
- (3) The [Minister/CEO/PS/DG] may:
  - (a) dismiss the complaint; or
  - (b) require the respondent to remedy the matter complained of.
- (4) The enforcement officer must give a copy of the decision to the complainant and the respondent.
- (5) In this Regulation:
 

“**enforcement officer**” includes the [CEO/PS/Secretary/DG].

**[31] Product recall**

- (1) This section applies if a designated product:
  - (a) does not comply with a requirement these Regulations, such as labelling or other information on the designated product; or
  - (b) is manufactured, imported, distributed or sold contrary to these Regulations or the *Codex*.
  - (c) appears to the Minister to cause or may cause injury or death to a person or for any reason is not safe to be used or consumed.
- (2) The [Minister] may, by order, recall the designated product with the costs borne by the manufacturer, wholesaler or retailer.
- (3) The order is also treated as the authority:
  - (a) to enter and inspect the place where the designated product is kept or is suspected or believed to be kept; and
  - (b) to seize and remove the designated product specified in the order.
- (4) The [Minister] may approve the disposal of any recalled designated product.

**[32] Offence of misleading marketing**

A person commits an offence who markets, advertises or promotes any food product in a manner that misleads consumers about:

- (a) the high content of free salt in the food product; or
- (b) using a word, such as “anti-oxidant” in the label of the food that is high in free salt that leads a consumer to think that the food product is healthy; or
- (c) the high content of free sugar in the food product; or
- (d) using a word in the label of the food product that is high in free sugar that leads a consumer to think that the food product is healthy; or
- (e) the high content of fat in the food product; or
- (f) using a word, such as “antioxidant”, in the label of the food product that is high in fat that leads a consumer to think that the food product is healthy.

**[33] Obstruction etc. of enforcement officers**

A person commits an offence who, without reasonable excuse:

- (a) obstructs or hinders an enforcement officer when carrying out a function, power or duty under these Regulations; or
- (b) fails to comply with a requirement or direction of an enforcement officer.

### **[34] Offence of making false, etc., claims**

A person commits an offence who makes a claim that:

- (a) is false or misleading; or
- (b) gives rise to doubt about the safety or the nutritional adequacy of any other food; or
- (c) encourages or condones excess consumption of any food; or
- (d) states, suggests or implies that a balanced and varied diet cannot provide appropriate quantities of nutrients in general; or
- (e) refers to changes in bodily functions which could give rise to or exploit fear in the consumer, either textually or through any pictorial, graphic or symbolic representation.

### **[35] Infringement notices for spot fines**

- (1) This section applies if a person ("**defendant**") commits an offence under these Regulations for which an infringement notice is required to be issued.
- (2) An enforcement officer may issue an infringement notice [in a prescribed/approved form] requiring the defendant to pay the fixed penalty on the date specified in the notice.
- (3) When a defendant is served with an infringement notice, the defendant may:
  - (a) pay the spot fine (in full) before the specified date for payment of fixed penalty, if the defendant admits the offence by endorsing, in writing, the admission on the notice; or
  - (b) appear before the court on a date specified in the notice for appearance in court if the defendant denies the offence.
- (4) In a proceeding, a certificate signed by an enforcement officer indicating that the spot fine has or has not been paid, unless the contrary is proved, is evidence of the matters stated in the certificate.
- (5) No further proceeding is to be instituted against the defendant for an offence for which a spot fine has been fully paid.
- (6) The defendant who is convicted in court pursuant to an infringement notice:
  - (a) is not subject to the fixed penalty specified in the notice; but
  - (b) is subject to the penalty prescribed for that offence.

### **[36] Service of infringement notices**

- (1) An infringement notice is to be:
  - (a) served pursuant to the rules of the court; and
  - (b) filed before the court specified in the notice.
- (2) An infringement notice that is filed under subregulation (1)(b) is treated for all purposes as summons issued pursuant to the [criminal procedure/magistrates'/District courts legislation] to institute the proceedings for the offence.

### **[37] Directors, etc., liability**

- (1) This section applies if a body corporate commits an offence.
- (2) A director of the body corporate also commits the same offence.
- (3) It is a defence if the director proves that the offence was committed without the director's knowledge, connivance or consent.
- (4) In this section:  
"**director**" includes the secretary of the body corporate, or an officer or employee who manages or supervises the operations of the body corporate.

**[38] Penalties**

- (1) A person served with an infringement notice is liable to pay the fixed penalties for that offence listed in Part 1 of Schedule 2.
- (2) A person convicted of an offence under these Regulations is liable to the penalties in listed in Part 2 of Schedule 2.

**PART 7 – MISCELLANEOUS****[39] Immunity from personal liability**

- (1) A person is not personally liable for carrying out, in good faith, a function, duty or power under these Regulations.
- (2) Subregulation (1) does not affect any liability that the State would, but for that subregulation, have for an act or omission.

**[40] Repeal/consequential amendments**

*[Repeal or amend existing regulations]*

## SCHEDULE 1 – MAXIMUM LEVEL OF SALT, SUGAR OR TRANS-FAT IN PROCESSED FOOD PRODUCTS

Regulation [xx]

### PART 1 – SALT

Food <sup>218</sup>	Maximum salt level <sup>219</sup> (Effective from 20...)	Maximum salt level Effective from [20...] <sup>220</sup>	Maximum salt level Effective from [20...]
Bread, croissants			
Cereals and salted cookies			
Margarines and butter			
Salty snacks			
Chips, such as potato chips			
Processed food (including processed or cured meats and sausages)			
Gravy and soup mixes and dressings			
Instant noodles			
Stock cubes			
Foods prepared in restaurants			
Dairy and cheese products			
Pizza and pastas			

### PART 2 – SUGAR

Food	Maximum sugar level	

### PART 3 – TRANS-FAT<sup>221</sup>

Food	Maximum trans-fat level	

<sup>218</sup> List of food items used by South Africa which PICTs can use as the basis for listing those targeted food items.

<sup>219</sup> PICTs to decide the method (weight, per serving, etc.) of maximum salt content for each food or a class.

<sup>220</sup> PICTs can phase-in the salt level over a period to reach target maximum level.

<sup>221</sup> Only for PICTs that do not have total ban on trans-fat.

## SCHEDULE 2 - PENALTIES

### Regulation [xx]

#### PART 1 – FIXED PENALTIES

1. Regulation	2. Individual (first offence)	3. Individual (second or subsequent offence)	4. Company (first offence)	5. Company (second or subsequent offence)

#### PART 2 – PENALTIES FOR OFFENCES

1. Regulation	2. Individual (first offence)	3. Individual (second or subsequent offence)	4. Company (first offence)	5. Company (second or subsequent offence)

#### PART 3 – INFRINGEMENT NOTICE FORM

<b>FOOD ACT [...]</b> <b>FOOD (SALT, SUGAR AND TRANS-FAT) REGULATIONS 20...</b> <b>INFRINGEMENT NOTICE</b>	
<b>1</b>	<b>Date of Notice:</b> [date] [...month...][20.....]
<b>2</b>	<b>Defendant:</b> <ul style="list-style-type: none"> <li>• Name (In full):</li> <li>• Residential address:</li> <li>• Other contact details:</li> </ul>
<b>3</b>	<ul style="list-style-type: none"> <li>• Regulation contravened:</li> <li>• Statement of offence:</li> <li>• Details of offence:</li> </ul>
<b>4</b>	The fixed penalty is [ <b>\$....</b> ]
<b>5</b>	<p><b>Admitting the offence</b></p> <p>If you admit the offence in 3 above:</p> <ul style="list-style-type: none"> <li>• You must:           <ul style="list-style-type: none"> <li>o <b>sign</b> the admission declaration in 7 below;               <ul style="list-style-type: none"> <li>▪ immediately when this completed Notice is given to you; or</li> <li>▪ otherwise, no later than 20 working days from the date in 1 above; and</li> </ul> </li> <li>o <b>pay</b> the fixed penalty in 4 above (either paid in a lump sum or part payment, before 20 working days above expires) to:               <ul style="list-style-type: none"> <li>▪ [nearest ...Ministry Office]</li> <li>▪ [add other places for payment]</li> </ul> </li> </ul> </li> </ul> <p>When you have paid <b>ALL</b> the fixed penalty in 4 above, no other action relating to the offence in 2 above will be taken against you.</p> <p>If you fail to pay <b>ALL</b> the fixed penalty within 20 working days above, you are treated as having denied the offence and you will be served with the Notice to Attend Court in 9 below.</p>



# ANNEX 7 – TAX MEASURES ON TOBACCO PRODUCTS, ALCOHOL AND SUGAR-SWEETENED BEVERAGES

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**PART 1 – AMENDMENT OF THE EXCISE ACT**

**PART 2 – AMENDMENT OF THE CUSTOMS TARIFF ACT**

**PART 3 – AMENDMENT OF THE VALUE ADDED TAX ACT**

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## **PART 1 – AMENDMENT OF THE EXCISE ACT**

**[A BILL FOR]**

**AN ACT** to amend the Excise Act [Year]

**ENACTED** by [Parliament...] –

### **[1] Short title and commencement**

- (1) This Act may be cited as the Excise (Amendment) Act [Year].
- (2) This Act commences on [specific date and month and year if appropriate].<sup>223</sup>
- (3) In this Act, the Excise Act [Year] is referred to as the “principal Act”.

### **Schedule [X] amended**

Schedule [X] of the principal Act is amended in Part [X], as provided in the example below, by deleting the expressions in the second column and substituting the expressions set out in the third column, in relation to the items listed in the first column.

### **Notes**

1. It is important to study the principal Act or Excise Act as there is an empowering provision which mandates the State (Government) to impose or vary an excise tax on locally manufactured goods. These manufactured goods which are subject to excise duty (tax) will be set out in a Schedule to the Act. Similarly, locally manufactured goods which are not subject to excise duty (tax) will be set out in another Schedule.
2. It is important to bear in mind that the Excise Act will apply to locally manufactured tobacco products, alcohol products and sugar-sweetened beverages.
3. Note that the content of columns 1, 2 and 3 will differ in Schedule [X] to the Excise Act from one country to the next. Within the items listed in Column 1, there are different types of tobacco products, spirits, wines and sugar-sweetened beverages and they will be assigned an item number. It is important to carefully study the definition of the listed NCD risk factors to ensure that they encapsulate all the different facets of an NCD risk factor. Scientific evidence plays a critical role in framing the definition of an NCD risk factor. The advantages and disadvantages of having either a specific or *ad valorem* tax will need to be considered when determining the tax rate. It appears from the example below that excise duty (tax) is a hybrid of the specific tax approach and an *ad valorem* approach.

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<sup>223</sup> Either “on a date [appointed/nominated] by the Minister, [by notice in the Gazette]” or “[a fixed date]”. The date should be retroactive (future date) not retrospective (past date).

Note that the Schedule and the framing of NCD risk factors will differ from country to country. For example, the relevant Schedule to the Excise Act, in its current form would be displayed as follows.

Column 1 Item	Column 2 Excisable good	Column 3 Rate of Excise Duty
2.01	Containing tobacco grown outside [X] but not containing tobacco grown in [X].	\$200.45 on every kilogram of tobacco
3.01	Ale, beer, stout, porter and other fermented liquors and cider and perry of an alcoholic strength of 3.00% by volume or less	\$1.72 per litre
4.0	Ethyl alcohol or neutral spirits, undenatured of a strength not less than 80% of Gary Lussac	\$132.17 per litre of alcohol
7.0	Sweetened beverages with added or artificial sweetener but does not include sweetened or flavoured milk	\$0.35 per litre

## PART 2 – AMENDMENT OF THE CUSTOMS TARIFF ACT

### [A BILL FOR]

**AN ACT** to amend the Customs Tariff Act [Year]

**ENACTED** by [Parliament...] –

### [1] Short title and commencement

- (1) This Act may be cited as the Customs Tariff (Amendment) Act [Year].
- (2) This Act commences on [specific date and month and year if appropriate].<sup>224</sup>
- (3) In this Act, the Customs Tariff Act [Year] is referred to as the “principal Act”.

### Schedule [X] amended

Schedule [X] of the principal Act is amended in Part [X], as provided in the example below, by deleting the expressions in the third column and substituting the expressions set out in the third column, in relation to the items listed in the first column.

### Notes

1. It is important to study the principal Act or the Customs Tariff Act as there is an empowering provision which mandates the State (Government) to impose or vary an import tax on any imported goods into the country. Imported goods which are subject to import duty (tax) will be set out in a Schedule to the Act. Similarly, imported goods which are not subject to import duty (tax) will be set out in another Schedule.
2. It is important to bear in mind that the Customs Tariff Act will apply to imported tobacco products, alcohol products and sugar-sweetened beverages.
3. Note that the content of columns 1, 2 and 3 will differ in Schedule [X] to the Customs Tariff Act from one country to the next. Within the items listed in Column 1, there are different types of tobacco products, spirits, wines and sugar-sweetened beverages and they will be assigned an item number. It is important to carefully study the definition of the listed NCD risk factors to ensure that they encapsulate all the different facets of an NCD risk factor. Scientific evidence plays a critical role in

<sup>224</sup> Either “on a date [appointed/nominated] by the Minister, [by notice in the Gazette]” or “[a fixed date]”. The date should be retroactive (future date) not retrospective (past date).



framing the definition of an NCD risk factor. The advantages and disadvantages of having either a specific or ad valorem tax will need to be considered.

Tariff items	Column	Tariff rate
2710.12.11	3	0.46 per litre
2710.12.12	3	0.46 per litre
2710.12.19	3	0.46 per litre

## PART 3 – AMENDMENT OF THE VALUE ADDED TAX ACT

### [A BILL FOR]

**AN ACT** to amend the Value Added Tax Act [Year]

**ENACTED** by [Parliament...] –

### [1] Short title and commencement

- (1) This Act may be cited as the Value Added Tax (Amendment) Act [Year].
- (2) This Act commences on [specific date and month and year if appropriate].<sup>225</sup>
- (3) In this Act, the Value Added Tax Act [Year] is referred to as the “principal Act”.

### Schedule [X] amended

Schedule [X] of the principal Act is amended as follows [Be sure to study the Schedules as these will itemise the goods and services that are charged VAT]

### Notes

1. The Value Added Tax is a tax on most goods, services and other items sold or consumed in the country.
2. The Value Added Tax Act will have a legislative provision supported by a Schedule which will empower the Revenue and Customs Authority to levy and collect the tax on goods and services that are subject to Value Added Tax.
3. These NCD risk products will be subject to VAT: tobacco products, alcohol products and sugar-sweetened beverages only if the country has a VAT Act or its equivalent.
4. A manufacturer of these NCD risk factors can be imposed these three types of taxes and where a retailer imports goods then that retailer will be imposed an import tax and a Value Added Tax.

<sup>225</sup> Either “on a date [appointed/nominated] by the Minister, [by notice in the Gazette]” or “[a fixed date]”. The date should be retroactive (future date) not retrospective (past date).

