



TOBACCO CONTROL BILL 2010

(NO. 4 OF 2010)



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A

BILL

Entitled

AN ACT TO REGULATE LABELLING, DISTRIBUTION, SALE, ADVERTISEMENT AND SMOKING OF TOBACCO PRODUCTS AND TO GIVE EFFECT TO THE WORLD HEALTH ORGANIZATION FRAMEWORK CONVENTION ON TOBACCO CONTROL AND RELATED MATTERS

ENACTED by the National Parliament of Solomon Islands.

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TOBACCO CONTROL BILL 2010

PART 1 – PRELIMINARY

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| <p>1. This Act may be cited as the Tobacco Control Act 2010, and commences on a date appointed by the Minister, by notice in the <i>Gazette</i>.</p> | <p>Short title and commencement</p> |
| <p>2. In this Act, unless the context otherwise requires –</p> <p>“authorised officer” means a person appointed as such under section 28;</p> <p>“brand” means a brand of tobacco product;</p> <p>“brand variant” means a tobacco product distinguishable from another tobacco product by any means, including the following –</p> <ul style="list-style-type: none"> (a) the tobacco product is sold under different brand names; (b) the tobacco product is sold under the same brand name, but differs in one or more of the following ways – <ul style="list-style-type: none"> (i) containing or not containing menthol; (ii) being otherwise differently flavoured; (iii) producing different quantities of tar, nicotine, carbon-monoxide or other constituents; (iv) allegedly differing in mildness; (v) having or not having filter tips or cork tips; (vi) being sold in retail packages containing different number of pieces; (vii) being of different length or mass; <p>“child” means a person who is under the age of eighteen years;</p> | <p>Interpretation</p> |

"class", in relation to tobacco product, means a class of tobacco product, and includes manufactured cigarettes, cigarette tobacco, pipe tobacco, cigars, cigarillos, bidis or thing containing tobacco product;

"Committee" means the Healthy Lifestyles Promotion Committee established under section 24;

"Convention" means the World Health Organization Framework Convention on Tobacco Control that entered into force on the 27th day of February 2005;

"data message" means information generated, sent, received or stored by electronic, optical or similar means;

"distributor" means a person who engages in the business of selling tobacco products, and includes a manufacturer, wholesaler, importer or exporter, but does not include a retailer who engages in the business of selling tobacco products by retail only;

"Fund" means the Healthy Lifestyles Promotion Fund established under section 26;

"manufacturer" includes any entity that is associated with a manufacturer in relation to the manufacturing of tobacco products;

"package" means any pack, carton, wrapping or other container in which tobacco products are customarily sold at retail;

"Permanent Secretary" means the Permanent Secretary of the Ministry responsible for the administration of this Act;

"publish" includes to insert in any newspaper or other publication, to broadcast or include in any film, video recording, computer disk or other data message, to display by way of a sign or poster or to distribute, publish or display by any other means;

"retailer" means a person who engages in the retail selling of tobacco products;

"sell" includes to offer, expose or display for sale, to keep or have in possession for sale whether by wholesale or retail or to sell by means of a machine or mechanical

device used or capable of being used for the purpose of selling or supplying tobacco products;

"smoking" means inhaling and expelling of smoke of cigarettes, cigars or tobacco products in any form whatsoever, and includes the act of handling a lighted tobacco product;

"smoke-free" means free of any direct or indirect exposure resulting from smoking;

"tobacco" means any preparation of dried leaves of the *nicotiana tabacum* plant of the nightshade family;

"tobacco product" means any product from tobacco whether or not manufactured and intended for use by smoking, inhaling, mastication, orally taking by mouth or administration through the skin, and includes nasal or oral snuff or any product containing tobacco;

"tobacco product advertisement" –

(a) means any word, whether written, printed or spoken, including on film, video recording or other medium or broadcast, telecast, electronic transmission, computer disk or other data message or any pictorial representation, design or device used to encourage the use or to notify the availability or promote the sale of any tobacco product or to promote smoking behaviour; and

(b) includes the use in any advertisement or promotion to the public of the company name of the manufacturer of the tobacco product where that name or any part of that name is used as or is included in a tobacco product trademark;

"toxic constituent" means any substance prescribed by regulations to be a toxic constituent, and includes any substance found in a tobacco product or in its smoke;

"trademark" includes the following–

(a) any trademark whether or not it is registered or registrable as such;

- (b) any brand name;
- (c) any company name where that name is used for advertising or promotional purpose;
- (d) any name, word or mark that so resembles any trademark that it may be taken as that trademark;

"vending machine" means a machine, device or contrivance that is constructed to contain tobacco products that may be obtained from it by an operation that involves the insertion in the machine, device or contrivance of a coin, token or similar object;

"warning" in relation to tobacco products, means a warning or an explanatory statement about the health effects or social costs of tobacco use, the benefits of or suggestions for quitting or any other matter relating to tobacco and health or adverse effect of tobacco use or exposure, as prescribed by regulations;

"work place" –

- (a) means any indoor or other enclosed space in which employees, contractors, volunteers or other persons perform the duties of employment, services or other work (paid or unpaid); and
- (b) includes –
 - (i) any restaurant, bar, cafeteria or private office or any adjacent corridor, lobby, stairwell, elevator, washroom or other common area frequented by such employees, contractors, volunteers or other persons during the course of their employment, service or work; or
 - (ii) any public place where persons work including; but
- (c) does not include any place or part of it which is primarily used as a private residence.

3. The objects of this Act are –

- (a) to protect the health of the public against the dangers of tobacco smoking;
- (b) to encourage non-smokers to refrain from smoking and protect them from persuasion or inducements to use tobacco products and consequent dependence on the tobacco products;
- (c) to enhance public awareness of the hazards of tobacco use by ensuring the effective communication of accurate and relevant information to consumers of tobacco products;
- (d) to protect the public to the extent deemed reasonable and possible from the hazards of involuntary or indirect exposure to tobacco smoke;
- (e) to encourage and assist smokers to quit smoking and to promote healthy lifestyles and prevention of illness; and
- (f) to reduce some of the harmful effects of tobacco products by monitoring and regulating the presence of harmful constituents in tobacco products and in tobacco smoke.

PART 2 – SALE, ADVERTISEMENT AND PROMOTION

4. (1) No person shall, after the expiry of three months from the commencement of this Act, publish any tobacco product advertisement in the Solomon Islands.

Restriction on
advertisement of
tobacco products

(2) No person in Solomon Islands shall display, publish any tobacco product advertisement so that it can be viewed by persons in another country.

(3) No person may, whether or not for payment or other consideration, publish, broadcast or disseminate on behalf of another person a tobacco product advertisement or arrange for a tobacco product advertisement to be published, broadcast or disseminated.

(4) ✓ Subsection (1), (2) or (3) does not apply to the following –

- (a) ✓ a tobacco product advertisement that is an accidental or incidental accompaniment to a film or video;
- (b) ✓ a tobacco trademark on an invoice, statement, order, letterhead, business card, cheque, manual or other document ordinarily used in the course of a business of a distributor or retailer of tobacco products;
- (c) ✓ a commentary, opinion, report, editorial or political discourse relating to tobacco products or distributor or retailer, unless the activity is made in exchange for or in expectation of remuneration, reward or emolument of any sort or other consideration (whether direct or indirect) from a distributor or retailer or any of its agents;
- (d) ✓ depiction of or reference to a tobacco product or trademark made in any artistic, literary, scientific, educational or entertainment production, performance, writing or any other work, unless such depiction or reference is made in exchange for or in expectation of remuneration, reward or emolument of any sort or other consideration (whether direct or indirect) from a distributor or retailer or any of its agents;
- (e) ✓ an imported newspaper, imported magazine or imported book with tobacco product advertisements or any radio or television transmission originating outside of Solomon Islands or any data message originating outside of Solomon Islands or any film or video recording made outside of Solomon Islands, unless –
 - (i) the principal purpose of the book, newspaper, magazine, radio or television transmission, film, video recording or data message is the promotion of tobacco products;

(ii) the book, newspaper, magazine, film or video recording originating outside of Solomon Islands is intended for sale, distribution or exhibition primarily in Solomon Islands; or

(iii) in the case of an advertisement in any radio, television or electronic transmission or data message, the advertisement is targeted primarily at an audience in Solomon Islands;

(f) ✓ communication of information on tobacco product by distributors or retailers to other persons involved in the manufacture, distribution, importation, exportation or sale of tobacco products;

(5) A person who contravenes subsection (1), (2) or (3) commits an offence.

5. ✓ (1) Notwithstanding section 4, a retailer may do any or all of the following things inside the place of his retail business, provided such things are done in accordance with this Act or any regulations –

Permitted
advertisement by
retailers

(a) ✓ to expose tobacco products for sale;

(b) ✓ to display notices that identify the tobacco products that are available for sale and their prices;

(c) ✓ to display a list of tobacco products available for sale and their prices.

✓ (2) A notice displayed pursuant to subsection (1)(b) shall be displayed so that it is not visible from outside the place of business.

✓ (3) If a retailer's name or trade name, at the commencement of this Act, contains any word or expression signifying that any tobacco product is available in the retailer's place of business for purchase, the name or trade name may continue to be displayed on the outside of that place, in accordance with any regulations, except that –

(a) ✓ the name or trade name does not include the trademark or name of a tobacco product or

the company name of the manufacturer of the tobacco product;

(b) its name or trade name is not displayed more than twice on the outside of the business place; and

(c) each display of the name or trade name on the outside is accompanied, immediately beneath it, by the health warning "Smoking Kills - *Simok Save Kilim Iu*", in lettering not less than half the size of the name or trade name.

(4) Notwithstanding subsection (3), if a retailer's name or trade name, at the time of the commencement of this Act, includes the trademark or name of a tobacco product or the company name of the manufacturer of the tobacco products, that name may remain displayed on the outside of the retailer's place of business without a health warning for a period not exceeding twelve months from the commencement of this Act.

(5) Notwithstanding section 4, a retailer may retain any tobacco product advertisement, whether inside a retailer's place of business or visible from the outside or in the open air, that was erected prior to the commencement of this Act for a period not exceeding twelve months from the commencement of this Act.

(6) A retailer who fails to comply with a provision of this section commits an offence.

Prohibition of use
of trademark for
promotions

6. - (1) No person may use the brand name or trademark of a tobacco product or the name of a distributor of tobacco products, in a representation to the public that -

(a) promotes any organisation, activity or event, including those of an educational, cultural or sporting nature; or

(b) acknowledges the financial or other contributions made by a distributor of tobacco product toward such an organisation, activity or event.

(2) Subsection (1) does not apply to –

- (a) prescribed organisation, activity or event which is not associated with or aimed at the promotion of tobacco products; or
- (b) the use of a tobacco company name in a representation to the public if this is done in accordance with a contract entered into before the commencement of this Act.

(3) The use tobacco company name under subsection (2) shall cease at the expiry of twelve months from the commencement of this Act or such earlier date as maybe prescribed by contract.

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

7. (1) No distributor may, at the expiry of six months from the commencement of this Act, distribute tobacco products in the absence of payment or other consideration or provide tobacco products to any person for the purpose of their subsequent distribution without payment or other consideration.

Restriction on free
distribution by
distributors

(2) No person may, at the expiry of six months from the commencement of this Act, offer any gift or cash rebate or the right to participate in any contest, lottery or game to the purchaser of a tobacco product in consideration of the purchase of the tobacco product or to any person in consideration of providing the evidence of the purchase.

(3) This section does not apply to trade discounts or rebates given in the course of normal business practices between distributors or between distributors and retailers.

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

8. (1) A manufacturer or distributor of tobacco products who is entitled to use any trademark in association with the tobacco products or a person acting with or without the concurrence or acquiescence of the manufacturer or distributor shall not, at the expiry of twelve months from the commencement of this Act –

Restriction on use
of trademark by
manufacturers or
distributors

- (a) apply the trademark, in any form in which it appears on the packages of the tobacco products, to any article other than a tobacco

product or a package or container in which a tobacco product is sold or shipped; or

- (b) use the trademark in any such form for the purpose of advertising any article other than a tobacco product or the advertising of any organisation, service, activity or event, notwithstanding that the manufacturer or distributor is, but for this Act, entitled to use the trademark in association with that article, organisation, service, activity or event.

(2) No person shall, at the expiry of twelve months from the commencement of this Act, distribute for sale or sell any article that bears a trademark of a tobacco product in any form in which it appears to contain tobacco product unless it contains tobacco product or the package or container contains the tobacco product to be sold or shipped.

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

Warnings and
constituent
information

9. (1) No distributor or retailer of tobacco products shall, at the expiry of twelve months from the date of commencement of this Act, sell a tobacco product unless –

- (a) the package displays –
 - (i) a warning about the use of the product;
 - (ii) a list of or information on the toxic constituents present in the tobacco product; and
 - (iii) in the case of a tobacco product intended for smoking a list of or information on the toxic constituents, and their respective quantities present in the smoke; or
- (b) the package contains information relating to the effects of the use of the product on health and any other relevant information.

(2) Any information or warning specified in subsection (1) shall be displayed on tobacco packages, in accordance with the form and manner as are prescribed by regulations.

(3) Any prescribed warning shall --

- (a) be rotated so that a range of warnings and other information is displayed on all tobacco brands and brand variants;
- (b) be large, clear, visible and legible;
- (c) take up a minimum of thirty percent of the principal display area of the package; and
- (d) be presented in English and Solomon Islands Pidgin.

(4) Subject to section 10, any information specified in subsection (1) shall be expressed in both English and Solomon Islands Pidgin.

(5) The prescribed warnings may include pictures, symbols, pictograms or other graphic representations.

(6) No distributor or retailer of tobacco products shall, at the expiry of twelve months from the commencement of this Act, sell a tobacco product if the package contains any writing, symbols or other graphic representation other than --

- (a) the information required by subsection (1);
- (b) the name, brand name or any trademark of the tobacco product; and
- (c) any other prescribed information or other information required under other written law.

(7) Any tobacco products imported for sale shall carry a statement that the product is intended to be sold in Solomon Islands.

(8) A person who contravenes a provision of this section commits an offence.

10. (1) For the purposes of this section "substantially to the same effect as required by this Act" means warnings and constituent information, which, while differing in some aspects from the requirement of this Act or regulations, are considered by the Minister, acting on the advice of the Permanent Secretary, to be, in all material respects, of a standard which warns and informs to a standard which meets or exceeds the requirements under section 9 or any regulations.

Recognised
acceptable
standards

(2) Notwithstanding section 9, the Minister may, by order in the *Gazette*, declare a law of another country as being substantially to the same effect as required by this Act and thus recognise tobacco products imported from that country, packaged and labelled in accordance with the law of that country, as complying with any or all requirements under this Act in relation to the packaging and labelling of tobacco products.

(3) Notwithstanding section 9 and subject to subsection (4), tobacco products that are packaged or labelled substantially to the same effect as required by this Act and any regulations may be sold, distributed, displayed for sale or distribution, imported or exported.

(4) The Minister may, on the advice of the Permanent Secretary, by notice in the *Gazette*, state that tobacco product labelling and the packaging of identified tobacco products imported from an identified country is regarded by the Minister as being substantially to the same effect as required under this Act or any regulations.

(5) The Minister may, on the advice of the Permanent Secretary, by notice in the *Gazette*, state that tobacco product labeling and packaging identified under subsection (4) as being substantially to the same effect as required under this Act or any regulations shall be supplemented by warnings in English and Solomon Islands Pidgin being added to tobacco packages by way of addition of adhesive labels that are of such a nature that they cannot be removed without permanent damage to the tobacco package.

(6) An adhesive label referred to in subsection (5) must be applied to the tobacco package in a way that it does not obscure any health information other than the warning it is intended to replace.

Misleading
labelling prohibited

11. / (1) A person shall not –

- (a) sell or distribute;
- (b) display for distribution; or
- (c) import or export,

any tobacco product the packaging and labelling of which promotes that tobacco product by any means that are false, misleading, deceptive or likely

to create an erroneous impression of the characteristics, health effects, hazards or emissions of that product or of which includes any written term, descriptor, trademark, symbol or sign that directly or indirectly creates the false impression that a particular tobacco product is less harmful than other tobacco products.

(2) Regulations may prohibit the use of any word or term on the packaging or labelling of a tobacco product and the use of the prescribed prohibited word or term on the packaging or labelling of a tobacco product shall be deemed to be misleading or deceptive for the purposes of subsection (1).

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

12. (1) No person shall, at the expiry of twelve months from the commencement of this Act -

Sale of cigarettes
to be in unbroken
packages

(a) sell any cigarette or bidi other than in unbroken packages containing not less than ten or twenty cigarettes or bidis, as the case may be; or

(b) sell a tobacco product other than cigarettes, bidis or cigars, other than in unbroken packages containing not less than thirty grams of tobacco.

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

13. (1) No person shall sell, give or in any way provide any tobacco product to a child.

Sale to children
prohibited

(2) A retailer of tobacco products shall display clearly for the public a notice to the effect that the sale of any tobacco product to a child is prohibited.

(3) It is not a defence for a person charged under subsection (1) that the person believed that the person to whom the tobacco product was sold, given or provided was over the age of eighteen years of age at the time the offence is alleged to have been committed, unless the accused took all reasonable steps to ascertain the age of the person to

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

Vending machines
prohibited

14. (1) No person shall install or operate a self-service vending machine from which tobacco products may be sold, given or in any way provided directly to the public.

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

PART 3 - LICENSING OF DISTRIBUTORS, ETC

Licence to
distribute or sell

15. (1) No person shall manufacture, sell, distribute, import or export or cause to be manufactured, sold, distributed, imported or exported any tobacco product except with a licence issued under this section.

- (2) The Permanent Secretary may, upon application, issue a licence, subject to conditions, to any person under this section authorising the person to manufacture, sell, distribute, import or export or cause to be manufactured, sold, distributed, imported or exported any tobacco product.

- (3) A person may, in the prescribed form and with the prescribed fee, apply to the Permanent Secretary for a licence.

- (4) A licence issued under this section shall be valid for twelve months from the date of issue and such licence shall be displayed at a conspicuous place in the licensee's place of business.

- (5) A licence issued under this Act, including its conditions, may be varied, suspended or cancelled or subject to further conditions if the licensee is in breach of any provision of this Act.

- (6) A licence, permit or authority issued under any other written law shall not be treated as authorising the manufacture, sale, distribution, importation or exportation of tobacco product except with the licence issued under this Act.

- (7) A person who contravenes this section commits an offence.

- (8) Subject to compliance with other requirements of this Act, a person who was a manufacturer, seller, distributor,

importer or exporter of any tobacco product before the commencement of this Act shall continue as if the person was licensed under this Act but the person shall apply for a licence under this Act within twelve months from the commencement of this Act.

PART 4 – CONSTITUENTS OF TOBACCO PRODUCTS

16. (1) A manufacturer or importer shall –

Test for toxic
constituents

(a) test for the respective quantities of prescribed toxic constituents in each brand or brand variant of any tailor-made tobacco product prescribed by regulations for this purpose and sold by the manufacturer or importer in Solomon Islands; and

(b) where applicable, test for the respective quantities of prescribed toxic constituents in the smoke produced from the combustion of each brand or brand variant of tailor-made tobacco product.

(2) The Minister may require a manufacturer or importer of tobacco products –

(a) to undertake further testing of the toxic or other constituents of tobacco products or the toxic or other constituents found in the smoke produced from the combustion of tobacco products at a laboratory nominated by the Minister; and

(b) to provide the Minister with any report on such test at such intervals as the Minister may determine.

(3) Without limiting subsection (2), the Minister may allow a manufacturer or importer to use the result of any test carried out in the country of importation in respect of any imported tobacco product in order to comply with this section.

(4) A manufacture or importer that contravenes subsection (1) commits an offence.

Test results

17. (1) The manufacturer or importer of any tobacco product shall provide a report to the Minister, in the prescribed form and manner, on the following –

- (a) the results of all tests that, during the previous year, have been conducted by the manufacturer or importer for the purposes of section 16;
- (b) the quantity of tobacco products manufactured or imported by that manufacturer or importer during the previous year in relation to –
 - (i) the total weight of tobacco used in the manufacture of each class of tobacco product manufactured or imported for sale in Solomon Islands; and
 - (ii) the total number of packages of each brand or brand variant manufactured or imported for sale in Solomon Islands;
- (c) the quantity of each brand or brand variant of tobacco product sold by the manufacturer or importer during the previous year;
- (d) the recommended retail price of each brand or brand variant sold by the manufacturer or importer during the previous year;
- (e) the total weight of each additive used in the manufacture of each class of tobacco product sold by the manufacturer or importer during the previous year.

(2) The manufacturer or importer of any tobacco products shall, no later than the 31st day of March in each year, provide a report required under subsection (1) to the Minister.

(3) The Minister may publish or make available to the public any information contained in a report provided under subsection (2).

(4) The manufacturer or importer that contravenes subsection (1) or (2) commits an offence.

Controls on the
content of tobacco
products or
emissions

18. A person who manufactures, distributes, sells, imports or exports any tobacco product that does not comply with any requirement regulating the level of permitted addictive constituent and other constituent of tobacco products, the level of acceptable emissions from combusted tobacco products or any product content or the safety standards prescribed by regulations commits an offence.

PART 5 – CONTROL OF SECOND-HAND SMOKE

19. (1) The employer or a person-in-charge of a workplace shall ensure that no person shall smoke in any indoor part of the workplace.

Smoking in
workplaces
prohibited

(2) An employer may designate a smoking area in a workplace.

(3) An area designated under subsection (2) –

(a) shall be an outdoor area of the workplace where no work is normally undertaken; and

(b) shall not be located in the place where smoke may then readily drift back into the indoor part of the workplace.

(4) Notwithstanding subsection (3), owners or occupiers of prescribed workplaces may declare or set aside smoking areas inside the prescribed workplaces.

(5) A person who contravenes this section in relation to a workplace or smokes in an area prohibited for smoking commits an offence.

(6) The Minister may, by order in the *Gazette*, declare any public place, public building or public facility or any place, building, facility where public have access to be a smoke-free area.

(7) Subsections (1) to (5) apply to any area declared under subsection (5).

20. (1) All school buildings and school permanent or temporary structures shall be smoke-free at all times, including outdoor areas and grounds of schools.

Smoking in
schools prohibited

(2) / The principal or person-in-charge of a school shall ensure that no person smokes inside any school building or structures or within any school grounds or outdoor areas.

(3) / A person who smokes in a smoke-free area in contravention of this section commits an offence.

Smoking in hospitals prohibited 21. (1) / All indoor places and outdoor areas of hospitals and health clinics shall be smoke-free at all times.

(2) / Any person-in-charge of a hospital or health clinic shall ensure that no person smokes inside that hospital or health clinic or within any outdoor areas of the hospital or health clinic under the control of the person-in-charge.

(3) / A person who smokes in a smoke-free area in contravention of this section commits an offence.

Smoking in public transport prohibited 22. (1) / Subject to subsection (2), all public transport providing services to the public whether by air, land or water shall be operated smoke-free.

(2) / The owner of a ship or vessel may designate a smoking area on a ship or vessel designed to carry passengers and marked as a "smoking area" except that that the designated area shall be outside on a deck or observation area.

(3) / The operator of a public transport or an employee who becomes aware that a passenger is smoking in contravention of subsection (1) shall request the passenger to refrain from smoking.

(4) / Where a passenger fails to comply with a request made under subsection (3) the operator or employer shall require the passenger to disembark at the next scheduled stop following the passenger's failure to comply.

(5) / No smoking shall be allowed in any enclosed waiting area or waiting room used for passengers.

(6) / A person commits an offence if the person operates a public transport service or smokes in contravention of this section.

(7) / This Part is in addition to any other written law that controls second-hand smoking.

23. (1) The owner, occupier or the employer of any place to which this Part applies which is either indoors or fully or partly enclosed shall post signs prominently at areas in such place stating whether or not smoking is permitted in that area.

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

PART 6 - HEALTHY LIFESTYLES PROMOTION COMMITTEE AND THE FUND

24. (1) This section establishes the Healthy Lifestyles Promotion Committee, as body corporate to which Part VII of the Interpretation and General Provisions Act (Cap.85) applies, consisting of the following members -

Establishment of
the Committee

- (a) the Permanent Secretary responsible for Health, as Chairperson;
- (b) the Permanent Secretary responsible for Environment or his nominee, as Deputy Chairperson;
- (c) the Permanent Secretary responsible for Youth or his nominee;
- (d) the Chairperson of the Pharmacy and Poisons Board established under the Pharmacy and Poisons Act (Cap. 105);
- (e) a representative from the Consumer Affairs Division established under section 5 of the Consumer Protection Act (Cap.63), appointed by the Permanent Secretary responsible for Consumer Affairs;
- (f) a senior public officer from the Health Education and Promotion Department, appointed by the Permanent Secretary responsible for Health.

(2) The Schedule sets out other provisions in relation to the Committee.

Functions of the
Committee

25. The functions of the Committee are –

- (a) to administer the Fund;
- (b) to assist in the promotion of health and the encouragement of healthy lifestyles;
- (c) to fund or promote the funding of measures required under Articles 12, 14, 20, 21 and 22 of the Convention;
- (d) to advise the Minister on the promotion of health and the encouragement of healthy lifestyles or any other matter relating to this Act; and
- (e) to engage any person in carrying out its functions under this Act.

Establishment of
the Fund

26. (1) This section establishes the Healthy Lifestyles Promotion Fund, as a special fund under section 100(2) of the Constitution, into which shall be paid the following –

- (a) moneys appropriated by Parliament for the purpose of the Fund;
- (b) fees or other charges collected under this Act;
- (c) any interest accrued to moneys in the Fund;
- (d) any donations, grants or bequests to the Fund from other sources;
- (e) any proceeds of sale received by the Fund on the sale of any assets.

(2) The Fund shall be used for the purposes of promoting health and encouraging healthy lifestyles, funding of measures under section 25(c) and funding of any other prescribed matters relating to this Act.

(3) The Funds shall be managed in accordance with the Public Finance and Audit Act (Cap.120) and any financial instructions issued under that Act.

Annual report

27. The Committee shall, not later than three months after the end of its financial year, prepare and submit to the Minister its annual report setting out –

- (a) its activities and operations under this Act, and in

particular matters relating to the Fund; and

- (b) ✓ its financial statements for the financial year consisting of statements of financial position, financial performance, changes in financial position and any other necessary information.

PART 7 – ENFORCEMENT

28. (1) ✓ The Minister may, on the advice of the Permanent Secretary – Appointment of authorised officers

- (a) ✓ appoint public officers, provincial government officers and other persons as authorised officers under this Act; and

- (b) ✓ by notice in the *Gazette*, delegate to such officers or persons powers and functions under this Act.

(2) / An authorised officer has the power to exercise and carry out the powers and functions delegated under subsection (1).

(3) ✓ The Permanent Secretary shall provide to each authorised officer, an identity card that will provide evidence of the identity of that person and of the appointment of that person as authorised person.

(4) / An authorised officer who holds an identity card issued under this section shall on termination of his appointment, surrender the identity card to the Permanent Secretary.

29. (1) ✓ In relation to any matter relevant to the operation or enforcement of this Act, an authorised officer may require a person (either by oral or written requisition) to provide –

Provision of records and information

- (a) ✓ any information; or

- (b) ✓ any record or copy of such record in the possession of the person.

(2) For the purpose of subsection (1), a person is in possession of –

- (a) any information, if the person has the information or is entitled to access to and to release the information; or
- (b) any record, if the person has the record in his possession or under his control in any place, whether for his own use or benefit or for the use or benefit of another person although that other person has actual possession or custody of the record.

(3) A requisition made under subsection (1) may require that the information or record or copy of it to be provided to the authorised officer.

(4) A person commits an offence if the person –

- (a) without reasonable excuse, refuses or fails to provide any information, record or copy as required under this section; or
- (b) in response to a requisition made under this section, provides information, record or copies that are false or misleading.

(5) A person may not refuse to provide any information, record or copy of it on the grounds that its content may incriminate the person.

(6) If a person, when supplying any information, record or copy of it under subsection (5), states in writing that the information, record or copy incriminates or may incriminate the person, the information, record or copy shall not be used in any proceedings against that person for any offence.

(7) If any person records or stores any matter by means of mechanical, electronic or other device, the duty imposed by this section to produce any record containing those matters is to be construed as including a duty to produce the matters in written form if that is demanded.

(8) The duty imposed by this section to produce a copy of any record is to be construed as a duty to produce a clear reproduction.

(9) / An authorised officer may take or make notes or copies of or extracts from any information, record or copy of it produced under this section.

30. (1) / Subject to other provisions of this section, any authorised officer shall, if so required, on producing his identity card or other written authorisation, have the right to enter and remain on any premises at all reasonable hours –

Power of entry

- (a) / for the purpose of ascertaining whether or not there is or has been on or in connection with the premises any contravention of a provision of this Act;
- (b) / for the purpose of ascertaining whether or not circumstances exist which would authorise the taking of any action under this Act; or
- (c) / generally, to perform his functions and duties under this Act.

(2) / The entry under subsection (1) to any premises, not being a workplace, shall not occur unless with the consent of the owner or occupier or a twenty-four hours notice of the intended entry has been given to the owner or occupier.

(3) / A Magistrate may, upon application, issue a warrant authorising the person named in the warrant to enter any premises, if the Magistrate is satisfied on sworn statement stating –

- (a) / that admission to any premises –
 - (i) / has been refused;
 - (ii) / is anticipated to be refused;
 - (iii) / will be impossible because the premises are unoccupied or the occupier is temporarily absent;
 - (iv) / is urgent; or
 - (v) / if the twenty-four hour notice is given, it would defeat the object of the entry sought; and

- (b) that there is a reasonable ground for entry into the premises for any purpose specified in paragraph (a).

(4) Any person entering any premises under this section or by warrant may take such other persons as may be necessary, and, on leaving any unoccupied premises which the person has entered by virtue of a warrant, shall leave the premises as he found them, as effectively secured against any trespassers.

(5) A warrant granted under this section is to continue in force until the authorised purpose of the entry has been satisfied.

Powers of search,
inspection and
seizure

31. -(1) Subject to other provisions of this section, any authorised officer may, on entering any premises for the purposes of this Act, do any or all of the following -

- (a) examine, open and test any equipment, tools, materials or thing the officer reasonably believes is used or capable of being used for the manufacture, packaging, labelling, storage, distribution, displaying, advertising or promotion of tobacco products;
- (b) examine any operation or process carried out on the premises;
- (c) examine, make and take copies of or from any books, documents, notes, files (including electronic files) or other records the officer reasonably believes to contain information relevant to determining compliance with this Act or any regulations;
- (d) interview or question -
 - (i) any licensee or other person involved in the sale, advertisement, promotion, manufacture, importation, exportation, growing, transportation, packaging or distribution of tobacco products; or
 - (ii) the owner or occupier of the premises or any person using the

premises and his employee, agent or contractor,

all of whom are required to cooperate fully with any inspection or investigation;

(e) / take samples of tobacco or tobacco products or components of the tobacco or tobacco products where they are found;

(f) / if the officer reasonably believes that a provision of this Act or regulations has been breached –

(i) / seize and detain any tobacco, tobacco products; or

(ii) / order the storage of any tobacco or tobacco product, which shall not be removed from its storage or altered in any way,

and shall provide the licensee or owner of the tobacco products or if the licensee or owner is unavailable provide any person on the place where the tobacco products are located a written notice of the seizure and detention or order for the storage and the grounds for it;

(g) / seize and detain or dispose of any tobacco product being sold by a person in a manner which contravenes a provision of this Act or any regulations.

(2) / A tobacco product that is seized and detained by an authorised officer shall be returned immediately to the owner or to the place from which it was seized, if the tobacco product that is seized and detained is subsequently determined by the authorised officer to meet a requirement of this Act or any regulations.

(3) / If any tobacco product that has been seized or detained is determined by an authorised officer, not to have met the requirements of this Act or any regulations, the tobacco product may be confiscated and destroyed or subject to other disposal, as may be ordered by the court.

(4) / A police officer may accompany an authorised officer for the purpose of this section.

Offence of
obstruction

32. (1) / Any person who obstructs an authorised officer when exercising any power under this Act commits an offence.

(2) / In this section, a person obstructs an authorised officer if the person –

- (a) / assaults, abuses, intimidates or insults the authorised officer or any other person assisting the authorised officer when exercising any power under this Act;
- (b) / directly or indirectly prevents or attempts to prevent any person from being questioned by an authorised officer or from providing under this Act any information or record or copy of it; or
- (c) / otherwise in any other way or manner when the authorised officer is exercising any power under this Act.

Directions may be
issued to secure
compliance

33. (1) / If any person has contravened a provision of this Act, an authorised officer may, in writing, direct that person to take within a specified time not exceeding fourteen days or other prescribed period, such action as may be specified to prevent any further contravention and to remedy the act of contravention.

(2) / A direction issued under subsection (1) does not affect any proceeding under this Act which has been or may have been taken for the non-compliance relating to the direction.

(3) / Any person to whom a direction is issued under this section and who does not comply with the direction commits an offence.

Removal of
advertisement and
destruction of
tobacco products

34. (1) / If a person is convicted of an offence under section 4, the court, in addition to any penalty imposed for contravening section 4, order that –

- (a) / the advertisement be removed, obscured or destroyed by an authorised officer; and

- (b) ✓ the convicted person pay reasonable costs incurred by the authorised officer in removing, obscuring or destroying the advertisement.

(2) ✓ If a person is convicted of an offence under section 9, 11, 12, 15 or 17, the court may, in addition to any penalty imposed for contravening any of those sections, order that –

- (a) ✓ the tobacco product be confiscated and forfeited to the Crown and thereafter be destroyed by an authorised officer; and
- (b) ✓ the convicted person pay the reasonable costs incurred by an authorised officer for
/ confiscating and destroying the tobacco products.

PART 8 – MISCELLANEOUS

35. ✓ A contract, agreement, undertaking or understanding affecting any matter under this Act, which is in force at the commencement of this Act is void to the extent to which it is inconsistent with this Act.

Contracts etc.,
void

36. ✓ Any person who is dissatisfied with any decision of the Permanent Secretary made under Part 3 may, within thirty days from the date of the decision, appeal to the Principal Magistrate's Court only on question of law.

Appeal

37. ✓ A person who is convicted of an offence under this Act is liable –

Penalties

(a) ✓ for an individual –

- (i) ✓ for the first offence, to a fine not exceeding 20,000 penalty units or to imprisonment for a term not exceeding two years; or
- (ii) ✓ for the second or any subsequent offence, to a fine not exceeding 50,000 penalty units or to imprisonment for a term not exceeding four years; or

(b) / for a body corporate –

- (i) for the first offence, to a fine not exceeding 500,000 penalty units; or
- (ii) for the second or any subsequent offence, to a fine not exceeding 1,000,000 penalty units.

Corporate bodies
liable for offences

38. / (1) If a body corporate commits an offence under this Act, every officer of the body corporate commits the same offence unless the officer proves that –

- (a) the offence was committed without the officer's consent or connivance; and
- (b) / the officer exercised all due diligence or care to prevent the commission of the offence as the officer ought to have exercised, having regard to the nature of the officer's function in that capacity and to all the circumstances.

(2) In this section, "officer" means –

- (a) / a director, secretary or executive officer of the body corporate;
- (b) / a receiver or a receiver and manager of property of the body corporate or any other authorised person who enters into possession or assumes control of property of the body corporate for the purpose of enforcing any charge;
- (c) / an official manager or deputy official manager of the body corporate;
- (d) / a liquidator of the body corporate;
- (e) / a trustee or other person administering a compromise or arrangement made between the body corporate and another person; or
- (f) / any other person who, by whatever name called and whether or not a director of the body corporate, is concerned or takes part in the management of the body corporate.

39. (1) ✓ A person shall not be appointed as an authorised officer if the person is engaged directly or indirectly in the manufacturing, importation, exportation, packaging, fabrication, distribution or sale of tobacco products in Solomon Islands.

(2) ✓ If an authorised officer has a personal interest in a case under investigation, the officer must disqualify himself from the case or the case be removed from the officer by the Permanent Secretary in writing.

40. A person shall not be liable for any act done in good faith (whether or not done negligently) by the person in the performance of any function, duty, power or authority under this Act.

Exemption of
liability

41. (1) ✓ The Minister may make regulations to give effect to or for the purpose of this Act, and in particular to make regulations –

Regulations

- (a) ✓ prescribing the manner by which tobacco products may be displayed for sale inside retail outlets;
- (b) ✓ prescribing the size, colour, style, position, number and nature of notices and lists permitted at retail outlets where tobacco products are sold, and the health warnings, messages and other information to be included in those notices and lists;
- (c) ✓ prescribing the size, colour, content, and number of the signs that may be placed on the outside of the retailer's place of business, and the inclusion of the health messages and other information on those signs;
- (d) ✓ prescribing the warnings, constituent information and lists, and other information to be displayed on packages containing tobacco, including the position of the information on the packages containing tobacco, including the position of the information on packages and the size, colour, style, content and nature of warnings, messages or information;
- (e) ✓ prescribing the means of communication in warnings, constituent information and lists and other information, including the use of

written words, figures, symbols, pictures or other graphic representation;

- (f) prescribing any word or term misleading or deceptive;
- (g) prescribing the size, content, colour, style, and nature where informational inserts are required to be included in packages of tobacco products;
- (h) prescribing the size, content, colour, style, position and the nature of list of or information on, toxic constituents to be displayed on packages of tobacco products;
- (i) prescribing toxic constituents of tobacco products;
- (j) prescribing classes of toxic constituents of tobacco products;
- (k) prescribing testing methods to analyse and determine the nature and level of toxic constituents in tobacco constituents in tobacco products and the smoke produced from their constituents;
- (l) specifying controls on the content of tobacco products or the setting of product standards, including the minimum for any identified addictive constituents;
- (m) prescribing the manner in which reports are to be filed by manufacturers and importers;
- (n) prescribing the information to be included in, and the form of, statutory declarations relating to the use of additives in tobacco products;
- (o) prescribing the entry into and the conduct of inspections at points of sale of tobacco products, and any premises for manufacturing of tobacco products by authorised officers;

- (p) regulating the taking of tobacco samples for the purposes of analyses;
- (q) regulating reporting and accountability to the Minister;
- (r) exempting from the requirements of this Act, which may be limited to specified period not exceeding six months, including from the commencement of this Act;
- (s) regulating procedures, criteria, conditions, processes, appeal procedures for licences under this Act;
- (t) prescribing fees and forms for the purpose of this Act;
- (u) regulating seizure, detention and destruction of tobacco products that are illegally smuggled into Solomon Islands or any tobacco products that are illicitly manufactured or counterfeited;
- (v) regulating other matters relating to the Fund; and
- (w) prescribing other matters required under this Act to be prescribed.

(2) - An offence created under any regulations may prescribe a fine not exceeding 20,000 penalty units or imprisonment for a term not exceeding two years imprisonment.

(3) - The Minister may make regulations in relation to any transitional matter except that the power to make regulations under this subsection shall expire on the second anniversary of the commencement of this Act.

42. - Subject to such modifications and adaptations, prescribed by regulations, as may be necessary to achieve the objects of this Act, the Convention shall have the force of law in Solomon Islands.

Convention to
apply

SCHEDULE
(Section 24)

OTHER PROVISIONS RELATING TO THE COMMITTEE

- | | |
|-----------------------------------|--|
| Resignation | 1. A member of the Committee appointed under section 24(1)(e) and (f) may give written notice of his resignation from the Committee to his Permanent Secretary; and such resignation shall take effect from the date the Permanent Secretary receives the resignation. |
| Convening and conducting meetings | 2. The procedures for convening and the conduct of business of meetings of the Committee shall be determined by the Committee, subject to this Act and any regulations. |
| Quorum | 3. The quorum of the Committee is four members. |
| Other presiding member | 4. If the Chairperson and the Deputy Chairperson are both unable to attend a meeting, the other members present may appoint one of them to preside at that meeting. |
| Vote of presiding member | 5. <u>The person presiding has a deliberative vote and a casting</u>
vote. |
| Decision by majority | 6. A decision supported by a majority of the votes cast at a meeting of the Committee shall be the decision of the Committee. |
| Minutes | 7. The Committee shall keep and maintain records of the minutes of all its meetings. |
| Allowances | 8. All members of the Committee are entitled to allowances as are prescribed by regulations. |
| Other procedures | 9. The Committee may regulate its own procedures, subject to the procedures in this Act. |
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TOBACCO CONTROL BILL 2010

OBJECTS AND REASONS

The objects of this Bill are –

- (a) to protect the health of the public against the dangers of tobacco smoking;
- (b) to encourage non-smokers to refrain from smoking and protect them from persuasion or inducements to use tobacco products and consequent dependence on them;
- (c) to enhance public awareness of the hazards of tobacco use by ensuring the effective communication of accurate and relevant information to consumers of tobacco products;
- (d) to protect the public to the extent deemed reasonable and possible from the hazards of involuntary exposure to tobacco smoke;
- (e) to encourage and assist smokers to give up smoking, to promote good health and the prevention of illness; and
- (f) to reduce some of the harmful effects of tobacco products by monitoring and regulating the presence of harmful constituents in tobacco products and in tobacco smoke.

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MINISTER FOR HEALTH AND MEDICAL SERVICES

EXPLANATORY MEMORANDUM

Clause 1 provides for the short title and commencement

Clause 2 provides for the definition of words.

Clause 3 sets out the objects.

Clause 4 provides for restrictions on tobacco product advertisements, subject to certain exceptions.

Clause 5 provides things that a retailer may do, such as display of tobacco product for sale, etc.

Clause 6 prohibits use of brand name or trademark for tobacco product for promoting or sponsoring sporting, educational, cultural activities, etc.

Clause 7 prohibits free distribution, such as promotion of tobacco products, etc.

Clause 8 prohibits use of tobacco trademark in other article other than packages containing tobacco products.

Clause 9 regulates warning on use of tobacco products to be displayed on the packages.

Clause 10 empowers the Minister to recognise that packaging, labelling, etc., in compliance to a law of another country to be in compliance with the law of Solomon Islands.

Clause 11 prohibits selling, exportation, importation, etc., of tobacco products which the packaging or labelling is false, misleading or deceptive.

Clause 12 prohibits selling of cigarettes in rolls other than in packages.

Clause 13 prohibits selling or giving cigarettes to a child (a person under 18 years).

Clause 14 prohibits using self-service vending machine to sell tobacco products.

Clause 15 provides for licensing of those who want to sell, distribute, etc tobacco products.

Clause 16 provides for obligation on manufacturer and importers to test toxic constituents in the smoke from tobacco products.

Clause 17 obligates the manufacturer or importer to provide reports to the Minister on any test carried out under clause 16.

Clause 18 regulates content of tobacco products or smoke emissions.

Clause 19 prohibits smoking in workplaces, and any public place, etc., declared by the Minister.

Clause 20 prohibits smoking in schools.

Clause 21 prohibits smoking in hospitals.

Clause 22 prohibits smoking in public transport.

Clause 23 provides identification of smoking and non-smoking areas.

Clause 24 establishes the Healthy Lifestyles Promotion Committee comprising 6 members.

Clause 25 sets out the functions of the Committee.

Clause 26 established the Healthy Lifestyles Promotion Fund.

Clause 27 requires the Committee to prepare annual reports.

Clause 28 provides for the appointment of authorised officers to be delegated powers and functions under the proposed Act.

Clause 29 empowers authorised officers to require persons to provide information, records, etc required for operation and enforcement of the proposed Act.

Clause 30 empowers authorised officers to enter premises. For premises other than a workplace, a 24 hour notice is required to be first given; otherwise a warrant may be sought if entry is refused.

Clause 31 provides for the authority to search and seizure when entering premises.

Clause 32 creates the offence of obstructing an authorised officer from carrying out his powers.

Clause 33 empowers authorised officers to give directions to persons take measures to remedy or prevent further contravention.

Clause 34 empowers the court, on conviction, to make further orders to remove advertisement or pay costs for removal of such advertisement or

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order forfeiture and destruction of tobacco product that is the subject of the offence.

Clause 35 makes terms of contracts, etc that are inconsistent with this Act as void.

Clause 36 provides an appeal mechanism to the Principal Magistrate's Court.

Clause 37 sets out the penalties for offences.

Clause 38 makes officers of a body corporate liable for the offences committed by the body corporate.

Clause 39 prohibits persons connected with manufacturing, etc of tobacco product from being appointed as authorised officers.

Clause 40 protects persons performing functions and powers from being liable for performing the functions or powers in good faith.

Clause 41 empowers the Minister to make regulations.

Clause 42 makes the Convention to have the force of law subject to adaptations and modifications as may be prescribed by regulations.

MINISTER FOR HEALTH AND MEDICAL SERVICES

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