

REPUBLIC OF VANUATU

**TOBACCO CONTROL ACT
NO. 19 OF 2008**

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REPUBLIC OF VANUATU

**TOBACCO CONTROL
ACT NO. 19 OF 2008**

An Act to govern the import, distribution, sale, marketing, promotion and use of tobacco products in Vanuatu.

Be it enacted by the President and Parliament as follows:

PART 1 PRELIMINARY MATTERS

1 Interpretation

(1) In this Act, unless the contrary intention appears:

additive, in relation to tobacco products, means a substance that forms part of a tobacco product that is not cured tobacco leaf and includes:

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

contained in the paper, filter, portion, pouch or similar part of the tobacco product;

aircraft means any machine or craft that can derive support in the atmosphere from the reactions of the air;

authorised officer means a person who is appointed for the purposes of this Act under section 35;

broadcast means the transmission of programmes, whether or not encrypted, by radio waves or other means of telecommunication for reception by the public by means of broadcasting receiving apparatus;

cigarette means a tobacco product comprising a roll of cut tobacco, enclosed in paper;

constituents mean:

(a) in relation to tobacco products intended for smoking, the chemicals found in the product itself, and in the smoke and other products of combustion emitted from the product;

(b) in relation to smokeless tobacco products, the chemicals inherent in the product;

Director-General means the Director-General of the Department responsible for health;

distributor, in relation to tobacco products, means a person who sells tobacco products and includes a manufacturer or importer of tobacco products, but does not include a person whose only sale of tobacco products is by way of retail;

educational facility means any school, college, place of learning or instruction and includes any kindergarten or pre-school facility;

exporter, in relation to tobacco products, means any person who sends, or arranges for tobacco products or raw tobacco to be sent from Vanuatu to a point outside of Vanuatu for the purpose of sale or distribution;

health message, 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 and suggestions for quitting, and any other matter related to tobacco and health, or other adverse effects of tobacco use or exposure, as prescribed by regulations made under the Act;

importer, in relation to tobacco products, means any person who brings tobacco products or raw tobacco into Vanuatu for the purpose of sale or distribution;

licensed premises, has the same meaning as in the Liquor Licensing Act [CAP 52];

loose cigarettes means cigarettes that are not contained in a package;

loose tobacco means tobacco, prepared for smoking in hand rolled cigarettes or in a pipe, which is not contained in a package;

manufacturer, in relation to tobacco products, means any person that manufactures, fabricates, produces, processes, packs or labels tobacco products for the purpose of sale or distribution;

Minister means the Minister responsible for health;

other information, in connection with a health message on a tobacco product, means such additional or amplifying information or explanatory material which, as prescribed, is to be displayed or published in conjunction with that health message;

package, in relation to a tobacco product, means any container, wrapper, carton, or other enclosure that contains any tobacco product or in which tobacco products are customarily sold and includes the package's label;

point of sale, in relation to the sale of tobacco products, means a counter or checkout where tobacco products may be bought; and includes a till or cashbox, where tobacco products may be bought, even if it is not at or part of that counter or checkout;

prescribed means prescribed by the regulations made under this Act;

promote, in relation to tobacco products or the activities of a seller of tobacco products, means any act or practice that is intended or likely to encourage the purchase or use of any tobacco product or brand or create a positive awareness of, or association with, a tobacco product, brand, manufacturer or seller;

public place has the meaning given by subsections (2) and (3);

public transport vehicle means any vehicle that carries passengers for hire or reward, whether locally, across islands, or internationally;

publish means to:

- (a) insert in any book, newspaper or other periodical publication printed, published, or distributed in Vanuatu; or
- (b) send to any person, by post or otherwise; or
- (c) deliver to any person or leave upon premises in the occupation of any person; or
- (d) broadcast; or
- (e) include in any film or video recording; or
- (f) include in any disk for use with a computer; or

- (g) disseminate by means of any other electronic medium; or
- (h) distribute by any means; or
- (i) display by way of a sign, notice, poster, or other means; or
- (j) bring to the notice of the public in Vanuatu in any other manner;

raw tobacco means tobacco that has not been processed or prepared for consumption;

restaurant means any premises, or any part of any premises, where the principal business is the selling of meals or refreshments to the general public for consumption on the premises, whether or not liquor is or may be sold on those premises or that part of those premises and includes any room or area on a public transport vehicle where meals or refreshments are provided for passengers to consume;

seller, in relation to tobacco products, means any person who sells any tobacco product or raw tobacco and includes any manufacturer, wholesaler, importer, exporter, retailer, or other distributor;

smoking means inhaling or exhaling the smoke from, or handling, a lighted tobacco product;

tobacco means any preparation of the dried leaves of the *Nicotiana tabacum*, a plant of the nightshade family;

tobacco carton means a box, carton, pack, packet, pouch, tin, wrapping, or other package containing two or more tobacco packages;

tobacco product means any product intended for human consumption which contains tobacco in any form, in an amount that is more than an incidental ingredient or component and includes all parts and materials such as filters, rods, portion pouches, and similar matter, as applicable, including loose tobacco but not including raw tobacco;

tobacco product advertisement means any writing, still or moving picture, sign, symbol or other visual image, or any sounds, or any combination of two or more of those things (in whatever form that advertisement may be produced, including but not limited to hard copy, soft or electronic form, narrowcast or broadcast), which is either intended to or has the effect of advertising, promoting or giving any form of positive publicity (either directly or indirectly) to any one or more of the following:

- (a) smoking;
- (b) the purchase or use of a tobacco product or a range of tobacco products;
- (c) the whole or a part of a trade mark of goods which are or include tobacco products;

- (d) the whole or a part of a design of articles which are or include tobacco products;
- (e) the whole or a part of the name of a person:
 - (i) who is a manufacturer, importer or who sells tobacco products; and
 - (ii) whose name appears on, or on the packaging of, some or all of those products;
- (f) any other words (for example, the whole or a part of a brand name) or designs, or combination of words and designs, that are closely associated with a tobacco product or a range of tobacco products (whether also closely associated with other kinds of products);

tobacco sponsorship means the attribution, acknowledgment, association or identification (in a manner which has the effect, directly or indirectly, of giving publicity (whether to the public, to any section of the public or to any person or group of persons)) of a tobacco manufacturer, seller, brand, or product with, on, or in connection with any one or more of:

- (a) an entertainment, sporting, recreational, educational, cultural, or other public event or work;
- (b) a person or team participating in such an event or work, including equipment, clothing, and accessories;
- (c) a service provided or contribution made by a tobacco manufacturer or seller;
- (d) a building, institution, stadium, organisation or other entity which is not a tobacco manufacturer, importer or seller;

wholesaler, in relation to tobacco products, means any person who buys tobacco products and re-sells them to another seller;

workplace has the meaning given by subsections (4) and (5).

(2) A place is a public place if it is a place (including any ship, aircraft or other vehicle or conveyance used for the purposes of public transport) to which members of the general public or class of the general public ordinarily have access by express or implied invitation or licence, whether by payment or otherwise and includes any building, structure or facility which is either owned or occupied by the Republic of Vanuatu.

(3) Any place or part thereof used primarily as a private residence is not to be considered a public place under this Act;

(4) A place is a workplace if it is a place in or at which employees, contractors, volunteers, or other persons perform duties of employment, services (paid or unpaid) or other work and includes private offices, common areas, and any other area that generally used by such persons during the course of their employment or work, and it includes:

- (a) any workplace owned or occupied by the Republic of Vanuatu; and
- (b) all public places where persons are expected to work including, without limitation, hotels, restaurants and bars.

(5) Any place or part thereof which is used primarily as a private residence shall not be considered a workplace under this Act.

2 Purpose of this Act

(1) The purpose of this Act is:

- (a) to reduce the social acceptance of tobacco use in Vanuatu by applying controls on the marketing, advertising, promotion and sale of tobacco products and their association through sponsorship with other products and events;
- (b) to protect the health of young persons by restricting their access to tobacco products and exposure to tobacco marketing;
- (c) to promote the accurate portrayal of the health and social consequences of tobacco use;
- (d) to reduce some of the harmful effects of tobacco products by monitoring and regulating the presence of harmful substances in tobacco products and in tobacco smoke;
- (e) to protect individuals from the hazards of exposure to tobacco smoke;
- (f) to promote an environment where non-smoking and the absence of tobacco promotion is the norm.

(2) Any product labelled as containing tobacco is to be considered for the purposes of this Act to be a tobacco product.

PART 2 TOBACCO ADVERTISING, PROMOTION, MARKETING AND SALES

3 Prohibition on advertising

(1) A person must not publish, or arrange for any other person to publish, any tobacco product advertisement in Vanuatu.

(2) A person who resides in, or operates from, the Republic of Vanuatu must not display, export or publish any tobacco product advertisement so that it can be viewed

by persons resident in another country.

(3) Any person who contravenes subsection (1) or (2) commits an offence and is liable on conviction:

(a) in the case of a body corporate - to a fine not exceeding VT 5 Million:

(b) in the case of an individual - to a fine not exceeding VT 1 Million or a term of imprisonment of not more than 2 years, or both.

4 Activities that are not tobacco product advertisements

(1) The undertaking of any one or more of the following activities is not to be considered as tobacco product advertisements under this Act:

(a) commentary, opinion, report, editorial, or political discourse related to tobacco products or sellers;

(b) depiction of or reference to a tobacco product or brand made in any artistic, literary, scientific, educational, or entertainment production, performance, writing or other work.

(2) Subsection (1) only applies if the activity is not made in exchange for or in the expectation of remuneration, reward or emolument of any sort or other consideration (whether direct or indirect) from a seller or any of its agents.

5 Exceptions to section 3

(1) Despite section 3, a person may do all or any of the following set out in subsections (2) to (7).

(2) A person may display a retailer's name or trade name on the exterior of a retailer's place of business, in accordance with any regulations made under this Act, if that wording does not include:

(a) a reference to the name or trademark of a tobacco product; or

(b) the name of a manufacturer of tobacco products;

whether or not that name or trade name contains a word or phrase that relates to tobacco products or to tobacco smoking.

(3) A person may place inside a retailer's place of business, price notices indicating the tobacco products available for purchase within that place and their prices if these notices comply with any regulations made under this Act in relation to their size, colour, content and number, and include any health message and other information prescribed by those regulations.

(4) A person may display tobacco products inside a retailer's place of business if the display complies with any regulations made under this Act.

(5) A person in the tobacco growing, manufacturing, importing, exporting, distribution, selling or trading business may make commercial communications directed solely at other persons in the tobacco growing, manufacturing, importing, exporting, distribution, selling or trading business.

(6) A person may operate an Internet web site for any particular seller, so long as it presents factual information about the business and does not advertise or promote tobacco products or brands.

(7) A person may advertise a tobacco product in an imported newspaper, book or magazine, or in a radio or television transmission or a data message originating outside of Vanuatu or any film or video made outside Vanuatu, unless:

(a) the principal purpose of the newspaper, book, magazine, radio or television broadcast, data message, film or video recording is the promotion of tobacco products; or

(b) the newspaper, book, magazine, radio or television broadcast, data message, film or video recording is targeted primarily at a Vanuatu audience.

6 "Smoking Kills" signage at point of sale

(1) A retailer of tobacco products must clearly display, in close proximity to tobacco products which are displayed for sale, a sign with the words 'Smoking Kills', in Bislama, English and French, printed:

(a) in dark coloured words on a white background; and

(b) in a font which is clear and legible, and printed at such a size and boldness that, subject to subsection (3), the words 'Smoking Kills' as nearly as possible take up the full area of the sign.

(2) The sign must be at least 360cm² in area.

(3) The sign may include the attribution 'Ministry of Health Warning' in Bislama, English and French, printed after the words 'Smoking Kills' if the print size of the attribution is no greater than one half the print size of the words 'Smoking Kills'.

(4) Any person who contravenes subsection (1), (2) or (3) commits an offence and is liable on conviction:

(a) in the case of a body corporate - to a fine not exceeding VT 50,000;

(b) in the case of an individual - to a fine not exceeding VT 10,000.

7 Prohibition against brand stretching

(1) A person must not advertise, display for sale or distribution, sell, or distribute any goods which are not a tobacco product, or any service, in any manner or form that

contains any writing, picture, image, graphic, message, or other matter, in whole or part, that is commonly identified or associated with, or is likely or intended to be identified or associated with a tobacco product, brand, or seller.

(2) A person must not display on any building (including, but not limited to any building which is or houses a club, restaurant, or stadium) or on any other structure or in any other place any name, writing, picture, image, graphic, message, or other matter, in whole or part, which is commonly identified or associated with, or is likely or intended to be identified or associated with a tobacco product, brand, or seller.

(3) Nothing in subsection (2) applies in respect of the business premises of any seller whose sole or principal business is either the manufacture or sale of tobacco products.

(4) Any person who contravenes subsection (1) or (2) commits an offence and is liable on conviction:

(a) in the case of a body corporate - to a fine not exceeding VT 500,000;

(b) in the case of an individual - to a fine not exceeding VT 100,000 or a term of imprisonment of not more than one year, or both.

8 Prohibition against reverse brand stretching

(1) A person must not display (either in whole or in part) on a tobacco product, any brand name, trademark or other sign, symbol, logo, or similar visual matter which is commonly associated with any goods which are not a tobacco product, or any service.

(2) A person who contravenes subsection (1) commits an offence and is liable:

(a) in the case of a body corporate - to a fine not exceeding VT 500,000;

(b) in the case of an individual - to a fine not exceeding VT 100,000 or a term of imprisonment of not more than one year, or both.

9 Tobacco sponsorships, scholarships, etc. prohibited

(1) This section applies to an event or activity if the name ascribed to the event or activity, or any item used or associated with the event or activity or in connection with its organisation, promotion, marketing or merchandising, includes or is associated in any way (directly or indirectly), with:

(a) any tobacco product; or

(b) any tobacco product trade mark; or

(c) a company name or any part of a company name which may be included in that tobacco product trade mark.

- (2) A person must not:
- (a) organise or promote any event or activity to which this section applies which is to take place, in whole or in part, in Vanuatu; or
 - (b) make any financial contribution towards the event or activity which is to take place, or is taking place, or has taken place, in whole or in part, in Vanuatu; or
 - (c) make any financial contribution to any person in respect of:
 - (i) the organisation or promotion, by that person, of; or
 - (ii) the participation, by the person, in,

the event or activity which is to take place, or is taking place, or has taken place, in whole or in part, in Vanuatu.
- (3) Despite subsection (2), if a contract for sponsorship has been executed prior to the date on which this Act is published in the Gazette, any sponsorship obligations provided by that contract must be performed in accordance with its obligations under subsections (4) and (5).
- (4) The sponsor must include such health messages and constituent and additives disclosures as are prescribed in any tobacco product advertisement which is displayed at any event or activity including any mention, display, or other public association by any means of a seller, tobacco brand, or tobacco product.
- (5) The sponsor must give the Director-General not less than seven prior days' notice of the relevant display and, prior to that display, must meet the cost of one government advertisement that complies with subsection (6) about the dangers of tobacco use, at no cost to the government, for every tobacco product advertisement displayed at the sponsored event.
- (6) The government advertisement is to be given such time, space, prominence, and treatment as the Director-General determines is equally favourable to that afforded its matching tobacco product advertisement.
- (7) Any person who contravenes subsection (2), (4) or (5) commits an offence and is liable on conviction:
- (a) in the case of a body corporate- to a fine not exceeding VT 5 Million;
 - (b) in the case of an individual –to a fine not exceeding VT 1 Million or a term of imprisonment of not more than 2 years, or both.

10 Contributions permitted

Despite section 9, a seller may make contributions or give financial or other assistance to any event, activity, person, organisation, institution or other entity if any

corresponding attribution, association or identification with the seller or with any tobacco product or brand (whether required by the seller or not) is limited to private correspondence.

11 Sale of tobacco products to persons under 18 prohibited

- (1) A person must not sell a tobacco product to a person younger than eighteen years of age.
- (2) A person who sells a tobacco product to another person must take reasonable precautions and exercise due diligence to ensure that the intending purchaser is a person who is eighteen years of age or older.
- (3) A retail seller must display to customers, in a prominent manner at each point of sale of that seller at which tobacco products may be purchased a notice which clearly states that the sale of tobacco products to people who are younger than eighteen years is prohibited.
- (4) Regulations may provide as to the form and content of any such notice.
- (5) A person who contravenes subsection (1), (2) or (3) commits an offence and is liable on conviction:
 - (a) in the case of a body corporate - to a fine not exceeding VT 5 Million;
 - (b) in the case of an individual - to a fine not exceeding VT 1 Million or a term of imprisonment of not more than 2 years, or both.

12 Confectionery and toy tobacco products prohibited

- (1) A person must not manufacture or sell any product designed for or likely to appeal to children or persons under the age of 18 years that evokes or is likely to evoke an association with a tobacco product or brand, including but not limited to candy cigarettes, toys in the shape of cigarettes or other tobacco products, and similar products.
- (2) A person who contravenes subsection (1) commits an offence and is liable on conviction:
 - (a) in the case of a body corporate - to a fine not exceeding VT 5 Million:
 - (b) in the case of an individual - to a fine not exceeding VT 1 Million or a term of imprisonment of not more than 2 years, or both.

13 Restrictions on the sale of certain tobacco products in small quantities

- (1) A person must not in the course of retail trade either sell or offer for sale
 - (a) loose cigarettes; or

- (b) loose tobacco.
- (2) A seller must not sell or offer for sale:
 - (a) cigarettes in a package that contains fewer than twenty cigarettes; or
 - (b) loose tobacco in a package that contains less than thirty grams of tobacco.
- (3) A person who contravenes subsection (1) or (2) commits an offence and is liable on conviction:
 - (a) in the case of a body corporate - to a fine not exceeding VT 5 Million;
 - (b) in the case of an individual - to a fine not exceeding VT 1 Million or a term of imprisonment of not more than 2 years, or both.

14 Tobacco products not to be advertised or labelled as suitable for chewing, etc.

- (1) A person must not promote in any way a tobacco product in a manner which directly states or indirectly suggests the product is suitable for chewing or for any other oral use (other than smoking).
- (2) A person must not import for sale, sell, pack, or distribute any tobacco product labelled or otherwise described as suitable for chewing, or for any other oral use (other than smoking).
- (3) A person who contravenes subsection (1) or (2) commits an offence and is liable on conviction:
 - (a) in the case of a body corporate, to a fine not exceeding VT 5 Million;
 - (b) in the case of an individual to a fine not exceeding VT 1 Million or a term of imprisonment of not more than 2 years, or both.

15 Self-service vending machines and other methods of unsupervised sales prohibited

- (1) A tobacco product must not be sold or furnished through a vending machine which is capable of operation by a person other than the seller of that tobacco product or by any employee of the seller.
- (2) A tobacco product must not be sold or furnished at retail by postal, courier or other form of delivery or means by which the age of the purchaser or recipient of the tobacco product cannot be verified.
- (3) A person who contravenes subsection (1) or (2) commits an offence and is liable on conviction:

- (a) in the case of a body corporate - to a fine not exceeding VT 5 Million:
- (b) in the case of an individual - to a fine not exceeding VT 1 Million or a term of imprisonment of not more than 2 years, or both.

16 Sales of tobacco products prohibited in certain places

- (1) A person must not sell or otherwise distribute tobacco products in any place where health care services are rendered or in any educational facility serving people under 18 years of age, or in any other place as may be prescribed by regulations.
- (2) A person who contravenes subsection (1) commits an offence and is liable on conviction:
 - (a) in the case of a body corporate - to a fine not exceeding VT 5 Million:
 - (b) in the case of an individual - to a fine not exceeding VT 1 Million or a term of imprisonment of not more than 2 years, or both.

17 Free distribution and rewards prohibited

- (1) A seller must not:
 - (a) distribute any tobacco product; or
 - (b) supply any tobacco product to any person for distribution; or
 - (c) in the case of a retailer - supply any tobacco product to any person for the purpose of that retailer's business,

free of charge, or at a charge which is reduced below the usual market rate charged to purchasers at retail or (in the case of a distribution or supply to a wholesaler) at wholesale.

- (2) A person, in connection with, or for the purpose of promoting, the sale of a tobacco product, must not supply to the purchaser of any goods or services or any other person by reason of the purchase of those goods or services:
 - (a) a prize, gift or other benefit; or
 - (b) a stamp, coupon, token, voucher, ticket or other thing by virtue of which the purchaser or any other person may become entitled to, or may qualify for a prize, gift or other benefit (whether the entitlement or qualification is absolute or conditional); or
 - (c) any thing which, or a copy or facsimile of which, is a necessary prerequisite to participation in, or is likely to confer an advantage in, any game, contest or other activity in which a participant may become entitled to, or may qualify for, a prize, gift, or other benefit (whether the entitlement or

qualification is absolute or conditional).

(3) A person who contravenes subsection (1) or (2) commits an offence and is liable on conviction:

(a) in the case of a body corporate - to a fine not exceeding VT 5 Million:

(b) in the case of an individual - to a fine not exceeding VT 1 Million or a term of imprisonment of not more than 2 years, or both.

PART 3 TOBACCO LABELLING, CONTENT, TESTING AND REPORTING

18 Controls on the content of tobacco products

(1) A person must not manufacture, import, export, sell or otherwise distribute any tobacco product that does not comply with the requirements regulating the additives and constituents of tobacco products prescribed by regulations made under this Act.

(2) A person who contravenes subsection (1) commits an offence and is liable on conviction:

(a) in the case of a body corporate, to a fine not exceeding VT 5 Million;

(b) in the case of an individual to a fine not exceeding VT 1 Million or a term of imprisonment of not more than 2 years, or both.

19 Testing required

(1) This section applies to any tobacco product prescribed, for the purposes of this section, by regulations under this Act.

(2) A manufacturer and importer of a tobacco product to which this section applies must at least once in each calendar year conduct, in accordance with the regulations, either or both of the following (as the regulations require):

(a) a test for the constituents of each brand of the tobacco product sold by the manufacturer or importer, and the respective quantities of those constituents;

(b) if the tobacco product is intended to be smoked, a test for the constituents of the smoke of each brand of the tobacco product sold by the manufacturer or importer, and the respective quantities of those constituents.

(3) If the regulations require it, each variant of the brand must be tested separately.

(4) In addition to the annual test or tests required by subsection (2), the Director-General may, by notice in writing to the manufacturer or importer of a tobacco

product to which that subsection applies, require a further test or tests to be conducted.

(5) The further test or tests under subsection (4) must be conducted, in accordance with the regulations referred to in subsection (2):

- (a) in a laboratory nominated by the Director General; and
- (b) at the expense in all respects of the manufacturer or importer.

(6) In any calendar year, the Director-General must not require further tests under subsection (4) in respect of more than 10% of the brands of tobacco products to which subsection (2) applies that are sold by a particular manufacturer or importer.

(7) A person who contravenes a subsection of this section commits an offence and is liable on conviction:

- (a) in the case of a body corporate - to a fine not exceeding VT 5 Million;
- (b) in the case of an individual - to a fine not exceeding VT 1 Million or a term of imprisonment of not more than 2 years, or both.

20 Reports of constituents, additives, and certain business information required

(1) A manufacturer, importer, and exporter of tobacco products must submit to the Director-General:

- (a) the results of all tests carried out pursuant to section 19 within 60 days of testing and in any event not later than the 31st day of January of the following year; and
- (b) all other information required either under this Act or the regulations, on or before the 31st day of January in each year unless otherwise prescribed;

(2) A person who contravenes subsection (1) commits an offence and is liable on conviction:

- (a) in the case of a body corporate - to a fine not exceeding VT 5 Million;
- (b) in the case of an individual - to a fine not exceeding VT 1 Million or a term of imprisonment of not more than 2 years, or both.

21 Packaging and labelling requirements

(1) Subject to section 23, a person must not sell, distribute or display for sale or distribution, any tobacco product that is not packaged and labelled in a manner that complies with all requirements of this Act and with those of any regulations made under this Act.

(2) A person who contravenes subsection (1) commits an offence and is liable on conviction:

(a) in the case of a body corporate - to a fine not exceeding VT 5 Million:

(b) in the case of an individual - to a fine not exceeding VT 1 Million or a term of imprisonment of not more than 2 years, or both.

22 Compulsory health messages and other information

(1) Subject to section 23, a person must not sell, distribute or display for sale or distribution, any tobacco product unless it has, permanently affixed on its package, or permanently affixed to an individual wrapper in the case of cigars, the health messages and other information prescribed by regulations made under this Act.

(2) The regulations must provide that the package of any tobacco product sold in Vanuatu, and all outside packaging and labelling of such tobacco products, must carry health messages and other information, as specified in the regulations and that those health messages and other information:

(a) are rotated so that a range of messages and other information is displayed on all tobacco brands and brand variants; and

(b) are large, clear, visible and legible; and

(c) are in Bislama, English and French; and

(d) take up a minimum of 30 percent of the principal display areas of tobacco packages.

(3) The regulations may provide that every unit, packet and package of every tobacco product sold in Vanuatu must carry messages that are in the form of, or include, pictures or pictograms.

(4) All tobacco products imported for sale or sold in Vanuatu must carry a statement that the product is intended for sale in Vanuatu.

(5) A person who contravenes a subsection of this section commits an offence and is liable on conviction:

(a) in the case of a body corporate - to a fine not exceeding VT 5 Million;

(b) in the case of an individual - to a fine not exceeding VT 1 Million or a term of imprisonment of not more than 2 years, or both.

23 Recognised acceptable standard

(1) For the purposes of this section, **substantially to the same effect as required by the Act** means health messages and other information, or constituent information, which, while differing in some respects from the requirements of this Act are

considered by the Minister, acting on the advice of the Director-General, to be, in all material respects, of a standard which warns and informs to a standard which meets or exceeds that required by sections 22, 24 and 26, and by any regulations made under this Act.

(2) Tobacco products identified in a Gazette notice published under subsection (4) that are packaged or labelled substantially to the same effect as required by the Act may be sold, distributed, displayed for sale or distribution, imported or exported.

(3) Tobacco products identified in a Gazette notice published under subsection (4) that carry health messages and other information substantially to the same effect as required by the Act may be sold, distributed, displayed for sale or distribution, imported or exported.

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

(5) The Minister, acting on the advice of the Director-General, may, by notice published in the Gazette, state that that packaging identified in a Gazette notice under subsection (4) as being substantially to the same effect as required by the Act, must be supplemented by health messages in Bislama, English and French added to the tobacco package by way of the addition of adhesive labels that are of such a nature that they cannot be removed without permanent damage to the tobacco package.

(6) Any adhesive label applied to a tobacco package in accordance with subsection (5) of this section must be applied to the tobacco package in a way that it does not obscure any health information other than the warning message it is intended that it replace.

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

(1) Subject to section 8, a person must not sell, distribute or display for sale or distribution, any tobacco product unless it has, permanently affixed on its package, or permanently affixed an individual wrapper in the case of a cigar, a disclosure in the form and manner prescribed by regulations made under this Act of any or all of the following:

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

(2) A person who contravenes subsection (1) commits an offence and is liable on conviction:

(a) in the case of a body corporate - to a fine not exceeding VT 5 Million:

(b) in the case of an individual - to a fine not exceeding VT 1 Million or a term of imprisonment of not more than 2 years, or both.

25 Package inserts

(1) A person must not sell or distribute, any tobacco product unless that product's package contains a package insert displaying information, including health messages and other information, in the form and manner prescribed by regulations made under the Act.

(2) A person who contravenes subsection (1) commits an offence and is liable on conviction:

(a) in the case of a body corporate - to a fine not exceeding VT 5 Million:

(b) in the case of an individual - to a fine not exceeding VT 1 Million or a term of imprisonment of not more than 2 years, or both.

26 Misleading labelling prohibited

(1) A person must not sell, distribute, display for sale or distribution, import or export any tobacco product in which the packaging or labelling:

(a) promotes that tobacco product by any means that are false, misleading, deceptive or likely to create an erroneous impression of the characteristics, health effects, hazards or emissions of that product; or

(b) includes any written term, descriptor, trademark, symbol or sign that directly or indirectly creates the false impression that a particular tobacco product is less harmful than other tobacco products.

(2) The regulations may prescribe words and terms which are not to be used on the packaging or labelling of a tobacco product and the use of any word or term so prescribed on the packaging or labelling of a tobacco product is be deemed to be misleading for the purposes of subsection (1).

(3) A person who contravenes subsection (1) commits an offence and is liable on conviction:

(a) in the case of a body corporate - to a fine not exceeding VT 5 Million;

(b) in the case of an individual - to a fine not exceeding VT 1 Million or a term of imprisonment of not more than 2 years, or both.

PART 4 PROTECTION OF NON-SMOKERS

27 Smoking in public places and workplaces prohibited

- (1) Subject to sections 28, 29 and 30, a person who has actual possession or control of any public place or any workplace must not permit smoking by any other person in any part of that public place or workplace which is either indoors or is fully or partly enclosed.
- (2) Despite subsection (1), where only one person works in an indoor or a fully or partly enclosed workplace, that person may smoke in all areas of that workplace except those areas (if any) to which the public normally has access.
- (3) A person must not smoke in any place where smoking is prohibited under this Act or in any place where smoking is prohibited under the regulations made under this Act.
- (4) A person who contravenes subsection (1) or (3) commits an offence and is liable on conviction:
 - (a) in the case of a body corporate - to a fine not exceeding VT 5 Million;
 - (b) in the case of an individual - to a fine not exceeding VT 1 Million or a term of imprisonment of not more than 2 years, or both.

28 Grace period for smoking in restaurants

- (1) Subject to subsections (2) and (3), the owner or operator of a restaurant may permit smoking in the restaurant.
- (2) If a restaurant has only one room or enclosed area set aside for the consumption of food by patrons, the owner or operator of the restaurant must ensure that:
 - (a) at least half the seating is designated for people who do not wish to smoke; and
 - (b) signs to that effect are prominently displayed; and
 - (c) as far as is reasonably practicable, the seating designated for people who do not wish to smoke is separate from the seating where smoking is permitted; and
 - (d) no person smokes in the seating designated for people who do not wish to smoke.
- (3) If a restaurant has more than 1 room or enclosed area set aside for the consumption of food by patrons, the owner or operator of the restaurant must:
 - (a) designate at least one room or area for people who do not wish to

smoke; and

- (b) ensure that signs to that effect are prominently displayed; and
 - (c) ensure that at least half of the seating in that restaurant is designated for people who do not wish to smoke; and
 - (d) ensure that no person smokes in the seating designated for people who do not wish to smoke.
- (4) A person must not smoke in a restaurant in seating designated for people who do not wish to smoke.
- (5) Subject to subsection (8), this section overrides section 27.
- (6) A person who contravenes subsections (2) or (3) of this section commits an offence and is liable on conviction:
- (a) in the case of a body corporate – to a fine not exceeding VT5 million;
 - (b) in the case of an individual – to a fine not exceeding VT1 million or a term of imprisonment of not more than 2 years, or both.
- (7) A person who contravenes subsection (4) commits an offence and is liable on conviction to a fine not exceeding VT 10,000.
- (8) This section expires or ceases to have effect twelve months after the date on which this Act is published in the Gazette.

29 Grace period for smoking in licensed premises

- (1) Subject to subsection (2) and section 28, the licensee of any licensed premises may permit smoking in a room or enclosed area in the premises that is set aside primarily for the consumption of liquor by patrons.
- (2) If seating is set aside in the room or enclosed area for the consumption of meals by patrons, the licensee must ensure that:
- (a) at least half the seating is designated for people who do not wish to smoke; and
 - (b) signs to that effect are prominently displayed; and
 - (c) as far as is reasonably practicable, the seating designated for people who do not wish to smoke is separate from the seating where smoking is permitted; and
 - (d) no person smokes in the seating designated for people who do not wish to smoke.

- (3) A person must not smoke in any licensed premises in seating designated for people who do not smoke or who do not wish to smoke.
- (4) Subject to subsection (7), this section overrides section 27.
- (5) A person who contravenes subsection (2) of this section commits an offence and is liable on conviction:
- (a) in the case of a body corporate – to a fine not exceeding VT5 million;
 - (b) in the case of an individual – to a fine not exceeding VT1 million or a term of imprisonment of not more than 2 years, or both.
- (6) A person who contravenes subsection (3) commits an offence and is liable on conviction to a fine not exceeding VT 10,000.
- (7) This section expires or ceases to have effect twelve months after the date on which this Act is published in the Gazette.

30 Smoking in certain institutions

- (1) Subject to subsection (2), no person who has actual possession or control of a place where health care services are rendered or of an educational facility may permit smoking in that place.
- (2) Any person having actual possession or control of a place where health care services are rendered or of an educational facility may permit smoking to take place in a designated area of that place if:
- (a) the designated area where smoking is permitted is outside any building or fully or partly enclosed area; and
 - (b) a person is not required to undertake his or her usual work duties in that designated area or in close proximity to that area; and
 - (c) the smoke from the designated area does not adversely affect any indoor or enclosed place.
- (3) Despite section 27, smoking may be permitted in any prison upon terms and conditions approved from time to time in writing by the superintendent of that prison if those terms and conditions are not inconsistent with the following provisions:
- (a) prison employees who do not smoke, or who do not wish to smoke in their workplace, shall, so far as is reasonably practicable, be protected from tobacco smoke in the workplace;
 - (b) inmates who do not smoke, or who do not wish to smoke, in the prison shall, except where it is impracticable, be protected from tobacco smoke in the prison;

(c) any inmate who requests that he or she be secured in a cell in which smoking will not be permitted while he or she is there shall, unless it is impracticable, be placed in such a cell;

(d) subject to paragraphs (a) to (c), a correctional officer may designate any indoor or enclosed area used in common by detainees as an area in which smoking is permitted.

(4) No person may smoke in any place where smoking is prohibited under this section.

(5) A person who allows smoking to take place in contravention of a subsection of this section commits an offence and is liable on conviction:

(a) in the case of a body corporate - to a fine not exceeding VT 5 Million;

(b) in the case of an individual - to a fine not exceeding VT 1 Million or a term of imprisonment of not more than 2 years, or both.

(6) A person who smokes in contravention of a subsection of this section commits an offence and is liable on conviction to a fine not exceeding VT 10,000.

31 No smoking signs required

(1) A person having actual possession or control of any public place or workplace which is either indoors or is fully or partly enclosed must post signs stating prominently that smoking is not permitted in those parts of that place where smoking is not permitted under this Act.

(2) The signs must comply with any requirements set out in the regulations.

(3) A person who contravenes subsection (1) or (2) commits an offence and is liable on conviction:

(a) in the case of a body corporate - to a fine not exceeding VT 50,000;

(b) in the case of an individual - to a fine not exceeding VT 10,000.

32 Smoking prohibited on public transport vehicles

(1) A person must not smoke on any bus, taxi, shuttle vehicle or any other public transport vehicle used for the purposes of transporting passengers.

(2) The operator of a public transport vehicle must not permit any person to smoke in that vehicle while it is carrying passengers.

(3) A person must not smoke in an operating taxi, whether or not it is carrying passengers.

(4) The operator of a public transport vehicle must ensure that signs are posted in

the vehicle notifying the passengers that smoking is prohibited.

- (5) A person must not smoke in any enclosed area on any ship used for the purpose of transporting passengers.
- (6) The owner or operator of ship used to transport passengers must ensure that signs are posted on the ship notifying the passengers that smoking is prohibited in enclosed areas.
- (7) A person who smokes in contravention of this section commits an offence and is liable on conviction to a fine not exceeding VT 100,000.
- (8) An operator of a public transport vehicle who allows a person to smoke on a public transport vehicle in contravention of any relevant subsection of this section commits an offence and is liable on conviction:
 - (a) in the case of a body corporate - to a fine not exceeding VT 5 Million;
 - (b) in the case of an individual - to a fine not exceeding VT 1 Million or a term of imprisonment of not more than 2 years, or both.

33 Smoking in aircraft

- (1) A person must not smoke in an aircraft that is carrying members of the public on any journey in or beginning or ending in Vanuatu.
- (2) A person who contravenes subsection (1) commits an offence and is liable on conviction to a fine not exceeding VT 100,000.

34 Obligations of owners or operators of premises and owners or operators of public transport vehicles or aircraft

- (1) The following persons must take reasonable steps to ensure that no person smokes in violation of the provisions of this Act:
 - (a) all persons in actual possession or control of any public place or workplace, together with their agents and employees at that place;
 - (b) the owner or operator of any public transport vehicle or aircraft and their agents and employees on that vehicle or aircraft .
- (2) If a person smokes in violation of the provisions of this Act, the taking of reasonable steps may include:
 - (a) asking that person to stop smoking; and
 - (b) upon any failure or refusal of that person to comply with that request, requiring that person to leave the premises or, in the case of a public transport vehicle, to leave the vehicle at the next scheduled stop; and

- (c) if that person refuses to stop smoking or leave the premises or vehicle, seeking the assistance of law enforcement personnel.
- (3) A person must not in any way discriminate or retaliate against any other person (whether or not a servant, agent or invitee) who asserts his right to a smoke-free environment or who reports any violation of the provisions of this Act.
- (4) A person who contravenes subsection (1) or (2) commits an offence and is liable on conviction:
 - (a) in the case of a body corporate - to a fine not exceeding VT 5 Million:
 - (b) in the case of an individual - to a fine not exceeding VT 1 Million or a term of imprisonment of not more than 2 years, or both.

PART 5 AUTHORISED OFFICERS

35 Appointment of authorised officers

- (1) The Director-General may, appoint any person who has been appointed as an authorised officer under section 7 of the Public Health Act [CAP 234] to be an authorised officer under this Act.
- (2) A person appointed as an authorised officer under this Act has the power to exercise and carry out the functions and powers of an authorised officer under this Act.
- (3) The Director-General is to 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 an authorised person under this Act.
- (4) An authorised officer who holds an identity card issued under this section must, on the termination of his or her appointment, surrender the identity card to the Director-General.

36 Examination and investigation

Without prejudice to the other provisions of this Act, the Director General may conduct or cause to be conducted, any examination or investigation as he or she thinks necessary for the purposes of this Act.

37 Power to obtain information

The Director General may direct any person who has information which the Director General or any authorised officer requires, to furnish such particulars to the Director General or any authorised officer, within such time as the Director General may specify in such direction .

38 Protection of information provided

No particulars furnished in accordance with a direction under section 37, and information relating to any individual business obtained by means of such particulars, is to be disclosed (except in due discharge of duties under this Act), without the prior consent in writing of the person carrying on the business in question.

39 Power of entry

(1) Subject to the provisions of this section, any authorised officer has, on producing, if so required, some duly authenticated document showing his authority, a right to enter premises at all reasonable hours for all or any of the following purposes:

- (a) for the purpose of ascertaining whether there is, or has been, on or in connection with the premises any contravention of the provisions of this Act;
- (b) for the purpose of ascertaining whether or not circumstances exist which would authorise the Director General or the authorised officer to take or direct the taking of any action under this Act;
- (c) generally, for the purpose of the performance of his or her functions and duties under this Act.

(2) However, the admission to any premises, not being a workplace, must not occur unless twenty-four hours notice of the intended entry has been given to the occupier.

(3) If it is shown to the satisfaction of a court in a sworn written statement that:

- (a) admission to any premises by an authorised officer on reasonable grounds has been refused or refusal is anticipated; or
- (b) the premises are unoccupied; or
- (c) the occupier is temporarily absent; or
- (d) the case is one of urgency; or
- (e) an application for admission would defeat the object of the entry sought,

the court may, by warrant, authorise an authorised officer to enter the premises if necessary by force.

(4) Any person entering any premises by virtue of this section, or by warrant issued under it, may take with him or her such other persons as may be necessary, and, on leaving any unoccupied premises which he or she has entered by virtue of a warrant, must leave them as effectually secured against trespassers as he or she found them.

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

40 Powers of search, inspection and seizure

- (1) Subject to the provisions of this section, any authorised officer may, on entering a premises for the purposes of section 39 do all or any of the following:
- (a) examine, open, and test any equipment, tools, materials, packages or anything the officer reasonably believes is used or capable of being used for the manufacture, packaging, labelling, storage, distribution, display, advertising or promotion of tobacco products;
 - (b) examine any operation or process carried out on the premises;
 - (c) examine and make copies of or from any books, documents, notes, files, including electronic files, or other records the officer reasonably believes might contain information relevant to determining compliance with this Act or with regulations made under this Act;
 - (d) interview or question:
 - (i) any licensee or other person involved in selling, advertising or promoting, manufacturing, importing, exporting, growing, transporting, packaging, or distributing tobacco products; or
 - (ii) any owner of the premises, or any person using the premises, and his or her employees, agents, contractors and workers,

all of whom must cooperate fully and truthfully with any inspection or investigation;
 - (e) take samples of tobacco or tobacco products or components of products anywhere they are found and have them tested;
 - (f) if the officer reasonably believes that a provision of this Act or regulations made under the Act has been breached:
 - (i) seize and detain; or
 - (ii) order the storage without removal or alteration of any tobacco or tobacco product wherever they may be found,

upon providing the licensee or owner of the tobacco products, or if he or she is unavailable, any other person on the place where the tobacco products are located, written notice of the seizure and detention or order for storage, and the grounds for it;
 - (g) seize and detain and dispose of any tobacco product being sold by a person in a manner which contravenes the requirements of the Act.
- (2) A tobacco product that is seized and detained by an authorised officer must be

returned immediately 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 the requirements of the Act or regulations made under the Act,

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

(4) A police officer may accompany an authorised officer exercising powers under this section.

41 Penalty for obstruction

Any person who, without lawful reason, wilfully obstructs, assaults, hinders, threatens, abuses, insults or intimidates any person acting in the execution of his duty under this Act is guilty of an offence and is liable on conviction to a fine not exceeding VT 100,000 or to imprisonment for a term not exceeding 12 months or to both such fine and imprisonment.

42 Offences by a body corporate

(1) If a body corporate contravenes any provision of this Act, every person at that time of the commission of the offence who was:

- (i) a director; or
- (ii) general manager; or
- (iii) secretary; or
- (iv) other similar officer of such body corporate; or
- (v) who was acting, or purporting to act, in any such capacity,

is also guilty of such an offence unless the person proves that such offence was committed without his or her consent or knowledge and that he or she exercised all such diligence to prevent the commission of the offence as he or she ought to have exercised having regard to the nature of his or her functions in such capacity and in all the circumstances.

(2) A person may be prosecuted and convicted under a provision of this Act in accordance with subsection (1) whether or not the body corporate has been prosecuted or convicted under that provision.

43 Institution of proceedings

(1) A prosecution for an offence under this Act or any regulations made under this Act must not be instituted, except by the Public Prosecutor.

(2) An authorised officer must report offences committed against this Act or any regulations made under it to the Public Prosecutor.

44 Prevention of conflict of interest

(1) A person must not be appointed as an authorised person if he is engaged directly or indirectly in the import, export, manufacturing, packaging, fabrication, distribution or sale of tobacco products in Vanuatu.

(2) If an authorised officer has a personal interest in a case under investigation, he or she must disqualify himself or herself from the case or must be removed from the case by the Director General by a written instrument.

45 Indemnity and immunity of authorised officers

No suit, prosecution or other legal proceedings is to be instituted for any act or omission which in good faith is done or purported to be done by any person under this Act.

PART 6 MISCELLANEOUS

46 Penalty Notices

(1) An authorised officer may serve a penalty notice on a person if it appears to the officer that the person has committed an offence under section 6, 11, 12, 13, 27, 28, 29, 31, 32 or 33 or such other section as is prescribed by the regulations.

(2) A penalty notice is a notice to the effect that, if the person does not wish to have the offence determined by a court, the person may pay, within the time and to the person specified in the notice the amount of penalty prescribed by the regulations for the offence.

(3) If the amount of penalty prescribed for the purpose of this section for an alleged offence is paid under this section, no person is liable to any further proceedings for the alleged offence.

(4) A penalty notice may be served personally or by post.

(5) The amount of penalty prescribed under this section for an offence must not exceed the maximum amount of penalty which could be imposed for the offence by a court.

(6) Payment under this section is not to be regarded as an admission of liability for the purpose of, nor in any way affect or prejudice, any civil proceeding arising out of the same occurrence.

(7) This section does not limit the operation for any other provision of, or made under, this or any other Act relating to proceedings that may be taken in respect of offences.

47 Regulations relating to tobacco control

The Minister may make regulations to control smoking and limit the use of tobacco as contemplated by this Act or as is necessary or expedient for the purposes of this Act including, but not limited to any of the following purposes:

- (a) prescribing the form and content of information, documents, forms, certificates, notices, leaflets, signs, displays, particulars, and notifications, and the persons by whom and the persons to whom any such information, documents, forms, certificates, notices, leaflets, signs, displays, particulars, and notifications are to be supplied;
- (b) prescribing records and registers for the purposes of the Act, the manner in which and the period during which any such records and registers are to be kept; and the persons to whom, and the conditions on which, any such records and registers may be available for searching, inspection, or copying;
- (c) prescribing the size, colour, content, and number of signs that may be placed on the exterior of a retailer's place of business under section 5(a) of this Act, and the inclusion of health messages and other information on those signs;
- (d) prescribing the size, colour, content and number of price notices permitted under section 5(b) of this Act, and the inclusion of a health messages and other information on those notices;
- (e) prescribing the manner by which tobacco products may be displayed inside retail outlets under section 5(c) of this Act;
- (f) prescribing requirements for the purpose of section 9;
- (g) prescribing requirements for signage required under section 11;
- (h) prescribing additional places where it is prohibited to sell tobacco products for the purpose of section 16;
- (i) prescribing the form, size, and content of health messages and other information (including information about constituents) to be displayed with, on, or in packages of, tobacco products; and prescribing the circumstances and manner in which the messages and other information are to be so displayed, including:
 - (i) requiring tobacco products sold or offered for sale to display a photograph or picture intended to have effect as a warning relating to the effects of their use on health; or
 - (ii) requiring a package insert, in a prescribed form, to be placed inside packages of tobacco products sold or offered for sale;

- (j) specifying controls on the content of tobacco products, or the setting of product standards, including minima or maxima for identified constituents or additives;
- (k) prescribing the method of determining the constituents of tobacco products and the constituents of smoke produced from their combustion;
- (l) prescribing the form and manner in which returns and reports are to be filed under section 20;
- (m) requiring manufacturers and importers of tobacco products conducting tests for the constituents, and the respective quantities of those constituents of each brand sold by that manufacturers or importers to test each variant of the brand separately;
- (n) requiring manufacturers and importers of tobacco products conducting tests for the constituents, and the respective quantities of those constituents, in the smoke of each brand of the product sold by the manufacturers or importers that is intended to be smoked, to test each variant of the brand separately;
- (o) requiring manufacturers and importers of tobacco products to file with the Director General returns showing all additives used in the manufacture of the tobacco products sold by that manufacturer or importer;
- (p) requiring manufacturers and importers of tobacco products to file with the Director General returns showing by brand variant:
 - (i) the weight of tobacco (or the weight of tobacco and of each additive) used in the manufacture of the tobacco products sold by the manufacturer or importer; and
 - (ii) the quantity of each variant of a brand of tobacco product sold by the manufacturer or importer; and
 - (iii) the recommended price of each variant of a brand of tobacco product sold by the manufacturer or importer during the previous calendar year;
- (q) identifying any words or terms that are deemed as misleading words or terms for the purposes of section 26 of this Act;
- (r) requiring the licensing of growers, manufacturers, distributors, wholesalers, importers, or retailers of tobacco products;
- (s) prescribing places for the purposes of subsection 27(3);
- (t) prescribing penalties, not exceeding a fine of VT 5,000, for offences against the regulations;
- (u) providing for such other matters as are contemplated by or necessary

for giving full effect to the provisions of this Act or its due administration.

48 Commencement

(1) Sections 3, 6, 7, 8, 11, 12 and 17 come into force on the expiry of 3 months after the date on which this Act is published in the Gazette.

(2) Sections 13, 14, 15, 16, 22, 24, 26, 27, 30, 31, 32 and 34 come into force on the expiry of 6 months after the date on which this Act is published in the Gazette.

(3) Except as provided in subsections (1) and (2) of this section, this Act commences on the date on which it is published in the Gazette.