PACIFIC LEGISLATIVE FRAMEWORK FOR NON-COMUNICABLE DISEASES

[MANA/PLF WORKSHOP DRAFT]

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INTRODUCTION

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CHAPTER 1: TOBACCO CONTROL

1.0 Policy objectives and rationales

The policy objectives are:

(a) to regulate measures to reduce demand for tobacco product, including measures on tobacco tax, exposure to tobacco smoke, contents, product disclosures, packaging and labelling, advertisements, promotion, sponsorship, dependence and cessation; and

(b) to regulate measures to reduce supply, including illicit trade, sales to young persons and licensing of manufacturers, importers, distributors and retailers.

The policy rationales are:

(a) to protect people from the health, social, environmental and economic consequences of tobacco product use and exposure to tobacco smoke;[2]

(b) to prioritise the right to public health and ensure the highest standard of health;[3]

(c) to reduce demand, production and supply of tobacco product;[4]

(d) to prevent exposure to tobacco smoke through smoke-free environment;[5]

(e) to regulate contents of tobacco products and product disclosures;[6]

(f) regulate packaging and labelling of tobacco products and advertising, promotion and sponsorship;[7]

[1] The introduction will cover the policy initiatives, including the Pacific NCD Roadmap, Pacific NCD Dashboard, Pacific NCD Legislative Framework, Structure, Status of NCD Laws specified in the Pacific Dashboard

[2] Art 3 of FCTC

[3] Preamble of FCTC

[4] Art 6, 7 & Part IV of FCTC

[5] Art 8 of FCTC

[6] Art 9 of FCTC

[7] Art 11 &13 of FCTC

(g) to provide public awareness, education, communication and training on the health risks of tobacco use and exposure to tobacco smoke;[8]

(h) to provide measures to reduce tobacco dependence and cessation;[9]

(i) to …

1.1 Gaps identified in the Pacific Dashboard

The Pacific Dashboard identifies the tobacco industry interference as the main gap area in the laws of the PICTs requiring urgent national action. Other problem areas include:

further increase in tobacco tax;

using graphic health warnings and coverage in packages; and

tobacco product sale and licensing.

1.1.1 Tobacco industry interference

1.1.1(A) Policy objectives and rationales

The main policy objective is to protect public health policies from commercial and other vested interests of the tobacco industry.10 The rationales are to:

protect public health policies from any interference by the tobacco industry;

ensure that public officials do declare any interest or engagement with the tobacco industry;

to…

1.1.1(B) PICTs current legislation

All PICTs do not have provisions that effectively deal with interference of the tobacco industry with public health policies except the requirements for disclosure of industry information. They are recommended in the Pacific Dashboard for urgent measures to be taken by PICTs.

1.1.1(C) Legislation plan

The interference of the tobacco industry with public health policies or other government activities relating tobacco control policies will cover the following provisions:

(a) definition of "manufacturer" as a referential definition about the tobacco industry;

(b) a purpose clause listing the objectives of regulating the industries interference with public health policies;

(c) administrative functions relating to awareness, etc.;

(d) prohibiting any involvement with the government on matters relating to public health policies;

(e) prohibiting giving of gifts or other benefits to public officers;

(f) disclosure of interest with the tobacco industry by public officials, including applicants for public official positions;

(g) prevention of those employed or engaged by the tobacco industry to be appointed to government boards, committees, etc.;

[8] Art 12 of FCTC
[9] Art 14 of FCTC
[10] Art 5.3 of FCTC

(h) prohibiting the tobacco industry from making contribution to political parties or for election purposes;

disclosure of information on tobacco business, especially, manufacturing of tobacco products;

prohibiting giving of government incentives to the tobacco industry;

prohibiting the state from any dealing with or interest in the tobacco industry.

1.1.1(D) Suggested draft legislative provisions

(*Refer to Part 5 of the Bill – Annex 1*)

1.1.2 Further increase in tobacco tax

1.1.2(A) Policy objective and rationales

The main policy objective is to increase taxes and prices of tobacco product, as effective measures of reducing tobacco consumption of tobacco product.[11] The policy rationales are:

(a) to implement measures on tax policies (and if appropriate price policies) on tobacco product as part of the health objectives to reduce tobacco consumption;[12]

(b) to prohibit or restrict sales to importation by international travellers of tax- and duty-free tobacco product;[13]

(c) to add to government revenue;

(d) to fund health promotion and public awareness and campaigns against the risks of smoking or exposure to smoking;

(e) to …

Evidence shows that excise tax (specific tax or ad valorem) is the most appropriate tax for tobacco product, which may also be subject to additional tax, such as sales tax (Value added tax (VAT)).[14] The specific tax is a fixed amount calculated on quantity (pack, weight, sticks/rolls, etc.). The ad valorem tax is based on a percentage of the value of tobacco products. Both tax bases have their own advantages and disadvantages. It seems that specific tax is preferred as it is simple to assess, monitor and enforce. Ad valorem is problematic because of valuation issues.

The WHO recommended excise tax rate is at least 70% of the retail price. Fixing the rate of tax should take into account factors, such as[15]:

(a) overall consumption;

(b) price of tobacco product;

(c) price elasticity;[16]

(d) income levels;

(e) affordability of tobacco products;

(f) reaction of demand to tax increases;

(g) protection of secondhand smokers;

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[11] Art 6 of FCTC
[12] Art 6 of FCTC
[13] Art 6 of FCTC
[14] WHO Technical Manual on Tobacco Tax Administration (2011 Reprint). IMF Fiscal Policy: How to Design and Enforce Tobacco Excise (No3 – Nov 2016)
[15] IMF Fiscal Policy: How to Design and Enforce Tobacco Excises
[16] "A fundamental building block of economic theory is the fact that increasing (or decreasing) the price of a commodity reduces (or increases) demand for that commodity. *Price elasticity of demand* refers to the extent to which use of a product falls or rises after increases or decreases in its price. If price elasticity of demand for a product were very low–that is, if it were *inelastic*–then demand would fall or rise only slightly in response to price changes. For instance, if price elasticity for a particular good were about –0.1, then demand for that good would fall by only 0.1% for every 1% increase in price. Demand would fall by 1% for a 10% increase in price, by 2% for a 20% price increase and so on. Demand for a good with high price elasticity would fall much more sharply in response to price increases. If price elasticity of demand for a good were about –1.0, then demand for that good would fall by 1% for every 1% increase in price. Demand would fall by 10% for a 10% price increase, 20% for a 20% price increase, 100% for a 100% price increase, and so on." [Tobacco in Australia: Facts and Issues – www.tobaccoinaustralia.org.au]

(h) accessing public health funding by smokers.

The tax rate should be uniform for all tobacco products. PICTs that have *ad valorem* tax base may consider changing it to specific tax base.[17]

1.1.2(B) PICTs current laws on tobacco taxes and prices

Table 1 below sets out the status of tobacco taxes and prices[18] for each of the PICTs.

Table 1 (Tax and prices as at …date…)[19]

country	Tax type	Tax rate (% of price)	Cigarette pack price[20]	Duty free	Year of increase
American Samoa	Specific excise tax (30 cents a cigarette or cigar or 10 grams of tobacco)	42 – 58	US$9 – $12 (20[21])	200 cigarettes 100 cigars 2 kg tobacco	2006
CNMI	Specific excise tax ($3.75 for 20 cigarettes)	58	$4.75 – $6.50		2017
Cook Islands	Specific excise tax (52% of retail price)	63.6 excise tax (74% tax = 63.6 excise tax + 10.4 VAT)			2016
Fiji		38.5 excise tax			2016
French Polynesia	• Tobacco consumption tax (60% CIF + XPF 8000 to 32,200/1000 cigarettes and XPF 17,000/kg of rolling tobacco) • Tobacco and spirits countervailing charge (60% CIF on tobacco) • Solidarity tax (275% CIF on tobacco)	70			2017
Kiribati		42 (35 excise tax + 7% VAT)			2014 (Tax reduced from 49.22% to 42%)
Guam	Tax rate of $15 per 100 cigarettes	45	$US6.75		2010
Marshall Islands	40% import duty	54			2016
Federated States of Micronesia		60 (import duty)			2016

[17] WHO Technical Manual on Tobacco Tax Administration (2011 Reprint). IMF Fiscal Policy: How to Design and Enforce Tobacco Excise (No3 – Nov 2016)?
[18] Prices set out in the Status of NCD Policy and Legislation in Pacific Island Countries and Territories, 2018 (Supplementary Report: National Profiles)
[19] Current rates will be reviewed close to finalization of PLF
[20] Price range depends on brand
[21] Number of cigarettes in a pack

country	Tax type	Tax rate (% of price)	Cigarette pack price[20]	Duty free	Year of increase
Nauru		50.5 import tax			2016
New Caledonia		84 (1% customs tax + 41 Gov't tax + 42 health agency levy)			2016/17
Niue		69.8 (11.11% VAT + 50.35 import tax + 8.34% other taxes)			2017
Palau	$5.00) per 0.017 kg $5.00 packs of cigarettes less than 0.017 kg	74.1	$7.00-$7.65		2015
Papua New Guinea		36.9 (27.8 excise tax + 9.1% VAT)			2015
Samoa		51.6 (38.5% excise tax + 13% VAT)			2016
Solomon Islands		28.9 (19.8 excise tax + 9.1 VAT)			2016
Tokelau	295% relative to nett material cost in Samoa	20			2016/17
Tonga	excise tax $450 per 1000 sticks; and $350 per 1000 for locally produced	75 – 81.8	$11 – $12		2017
Tuvalu		50.6 (42.8 (ad valorem excise + 2% VAT + 5.8 import duty)			2016
Vanuatu	Specific excise 44.44%, VAT 6.12%, and import duty 1.6%.	52.5 (44.4 excise + 6.2 VAT + 1.8 import duty)			2016
Wallis and Futuna	CIF (cost, insurance and freight) + 20% (haulage) + territory tax (5.25% for tobacco from Europe and 6.20% for the rest of the world) + inland tobacco	80			2016/17

country	Tax type	Tax rate (% of price)	Cigarette pack price[20]	Duty free	Year of increase
	consumption tax (TICT) depending on whether the tobacco is blond or black. = 80% of tobacco sales prices are taxes.				

1.1.2(B) Framework policies for tobacco taxes and prices

It is vital for each PICT to develop, formulate and settle a suitable and appropriate fiscal policy on tobacco taxes and prices. The policy should look at excise tax bases that best suit a particular PICT. The advice of experts on tobacco tax and price issues should be sought when formulating the policy on tobacco tax and prices.

1.1.2(C) Legislative plan

Excise tax rate is to be amended in the relevant tax legislation to be amended to raise the tax rate.

Tax legislation is to be amended if earmarking/hypothecation of tax is adopted.

The amendment may include introduction of measures to strengthen monitoring and enforcement of tobacco taxes:

(a) tax stamps (appropriate instrument is by way regulations);

(b) power to require submission of tax returns;

(c) power to place tax officers at production facility to monitor production.

Some of the basic provisions for tax stamps are[22]:

(a) registration of producers and importers;

(b) types, procurement, supply and distribution of stamps;

(c) affixing and record keeping;

(d) exemptions, accounting of stamps, returns, computation and payment of excise;

(e) auditing, inspection and collection.

1.1.2(D) Excise duty or tariff legislation

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

1.1.3 Large Health Warnings and Messages

1.1.3(A) Policy objective and rationale

The policy objective is to regulate information about health warnings and messages on the retail package or label of tobacco product.[23] The policy rationale is to ensure prominent and conspicuous display of health warnings and messages. In particular, the use of graphics to depict the health risks associated with tobacco use or exposure to tobacco smoke.

1.1.3(B) PICTs current laws on health warnings

The PICTs current laws on health warnings are set out in the Table below.

[22] Tanzania – Films and Music Products (Tax Stamps) Regulations 2013 (made under the Excise (Management and Tariff) Act (Cap.147)
[23] Art 11 of FCTC

Table [List to be revised completed close to finalisation of PLF]

Country	languages	Front of pack	Back of pack	Images source
Cook Islands	2 national languages	50%	50%	Adapt New Zealand and Australia requirements
Fiji	3 national languages	30%	90%	International
Nauru				
Papua New Guinea		50%	50%	
Samoa	2 national languages	30%	90%	International + local
Solomon Islands	2 national languages	30%	70%	International + local
Tonga	2 national languages	50%	50%	?
Tuvalu		30%	30%	
Vanuatu	3 national languages	90%	90%	local

1.1.3(C) Legislation plan

The provisions cover:

(a) a statutory prohibition on manufacturing, importing or selling tobacco products that do not have health warnings and messages on their packets or labels;

(b) a provision setting out the requirements for health warnings or messages, including the copyright ownership of graphics;

(c) a provision on the point-of-sale display of "Smoking Kills".

1.1.3(D) Suggested draft legislative provisions

(*See Division 4 of Part 2 of the Bill – Annex 1*)

1.1.4 Tobacco sale and licensing

1.1.4(A) Policy objective and rationale

The policy objective is to regulate manufacture, wholesale distribution, importation and retail sale of tobacco product. The policy rationales are

(a) to control the supply of tobacco product through a licensing system;

(b) to facilitate monitoring of business that supplies tobacco products;

(c) to…

1.1.4(B) PICTs current laws

Fiji, Solomon Islands, Palau and Papua New Guinea laws provide for a licensing and registration system.

1.1.4(C) Legislation plan

The licensing provisions will cover the following:

(a) prohibition to manufacture, etc., tobacco except under the authority of a licence;

(b) identifying the licensing authority and stating the power to issue licences;

(c) application for licence;

(d) register of licensees;

(e) amendments to particulars about licensees;

(f) conditions of licences;

(g) suspension and revocation of licences;

(h) non-transferability of licences;

(i) appeal mechanism.

1.1.4(D) Suggested draft provision

(*See Part 3 of the Bill – Annex 1*)

1.2 NCD "best buys"

The PLF on tobacco control and prevention will also cover the following "best-buys" for NCDs and other recommended interventions:[24]

(a) to implement plain packaging;

(b) to ban on tobacco advertising, promotion and sponsorship;

(c) to eliminate exposure to second-hand tobacco smoke in all indoor workplaces, public places and public transport;

(d) to implement effective mass media campaigns that educate the public about the harms of smoking or tobacco use and second-hand smoke;

(e) to regulate Illicit trade in tobacco products;

(f) to ban cross-border advertising, including using modern means of communication; and

(g) to provide cessation for tobacco cessation to all those who want to quit.

1.2.1 Plain Packaging

1.2.1(A) Policy objective and rationales

The policy objective is to deter smoking of tobacco product by removing positive associations of brands (including trademarks or marks) with smoking. The rationales are to:

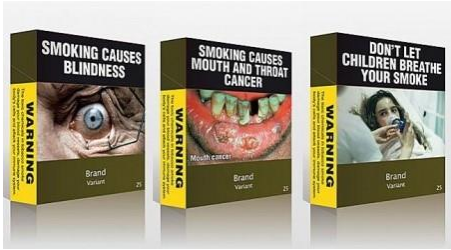
(a) regulate printing of the brand name in a mandated size, font and place on the package, in addition to the health warnings and any other legally mandated information such as toxic constituents and tax-paid stamps etc.;

(b) standardize the appearance of packets of tobacco products, including using of a color of the packet to reduce appeal of packets by eliminating space on the package traditionally used by tobacco industry to use colors, terms, logos, etc., to increase attractiveness;

(c) increase health warning effectiveness and to clarify confusions about harms and risks of tobacco products.

The Australian example of the plain packaging for cigarette packets is depicted in the photograph below, which uses non-attractive packet color (drab dark brown) and gives prominence to health warnings.

[24] "Best-Buys" and other recommended interventions for the Prevention and Control of Non-communicable Diseases, Appendix 3 (updated 2017) of the Global Action Plan for the Prevention and Control of Non-communicable Diseases 2013 – 2020. Similar areas recommended in the Pacific Dashboard are excluded.



After the introduction of plain packaging in Australia, evidence shows:

(a) an increased rate of attempts to quit smoking; and

(b) a significant decrease in the appeal of cigarette packs and brands.[25]

1.2.1(B) Legal issues on plain packaging26

In June 2018, a panel of the World Trade Organisation (WTO) affirmed that the Australian laws on plain packaging are consistent with Australia's WTO obligations. The panel rejected claims by Cuba, the Dominican Republic, Honduras and Indonesia that the Australian laws on plain packaging violated the WTO Technical Barriers to Trade (TBT), Trade Related Aspects of Intellectual Property Rights (TRIPS) and the WTO General Agreement on Tariffs and Trade.

The panel held that plain packaging is 'apt to, and does, contribute' to the goal of reducing tobacco use and exposure to tobacco smoke and it is not more than trade restrictive than necessary to protect health under article 2.2 of the TBT, nor does it infringes on any relevant intellectual property protections under TRIPS.

1.2.1(C) PICTs current laws

None of the PICTs have laws on plain packaging of tobacco products. However, New Zealand and Australia are among the countries that have laws on plain packaging.

All PICTs use normal packaging and labelling to show information, such as, health messages, contents and emissions, etc.

1.2.1(D) Australian plain packaging law

The Tobacco Plain Packaging Act 2011 (Australia):

(a) bans the use of logos, brand imagery, symbols, other images, colours and promotional text on tobacco products and tobacco product packaging;

(b) requires packaging to be a standard drab dark brown colour in matt finish;

(c) requires packs to distinguished by brand and product name printed in a standard colour, position, font size and style;

(d) requires graphic health warnings to be 75% of the front and 90% of the back of tobacco packaging.

The objects of the Act are:

(a) to improve public health (s3(1));

(b) to discourage people from taking up smoking, or using tobacco products;

(c) to encourage people to give up smoking, and to stop using tobacco products;

[25] https://www.cancer.org.au/content/pdf/CancerControlPolicy/Position - 2011 Review.

[26] https://untobaccocontrol.org/kh/legal-challenges/australias-plain-packaging-laws-wto/

(d) to discourage people who have given up smoking, or who have stopped using tobacco products, from relapsing;

(e) to reduce people's exposure to smoke from tobacco products;

(f) to give effect to certain obligations under FCTC.

These objects are to be achieved by (s3(2)) regulating the retail packaging and appearance of tobacco products in order to:

(a) reduce the appeal of tobacco products to consumers;

(b) increase the effectiveness of health warnings on the retail packaging of tobacco products;

(c) reduce the ability of the retail packaging of tobacco products to mislead consumers about the harmful effects of smoking or using tobacco products.

Plain packaging is recommended by guidelines on implementing Article 11 (packaging and labelling) and Article 13 (tobacco advertising, promotion and sponsorship) adopted by the Conference of the Parties of the FCTC.

1.2.1(E) Legislation plan

The proposed provisions cover the following:

(a) retail packaging design, form, quality, colour and dimension;

(b) use of trademarks, brand name, manufacturer, etc;

(c) use of logos, brand imagery, symbols, other images, colours and promotional text on tobacco products and tobacco product packaging;

(d) packaging to be a standard colour in matt finish;

(e) packs to be distinguished by brand and product name printed in a standard colour, position, font size and style;

(f) graphic health warnings to be [75%] of the front and [90%] of the back of tobacco packaging.

1.2.1(F) Suggested draft legislation provisions

(*See Division 3 of Part 2 of the Bill – Annex 1*)

1.2.2 Advertisement, Promotion and Sponsorship

1.2.2(A) Policy objective and rationale

The policy objective is to prohibit all forms of advertisement, promotion or sponsorship of tobacco products.[27]

The policy rationale is to reduce or prevent the use of tobacco product through prohibiting all forms of tobacco product advertisement, promotion or sponsorship.[28]

1.2.2(B) Current laws in PICTs

About 17 PICTs[29] regulate tobacco product advertisement, promotion or sponsorship. The provisions fall into 2 categories, namely:

(a) total prohibition on tobacco product advertisement, promotion or sponsorship;[30]

(b) restricted prohibition which covers false, misleading and deceptive tobacco product advertisement, promotion or sponsorship about the characteristics, etc., of the product.

The proposal is to adopt the total prohibition on tobacco product advertisement, promotion and sponsorship. This includes strengthening those current provisions dealing with total prohibitions of tobacco product advertisement.

1.2.2(C) Legislation plan

The measures to regulate tobacco product advertisement, etc., cover the following:

(a) prohibit advertisement, including cross-border advertisement;

(b) exceptions, such as films, etc.;

(c) prohibit promotion;

(d) prohibit sponsorship;

(e) prohibit free samples and incentivising others to smoke;

(f) prohibit use of tobacco product as a rewards, prizes, etc for competitions;

(g) prohibit brand stretching and reverse brand stretching.

1.2.2(D) Suggested draft legislative provisions[31]

(*See Division 5 of Part 2 of the Bill – Annex 1*)

[27] Art 13 of FCTC
[28] Art 13.1 of FCTC
[29] American Samoa, Cook Islands, Fiji, French Polynesia, Kiribati, New Caledonia, Guam, Nauru, Palau, Republic of Marshall Islands, Papua New Guinea, Samoa, Solomon Islands, Tonga, Tuvalu, Vanuatu and Wallis and Futuna
[30] Solomon Is, Tonga, Nauru, Samoa, Tuvalu, Vanuatu, Fiji, Papua New Guinea
[31] The proposed arrangement is cover separate provisions dealing with the 3 basic issues about advertisement, namely advertisement, promotion and sponsorship.

1.2.3 Smoke free environment

1.2.3(A) Policy objective and rationales

The policy objective is to protect others from exposure to tobacco smoke.[32] The policy rationales are:

(a) to reduce tobacco smoke (through smoking and second-hand smoking) that causes death, disease and disability;[33]

(b) reduce exposure to tobacco smoking in particular in young people;[34]

(c) regulate environment by having absolute smoke-free environment and restricted smoke free environment where smoking areas may be designated within the restricted smoke-free environment; and

(d) provide for smoke-free zones in outside places such as public parks, streets, hotel premises etc.

1.2.3(B) PICTs current laws

Most of the PICTs list facilities, areas and means of public transport where smoking are absolutely prohibited (aircraft) and those where designated smoking areas may be provided.

1.2.3(C) Legislation plan

Smoke-free environments will cover provisions:

(a) listing facilities, areas or public transport as absolute smoke-free environments;

(b) prohibiting smoking in outside areas and entrances to schools and hospitals, including outdoor playing ground and facilities for young persons;

(c) setting out duties of owners of absolute smoke-free environments to monitor, etc., any smoking activity;

(d) listing restricted smoke-free environment including designation of smoking areas within that restricted environment;

(e) setting out duties of owners of restricted smoke free environment to monitor, etc., any smoking activity;

(f) declaring non-smoking zones within other open public places, including the duties of owners to designate smoking areas and monitor smoking activities within the non-smoking areas.

1.2.3(D) Suggested draft legislative provisions

(*See Division 1 of Part 2 of the Bill – Annex 1*)

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

1.2.4(A) Policy objective and rationales

The policy objective is to promote and strengthen public awareness of tobacco control issues.[35] The policy rationales are to:

(a) provide for matters listed in paragraphs (a) to (f) in Art 12 of FCTC;

(b) ensure that Government provides funds and carries out public awareness programmes or initiatives that are specified in Article 12;

[32] Art 8 of FCTC
[33] Art 8 of FCTC
[34] WHO – Update and Summary guide to the report: Advancing the Right to Health – The Vital Role of Law 2018.
[35] Art 12 of FCTC

(c) to…

1.2.4(B) Legislation plan

The provisions are to create a statutory duties of government to carry out public awareness about any health risks associated with smoking and health benefits of non-smoking or non-exposure to tobacco smoke.

1.2.4(C) Suggested draft legislative provisions

(*See Part 6 of the Bill – Annex 1*)

1.2.5 Illicit trade in tobacco products

1.2.5(A) Policy objective and rationales

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

(a) eliminate illegal activities on production, shipment, receipt, possession, distribution, sale or purchase of tobacco product;[36]

(b) prevent accessibility and affordability of tobacco product;[37]

(c) prevent undermining public revenues;[38]

(d) prevent illicit trade through licensing of production, distribution or sale of tobacco products;[39]

(e) state the name of country of intended sale on the retail packet or label of tobacco product.

A provision to prohibit certain types of tobacco products or forms of tobacco product (e-cigarettes) use (water and chewing) is provided for PICTs to consider adopting. Growers of tobacco plants are not regulated by any of the PICTs. A licensing or registration system can be devised for commercial growing and harvesting of tobacco plants. Growing of tobacco plants for personal or subsistence use should be prohibited to ensure that users of manufactured tobacco production do not use that as an alternative for smoking or using tobacco products.

1.2.5(B) PICTs current laws on illicit trade

Some of the PICTs[40] provide for licensing or registration of manufacturers, importers and retail sellers, including sale of local tobacco[41] products as part of the control mechanism for illicit trade. Almost all PICTs have provisions requiring the name of country of intended sale to be stated on the retail packet or label of the tobacco product. It appears that none of the PICTs has provision for smuggling in the tobacco control legislation. However, smuggling offence may be covered in other laws, such as the Customs/Excise legislation that deals generally with smuggling of imported goods for the purposes of defrauding revenue.

1.2.5(C) Legislation plan

Prohibited tobacco products:

(a) prohibits certain tobacco products, including certain forms of smoking (water smoking, chewing tobacco, etc.);

(b) power to order cessation of activity, confiscation, forfeiture, etc.;

(c) provides exceptions subject to approval of [XX] if product is necessary to help in cessation of smoking, etc.

[36] WHO Protocol to Eliminate Illicit Trade in Tobacco Products 2013.
[37] Update and summary guide to the report: Advancing the Right to Health – The Vital Role of Law
[38] Update and summary guide to the report: Advancing the Right to Health – The Vital Role of Law
[39] Art 15.7 of FCTC
[40] Fiji, Solomon Islands, Palau, Papua New Guinea. In Solomon Islands, licence (other than creating a registration system) is required for manufacture, import or export, sale or distribution of tobacco product.
[41] Called 'suki' in Fiji and 'brus' in Papua New Guinea.

Smuggling offence: Provision to create the smuggling offence for tobacco products in order to defraud revenue.[42]

1.2.5(D) Suggested draft legislative provisions

(*See Division 1 of Part 4 of the Bill – Annex 1*)

1.2.6. Tobacco cessation promotion and programmes

1.2.6(A) Policy objective and rationales

The policy objective is to provide measures to promote cessation of tobacco product use and measures to treat tobacco dependence.[43] The rationales are:

(a) to design and implement programmes to promote cessation of tobacco product use;

(b) to provide treatment of tobacco dependence and counselling services on cessation of tobacco use;

(c) to establish programmes to diagnose, counsel, prevent and treat tobacco dependence;

(d) to help accessibility and affordability of treatment of tobacco cessation, including pharmaceutical products.

1.2.6(B) Legislation plan

A provision to create administrative statutory duty to carry out measures to cease use of tobacco product or measures to treat dependence on tobacco product.

1.2.6(C) Suggested draft legislative provisions

(*See Part 6 of the Bill – Annex 1*)

1.3 General areas for review

Other areas for general review are:

(a) regulating sale and supply of tobacco products to young persons;

(b) regulating new tobacco products, such as e-cigarettes or vaping;

(c) objects or purpose clause;

(d) extending application of legislation outside territorial jurisdiction given the archipelagic status of most PICTs;

(f) packaging and labelling requirements; and

(e) strengthening administration and enforcement provisions.

1.3.1. Protection of young persons

1.3.1(A) Policy objective and rationales

The policy objective is to regulate sale and supply of tobacco products to young persons. The policy rationales are:

(a) to prevent young persons from becoming permanent smokers;

(b) to …

1.3.1(B) PICTS current laws

[42] Adapted from the Australian Excise/Customs legislation of smuggling of tobacco product to defraud revenue. PICTS may consider following the Australian approach of using the Excise/Customs legislation.
[43] Art 14 of FCTC

The following table shows the age for prohibition of sale of tobacco products

Table:

	18 years	21 years
Countries	Cook Islands, Fiji, FSM, Kiribati, Niue[44] Marshall Islands, Nauru, Papua New Guinea, Solomon Islands, Tonga, Tuvalu,	Samoa, Palau,

1.3.1(C) Age of smoking

The age of smoking in all PICTs should be at one level. It should follow the current trend of 21 years.

Provisions to regulate smoking by young persons is intended to cover:

(a) prohibiting sale or supply to young persons;

(b) prohibiting another person to buy a tobacco product for a young person;

(c) prohibiting a young person from selling tobacco product;

All of the PICTs prohibit sale of tobacco products to young persons.

1.3.1(D) Legislation plan

Amend existing tobacco control legislation:

(a) to increase the age of sale prohibition of tobacco product to 21 years for PICTS that tagged the age to 18 years;

(b) to ensure other provisions (another person buying tobacco product for a young person and prohibiting young persons from selling tobacco products) are included.

1.3.1(E) Suggested draft legislative provisions

(*See Division 2 of Part 4 of the Bill – Annex 1*)

1.3.2 Regulating new tobacco products, such as e-cigarettes or vaping

1.3.2(A) Policy objective and rationale

The policy objective is to ban any new tobacco product, such as e-cigarettes. The rationales are:

(a) to ensure that only current tobacco product be regulated and controlled;

(b) to prevent introduction or manufacturing of new types of tobacco product;

(c) to…

PICTs may consider a policy of prohibiting some types of tobacco products or forms of smoking, such as e-cigarettes, water smoking.

1.3.2(B) PICTs current laws

Fiji has included a definition of “e-cigarettes” and the consequentially amending the Decree to add the term “e-cigarettes” after any reference to “tobacco product”.

1.3.2(C) Legislation plan

The prohibitions may cover the following provisions

[44] Special import rates for persons over 18 years importing certain quantity of tobacco product under the Customs Tariffs (Cigarettes and Tobacco) Regulations 2006. Niue does not appear to have specific legislation for tobacco control.

(a) to declare any existing productions, for example, e-cigarette, as a prohibited product;

(b) to provide a statutory power to declare any tobacco product at as a prohibited product;

(c) to cover other provisions to give effect to or for the purposes of paragraph (a) and (b).

1.3.3(D) Suggest draft legislative provisions

(*See Division 1 of Part 4 of the Bill – Annex 1*)

1.3.3 Objects of Act

1.3.3(A) Policy objective and rationales

The policy objective is to list the purposes of the Act. The policy rationales are to:

(a) ensure that it links with the protection of public health under the constitution in order to insulate and constitutional challenge on the Act;

(b) facilitate the interpretation of the Act by the courts by providing express provisions on the purposes of the Act;

(c) to …

1.3.3(B) PICTs current laws

Some tobacco control laws in PICTs[45] provide for a section that lists certain purposes of the whole Act. Some[46] also provides for purpose section for certain Parts of the Act. However, the long titles of Acts provide for the general purpose of Acts.

1.3.3(C) Suggested draft legislative provisions

(*See Part 1 of the Bill – Annex 1*)

1.3.4 Extra-territorial application

1.3.4(A) Policy objective and rationale

The policy objective is to extend application of the law outside territorial jurisdiction and to the State/Government/Crown. The rationale for the policy objective is to ensure that any activities on control of tobacco product outside the territorial jurisdiction is covered.

1.3.4(B) PICTs current laws

All PICTs do not extend their Acts to the EEZ or contiguous zone. However, some PICTs[47] make their Acts binding on the State/Government.

1.3.4(C) Legislation plan

A provision to extend the application of law outside the territorial jurisdiction of the country, including application to the State/Government.

1.3.4(D) Suggested draft legislative provisions

(*See Part 1 of the Bill – Annex 1*)

1.3.5. Labelling and packaging of tobacco products

1.3.5(A) Policy objective and rationales

The main policy objective is to regulate the requirements for retail packaging or labelling of tobacco products[48], including the following:

[45] Cook Islands, Marshall Islands, Palau, Solomon Islands, Tuvalu, Vanuatu
[46] Samoa
[47] Cook Islands, Papua New Guinea, Samoa
[48] Art 11 of FCTC

(a) regulating terms used on packaging and labelling, particularly those which may be false, misleading or deceptive;

(b) disclosing tobacco product contents and effects etc., to reduce the attractiveness, addictiveness (dependence liability) of the product.

The policy rationales are:

(a) to prevent the use of false, deceptive or misleading terms that may cause people to think that some tobacco products are less harmful than others;[49]

(b) to prevent labelling of toxic content quantities which may give the impression that tobacco products with less tar, CO, nicotine, etc., are less harmful (no conclusive epidemiological or scientific evidence that tobacco products with lower machine-generated smoke yields are less harmful than tobacco products with higher smoke emission yields);[50]

(c) to regulate packaging or labeling (including plain packaging) requirements in order to reduce the surface area on packaging or labelling used by the tobacco industry to make tobacco products more enticing and attractive;

(d) to …

1.3.5(B) PICTs current laws

All PICTs regulate the requirements of retail packaging and labelling of tobacco products in their tobacco control laws.

[49] Art 11.1(a) of FCTC

[50] Art 11.2 of FCTC

1.3.5(C) Legislation plan

The packaging and labelling provisions will cover:

(a) a provision setting out all the mandatory information that should appear on the retail packet or label of a tobacco product, such constituents and emissions, health warning, the country of intended sale and any other information prescribed by regulations;

(b) a provision listing information that should not appear of the packets or labels of tobacco products; and

(c) a provision to creating an offence for selling tobacco products the retail packet or label of which contains false, misleading or deceptive.

1.3.5(D) Suggested draft legislative provisions

(*See Division 2 of Part 2 of the Bill – Annex 1*)

1.3.6 Regulation of content and emissions including testing

1.3.6(A) Policy objective and rationales

The policy objective is to regulate contents of tobacco products.[51]The policy rationales are:

(a) prevent appeal enhancement of tobacco products through use of certain ingredients;

(b) prevent certain ingredients from being added to tobacco products;

(c) prevent designs that promote tendency to ignite if lighted tobacco products are left unattended;

(d) provide testing of contents and emissions of tobacco products, including further testing and standards of testing;

(e) to…

1.3.6(B) PICTs current laws

Testing of ingredients and emissions is covered in most tobacco control legislation in the PICTs. [Check prohibited ingredients & tendency to ignite].

1.3.6(C) Legislation plan

A provision to list ingredients that are prohibited to be an ingredient of tobacco product. It is a exhaustive list that identifies certain known ingredients and then allowing others to be prescribed by regulations.

1.3.6(D) Suggested draft legislative provisions

(*See Division 6 of Part 2 of the Bill – Annex 1*)

1.3.7 Administration

1.3.7(A) Policy objective and rationale

The policy objective is to provide administrative statutory functions, such as awareness, research and other technical assistance as envisage in the FCTC. The rationale is to facilitate sustainable funding to carry out those statutory functions. Current administrative functions are determined by any current government as a matter of policy rather than fixed by legislation. The advantage for statutory basis is

[51] Art 9 of FCTC

that it will bind any future government to carry out the statutory functions, without limiting the right to amend laws.

1.3.7(B) PICTs current laws

All tobacco control laws do not provide legal bases for those statutory function except that it remains a policy matter.

1.3.7(C) Legislation plan

The provision for statutory functions will cover:

(a) a holder of public office, such a Minister, to carry out the functions; and

(b) a list of statutory functions.

1.3.7(D) Suggested draft provisions

(*See Part 1 of Annex 1*)

1.3.8 Enforcement

1.3.8(A) Policy objective and rationale

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

1.3.8(B) PICTs current laws

All tobacco control laws have provisions to enforce those laws.

1.3.8(C) Legislation plan

The provisions for enforcement cover the following:

(a) enforcement officers;

(b) functions and duties of enforcement officers;

(c) powers of entry and search;

(d) provision for a warrant if the place to be searched is a residential property;

(e) power to obtain name, age, address and other contact details;

(f) offence provisions for obstruction and failure to give information or for disclosing confidential information;

(g) power to recall non-compliant products;

(h) power to investigate and conduct prosecution of offences;

(i) tracking and tracing of illicit/smuggled products;

(j) confiscation and forfeiture;

(k) suspension and cancellation of licence on conviction of licensee;

(l) on-the-spot fines;

(m) liabilities of officers of body corporates

(n) formula for penalties.

1.3.8(D) Suggested draft provisions

(*See Part 7 of the Bill – Annex 1*)

CHAPTER 2: LIQUOR CONTROL

2.0 Overall policy objective and rationales

The overall policy objective of liquor control is to regulate manufacture, importation, sale, consumption, advertisement, promotion and sponsorship of liquor[52] in order to control the harmful use of liquor. The policy rationales are:

(a) to reduce harmful use of liquor that causes diseases (such as liver cirrhosis, certain types of cancer) and injuries (violence, motor vehicle accidents)[53];

(b) …

2.1 Gaps identified in the Pacific Dashboard

The Pacific Dashboard identified these gaps in liquor legislation in PICTs:

(a) restricting liquor advertising;

(b) licensing of liquor sale;

(c) liquor tax;[54]

(d) drink driving.

[52] The term "*liquor*" is used instead of "*alcohol*", as the term "*liquor*" refers to the drink that contains the alcohol substance. Each PICT is to consider a term (alcohol, intoxicating liquor, etc.) preferred for their legislation

[53] WHO Update and summary guide to the report: Advancing the Right to Health – The Vital Role of Law at p 37

[54] Taxation relating to NCD risk factors will be covered in a different chapter.

2.1.1 Advertising of liquor

2.1.1(A) Policy objective and rationale

The policy objective is to prohibit advertisement and sponsorship of liquor, through the media, including social media, in community settings and retail establishments, restrictions on liquor sponsorship of sporting and cultural events.

2.1.1(B) PICTs current laws

With the exceptions of French Polynesia, Guam and Wallis and Futuna, all other PICTs do not have laws that regulates advertisement of liquor. However, Fiji has a dated Act (and probably not enforced) that prohibits advertisement of liquor on delivery vehicles.

2.1.1(C) Legislation plan

The provisions cover the following:

(a) a purpose clause setting out the purposes of the Part dealing with advertisement and labelling of liquor;

(b) prohibits licensees from engaging in unacceptable practice and promotion of liquor, such as encouraging irresponsible consumption of liquor or promotion that appeals to children, etc.,;

(c) imposes duty on licensees to conduct the liquor business that encourages responsible consumption of liquor

(d) imposes duty on licensees to conduct business in a safe environment or to ensure that it does not adversely affect the amenity in the areas, etc.;

(e) ensures licensees the business is engages in positive practices or prohibits licensees from engaging the business in unacceptable practices;

(f) prohibits certain advertisement activities, such advertising free drinks, sale price of liquor at on-licensed premises, promotion such as 'happy hours' at on-licensed premises;

(g) power to issue compliance notices to a licensee if a licensee conducts business in an unacceptable practice or contravenes advertisement rules.

The labelling provisions cover the following:

(a) labelling of contents of liquor;

(b) requirement of a statement on the label on the number of standard drinks for liquor containing more that 0.5% alcohol volume;

(c) prohibits use of 'low alcohol' statement if alcohol content is more that 1.15% by volume;

(d) prohibits use of 'non intoxicating' if alcohol is more that 0.05%.

2.1.1(D) Suggested draft provisions

(*See Part 4 of the Bill – Annex 2-1*)

2.1.2 Liquor licensing

2.1.2(A) Policy objective and rationale

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

2.1.2(B) PICTs current laws

All PICTs have laws that regulate licensing of liquor sale.

2.1.2(C) Legislation plan

The provisions for licensing authority covers:

(a) the establishment of the licensing authority (LA);

(b) the membership, including the person/body to appoint members;

(c) the terms of appointments;

(d) the meeting procedures;

(e) other provisions to relating to establishment of LA.

The licensing provisions cover:

(a) the power to issue licences;

(b) other licensing powers, such as suspension or revocation of licences;

(c) the types of licences;

(d) other provisions to give effect to licensing.

2.1.2(D) Suggested draft provisions

(*See Part 3 of the Bill – Annex 2-1*)

2.1.3 Drink driving offences.

2.1.3(A) Policy objective and rationale

The policy objective is to regulate drink-driving, including random breath testing, a maximum 0.5 g/l blood alcohol concentration limit for adult drivers, with a reduced or zero limit for young drivers. The rationale is to reduce harmful use of alcohol and the burden of alcohol-attributable traffic crashes i.e. more likely when a driver has blood alcohol concentration (BAC) of 0.04% or over.

2.1.3(B) PICTs current laws

About 12 PICTS have laws on drink driving offences.

2.1.3(C) Legislation plan

Drink driving provisions cover the following:

(a) driving under the influence of drugs;

(b) driving exceeding the breath alcohol limit;

(c) driving exceeding the blood alcohol limit;

(d) zero alcohol limit;

(e) driving disqualifications;

(f) provisions on breath and blood tests to determine level of alcohol in the breath or blood;

(g) processes and procedures for taking blood specimen;

(g) certificate and presumptions on breath or blood tests as evidence in court proceedings;

(h) provisions relating to directives to drivers, arrests and defences.

2.1.3(D) Suggested draft provisions

(See Annex 2-2)

2.2 NCD 'BEST BUYS'

The following priority areas are recommended as NCD 'best buys' areas for liquor:

(a) restrict access to retailed liquor, including:

(i) minimum age; or

(ii) days and hours of retail sale; or

(iii) location and density of retail outlets; or

(b) increase the excise taxes on liquor.

Other legal and regulatory priorities to reduce risk factors for NCDs are:

(a) tracking system for illicit liquor, with penalties for smuggled and informal liquor resources for monitoring and enforcement; and

(b) health warnings on liquor products and at point of sale; enforce laws against serving to intoxication, and legal liability of harm that results from intoxication following the service of liquor; and

(c) drink-driving counter measures, including random breath testing, a maximum 0.5 g/l blood alcohol concentration limit for adult drivers, with a reduced or zero limit for young drivers.

The areas identified in the Pacific Dashboard have been deleted from the NCD 'best buys' list.

2.2.1 Minimum drinking age

2.2.1(A) Policy objective and rationales

The policy objective is to prevent young persons from drinking liquor. The policy rationale is to prevent young persons from exposing themselves to harm or adverse effect of consuming liquor at an early age.

PICTs current laws

Age	Country	Law	
18 years	Marshall Islands	S119 of Alcoholic Beverages Act 1971 – Prohibits sale or giving. Prohibits young person from buying, consuming, drinking, possessing or manufacturing alcoholic beverages	
	Niue	S11 of Liquor Act – Prohibits young person from possessing liquor in public places or buying, consuming and possessing at licensed premises	
	Papua New Guinea	s103 of the Liquor (Licensing) Act prohibits a young person from purchasing, consuming or obtaining liquor. Also cover a person who sends a young person to a licensed premises to obtain liquor.	
	Tonga	Section 65 of the Intoxicating Liquor Act 1988 – Prohibits sale or supply to a young person or a young person to be at a bar or nightclub or for a young person to purchase and consume liquor at a licensed premises.	
	Tuvalu	Section 99 of the Alcoholic Drink Act (Cap. 28.04) – Prohibits sale or supply liquor to	

		a young person or for a young person to obtain, possess or drink liquor, including employing a young person to sell or serve liquor.	
	Vanuatu	S17 of Liquor Licensing Act (Cap.52) – Prohibits a young person from procuring, consuming or possessing liquor or to sell or supply liquor to a young person.	
21 years	American Samoa	S27.0531 of Commerce and Trade Act – Prohibits sale to young persons	
	Fiji	S60 Liquor Act 2006 – Prohibits sale to young persons	
	Kiribati	S68 of Liquor Ordinance – Prohibits sale to young persons and the employment or presence at the licensed premises of young persons	
	Nauru	S39 of Liquor Control Act 2017 – Prohibits sale	
	Samoa	S14 of Liquor Act 2011 – Prohibits sale or send or allow young person to buy liquor	
	Solomon Islands	S72 of the Liquor Act – Prohibits sale or supply, including sending young person to buy. S73 prohibits employment	

2.2.1(B) Legislation plan

Provisions cover the following:

(a) exemption relating to training of young persons;

(b) prohibit sale or supply of liquor to young persons, including allowing to buy or collect or to be in possession or control of liquor;

(c) may be permitted to be in a licensed premises that provide cooked meals if they are accompanied by a responsible adult;

(d) may be allowed into restaurant to have meal only;

(e) due diligence check on age by checking evidence of age and identification, including defence;

(f) offence to provide false identification;

2.2.1(C) Suggested draft legislative provisions

(See Part 6 of the Bill – Annex 2-1)

2.2.2 Permitted hours

2.2.2(A) Policy

The policy is to ensure that the permitted hours of sale of liquor is stated in the principal legislation. It should not be a matter to be fixed by [LA]

2.2.2(B) PICTs law

The permitted hours in most of the PICTs liquor laws are specified in the principal legislation.

2.2.2(C) Suggested draft legislative provisions

(See Part 4 of the Bill – Annex 2-1)

CHAPTER 3: HEALTH PROMOTION FOUNDATION[55]

3.0 Policy objective and rationales

The policy objective is to establish health promotion foundation and to provide for the foundation's objects, functions, duties and powers. The policy rationales are:

(a) to provide educational and awareness programmes in order to promote health;

(b) to fund activity related to the promotion of good health, safety or the prevention and early detection of disease; and

(c) to increase awareness of programs for promoting good health in the community through the sponsorship of sports, the arts and popular culture; and

(d) to encourage healthy lifestyles in the community and support activities involving participation in healthy pursuits; and

(e) to fund research and development activities about health promotion; and

(a) to mobilize new resources for promoting health; and

(b) to support research, innovation, and strengthening health promotion capacities

3.1 PICTs current laws

Tonga[56] and Samoa[57] have Health Promotion Foundation Acts. Some PICTs establish health promotion funds under the tobacco control legislation.[58]

[55] PICTs to consider whether they need a separate legislation, similar to Tonga and Samoa or adopt the establishment of the foundation in an existing legislation, such as, PNG, Solomon Islands or RMI. The name may also be called the "Health Foundation Fund"
[56] Health Promotion Foundation Act 2007.
[57] Health Promotion Foundation Act 2015
[58] Papua New Guinea, Solomon Islands and Republic of Marshall Islands

PICTs are to consider whether to adopt a separate legislation, similar to Tonga and Samoa or to use an existing legislation, such as, tobacco legislation in PNG, Solomon Islands or RMI. The name may also be referred to as the "Health Promotion Fund".

3.2 Suggested draft legislative provisions

(See Annex 3 – Health Promotion Foundation Bill)

CHAPTER 4: CODE ON MARKETING OF BREASTMILK SUBSTITUTES

4.0 Policy objective and rationales

The overall policy objective is to ensure safe and adequate nutrition for infants (under 12 months) and young children (1 year to 3 years) by protecting and promoting breastfeeding and by regulating the marketing of food products manufactured for infants and young children and of feeding bottles, teats and pacifiers.

The policy rationales are:

(a) to implement the International Code on Marketing of Breastmilk Substitutes and subsequent relevant resolutions of the World Health Assembly (the "**Code**") in order to protect, promote and encourage 6 months of exclusive breastfeeding, followed by the provision of safe and appropriate complementary foods, with continued breastfeeding for up to two years of age or beyond, as the ideal nutrition for growing and developing infants and young children;[59]

(b) to protect the rights of adequate nourishment of infants and young children and mothers in order to attain and maintain their health;[60]

(c) to encourage and protect breastfeeding, as vital to primary health care and to promote healthy growth and development of infants and young children;[61]

(d) breastfeeding reduces risk of infectious diseases against infants and young children and contributes to the health of mothers (such as, reducing the risk of breast or ovarian cancer and increasing the space between pregnancies);[62]

(e) to regulate marketing of breastmilk substitutes and other food products manufactured for infants and young children and of feeding bottles, teats and pacifiers ("**designated products**") so that the marketing does not interfere with protecting and promoting breastfeeding;[63]

(f) to ensure that the health systems and health care workers carry out their duties on providing objective and consistent information and advice about breastfeeding and the proper use of breastmilk substitutes;[64]

(g) to fulfil the governments obligations under the Convention on the Rights of Child ("**CRC**") in respecting, protecting and fulfilling the child's right to attain the highest standard of health;[65]

[59] Art 1 and 2 of the Code
[60] *para 1 of Preamble of Code*
[61] *paras 2, 3 and 5 of Preamble of Code*
[62] *para 4 of Preamble of Code*
[63] *paras 6 & 7 of Preamble of Code*
[64] *para 10 of Preamble of Code*
[65] *Art 24 of CRC*

(h) to harness the political commitment to promote and protect breastfeeding through policy initiatives and legislation;[66]

(i) to regulate:

(i) advertising and promotion of designated products, including samples, gifts, free or low-cost supplies, and sales incentives for designated products and contact with mothers;

(ii) information materials about infant and young child feeding, including breastfeeding, and about risks of not breastfeeding, including information to be factual and scientific;

(iii) use of health care facilities and health workers to promote designated products, including health professionals receiving samples for research purposes; and

(iv) labelling requirements about the correct use of designated products and the risks of misuse, and not to discourage breastfeeding.

4.1 PICTS current laws

4.1.1 Legislation on the Code

Palau[67] and Federated and States of Micronesia[68] have specific Acts of Parliament on the Code adopting the Model Law developed by the International Code Document Centre/International Baby Food Action Network ("**Model Law**").

4.1.2 Food legislation

Other PICTs[69] have food legislation that regulates advertisement and labelling of Food. Some food legislation covers specific provisions on some aspects of the Code.[70] A few food legislation expressly refer to making of regulations on breastmilk substitutes[71], otherwise it can be implied through the general power to give effect to or for the purpose of the Act.

Some have specific regulations on the Code.[72]

4.2 Purpose of regulation

4.2.1 Policy objective and rationale

The policy objective is to list the purposes of the Regulations. The policy rationales are:

(a) to make a list of general policy statements about regulating marketing of designated products;

(b) to help the courts when interpreting the Regulations; and

(c) to link the Regulations to the relevant general health grounds stated in the bills of rights provisions under the constitutions of PICTs, including certain human rights issues.

4.2.2 Legislation plan

A provision to list the purposes of objects of the Regulations

4.2.3 Suggested draft legislative provisions

(See Part 1 of the Regulations – Annex 4)

[66] Code Essential 1
[67] Promotion of Optimal Infant and Young Child Nutrition Act 2006.
[68] FSM Infant Formula and Food Act (Title 41, Cap 10 (1001 – 1028))
[69] Cook Is, Fiji, Kiribati, FSM, Nauru, Niue, PNG, Samoa, Solomon Is, Tonga, Tuvalu, Vanuatu
[70] Fiji - It is an offence under section 15 to promote through advertisement any breastmilk substitutes, including gifts, discounts, coupons, etc. Samoa – section 10 includes advertisement, etc., of feeding accessory, etc., for infant and young children.
[71] Nauru – s39(2)(m), Kiribati s33(2)(m), FSM – s21(2)(h), Tuvalu s41(1)(m)
[72] Marketing Controls (Food for Infants and Young Children) Regulations 2010 (Fiji), Regulations 23 and 24 of the Pure Food (Food Control) Regulations 2010 (Solomon Islands).

4.3 Sale of designated products

4.3.1 Policy objective and rationales

The policy objective is to regulate selling of designated products. The policy rationales are to:

(a) impose appropriate control over and monitoring of the sale of designated products;

(b) ensure the safety and quality of designated products;

(c) …

4.3.2 Legislation plan

The provisions cover the following:

(a) definition of "designated product" which lists the types of breastmilk substitutes;

(b) requiring Codex standard as standard for manufactured designated products, including the duty of manufacturer or distributor to monitor its marketing practices; and

(c) regulate sale of designated product;

(d) power to designate a product as a designated product.

4.3.3 Suggested draft legislative provisions

(See Part 2 of the Regulations – Annex 4)

4.4 Advertisement and promotion

4.4.1 Policy objective and rationales

The policy objective is to regulate advertisement and promotion of designated products. The policy rationales are:

(a) to prohibit the advertisement and promotion of designated products;

(b) to prohibit donation, gifts, etc., of designated products; and

(c) to prevent health workers whose function is to deal with mothers and children, from accepting donations, gifts, etc., of designated products.

4.4.2 Legislation plan

The following provisions are designed to regulate promoting or advertising of designated products:

(a) a rule to prohibit a person from promoting or advertising a designated product (with special provisions on promotion of complimentary foods);

(b) a rule to prohibit donation, gifts, etc., of designated products;

(c) special rule prohibiting health workers from accepting donations, gifts, etc., of designated products;

(d) offence and penalty provisions.

4.4.3 Suggested draft legislative provisions

(See Part 2 of the Regulations – Annex 4)

4.5 Labelling requirements

4.5.1 Policy objective and rationales

The main policy objective is to regulate the labelling of designated products. The policy rationales are:

(a) users of the products must be given labelling information that provides warnings about using designated products and the risks of improper use, preparation and storage;

(b) information on the labels should not use terms or other representations that give preference of designated products over breastfeeding.

4.5.2 Legislation plan

The legislation plan for labelling requirements covers the following matters:

(a) general requirements for labelling;

  (i) matters that should not appear on the label such as health claim;

  (ii) matters that should appear on label such as preparation instruction;

(b) labelling requirements for infant formula and follow-up formula;

  (i) matters that should appear on the label, in particular warning messages and preparation instructions;

  (ii) certain terms or text that should not appear on the label, such as “maternalised”, etc.

(c) labelling requirements for therapeutic and complimentary food:

  (i) matters that should not appear on the label, such as suitability for infants under 6 months;

  (ii) certain terms or text that should appear on the label such as preparation instructions;

(d) labelling requirements for skimmed milk, condensed milk, low-fat milk and standard milk, matters that should appear on the label, such as, the skimmed or condensed milk not to be used to feed infants or low-fat milk or standard milk should not be used as the sole source of infants’ feed.

(e) labelling requirements for feeding bottle, teat and pacifiers, matters that should appear on the label, such as, important notice, warnings and instructions for use.

(f) offences + penalties for breach of labelling requirements.

4.5.3 Suggested draft legislative provisions

(See Part 3 of the Regulations – Annex 4)

4.6 Information

4.6.1 Policy objective and rationales

The policy objective is to regulate the content of information (including its planning, provision, design or dissemination) and educational material on artificial feeding. The policy reasons are to:

(a) ensure that adequate instructions, preparation, etc., of artificial feeding, including bottle-feeding are provided, in order to minimize the risks of artificial feeding;

(b) to ….

4.6.2 Legislation plan

The legislative provisions will cover:

(a) requirements for information on infant feeding;

(b) requirement for information on artificial feeding;

(c) providing exempt information to health professionals.

4.6.3 Suggested draft legislative provisions

(See Part 4 of the Regulations – Annex 4)

4.7 Duties of health workers

4.7.1 Policy objective and rationales

The main policy objective is to provide for duties of health workers to encourage and protect breast feeding.

The policy rationales are to:

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

(b) avoid all potential conflicts of interest and ensure that health workers do not receive gifts, benefits, etc., that may impede their duties to support, encourage or protect breastfeeding;

(c) prevent abuse of duties of health workers if they are involved in marketing and promotion of designated products.

(d) …

4.7.2 Legislation plan

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

(a) duty of heads of health care facilities to support, encourage and protect breastfeeding;

(b) duty of health workers to support, encourage and protect breastfeeding;

(c) duty of health workers to report to [head of the health facility] any offer of gift, benefit etc., received from manufacturers, etc.;

(d) duty of [head of the health facility] to send the report to [head of facility/Minister].

4.7.3 Suggested draft legislative provisions

(See Division 2 of Part 5 of the Regulations – Annex 4)

4.8 Administration and enforcement[73]

(See Parts 5 and 6 of the Regulations – Annex 4)

CHAPTER 5: SALT, SUGAR, TRANSFAT AND MARKETING OF UNHEALTHY FOODS AND DRINKS

5.0 Introduction

The Pacific Dashboard identifies food preventative policies on reduction of salt consumption, cheaper and easier healthy food choices and discourage unhealthy food choices, trans-fat in food supply, restrict marketing of unhealthy food to children.
For enforcement, the Dashboard suggests a 'government-level system in place to support enforcement.'

[73] To be revised against the parent Food legislation to link administration and enforcement to the parent food legislation if regulations are used.

5.1 Salt

5.1.1 Policy objective and rationales

Policy objective is to reduce salt consumption by reducing salt content across the food supply through:

(a) reformulation and setting mandatory maximum levels of salt in food products;
(b) adopting standards for labelling and marketing;
(c) implementing standards for effective and accurate labelling and marketing of foods of foods that are high in salt;
(d) developing, implementing and monitoring strategies to reduce the amount of salt people eat.

The policy rationale is to prevent the increase in risk of developing NCDs, such as heart diseases or stroke, caused by high salt diet.

5.1.2 PICTs current laws

Kiribati Food Regulations and standards 2014 – adopting Codex standards for maximum levels of sodium in processed meats

5.1.2 Legislation plan

The provisions cover regulating levels of salt (sodium) in processed food items and the sale, manufacturing, importation and labelling of those food items.

5.1.3 Suggested draft legislative provisions

(See Part 2 of Annex 5-1)

5.2 Sugar

5.2.1 Policy objectives and rationale

Policy objective is to reduce consumption of SSBs by:

(a) increasing the retail prices through increase in SSBs tax
(b) prohibiting importation of SSBs
(c) restricting sale and marketing
(d) providing public awareness

The policy rationale is to reduce or prevent health problems associated with high level of SSBs consumption is compelling evidence that SSBs are harmful to health.

5.2.2 Legislation plan

The provisions cover regulating levels of sugar in processed food items and the sale, importation and labelling of those food items.

5.2.3 Suggested draft legislative provisions

(See Part 3 of Annex 5-1)

5.3 Trans-fat

5.3.1 Policy objectives and rationale

The policy objective is to regulate trans-fat by either placing total ban or strict limit on the use of trans-fats (as harmful products) in foods.[74] The regulatory measures include:

[74] REPLACE action package. Module 3: Legislate or regulate. How-to guide for trans fat policy action. Geneva: World Health Organization; 2019 (WHO/NMH/NHD/19.14). Licence CC BY-NC-SA 3.0 IGO.

(a) setting mandatory limits on the amount of trans-fat in all foods to be in line with WHO recommended limit of no more than 2g/100g of total fats in all foods;
(b) requiring clear labelling of trans-fat used in food;
(c) prohibiting partially hydrogenated oils.

The policy rationale is to reduce or prevent the risk of cardiovascular disease, type 2 diabetes and obesity by removing industrially-produced trans-fat from food.

5.3.2 Legislation plan

The provisions cover regulating levels of trans-fat in processed food items and the sale, manufacturing, importation and labelling of those food items.

5.3.3 Suggested draft legislative provisions

(See Part 4 of Annex 5-1)

5.4 Marketing of unhealthy foods and sugary drinks to children

5.4.1 Policy objective and rationales

The policy objective is to regulate [the manufacture, import, distribution, sale and marketing] of unhealthy foods and SSBs. The rationale is to ensure that children are aware of the health risks associated with consuming unhealthy foods and SSBs.

5.4.2 PICTs current laws

…

5.4.3 Legislation plan

The parts of the Regulations will cover the following:

(a) Part 1 deals with preliminary provisions (title, definitions and objects);
(b) Part 2 deals with marketing of unhealthy foods and sugary drinks (designated products);
(c) Part 3 covers administrative provisions;
(d) Part 4 covers enforcement provisions;
(e) Part 5 covers miscellaneous provisions.

5.4.4 Suggested draft legislative provisions

(See Annex 5-2)

CHAPTER xx – IMPLEMENTATION

DEFINITIONS/ACRONYMS

Acronym	Phrase
CFTC	WHO Convention Framework on Tobacco Control
CNMI	Commonwealth of Northern Mariana Islands
FSM	Federated States of Micronesia
GAP	WHO Global Action Plan for the Prevention and Control of Non-communicable Diseases 2013 – 2020
HoH	Pacific Health of Heads
IMF	International Monetary Fund
MANA	Pacific Monitoring Alliance for NCD Action
NCD	Non-communicable disease
NGO	Non-governmental organisation
PICT	Pacific Island Countries and Territories
PIFS	Pacific Islands Forum Secretariat
PHMM	Pacific Health Ministers Meeting
PLF	Pacific NCD Legislative Framework
PNG	Papua New Guinea
RMI	Republic of Marshall Islands
TBT	WTO Technical Barriers to Trade
TRIPS	Trade Related Aspects of Intellectual Property Rights
UNICEF	United Nation International Children's Emergency Fund
VAT	Value Added Tax
WHO	World Health Organisation
WTO	World Trade Organisation

REFERENCES

ANNEX 1 – Tobacco Control Bill

TOBACCO CONTROL BILL

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A BILL FOR

AN ACT to control and regulate tobacco products [and for related purposes][75]

ENACTED by [Parliament…] –

PART 1 – PRELIMINARY

Short title and commencement

(1) This Act may be cited as the Tobacco Control Act [20…].

(2) This Act commences on a date […].

Interpretation/Definition

In this Act:

"**additive**":

(a) means any substance that is added, except water, during the manufacture of a tobacco product; and

(b) includes preservative, humectant, flavour, or processing aid;

"**cigarette pack**" means a container in which cigarettes are directly placed for retail sale;[76]

"**cigarette roll**" means a roll of cut tobacco (enclosed in paper) for smoking;[77]

["**constituent**" means …]

["**contaminant**"] means …]

"**content**":

(a) means a constituent of a processed tobacco; and

(b) includes an ingredient of tobacco product;

"**Convention**" means the World Health Organisation Framework Convention on Tobacco Control;

"**design feature**" means a characteristic of the design of a tobacco product that has an immediate causal link with the testing and measuring of the contents and emission of the tobacco product, such as the ventilation holes around cigarette filters decrease machine-measured yields of nicotine by diluting mainstream smoke;

"**effect of promotion**" includes the use of:

(a) word, design, image, sound or colour;

(b) brand name, trademark, logo, name of manufacturer or importer;

(c) scheme of colour associated with the tobacco product, manufacturer or importer;

"**emission**" means a substance that is:

(a) released when a tobacco is used as intended; or

(b) in the smoke released from cigarette or other combusted tobacco product,; or

(c) for smokeless tobacco product:

(i) released during the process of chewing or sucking through the mouth; or

(ii) released by particles during the process of snuffing through the nose;

"**enforcement officer**" means a person appointed or an officer mentioned under [section [xx][78];

[75] This is a short form of long title. The long form may be used by expressing the main parts of the Bill i.e. "to regulate and control reducing supply and demand for tobacco products [and to provide for administration and enforcement [and for related purposes]"
[76] Definition adopted from the Australian Tobacco Control Act
[77] Definition adopted from the Australian Tobacco Control Act
[78] Other designation, such as "enforcement officer" may be used.

[“**exporter**” means a person who is licensed under [section xx] to export tobacco product;[79]]

“**export licence**” means a licence to export tobacco product issued under [section xx]

“**health warning or health message**” means any message, information, graphic or other thing that is required to appear on the retail packaging of tobacco products about the health effect of smoking or using tobacco products or exposure to tobacco smoke;[80]

“**hospital**” includes a place for providing public or private health care service;

“**hotel**” has the meaning in the [hotel legislation];

“**illicit trade**” of tobacco products:

(a) means an unlawful practice or conduct relating to the production, shipment, transportation, receipt, possession, distribution, sale or purchase; and

(b) includes:

(i) an unlawful practice or conduct intended to facilitate production, shipment, transportation, receipt, possession, distribution, sale or purchase; or

(ii) smuggling, illicit manufacturing or counterfeiting;

“**import licence**” means a licence issued under [section xx];

“**importer**” means a person who is licensed under [section xx] to import a tobacco product;

“**indoor**” includes a place covered partly or temporarily by a material, including a roof or wall;

“**ingredient**”:

(a) includes:

(i) tobacco; or

(ii) a component, such as filter or paper, or a material used to manufacture the component; or

(iii) an additive or processing aid; or

(iv) a residual substance found in tobacco after storage or processing; or

(v) a substance that migrates from the packaging material into the product; but

(b) does not include a contaminant;

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

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

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

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

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

(a) a no smoking symbol in the form of a circle and diagonal line printed in red over a depiction of a cigarette and smoke printed in black, or other symbol that clearly indicates that smoking is not permitted, with the symbol being at least [70mm] in height; and

(b) the phrase "*No Smoking*" or "*Smoking Prohibited*", or other wording that clearly indicates that smoking is not permitted, in letters that are at least [20mm] in height;

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

“**owner**”:

(a) means a person who owns, occupies or is in possession of a place; and

(b) includes a person who manages or is in charge or in control of the place;

[79] Delete definition if the term (‘export’ or ‘import’) is defined in the Interpretation Act. The term “exporter” or “importer” will be taken to have corresponding meaning or grammatical variation of ‘export’ or ‘import’

[80] Definition adopted from the Australian Tobacco Control Act

"**package**":

(a) means a package of a unit of packet; and

(b) includes a package containing units of packets or any outside packaging or labelling;

"**packaging or labelling**" for retail sale of a tobacco product means:[81]

(a) a container in which the tobacco product is directly placed; or

(b) a container that contains a smaller container in which the tobacco product is directly placed; or

(c) a plastic or other wrapper that covers any retail packaging or labelling (within the meaning of paragraph (a) or (b)); or

(d) a plastic or other wrapper that covers the tobacco product; or

(e) an insert that is placed inside the packaging or labelling (within the meaning of any of paragraphs (a) to (d)); or

(f) a thing affixed or attached to the packaging or labelling (other than the lining of a cigarette pack) that is affixed or attached to the packaging or labelling (within the meaning of any of paragraphs (a) to (d));

"**place**" includes an area, facility, premises, building, vehicle or vessel;

["**processed tobacco**" means …]

"**public playground**" includes:

(a) an a place in a park designed for young persons; or

(b) a swimming pool; or

(b) a place during an organised sporting, social, communal or other recreational event for young persons.

"**public officer**":[82]

(a) means a person appointed under [public service legislation]; and

(b) includes:

(i) the holder of a public office appointed under the Constitution[83]; or

(ii) a government employee, consultant, or contractor; or

(ii) … [*add to the list*]

"**public place**"[84]includes any other place (regardless of ownership or right of access) accessible or for collective use, by or open to the public, whether on payment of money or otherwise;

"**public road**" has the meaning in the [road legislation];

"**public transport**" means any form of land, sea or air conveyance for public transportation;

"**prescribe**" means to be prescribe by regulations;[85]

"**proof of age**" means an identification document of a person setting out:

(a) the person's date of birth; and

(b) a passport size photograph showing the face of the person; and

(c) any other information necessary to ascertain the age and identity of the person;

[81] Definition adopted from the Australian Tobacco Control Act
[82] Check and compare with Interpretation Act if that term is defined in that Act, and if so it can be deleted.
[83] Check as some holders of public offices are appointed under your Constitution.
[84] Check and compare with Interpretation Act if that term is defined in that Act
[85] Delete definition if the term is defined in interpretation legislation

"**restricted smoke-free environment**" means:

(a) any liquor licensed place;

(b) a place to sell and consume food at that place;

(c) a prescribed place;

"**retailer**" means a person who is licensed under [section xx];

"**retail licence**" means a licence issued under [section xx];

"**sell**" includes supply or distribute for sale;

"**school**": means a primary or secondary school.

(a) means a school regulated or registered under the [Education Act]; and

(b) includes a centre for early childhood learning or for infants day care;[86]

"**smoke**":

(a) means to smoke a tobacco product; and

(b) includes to possess or control a lit tobacco product regardless of whether the smoke is being actively inhaled or exhaled;

"**smoke-free environment**" means a place specified in [section xx] where smoking is totally prohibited;

"**smoke-free zone**" means a place declared as smoke-free zone under [section xx];

"**smoking area**" means an area designated under [section xx or xx] where smoking is permitted;

"**smoking sign**" means a sign, diagram or photograph in a smoking area that clearly indicates that smoking is permitted;

"**tobacco control**" means a range of supply, demand, or harm reduction strategy to improve human health by eliminating or reducing consumption of tobacco products or exposure to tobacco smoke;

"**tobacco product**":

(a) means a product entirely or partly made of the leaf tobacco as raw material which are manufactured to be used for smoking, sucking, chewing or snuffing; and

(b) includes [e-cigarette][87] or any other form of use or consumption of the tobacco product; but

(c) does not include a tobacco product prohibited under [section xx];

"tobacco product advertisement":

(a) means[88] an advertisement to promote or publicise:

(i) smoking of tobacco product; or

(ii) selling, buying or use of tobacco product; or

(ii) the trade mark or design for a tobacco product or for other goods or articles that include a tobacco product; or

(iii) the name of the manufacturer, importer or seller of a tobacco product; or

(iv) the name of any other person whose name appears on, or on the packaging of, some or all of tobacco products; or

(v) any other word, (such as, the whole or a part of a brand name) or designs, or combination of words or designs, that are closely associated with a tobacco product with other products; and

(b) includes:

[86] This is to cover other educational or childcare facilities not regulated or registered under the Education legislation.
[87] To be deleted if e-cigarette is listed as a prohibited tobacco product.
[88] Adapted from the Vanuatu Tobacco Control Act 2008

(i) an arrangement for sale or distribution; or

(ii) a hidden form of advertising or promotion, such as, insertion of a tobacco product or tobacco use in any media content; or

(iii) an association of tobacco product with event or other product in various ways; or

(iv) a promotional packaging or product design feature;

(v) the production or distribution of an item, such as sweets, toys or other product that resemble cigarettes or other tobacco products;

"**tobacco product promotion**" includes promoting or publicising a tobacco product:

(a) in a manner that is deceiving or misleading about the product's character, property, toxicity, composition, merit or safety; or

(b) that does not display, in the prescribed form and manner, the information required under this Act about the product and its emissions, health hazards and effects arising from the use of the product or from its emissions and other health-related messages, such as, any advice on how to quit smoking; or

(c) through means of promotion that can be viewed from outdoors; or

(d) using any matter, item (other than a tobacco product), place or means of land, sea or air conveyance, which bears the brand name (alone or in conjunction with any other word) or trade mark; or

(e) using any sports or game or any musical, artistic or any other social or cultural event, or any entry or team in an event, in the brand name (alone or in conjunction with any other word) or trade-mark;

"**tobacco product sponsorship**":

(a) means a form of contribution (whether financial or otherwise or regardless of how or whether the contribution is acknowledged or publicised):

(i) to an event or activity; or

(ii) to an individual, -

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

(b) includes:

(i) any measure used by a tobacco company to make contribution to a deserving cause or to promote the social responsibility of the company business practices; or

(ii) any financial or in-kind contribution to any organisation or group either directly or through another entity; or

(iii) any socially responsible business practice such as good employee-employer relations or environmental stewardship, which do not involve contribution to other parties; or

(iv) any promotion to the public of any commendable activity, except for the purpose of corporate reporting, such as annual reports, or business administration, such as recruitment purposes or communications to suppliers; or

(v) any public education campaign, such as campaign to prevent youth smoking;

"**trade mark**" includes a trade name, distinguishing guise, logo, graphic arrangement, design, slogan, symbol, motto, selling messages, recognisable colour or pattern of colours, or any other indicia of product identification identical or similar to, or identifiable with, those used for any brand of tobacco product;

"**variant of brand**" of tobacco product, means the name used to distinguish that kind of tobacco product from other tobacco products that are supplied under the same brand, business or company name, by reference to the following:

(a) containing or not containing menthol;

(b) being otherwise differently flavoured;

(c) purporting to differ in strength;

(d) having or not having filter or other tips;

(e) being of different length or mass;

"**vehicle**" has the meaning in the [Traffic legislation];

"**vessel**" has the meaning in the [shipping legislation];

"**wholesaler**" means a person licensed under [section xx] to sell tobacco products by wholesale;

"**workplace**" has the meaning in the [labour/employment legislation];

"**young person**" means a person aged under [21][89] years.

Application

(1) This Act extends to the [contiguous zone[90] and] exclusive economic zone.

(2) This Act binds the [State/Republic/Government/Crown].

Objects

The objects of this Act are:[91]

(a) to protect the right to public health and ensure the highest standard of health against the dangers of tobacco smoking or exposure to tobacco smoke and against the diseases caused by tobacco products; and

(b) to encourage non-smokers to refrain from smoking and protect them from persuasion or inducements to use tobacco products and consequent dependence on tobacco products; and

(c) to enhance public awareness of the hazards of tobacco use by ensuring the effective communication of accurate and relevant information to consumers of tobacco products; and

(d) to encourage and assist smokers to quit smoking and to promote healthy lifestyles and prevention of illness; and

(e) to reduce some of the harmful effects of tobacco products by monitoring and regulating the presence of harmful constituents and emissions in tobacco products and in tobacco smoke; and

(f) to reduce the social approval of tobacco use by prohibiting advertising, promotion, sponsorship of tobacco products; and

(g) to protect the health of young persons by restricting access to tobacco products; and

(h) to enhance awareness of the hazards of using tobacco products and exposure to the product's smoke by ensuring the effective communication of accurate and relevant information about the use and exposure; and

(i) to reduce some of the harmful effects of tobacco products by monitoring and regulating the presence of harmful constituents and emissions in tobacco products; and

(j) to promote the prevention and cessation of smoking.

PART 2 – REDUCING DEMAND FOR TOBACCO PRODUCTS

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

Smoke-free environment

(1) A person must not smoke in:

(a) a school or hospital; or

(c) a public transport; or

(d) an indoor workplace; or

(e) an indoor place for use by the public; or

[89] PICTs which ban smoking at the age of 18 should consider increasing it to 21 years.
[90] Only for PICTs that have contiguous zones. Also it is important to extend the law to the EEZ since it will cover sea transport also.
[91] Adapted from Tuvalu and Vanuatu Tobacco Control Acts.

(f) any other prescribed place or transport.

(2) The owner of a smoke-free environment must:

(a) monitor any tobacco product use within it and take any remedial action to prevent, stop or remove the person using the tobacco product; and

(b) post a non-smoking sign in it; and

(c) take steps to discourage an individual from using tobacco product in the place, including:

(i) asking the individual to stop tobacco product use or to leave the place; or

(ii) discontinuing any service to the individual; or

(iii) reporting the matter to [an enforcement officer].

(3) A non-smoking sign must include:

(a) a statement to report any tobacco use; and

(b) any contact (whether the name of a person, a position or other means of communication) to report the tobacco use.

(4) A person commits an offence who contravenes subsection (1) [Offence + penalty].

No smoking in outdoor place of a school or hospital[92]

(1) A person must not smoke in a place that is:

(a) not enclosed; and

(b) within a school or hospital.

(2) A person must not smoke at or within [4] metres of any part of a pedestrian access point to:

(a) a school; or

(b) a hospital; or

(c) [indoor work place or indoor place for use by the public[93]].

(3) Subsection (2) does not apply to a person—

(a) in a motor vehicle, unless the motor vehicle is stationary; or

(b) in a place that is separated from a place referred to subsection (2) by a road; or

(c) at residential place or on land at which residential place are built or may lawfully be built; or

(d) in an outdoor place to sell and consume food or liquor; or

(e) who is not remaining at or near the pedestrian access point but is merely passing by the pedestrian access point.

(4) [Offence provision]

No smoking in outdoor public playground equipment for young persons

(1) A person must not smoke:

(a) in a place that is not enclosed and is within a public playground equipment for young persons; or

(b) at or within [4] metres of any part of a pedestrian access point to a public playground.

(2) Subsection (1) does not apply to a person:

(a) in a motor vehicle, unless the motor vehicle is stationary; or

(b) in a place that is separated from place referred to in subsection (1) by a road; or

(c) at residential place or on land at which residential place are built or may lawfully be built; or

[92] Adapted from the Tobacco Act 1987 of the State of Victoria, Australia available from hppt/www.legislation.vic.gov.au
[93] PICTs to consider whether it should be extended to indoor workplace, etc.

(d) in an outdoor place to sell and consume food or liquor; or

(e) who is not remaining at or near the pedestrian access point but is merely passing by the pedestrian access point.

(4) [Offence provision].

Restricted smoke-free environment

(1) A person must not smoke in a restricted smoke-free environment except in the area designated under subsection (2).

(2) The owner of a restricted smoke free-environment may designate an area within it as a smoking area.

(3) A smoke-free environment must not be prescribed as a restricted smoke-free environment.

(4) [Offence provision]

Duties of owners

(1) The owner of a restricted smoke free-environment must:

(a) monitor tobacco product use within the place and take any remedial action to prevent or stop a person using tobacco product in a non-smoking area of that place; and

(b) provide smoking sign or notice in the designated smoking area; and

(c) remove any ashtray from the non-smoking area; and

(d) take steps to discourage an individual from using tobacco product in the place, including:

(i) asking the individual to stop using the tobacco product or to leave the place; or

(ii) discontinuing any service to the individual; or

(iii) reporting the matter to [an enforcement officer].

(2) A notice or sign must include:

(a) a statement to report any breach for using tobacco product; and

(b) any contact (whether the name of a person, a position or other means of communication) to report the breach.

(3) Regulations may be made to provide other requirements:

(a) for marking or identifying smoking areas; or

(b) for the format and information for the permitted or not permitted smoking sign or notice.

Smoke-free zones[94]

(1) The [Minister] may, [with the approval of Cabinet], declare an open public place, including a public road, public park, hotel, as a smoke-free zone.

(2) A declaration of a hotel as a smoke-free zone must only be done on the recommendation of the owner of the hotel.

(3) The owner of a smoke-free zone must:

(a) monitor tobacco product use within the smoke-free zone and take any remedial action to prevent, stop or remove a person using tobacco product in a smoke-free zone; and

(b) designate a smoking area within the smoke-free zone; and

(c) provide smoking and non-smoking and signs; and

(d) take necessary and reasonable step to discourage using tobacco product in the smoke-free zone, including:

(i) asking an individual to stop using the tobacco product or to leave the smoke-free zone or go into a smoking area; or

(ii) discontinuing any service to the individual; or

[94] The provision has been adopted in Singapore by declaring a public road in the city, and in Malaysia by declaring a tourist area, a smoke-free zones.

(iii) reporting the matter to [an enforcement officer or a police officer].

(4) A notice or sign must include:

(a) a statement to report any breach for using tobacco product; and

(b) any contact (whether the name of a person, a position or other means of communication) to report the breach.

(5) Regulations may be made to provide other requirements:

(a) for marking or identifying the smoke-free zone specified under subsection (1); or

(b) for the format and information for smoking sign or non-smoking sign.

Division [2] – Packaging and labelling

Mandatory information to appear on packaging and labelling

(1) A person who manufactures, imports or sells a tobacco product must ensure that product's packaging or labelling displays the following information:

(a) health messages, warnings or information required under section xx];

(b) constituents and emissions of the product (except constituents prohibited under section xx]);

(c) name of manufacturer and of the country of intended sale of the tobacco product;

(d) any other prescribed information.

(2) [Offence provision]

Costs of packaging or labelling

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

(a) packaging and labelling on the tobacco product; or

(b) incorporating information on the packaging or labelling.

Prohibited information to be displayed on packaging or labelling

(1) The packaging or labelling of a tobacco product must not display:

(a) any figure on the emission yield, such as tar, nicotine or carbon monoxide; or

(b) any expiry or best use by date; or

(c) any other prescribed information.

(2) [Offence provision]

False, misleading and deceptive packaging and labelling

(1) A person must not manufacture, import or sell a tobacco product if its packet or label promotes the tobacco product by means that are:

(a) false, misleading, or deceptive; or

(b) likely to create an erroneous or false impression,

about the characteristic, health effect, hazard, or emission of a tobacco product.

(2) [Offence provision]

(3) In subsection (1):

"**means**" includes any terms, words, or signs (such as descriptors, trademarks, figurative, low tar, light, ultra-light, mild, extra or ultra).

Minimum pack size for cigarettes

(1) A person must not manufacture or sell cigarettes unless they are manufactured, sold, supplied or distributed in sealed packets of not less than [20] cigarettes.

(2) [Offence provision]

Restriction on sale of tobacco products in small quantities

(1) A person must not sell:

(a) loose cigarette sticks or cigarette roll; or

(b) loose tobacco in a package that contains less than [20] grams of tobacco.

(2) [Offence provision]

Division [3] – Plain packaging of tobacco products

Retail packaging

The packaging must comply with the following requirements:

(a) the outer surfaces and inner surfaces of the packaging must not have any decorative ridges, embossing, bulges or other irregularities of shape or texture, or any other embellishments, other than as permitted by the regulations; and

(b) any glues or other adhesives used in manufacturing the packaging must be transparent and not coloured.

Cigarette packs and cartons

(1) A cigarette pack or cigarette carton must comply with the following requirements:

(a) the pack or carton must be rigid and made of cardboard, and only cardboard (subject to section xx(1)(b) and subsection (2)(d));

(b) when the pack or carton is closed:

(i) each outer surface of the pack or carton must be rectangular; and

(ii) the surfaces of the pack or carton must meet at firm 90 degree angles;

(c) all edges of the pack or carton must be rigid, straight and not rounded, bevelled or otherwise shaped or embellished in any way, other than as permitted by the regulations.

(2) A cigarette pack must comply with the following requirements:

(a) the dimensions of the pack must comply with the prescribed requirements;

(b) the only opening to the pack must be a flip-top lid which must:

(i) be hinged only at the back of the pack; and

(ii) have straight edges;

(c) the inside lip of the cigarette pack must have straight edges, other than corners which may be rounded, and neither the lip, nor the edges of the lip, may be bevelled or otherwise shaped or embellished in any way;

(d) if the pack contains lining—the lining of the pack must be made only of foil backed with paper, or any other prescribed material.

(3) For subsection (2)(b)(ii), the lid or the edges of the lid must not be rounded, bevelled or otherwise shaped or embellished in any way.

Colour and finish of retail packaging

(1) This section applies to the following things:

(a) all outer surfaces and inner surfaces of the packaging (within the meaning of paragraph (a) or (b) of the definition of "**packaging or labelling**");

(b) both sides of any lining of a cigarette pack.

(2) The things mentioned in subsection (1):

(a) must have a matt finish; and

(b) except as provided by subsection (3):

(i) if regulations are in force prescribing a colour—must be that colour; and

(ii) otherwise—must be [drab dark brown].

(3) The following are not required to be the colour mentioned in subsection (2)(b):

(a) the health warnings;

(b) the text of:

(i) the brand, business or company name, or variant name (if any), for the tobacco products; and

(ii) the relevant legislative requirements (other than the health warnings).

(4) Regulations may be made under section [xx] on the following:

(a) requirements for health warnings, including graphics to cover not less than [70% of front and 90% of back] of the pack;

(b) prohibited and permitted use of trademarks and marks of tobacco products, including use in the packaging, such as brand, company name, brand variant, etc.;

(c) requirements for brand, business, company or variant name on retail packets;

(d) requirements for wrappers;

(e) prohibited and permitted use of retail packaging on inserts;

(f) prohibition on retail packaging to produce noise or scent;

(g) prohibition on change in retail packaging after retail sale;

(h) requirements for appearance of trade mark or mark on tobacco products, including permitted appearance.

Offence

A person commits an offence who manufactures, imports or sells any tobacco product that does not comply with the requirements of [section xx, xx, xx…][+ penalty]

Division [4] – Health warnings and messages

Health warnings and messages

(1) A person must not manufacture, import or sell a tobacco product if the packet or label does not contain the required health warning or health message.

(2) A health warning or health message is required to:

(a) be in [prescribed/approved] form; and

(b) be rotating, large, clear, visible, and legible; and

(c) be at least [70%] (but not less than [90%]) of the principal display area; and

(e) comply with regulations on the designs of health warnings and messages.

(3) The State owns the copyright and any pictorial on health warnings and messages.

(4) [Offence provision]

Display of "*SMOKING KILLS*" at point of sale[95]

(1) A person must not sell a tobacco product by retail unless a sign displaying "*SMOKING KILLS*" ("the sign") is displayed at the point of sale.

(2) The sign must be:

(a) in [xx] and [xx] languages; and

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

(c) in capital letters, clear and legible, and take up at least [90%] of the full area of the sign; and

[95] Adapted from the Tuvalu Tobacco Control Act. It has been placed close to health warning provision as it deals with other health messages.

(c) at least the area of an [A3] size of paper.

(3) The sign:

(a) may include the attribution ["Ministry of Health Warning" or "Government"] in [xx] and [xx] languages, printed after the sign; and

(b) must be of a print size of the attribution that is no greater than one-half the print size of the sign.

(4) Regulations may prescribe other requirements of the sign and how it is displayed at the point of sale.

(5) [Offence provision]

Division [5] – Advertising, promotion and sponsorship

Tobacco product advertisement[96]

(1) A person must not (through any medium, manner or form or any material or matter) undertake or carry out any tobacco product advertisement.

(2) Subsection (1) applies to:

(a) any tobacco product advertisement that originates in [xx] but used in another country or originates in another country but used in [xx]; or

(b) the sale of a material or matter (such as film, video, Compact Disk, document, leaflet) that contains or that is, a tobacco product advertisement; or

(c) the printing or publishing of a tobacco product advertisement in any material or matter that is intended for the public; or

(d) a tobacco product advertisement done on behalf of another person.

(3) This section does not apply to:

(a) a tobacco product advertisement that is an accidental or incidental accompaniment to a film or video; or

(b) a tobacco product advertisement included in a book, magazine, or newspaper printed in another country, or in a radio transmission or a television transmission originating in another country, or a film, video recording, or visual disk originating in another country, if:

(i) the principal purpose of the book, magazine, newspaper, broadcast, telecast, film, video recording, or visual disk is to promote the use or smoking of a tobacco product; or

(ii) the book, magazine, newspaper, broadcast, telecast, film, video recording, or visual disk is intended for sale, distribution, exhibition in [xx]; or

(iii) for a tobacco product advertisement in a radio transmission, television transmission, electronic transmission, or data message, the advertisement is targeted primarily at an audience in [xx].

(4) [Offence provision]

Tobacco product promotion[97]

(1) A person must not:

(a) promote a tobacco product through direct or indirect means, including promoting of any other person, service, place, transport, or event; or

(b) promote any other person, a tobacco product, unless allowed under this Act; or

(c) directly, target any other person with promotional material, including informational material, such as, direct mail, telemarketing, consumer survey, or research or person-to-person conversation by a tobacco product business or a person who is acting to further the interest of the business.

(2) [Offence provision].

Tobacco product sponsorship[98]

[96] Adapted from the Tobacco Control Decree 2010 (Fiji)
[97] Adapted from the FSM Tobacco Control Act. Subsection (1)(c) is moved to the definition so that it does not clutter the substantive provision.
[98] Adapted from the Tonga Tobacco Control Act 2000

(1) A person must not undertake or carry out any form or manner of tobacco product sponsorship.

(2) [offence provision].

(3) In this section:

"**tobacco product**" includes:

(a) the trademark or brand name (or part of it) of a tobacco product; or

(b) the name or interests of a manufacturer or wholesaler of a tobacco product (whether or not that manufacturer or wholesaler also manufactures or distributes a product other than the tobacco product).

Free samples and incentive to smoke

(1) A person must not, offer, give or distribute free sample of a tobacco product to another person in order to induce or promote the sale of a tobacco product.

(2) A person must not provide any, direct or indirect, incentive that encourages another person to smoke [+ penalty].

(3) [Offence provision].

Competition[99]

(1) This section applies to the use of a tobacco product in a competition connected with the selling or promoting the sale or use of tobacco product.

(2) A person must not:

(a) supply to another person any benefit, such as a prize or gift, or any other thing, as part of the competition;

(b) conduct a prescribed scheme to promote the sale of tobacco product or to promote smoking generally.

(3) [Offence provision].

(4) It is a defence to prove that:

(a) the benefit or thing supplied, or participation in the competition or scheme, was only incidentally connected with the purchase of a tobacco product; and

(b) equal opportunity to receive the benefit or thing, or to participate in the scheme, was afforded generally to persons who purchased products whether or not they were tobacco products.

(5) In this section:

"**benefit**" includes:

(a) a stamp, coupon, token, voucher or ticket under which another person may become entitled to, or may qualify for a benefit (whether the entitlement or qualification is absolute or conditional); or

(b) a matter which (or a copy or facsimile of which) is a necessary prerequisite to participate in, or is likely to confer a benefit or advantage in, any game, contest or other activity in which a participant may become entitled to, or may qualify for, a benefit (whether the entitlement or qualification is absolute or conditional);

(c) a reward or shopper loyalty scheme that provides benefits to customers.

Brand stretching and reverse brand stretching[100]

(1) A person must not:

(a) advertise:

(i) any goods which are not tobacco products; or

(ii) any service, -

in a manner or form that contains any writing that is commonly identified with a tobacco product; or

[99] Adapted from the Fiji Tobacco Control Decree 2010
[100] Adapted from Fiji and Tuvalu tobacco control laws

(b) display on a building any name or writing which is commonly identified with a tobacco product; or

(c) 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:

(i) any goods which are not a tobacco product; or

(ii) any service.

(2) Subsection (1)(b) does not apply to the business place of a manufacturer or seller whose sole or principal business is either the manufacture or sale of tobacco products.

(3) [Offence provision]

(4) In this section:

"**advertise**" includes:

(a) to sell, distribute or promote; or

(b) to display for sale, distribution or promotion;

"**building**" includes other structure or place, such as, a club, restaurant or stadium;

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

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

"**tobacco product**" includes trademark or brand name (or part of it) of a tobacco product or manufacturer;

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

Division [6] – Contents and emissions

Prohibited ingredients

(1) The following ingredients are prohibited ingredients of a tobacco product:

(a) an added ingredient to make the tobacco product palatable to smoke; or

(b) an ingredient that has a colouring property; or

(c) an ingredient that gives an impression that the tobacco product has health benefits or is associated with energy or vitality; or

(d) any other prescribed ingredient.

(2) [Offence provision].

(3) In this section:

"**ingredient**" includes:

(a) for subsection (1)(a), a substance with known irritant matter or an altered tobacco product emission to add or remove a specific substance, including:

(i) any sweet substance, such as, sugar, sweetener, honey, glucose, molasses or sorbitol;

(ii) any flavouring matter, such as, benzaldehyde, maltol, menthol or vanillin;

(iii) any herbs or spice, such as, cinnamon, ginger or mint;

(b) for subsection (1)(b):

(i) attractive colouring of tobacco product;

(ii) any colouring agent, ink, or pigment, to a component of tobacco product, such as, imitation cork pattern on tipping paper or titanium dioxide in filter material; but

(iii) does not include colouring agent for health warnings or messages or other markings;

(c) for subsection (1)(c):

(i) relating to health benefits, any vitamin, fruit or vegetable (including a matter or substance from processed fruit or vegetable), amino acid or fatty acid;

(ii) relating to energy or vitality, any substance or matter that increases mental alertness or physical performance, such as caffeine, guarana, taurine or glucuronolactone.

Prohibit tendency to ignite

(1) A person must not manufacture or sell a tobacco product that is not designed to be extinguished by itself when it is left unattended or is not puffed.

(2) [Offence provision].

Duty to test constituents and emissions

(1) A manufacturer or importer must, at its own expense, carry out a test to determine:

(a) the additives, the constituents and the design features of each brand of the product manufactured or imported; and

(b) the quantities of the additives or constituents; and

(c) if the product is intended for smoking:

(i) the emissions of the smoke of each brand of the product manufactured or imported; and

(ii) the quantities of those constituents.

(2) The test is to be carried out:

(a) on an annual basis; and

(b) pursuant to the prescribed procedures; and

(c) at a laboratory.

(3) The manufacturer or importer may separately test variant of a brand.

(4) [Offence provision]

Further tests

(1) If a test has been carried out under [section xx], the [xx] may, in writing, direct a manufacturer or importer to carry out a further test on the matters specified in that section.

(2) The manufacturer or importer must, at its own expense, carry out the further test:

(a) under the prescribed procedures; and

(b) by an independent laboratory.

(3) [offence provision].

Approved laboratory

(1) The [Minister] may approve a laboratory (either in [xx] or another country) in which test required under this Act may be carried out.

(2) A test is to be carried out under the International Organisation for Standardisation.

(3) A test is void if it is not carried out in an approved laboratory.

Test by Government

(1) The [Minister] may carry out any test at:

(a) a laboratory; or

(b) any other independent laboratory that is not directly or indirectly owned or controlled by the tobacco industry.

(2) The person whose tobacco product is being tested under this section is liable to the Government for cost of the test.

Test report

(1) The manufacturer or importer must, within [20 working days[101]] of receiving a report under [section xx or xx], send a copy to the [Minister].

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

Information on contents, constituents and emissions

(1) A manufacturer or importer must, before [31 July] each year, send to [xx] the [prescribed] information about the contents, ingredients and emissions of any manufactured or imported tobacco product.

(2) The [xx] must, as soon as practicable, publish the information in the [official publication, such as Gazette] or other media approved by [xx] except any information:

(a) that is a trade secret of the manufacturer or importer/exporter;

(b) decided by [xx] not to be released to the public; or

(c) claimed by a manufacturer or importer to be confidential.

(3) A failure to comply with subsection (1) is a ground to cancel the licence to manufacture, import, or export tobacco product.

(4) [Offence provision]

(5) In this section:

"**brand family**" a group of brands that falls under the same parent brand, marketed under the same parent brand and carries the same set of values as the parent brand;

"**information**" means information about:

(a) the type of tobacco product, brand, or brand family; or

(b) any ingredient used in manufacturing the tobacco product; or

(c) the quantity in each unit of the tobacco product; or

(d) any other ingredient present in a component of the tobacco product, such as filter, paper or glue, for each brand within a brand family; or

(e) any characteristic of tobacco leaves used, including the type and percentage of each type of leaves used; or

(f) the percentage of reconstituted or expanded tobacco used; or

(g) any other prescribed matter;

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

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

PART 3 – LICENSING OF MANUFACTURERS, ETC.

Licences to manufacture, import/export or sell tobacco products[102]

(1) A person must not:

(a) manufacture a tobacco product except under a manufacturing licence issued under [section xx]; or

(b) import a tobacco product except under an import licence issued under [section xx]; or

[(c) export a tobacco product except under an export licence issued under [section xx];[103] or

(d) sell a tobacco product (including zuki/brus[104]) by wholesale except under a wholesale licence issued under

[101] PICTs to decide appropriate time required taking into account their territorial geography. This applies to similar provisions that fix a time.
[102] Only one authority (licence) is proposed rather than having different authorities (licence, registration, permit, etc.)
[103] Only relevant to PICTs that export of tobacco product
[104] Use local name of tobacco. It is referred to as 'zuki' in Fiji and 'brus' in PNG

[section xx]; or

(e) sell a tobacco product (including zuki/brus) by retail except under a retail licence issued under [section xx].

(2) [Offence provision].

Power to issue licences

(1) The [xx] may, upon application, issue any of the following licences:

(a) manufacturing licence authorising the manufacturing of a tobacco product specified on the licence;[105]

(b) import licence authorising the importing of a tobacco product specified on the licence;

(c) export licence authorising the exporting of a tobacco product specified on the licence;

(d) wholesale licence authorising the sale to retail licensees of tobacco product specified on the whole licence;

(e) retail licence authorising the retail sale of tobacco product specified on the licence.

(2) A licensee commits an offence if:

(a) for a manufacturing licensee, the licensee distributes a tobacco product to a person who is not a wholesale licensee or retail licensee; or

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

(c) for a wholesale licensee, the licensee distribute a tobacco product to a person who is not a retail licensee.

Applications

(1) A person may apply to [xx] for a licence.

(2) The application must:

(a) be made in the [prescribed form/approved form][106]; and

(b) include the [prescribed/approved] fees; and

(c) contain any other prescribed information.

Register of licences

(1) The [xx] must establish and maintain a register of licences to record the following:

(a) The name of the licensees;

(b) the business and residential address and other contact information of the licensee

(c) the type of licence and what it authorises;

(d) term and expiry date of the licence;

(e) any other information approved by [xx].

(2) A person is entitled to inspect the register and access and obtain any information in it, subject to payment of [prescribed/approved] fee.

(3) The [xx] may refuse access to any information if [xx] is satisfied that the information is confidential or relate to privacy matters of the licensee or the matter licensed.

Notification of change of name, address, etc.

(1) A licensee must send a notice to the [xx] of any change that affects the records relating to:

(a) a licensee's name and address and other contacts;

(b) a licensee's employment or position; or

(c) any other detail requiring notification under this Act.

[105] PICTs to consider whether manufacturing licence should be subject to the prior approval of Cabinet.

[106] The devised application forms will provide for names, addresses and other contact information

(2) The notice must be:

(a) made within [20 working days] of the change; and

(b) made on a [prescribed/approved] form; and

(c) accompanied by a copy of the licence.

(3) The failure to comply with subsection (1) is a ground to suspend the licence.

Term and renewal of licence

(1) A licence is valid for [12 months] from the date of issue or renewal of the licence.[107]

(2) A licensee may, within [3 months] before expiry of the licence, apply to [xx] to renew the licence.

Conditions of licence

(1) The [xx] may:

(a) when issuing a licence, impose any condition of the licence;

(b) vary, suspend or revoke any current condition; or

(c) impose new conditions; or

(d) impose any prescribed conditions.

(2) Regulations may prescribe other conditions of licences.

Variation, suspension and revocation of licence

(1) The [xx] may:

(a) vary a licence if the [xx] is satisfied that the licence should be varied; or

(b) suspend a licence, for up to [3] months (subject to further extension), if the licensee has been alleged to have breached this Act; or

(c) revoke a licence if the licensee has been convicted of an offence under this Act or if it is in the interest of public health to revoke the licence.

(2) A licensee has the right to be heard on any proceeding to revoke the licence.

Transfer of licence

(1) The licensee must not transfer the licence to another person.

(2) A transfer to another person is void.

Appeal

(1) In this section:

"**decision**" means a decision:

(a) not to issue the licence; or

(b) not to renew the licence; or

(c) to revoke the licence.

(2) A person may appeal the decision to [xx[108]].

(3) The [xx] may hear and determine the appeal.

[(4) The appeal panel comprises:

(a) a lawyer with at least [5] years legal experience; and

(b) [2] other members.]

[107] PICTs to consider whether different licences (manufacturing licence, import licence, etc.) should have different terms.

[108] Each PICT to consider the appropriate appeal body. If the licensing authority is the CEO/PS health, the the Minister can be the appeal authority. If the Minister is the licensing authority then a panel of 3 can be established as the appeal authority. Also the lower courts (e.g. magistrates) can be considered.

Part 4 – REDUCING SUPPLY OF TOBACCO PRODUCT

Division 1 – Illicit trade

Prohibited tobacco products

(1) A person must not manufacture, import, sell, use or smoke any of the following tobacco products:[109]

(a) smokeless forms of tobacco product;

(b) tobacco product for chewing;

(c) water-smoking;

(d) e-cigarettes or vaping;

(e) any other prescribed tobacco product.

(2) If the [xx] suspects that a person is manufacturing or selling a prohibited tobacco product, the [xx] may order:

(a) the person to cease the activity; and

(b) the confiscation and forfeiture of the prohibited tobacco product; and

(c) the prohibited product to be destroyed in a proper manner.

(3) The [xx] may approve the importation of e-cigarettes or vaping to be used as part of the government programme to quit smoking.

(4) [Offence provision]

Smuggling of tobacco product[110]

(1) A person commits an offence who:

(a) imports a tobacco product (whether or not manufactured legally), with the intention to defraud revenue; or

(b) manufactures a tobacco product without authorisation of the rightful owners, with intent to defraud revenue; or

(b) conveys, or possesses a tobacco product that the person knows that the product was imported or manufactured, with intent to defraud revenue; or

(2) It is not necessary for the prosecution to prove the identity of the person who imported or manufactured the tobacco product.

(3) [Offence provision].

Manufacturer to provide information about retailers

(1) The [xx] may require a manufacturer to provide information:

(a) sufficient to identify the retailer to whom the manufacturer sells tobacco products or to locate the business place of the retailer; or

(b) about the quantity of tobacco products sold by the manufacturer to a retailer.

(2) A manufacturer must comply with a requirement under subsection (1).

(3) [Offence provision]

(4) In this section:

"**manufacturer**" includes an importer or wholesaler.

Division 2 – Young persons

[109] Each PICT should determine the tobacco products or methods of smoking to be prohibited.
[110] PICTs to determine whether smuggling offence should be in their customs/excise legislation.

Definition

In this Division:

"**covered**" means:

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

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

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

"**social event**" means an event that:

(a) involves the provision of music (whether live or recorded and whether for listening to or dancing to or both); and

(b) is predominantly organised or intended for, or predominantly attended by, young persons; and

(c) is open to members of the public (whether with or without payment); and

(d) takes place in a place other than a private residence.

Sale to young persons

(1) A person must not sell a tobacco product to a young person.

(2) A person must not supply whether by gift or other means, a tobacco product to:

(a) a young person; or

(b) another person whom the person knows, or ought reasonably to know, will supply the product to a young person.

(3) A person must not buy a tobacco product for use by a young person.

(4) It is irrelevant under subsection (1) that the young person was buying the tobacco product for or on behalf of an adult.

(5) [offence provision].

Licensees liable for acts of employees

(1) If a retailer's adult employee sells a tobacco product to a young person, the retailer is taken to also commit the same an offence against [section xx(1)].

(2) If a retailer's young person employee sells a tobacco product to another young person:

(a) the employee does not committed an offence against [section xx(1)]; and

(b) the retailer is taken to also commit the same offence against [section xx(1)]; and

(c) if, at the time of the sale, the young person employee was being supervised by an adult employee of the retailer – the adult employee is taken to also commit the same offence against[section xx(1)].

Defence on photographic identification

It is a defence to a prosecution for an offence against [section xx, xx, or xx] if the defendant proves:

(a) that, immediately before the sale, offer or buying of the tobacco product, the person who sold or offered to supply, or bought the tobacco product was shown photographic identification indicating that the sale or offer was being made to, or the buying was for, an adult; and

(b) that, at that time, a reasonable person would have had no reason to suspect that the photographic identification was false or related to another person.

False identification

(1) A person who is not sure about the age of a buyer of a tobacco product must:

(a) ask the buyer to provide proof of age[111]; and

(b) refuse the sale if:

(i) the proof of age is not provided; or

(ii) suspects that the proof of age is false.

(2) A person commits an offence if the person, with intent to obtain a tobacco product, uses a proof of age:

(a) of another person; or

(b) is false.

(3) [offence provision].

Sale of products resembling tobacco products

(1) A person must not sell a product, such as confectionery or toys, designed or marketed for consumption or use by young persons if the product:

(a) resembles, or is packaged to resemble, a tobacco product; or

(b) has or is likely to have the effect of encouraging young persons to smoke (whether it is intended to have that effect or not).

(2) [offence provision]

Sale prohibition sign

(1) A retailer must provide a sign at the point-of-sale stating that it is prohibited:

(a) to sell to or buy for, a young person a tobacco product; or

(b) to permit a young person to sell or buy, a tobacco product.

(2) A person must not sell a tobacco product by retail if a prohibition sign is not displayed at the point of sale.

(3) [offence provision].

Smoking in motor vehicle with young persons[112]

(1) A person commits an offence if:

(a) the person smokes in a motor vehicle; and

(b) the motor vehicle is on a public road or in a public place; and

(c) a young person is in the motor vehicle.

(2) In proceedings for an offence against subsection (1), if it is proved that the other person appeared to be a young person, the person is presumed to be under [21] years unless there is contrary evidence.

(3) If an enforcement officer suspects on reasonable grounds that a person in a motor vehicle is committing or has committed an offence against [section xx], the enforcement officer may do either or both of the following:

(a) require the driver of the motor vehicle to stop the motor vehicle;

(b) require the person to stop smoking.

Social events for young persons[113]

(1) A person must not sell or smoke any tobacco product in a place while a social event is taking place there.

(2) If an enforcement officer or police officer believes on reasonable grounds that a person smokes contrary to subsection (1), the officer may, on producing the officer's identity card, direct the person to cease smoking.

(3) A person given a direction under subsection (2) must comply with the direction.

(4) A young person who smokes in contravention of subsection (1) does not commit an offence.

[111] See definition of "proof of age"
[112] This is a new trend in some states in Australia. The ages are between 16 and 18. The proposal is to use the 21 years as the age to prohibit sale of tobacco products.
[113] Adapted from Tobacco Act 1987 of State of Victoria, Australia

(5) [offence provision].

Duties of owners – social events

(1) The owner of the place for social event commits an offence if [section xx] is contravened [+ penalty].

(2) It is a defence to a prosecution under subsection (1) if the accused proves that the accused did not provide an ashtray, matches, a lighter or any other thing designed to facilitate smoking where the contravention occurred and that—

(a) the accused was not aware, and could not reasonably be expected to have been aware, that the contravention was occurring; or

(b) the accused:

(i) requested the person contravening to stop smoking; and

(ii) informed the person that the person was committing an offence.

No smoking signs – social events

(1) The owner must display non-smoking sign in a manner that ensures that a person is reasonably likely to see one or more of them either on entering the place or from within the place.

(2) An owner commits an offence who, without reasonable excuse, contravenes subsection (1) [+ penalty].

(3) The non-smoking sign must be displayed in a manner that ensures that a person is reasonably likely to see one or more of them either on entering the place or from within the place.

Covering vending machines, tobacco advertisements etc., during social events[114]

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

(a) a vending machine in the place;

(b) a tobacco advertisement in the place;

(c) a display of tobacco products in the place.

Division 3 – Other measures

Vending machines[115]

(1) A person must not sell a tobacco product through a vending machine.

(2) If a young person obtains a tobacco product from a vending machine, either or both of the following is taken to have committed an offence:

(a) the owner or licensee of the place on which the machine was located;

(b) the employee of the owner or licensee who, at the time the young person obtained the tobacco product, was in charge of the place the vending machine was located).

(3) [offence provision].

Sales through the post, internet, etc.

(1) A person must not sell or buy any tobacco product through the post or the internet.

(2) [offence provision].

Visible displays of tobacco products

(1) A person who sells tobacco products must not display tobacco products in a manner (such as, shelves for public display of goods) that the tobacco products are directly accessible to or viewed by consumers.

(2) [offence provision]

[114] Only required if vending machine or advertisement is permissible.
[115] Some allow for sale through vending machine at places where young persons do not access. The proposal is the total prohibition of sale of tobacco products through vending machines.

PART 5 – INDUSTRY INTERFERENCE

Definition

In this Division:

"**manufacturer**", means any of the following persons who is involved in the tobacco industry :

(a) a person who manufactures or produces tobacco products; or

(b) a person:

(i) who distributes tobacco products, by wholesale; or

(ii) who imports tobacco products for wholesale or retail sale; or

(ii) whose work involves furthering the interests of the manufacturer, wholesaler or importer, such as an employee or agent.

Purpose this Part

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

(a) to protect the formulation and implementation of public health policies on tobacco control from the manufacturers from the greatest extend possible; or

(b) to ensure that any interaction between Government and manufacturers about tobacco control or public health is accountable and transparent; or

(c) to ensure that the manufacturers provide Government with information for effective implementation of this Act; or

(d) to treat any government preferential treatment of manufacturers to be in conflict with the tobacco control policy.[116]

Functions

The [xx] has the following functions:

(a) to raise awareness about:

(i) the addictive and harmful nature of tobacco products; and

(ii) the interference of manufacturers with tobacco control policies, including through its corporate social responsibilities; and

(b) to establish measures to limit Government interactions with the manufacturers; and

(c) to ensure that any interaction between Government and the manufacturers is carried out:

(i) in a transparent manner, such as any interaction conducted in public, public hearing or public notices of the interaction or the disclosure of a record of those public interactions; and

(ii) only when and to the extent that is necessary to enable Government to effectively regulate the manufacturers or the tobacco products; and

(d) to issue code of conduct on avoidance of conflict of interest for [public officers] dealing with matters:

(i) to prevent or control tobacco products; or

(ii) about the interference of manufacturers with tobacco control policies.

Support, endorsement, etc.

(1) A manufacturer must not:

(a) participate or offer to participate in developing tobacco control legislation or policy measures; or

[116] Other purposes may be added

(b) develop any educational, instructional or training resources on any tobacco control topic, policy matter or legislation for use:

(i) by government employees;

(ii) retailers; or

(iii) other persons who are subject to this Act,

except to prevent internal training manuals for use by a manufacturer in its own operations (even if the operations interfere with compliance with tobacco control requirements);

(c) offer to negotiate or to enter into any kind of partnership with Government or to host or sponsor any activities for the pursuit of tobacco control or public health goals;

(d) participate in any manner in any initiative, campaign, programme or activity about tobacco control of public health, including any other education programme or other tobacco control of public health initiative.

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

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

(4) [offence provision].

(5) In this section:

"**benefit**" includes any monetary or in-kind payment, gift, service, research funding, or any other facility or provision.

Declaration of interests

(1) A person:

(a) who applies for a government position connected with tobacco control, must disclose to the appointing authority any current or former engagement (whether or not gainful) with a manufacturer; or

(b) who is a public officer must declare to [xx] any interest in a manufacturer and must immediately divest the interest; or

(c) who is a public officer intending to be engaged (whether or not gainful) with a manufacturer, must, within [30 days] before taking up the engagement, inform the [xx] about the engagement.

(2) [offence provision].

Disqualifications to government boards, etc.

(1) A person employed or engaged (whether or not gainful) by a manufacturer must not:

(a) be appointed to any government statutory or non-statutory board, committee or group; or

(b) represent the Government in any national, regional or international meeting relating to tobacco control.

(2) An appointment or representation under subsection (1) is void.

Contribution to political parties

(1) A manufacturer must not make any contribution (financial or otherwise) to a political party or candidate for election of members of [Parliament/local [or provincial] government].[117]

(2) **[**offence provision**]**.

(3) An agreement or arrangement for contribution under this section is void.

(4) This section also applies to:

(a) a person who lobbies on behalf of the manufacturer; or

(b) a person acting on behalf of tobacco growers; or

(c) the agent of the person.

[117] An alternative provision is to disclose the contribution. The total prohibition is the better alternative because of the provision on the industry with public health policies.

Disclosure of information

(1) A manufacturer must disclose any information about the business operations of the manufacturer, as required under this section.

(2) The disclosure is:

(a) to be made to [xx]; and

(b) to be made by [30 June each year] or otherwise as prescribed by regulations;

(c) to be made in any other prescribed manner.

(3) A person is entitled to access any information disclosed under this section.

(4) A manufacturer commits an offence who:

(a) fails to disclose the information required under subsection (1); or

(b) discloses any information under subsection (1) that is false, misleading or deceptive. [+ penalty].

(5) In this section:

"**information**"

(a) means information about:

(i) the manufacturer's practice; or

(ii) the tobacco production, manufacture, market share, marketing expenditure and revenue; or

(iii) any other activity, including lobbying, philanthropy, or contribution; and

(b) includes any other [prescribed] information.

Industry not entitled to government incentives

(1) A manufacturer is not entitled to any government incentive.

(2) An incentive given contrary to subsection (1):

(a) is void; and

(b) must be returned by the manufacturer to [xx].

(3) In this section:

"**incentive**" includes:

(a) a privilege or benefit; or

(b) a tax exemption, incentive or benefit.

State interests

(1) The State must not own or operate the business of a manufacturer, importer, wholesaler or retailer, including having any share or interest in the business.

(2) Any business, share or interest of the State contrary to subsection (1) is void.

(3) In this section:

"**State**" includes the Government or any company or other legal entity of the State or Government.

PART 6 – ADMINISTRATION

Functions on public awareness, etc.

(1) The [xx] has the following functions:

(a) to provide educational and public awareness programmes and training on the health risks (including addictive characteristics) of tobacco consumption and exposure to tobacco smoking, including the following:

(i) programmes about any health risks of smoking or exposure to tobacco smoke, including its addictive

characteristics;

(ii) programmes for public and private sector participation to develop and implement inter-sectoral programmes and strategies;

(iii) providing information about any adverse effect of tobacco product and consumption on health, economy or environment, including access to information on the tobacco industry; and

(b) to carry out measures to cease tobacco product use or to treat dependence on tobacco product, including the following:

(i) programmes to promote ceasing tobacco product use, and its benefits and benefits of tobacco-free lifestyles;

(ii) to provide programme or treatment of tobacco dependence or counselling services on cessation of tobacco use, including programmes to diagnose, counsel, prevent and treat tobacco dependence;

(iii) to assist in the accessibility and affordability of treatment of tobacco cessation, including pharmaceutical products;

(iv) the health risks on tobacco consumption and exposure to tobacco smoke; or

(v) any other measures or programme to give effect to Article 14 of the Convention.

(d) to provide training in tobacco control (including sensitisation and awareness programmes) for public health officials, other relevant public officers, including media professionals and other interested tobacco control stakeholders.

(2) The [xx] functions on the demand reduction measures concerning tobacco dependence and cessation are:

(a) to design and implement programmes aimed at promoting ceasing and reducing tobacco dependence; and

(b) to design and implement programmes (including counselling services) to diagnose, treat prevent and provide counselling on, tobacco dependence; and

(c) to assist in accessing (including affordability) for treatment (including pharmaceutical products) of tobacco dependence.

(3) The [xx] must involve or consult the private sector (excluding the tobacco industry) and any non-governmental or civil society organisation or group when carrying out the functions under this section.

Research and strategies

(1) The [xx] may:

(a) develop and promote research or coordinate regional and international research programmes in the field of tobacco control:

(i) to conduct, cooperate, promote or encourage research or scientific assessment that addresses the determinants and consequences of tobacco consumption or exposure to tobacco smoke, including identifying alternative crops; or

(ii) to promote and strengthen training and support for those involved in tobacco control activities; and

(b) establish tobacco surveillance programmes (magnitude, patterns, determinants or consequences of tobacco consumption and exposure to tobacco smoke):

(i) to analyse and compare data system for the epidemiological surveillance of tobacco consumption and exposure to tobacco smoke and related social, economic and health indicators; or

(ii) to provide regional and international exchange of information on health indicators; or

(iii) to cooperate with World Health Organisation on guidelines or procedures to collect, analyse and disseminate tobacco related surveillance data; and

(c) promote and facilitate exchange of public information on the practices of tobacco industries and cultivation of tobacco in the following areas:

(i) to provide database on updated legislation on tobacco control, enforcement and law; or

(ii) to cooperate in developing programmes for regional and international tobacco control; or

(iii) to establish and maintain updated data from national surveillance; or

(iv) to cooperate at the regional and international level to establish and maintain a system to collect and disseminate information on tobacco production, manufacture and activities of tobacco industry which impact on tobacco control activities.

(2) The [xx] must establish and strengthen tobacco control strategies, plans and programmes, in particular:

(a) to assist in developing, transferring and acquiring technology, skills and capacity and expertise on tobacco control; and

(b) to provide technical, scientific and legal expertise to establish and strengthen tobacco control strategies, plans and programmes, including:

(i) assisting in developing strong laws, policies and technical programmes, including preventing initiating, promoting cessation of tobacco consumption and protecting exposure to tobacco smoke; or

(ii) assisting tobacco workers develop viable alternative livelihood; or

(iii) assisting tobacco growers shift production to alternative crops; and

(c) to support training for the purpose of this Act of public health officials, other relevant public officers and other interested tobacco control stakeholders; and

(d) to provide materials, equipment, supplies (logistics) for tobacco control strategies, plans and programmes; and

(e) to identify methods of tobacco control, including treatment of nicotine addiction and promote research on affordability of treatment of nicotine addiction.

PART 7 – ENFORCEMENT

Division 1 – Appointment of enforcement officers

Enforcement officers

(1) The [xx] may appoint in writing:

(a) a person to be an enforcement officer; or

(b) a class of persons as enforcement officers.

(2) The following are taken to be enforcement officers:

(a) a police officer;

(b) a public officer responsible for tobacco control;

(c) a other public officers designated in writing by [xx].

Identity cards

(1) The [xx] must issue to an enforcement officer an identity card:

(a) that specifies the name and appointment of the enforcement officer; and

(b) on which there is a recent photograph and the signature of the enforcement officer.

(2) An officer listed under [section xx(2)] does not need an identity card.

(3) A person who ceases to be an enforcement officer must, in the absence of reasonable excuse, return his or her identity card to the [xx] as soon as practicable after ceasing to hold that appointment.

(4) [[offence provision]

Division 2 – Enforcement functions and powers

Functions

The functions of an enforcement officer are:

(a) to administer and enforce this Act; and

(b) to perform any other function specified in the letter of appointment.

Entry and search powers

(1) An enforcement officer may, at all reasonable times, enter a place if the enforcement officer believes tobacco products are being manufactured or packaged or sold, or displayed for sale.

(2) An enforcement officer who enters a place under subsection (1) may do any of the following:

(a) enter and inspect the place and any machines found in or on the place;

(b) enter and collect:

(i) from a manufacturing, wholesale, or retail place, the sample of a tobacco product or other ingredient of tobacco products required testing; or

(ii) from manufacturer, importer or retailer, sample to be tested to ascertain whether a tobacco product has tendency to ignite when not puffed or left unattended;

(c) examine any tobacco products, and any packages that are used or are intended to be used for packaging tobacco products, found in or on the place;

(d) take measurements of the place or any thing found in or on the place;

(e) take photographs, films or audio, video or other recordings of the place;

(f) if the enforcement officer believes on reasonable grounds that an offence under this Act has been or is being committed – seize goods or other things or samples of goods or other things for use as evidence in a prosecution for the offence;

(g) take a copy of or extract from a document found at the place;

(h) require a person at the place to:

(i) answer questions or provide information; or

(ii) make available documents kept on the place; or

(iii) provide reasonable assistance to the enforcement officer in relation to the exercise of his or her powers under this section;

(i) test and verify an ingredient of a tobacco product, including to have direct access to a raw material or a finished tobacco product or to observe the manufacturing process;

(j) carry out any audit at the manufacturing facility to ensure that information received by the Government from the manufacturer about the tobacco product is complete and accurate;

(k) ensure that an offence under this Act is investigated as soon as practicable;

(l) carry on-the-spot checks on any manufacturing, importation or retail facilities to check, on a regular basis, the packaging or labelling or the health warnings or messages on a tobacco product;

(3) For subsection (2)(f), the enforcement officer must give a receipt for the goods, things or samples to:

(a) the owner or a person apparently in charge of the place; or

(b) the person who the enforcement officer reasonably believes was in possession of the goods, things or samples.

(4) The following provisions apply in relation to goods, things or samples seized under subsection (2)(f):

(a) if a prosecution for an offence under this Act is instituted within [12] months after the seizure and the defendant is guilty, the court may order that:

(i) the goods, things or samples be forfeited to the State; or

(ii) the defendant pay to the State an amount equal to the market value of the goods, things or samples when seized, being the value determined by the court;

(b) if:

(i) a prosecution for an offence under this Act is not instituted within [12] months after the seizure; or

(ii) on prosecution being instituted within that period, the defendant is not guilty or the court does not make an order under paragraph (a),

the enforcement officer must release the goods, things or samples to the owner or the person from whom they were seized.

Warrant required for residential property

(1) This section applies if a residential place is to be entered and inspected under [section xx].

(2) An enforcement officer may apply to [a magistrate] for a warrant to enter and inspect the place, and if necessary to seize items from the place.

(3) The warrant may authorise other matters required to give effect to the purpose of entry and inspection.

Power to require identification

(1) This section applies if an enforcement officer has reason to believe that a person whose name, address or age is not known to the officer may be able to assist the officer in inquiries in connection with an offence against this Act that has been, may have been, is being or may be committed.

(2) The officer:

(a) may require the person to give his or her:

(i) full and correct name and age; and

(ii) details of residential the address, including other communication contacts, such as telephone; and

(ii) without delay, proof of his or her age; and

(b) must warn the person that it is an offence the person fails to comply with paragraph (a).

(3) A person who fails to give the officer the information required under subsection (2)(a) commits an offence [+ penalty]

Product recall

(1) This section applies if:

(a) tobacco products available for wholesale or retail sale do not comply with a requirement this Act, such as packaging, labelling, health warnings or health messages; or

(b) other products are sold contrary to this Act.

(2) The [Minister] may, by order, recall the product at the costs borne by the manufacturer, wholesaler or retailer.

(3) The order is also treated as the authority to enter and remove the products that are subject of the order.

(4) The [Minister] may approve the means and methods to dispose of any product recalled.

Investigation and prosecution

(1) An enforcement officer may:

(a) investigate an offence under this Act; and

(b) institute and conduct any legal proceedings on the offence; and

(b) carry out any other duties and powers relating to paragraphs (a) and (b).

(2) This section does not prevent the [Director of Public Prosecutions][118] carrying out his or her powers under section [xx][119] of the Constitution.

Tracking and tracing system[120]

An enforcement officer may use a tracking or tracing system approved by [the Minister/Commissioner of Police] for any of the following purposes:

(a) to track the supply, transportation or distribution of tobacco product suspected of being manufactured or

[118] Commissioner of Police can be added if ComPol has constitutional functions to carry out investigation of offences.
[119] Some PICTs refer to it as 'Article', such as Samoa.
[120] Delete if your country provides for tracking under the Police Powers Act or other crime procedure legislation.

imported illegally; or

(b) to assist in the investigation of the tobacco product.

Confiscation and forfeiture[121]

A tobacco product, an equipment, or a matter used in the manufacture of the product that is the subject of an offence under this Act:

(a) is to be confiscated by [an enforcement officer]; and

(b) is forfeited to the [State/Crown] by the order of a court; and

(b) must be destroyed in an environmentally-friendly manner [approved by [xx]/as prescribed].

Court order to vary, suspend or cancel the licence

(1) This section applies to a licensee who is convicted of an offence under this Act.

(2) The court may, by order:

(a) vary the licence, as it deems fit; or

(b) suspend or cancel the licence:

(i) for first offence, for a period of up to 6 months;

(ii) for second offence, for a period not less than 6 months and not more than [12] months;

(iii) for third or subsequent offence, for a period of not less than [12] months but not more than [5] years.

(3) An order under this section is in addition to any fine or imprisonment imposed by the court on the offence.

Infringement notices for spot fines

(1) This section applies:

(a) if a person ("**defendant**") commits an offence under this Act; and

(b) to the imposition of administrative penalties by an enforcement officer pursuant to an infringement notice.

(2) An enforcement officer may issue infringement notice [in a prescribed/approved form] requiring the defendant to pay the fixed penalty specified in the notice.

(3) When a defendant is served with an infringement notice, the defendant:

(a) may pay the spot fines (in full) before the date specified in paragraph (b), if the defendant admits the offence in writing to the officer; or

(b) must appear before the court specified in the notice (including the place, date and time of not less than [20 working] days specified in the notice) if the defendant denies the offence.

(4) In a proceeding, a certificate signed an enforcement officer that the spot fine has or has not been paid, unless the contrary is proved, is evidence of the matters stated in the certificate.

(5) No further proceeding is to be instituted against the defendant for the offence for which the spot fines had been fully paid.

(6) The defendant who is convicted in court on an infringement notice:

(a) is not subject to the fixed penalty specified in the notice; but

(b) is subject to the penalty prescribed for that offence.

Service of infringement notices

(1) An infringement notice is to be:

(a) served pursuant to the rules of the court; and

(b) filed before the court specified in the notice.

[121] Clause to be deleted for PICTs that have proceeds of crime legislation

(2) An infringement notice that is filed under subsection (1)(b) is treated for all purposes as summons issued pursuant to the [criminal procedure/magistrates' courts legislation].

Directors, etc., liability

(1) This section applies if a body corporate commits an offence.

(2) A director of the body corporate also commits the same offence.

(3) It is a defence if the director proves that the offence was committed without the director's knowledge, connivance or consent.

(4) In this section:

"**director**" includes an officer who manages or supervises the operations of the body corporate.

Obstruction etc. of enforcement officers

A person commits an offence who, without reasonable excuse:

(a) obstructs or hinders an enforcement officer or any other person when carrying out a function, duty or power under this Act; or

(b) fails a requirement or direction of an enforcement officer to comply with this Act.

Penalties

(1) The fixed penalties for infringement notices are set out in Part 1 of the Schedule.

(2) The penalties for a person convicted of an offence are set out in Part 2 of the Schedule.

Division 2 – Information

Privacy and confidential information

(1) This section applies to a confidential information obtained or claimed under this Act.

(2) A person must not release a confidential information to another person except if the information is released:

(a) with the consent of the person who provides that information; or

(b) under a law or court order; or

(c) after the information becomes public information; or

(d) for official use under this Act.

(3) [offence provision]

Misleading information

(1) A person commits an offence who:

(a) gives information or document that the person knows to be misleading; and

(b) gives it to another person who is carrying out a function, duty or power under this Act[+ penalty].

(2) Subsection (1) does not apply if the person, when giving the document:

(a) draws the misleading aspect of the document to the attention of the enforcement officer; and

(b) to the extent to which the person can reasonably do so – gives the relevant officer the information necessary to remedy the misleading aspect of the document.

(3) In this section:

"**misleading information**" means information that is misleading in a material particular or because of the omission of a material particular.

Confidentiality of information

(1) A person who obtains any information under this Act commits an offence if the person discloses the information.

(2) Subsection (1) does not apply if:

(a) the person discloses the information:

(i) for the administration of this Act; or

(ii) with the consent of the person to whom the information relates; or

(iii) for legal proceedings arising out of the operation of this Act; or

(b) the information is otherwise available to the public.

PART 6 – MISCELLANEOUS

Immunity from personal liability

(1) A person is not personally liable for carrying out in good faith a function, duty or power under this Act.

(2) Subsection (1) does not affect any liability that the State would, but for that subsection, have for an act or omission.

Regulations

The [xx] may make regulations to give effect to or for the purposes of this Act, and in particular may make the following regulations:

(a) to prescribe fees and forms [D/Note = Delete "and forms" if the practice is to use approve form – Need a provision to approve forms];

(b) to further prescribe the information on the content, ingredient or emission of the tobacco product, including standards for materials designed to reduce tendency to ignite;

(c) to prescribe procedures samples and testing of tobacco product or ingredients used in the product;

(d) to regulate the design of health warnings and messages, including designs for different types of tobacco product, different target groups and methods for carrying out prior consultation on and research on the effective of the designs;

(e) to regulate giving of rewards or incentives to members of the public for reporting breach of this Act;

(f) to provide further procedures for spot fines, including offences and their fixed penalty amounts;

(g) to regulate and control tobacco growing;

(h) to regulate marks, such as tax stamps, on packages or labels to show evidence of payment of tax on tobacco products;

(i) to provide other matters to regulate plain packaging for tobacco products;

(j) to provide other matters to give effect to or for the purposes of enforcement of this Act;

(k) to prescribe other matters for the purpose of appeal;

(l) to amend Schedule 1[122];

(…) … [add other matters]

Approved forms

The [Minister] may approve forms for the purpose of this Act.[123]

Review of Act[124]

(1) This Act must be reviewed not later than:

(a) [4] years from its commencement; and

(b) [4] years from the date of the last review.

(2) Any review must include:

(a) any new design or form of health warnings and messages; and

[122] Penalties in Schedule 2 should only be amended by Parliament
[123] Clause to be deleted if forms are to be prescribed by regulations.
[124] The practice in some jurisdiction is to place this in the Preliminary provisions

(b) any provision on advertisement, promotion and sponsorship.

(3) Subsection (1) does not prevent an amendment to this Act that may be made before the next review.

Repeals and consequential amendments

[*Check repeals and consequential amendments*]

Saving and transition

[*Check matters to be covered by saving and transition*]

SCHEDULE

PENALTIES

PART 1 – FIXED PENALTIES[125]

Section	Individual (first offence)	Individual (second or subsequent offence)	Company (first offence)	Company (second or subsequent offence)

PART 2 – PENALTIES FOR OFFENCES

Section	Individual (first offence)	Individual (second or subsequent offence	Company (first offence)	Company (second or subsequent offence)

[125]Fixed penalties should tagged at around 20 – 25% of the fines fixed for that than offence in Part 2 of the Schedule.

ANNEX 2-1 – Liquor Control Bill

LIQUOR CONTROL BILL

Table of contents

[A BILL FOR]

AN ACT to control and regulate liquor [and for related purposes][126]

ENACTED by [Parliament…] –

PART 1 – PRELIMINARY

Short title and commencement

(1) This Act may be cited as the Liquor Control Act [20…].

(2) This Act commences on ...

Interpretation/Definition

In this Act:[127]

"**bar**" means an area of the off-licensed premises where the predominant activity at the licensed times is to serve liquor to be consumed at the premises;

"**bottle shop**" means an off-licence issued under [section xx – LA to issue licence];

"**licensed time**" means the time specified in the licence for which liquor may be sold at the licensed premises;

"**liquor**":[128]

(a) means a beverage that, at 20 degrees Celsius, has more than 1.15% alcohol by volume; and

(b) includes:

(i) any spirit, wine, ale, beer, porter, cider, perry, hop beer or any liquor of a strength exceeding 3% of proof spirit except methylated spirits; or

(ii) any other substance that comprises, makes up, contains or may be converted into beverage under paragraph (a); or

(iii) any other substance prescribed by regulations as liquor;

"**nightclub**" means premises where the predominant activity at the licensed times is dancing and entertainment;

"**off-licence**" means a licence issued under [section xx– LA to issue licence];

"**on-licence**" means a licence issued under [section xx– LA to issue licence];

Objects of Act

(1) The objects of this Act are:

(a) to reduce the harm associated with the consumption of liquor; and

(b) to facilitate the responsible development of the liquor and hospitality industries in a way that takes into account community safety; and

(c) in a way that encourages and supports liquor, to ensure that consumers are responsible:

(i) when consuming liquor; and

(ii) for their behaviour if it is affected by consuming liquor.

(2) A decision made under this Act must have regard to the following principles on harm minimisation and community safety:

(a) responsible attitudes and practices towards the sale, supply, promotion and consumption of liquor should be encouraged;

(b) community safety should not be jeopardised, particularly for events involving large numbers of people;

(c) the liquor industry should be regulated in a way that minimises harm caused by liquor abuse, including:

(i) adverse effects on health; and

(ii) personal injury; and

(iii) property damage; and

(iv) violent or anti-social behaviour; and

(d) the sale of liquor should be regulated in a way that contributes to the responsible development of the liquor, tourism and hospitality industries; and

(e) community amenity, social harmony and wellbeing should be protected and enhanced through the responsible sale, supply, promotion and consumption of liquor; and

(f) the safety, health and welfare of people using licensed premises and permitted premises should not be put at risk; and

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

[127] Other terms to be added

[128] This is adapted from the current PICTs liquor laws.

(g) noise from licensed premises and permitted premises should not be excessive; and
(h) licensed premises and permitted premises should not be located where they would be likely to cause undue disturbance, inconvenience or offence to people:
(i) lawfully at adjacent or nearby premises; or
(ii) because of the premises' proximity to a place of public worship, a hospital or a school; and
(i) licences and permits should only be issued to people who comply with the law, and are likely to continue to comply with the law; and
(j) licences and permits should only be issued for premises that comply with the law, and are likely to continue to comply with the law.

Application

This Act extends to the exclusive economic zone [and contiguous zone].

Exemptions from liquor licences

This Act does not apply to the following:
(a) the administration, dispensing or sale of liquor for medicinal purposes authorised by a doctor or pharmacist;
(b) the supply, possession, consumption or purchase of liquor that is authorised by any other enactment;
(c) the sale and supply in at a mess or other outlets for military, police or prison officers;
(d) the sale of liquor by an auctioneer under an auction;
(e) the sale of liquor seized, confiscated or forfeited by law;
(f) any other prescribed sale, purchase, supply, possession or consumption.

PART 2 – LIQUOR LICENSING AUTHORITY

Establishment [and members]

(1) The [Licensing Authority] (LA) is established.[129]
(2) The members of the [LA/Board[130]] are: …
(3) At least […] members are to be women.

Appointment

[statutory power to appoint members]

Terms, resignation, suspension and termination

[terms of office of members and process for resignation, etc]

Meetings and declaration of interests

[procedures for meeting of the [LA] and rules for declaration of interests of members]

Secretary

[Secretary to the [LA]]

PART 3 – LIQUOR LICENCES

Division 1 – Obtaining licences

Power to issue liquor licences

The [LA] may issue the following licences:
(a) a manufacturing licence;
(b) an import licence;
(c) an export licence;
(d) any type off-licence;
(e) any type of on-licence;
(f) a club licence;
(g) a special licence.

Manufacturing licences

A manufacturing licence authorises the licensee:
(a) to manufacture liquor at the single licensed premises; and
(b) to sell the manufactured liquor to be sold under a retail licence.

Import [and export] licences

(1) An import licence authorises the licensee to import liquor to be sold under a retail licence.
(2) An export licence authorises the licensee to export liquor.

Off-licences

(1) The types of off-licences are:
(a) wholesale licence for licensed wholesale premises; and
(b) retail licence for licensed retail premises; and
(c) [bottle-shop] licence for licensed bottle-shop premises; and

[129] Most PICTs have non-legal personality status
[130] For statutory corporation it should be referred to as Board of the LA.

(d) any other prescribed type of off-licence.

(2) An off-licence authorises the licensee to sell liquor:

(a) at the single licensed premises; and

(b) in a sealed container for consumption off the premises; and

(c) at the licensed times.

On-licences

(1) The types of on-licences are:

(a) bar licence for licensed bar premises; and

(b) nightclub licence for licensed nightclub premises; and

(c) restaurant licence for licensed restaurant premises; and

(e) special event licence for licensed event premises; and

(f) vessel or aircraft licence; and

(g) any other prescribed type of on-licence.

(2) An on-licence authorises the licensee to sell liquor:

(a) at the single licensed premises; and

(b) in an open container for consumption at the premises; and

(c) at the licensed times.

Club licence

(1) A club licence authorises the club to sell liquor:

(a) in stated parts of the single licensed premises; and

(b) in:

(i) open containers for consumption at the premises; or

(ii) sealed containers for consumption off the premises; and

(c) at the licensed times.

(2) The club must only sell liquor to a person aged [21] or over:

(a) who is a member of the club; or

(b) who is at the licensed premises as a temporary member of the club; or

(c) who is—

(i) at the licensed premises at the invitation of a member (aged [21] years or over) of the club who is also at the premises; and

(ii) authorised by the club to be at the premises.

Applications for licences

[How to apply for licence?]

Renewal applications

[How to renew licence]

Publications and objections

[Public notification of applications for licences and the right to object to applications]

Report of agencies (police, Health and planning)

Reports on suitability of applicant (police) and premises (health sanitation, safety and development planning]

Objections

[How objections may be made and submitted to LA]

Hearing/determining applications

[Power of LA to hear and determine applications, including the process for hearing the applicants and any objections]

Decisions

[How decisions are made and given to the applicant]

Division 2 – Other provisions on licences

Conditions of licences

[Imposing conditions of licences by LA, including conditions that automatically attaches to the licence and those that may be prescribed by regulation]

Term of licences

[Duration of licences – annual (31 Dec each year]

Amendment of licence

[How licence may be amended?]

Transfer and replacement

[Controlling transfer of licences and process of replacing lost licences]

Ceasing operations

[How to deal with licences when liquor business closes]
Suspension of licences
[Powers and grounds to suspend licences]
Revocation of licences
[Powers and grounds to revoke licences]

PART 4 – PERMITTED HOURS

Permitted hours for on-licences and off-licences
The permitted hours for the sale of liquor for each licence type are:

	Licence type	Opening hour	Closing hour	
(a)	Off-licence			
(b)	Bar			
(c)	Nightclub			
(d)	Vessel			
(e)	Club			
(f)	restaurant			

Permitted hours for special licences
The LA must specify the permitted hours for special licence.

PART 5 – ADVERTISEMENT[131] AND LABELLING

Purposes

The purpose of this Part is to provide for the duty of licensees:

(a) to regulate advertisement and labelling of liquor;

(b) to maintain a safe environment for customers and staff of the licensed premises; and

(c) to ensure liquor is served, supplied and promoted in a way that is compatible with minimising harm to anyone; and

(d) to preserve the amenity of the area in which the licensed premises are located.

Division 1 – Advertising and promotion of liquor

[1]Unacceptable practices and promotions

(1) A licensee must not engage in, or allow another person to engage in, an unacceptable practice or promotion in the conduct of business on the licensed premises [+ penalty].

(2) For subsection (1), each of the following is an ***unacceptable practice or promotion***—

(a) a practice or promotion that may encourage the irresponsible consumption of liquor;

(b) a practice or promotion that may discourage a customer from monitoring or controlling the customer's consumption of liquor;

(c) a practice or promotion likely to have a special appeal to children, for example, because of the use of designs, names, motifs or characters that are likely to be attractive to children;

(d) a practice or promotion that is indecent or offensive;

(e) a practice or promotion using emotive descriptions that are likely to encourage the irresponsible consumption of liquor;

(f) a practice or promotion that involves providing free drinks, or providing drinks at discounts, in a way that encourages customers to consume excessive amounts of liquor or consume liquor more rapidly than they would otherwise do;

(g) a prescribed practice or promotion.

[131] Adapted from the Queensland liquor law

(3) [offence + penalty].

Responsible practices and promotions

[2](1) A licensee must, in the conduct of business on the licensed premises, engage in practices and promotions that encourage the responsible consumption of liquor, either generally or as prescribed, including:

(a) having non-alcoholic and low alcohol beverages available; or

(b) supplying liquor in standardised quantities that can be recognised by customers; or

(c) serving customers half-measures of spirits on request;

(d) any other prescribed practices and promotions that encourage the responsible consumption of liquor.

(2) [offence + penalty].

Providing a safe environment and preserving amenity

[3](1) A licensee must, in the conduct of business on the licensed premises:

(a) provide and maintain a safe environment in and around the licensed premises; or

(b) take all reasonable steps to ensure the use of the premises does not adversely affect the amenity of the area in which the premises are located; or

(c) take all reasonable steps to ensure the behaviour of persons entering or leaving the premises does not adversely affect the amenity of the area in which the premises are located.

(2) If a licensee knows or has reason to believe that a licensed offence is being, or is about to be, committed in or around the licensed premises, the licensee must take reasonable steps to stop or prevent the commission of the offence.

(3) For subsection (2), an offence is a ***licensed offence*** if the commission of the offence may reasonably be expected to have an adverse impact on—

(a) the health and safety of a person in or around the licensed premises; or

(b) the amenity of the area in which the premises are located.

(4) [offence+ penalty].

Engaging in positive practices

[4] (1) A licensee:

(a) must in the conduct of business on the licensed premises, engage in prescribed positive practices; and

(b) must not, in the conduct of business on the licensed premises, engage in, or allow another person to engage in, a prescribed unacceptable practice.

(2) For subsection (1), a regulation may prescribe a practice to be a positive practice or an unacceptable practice for the purposes of—

(a) providing and maintaining a safe environment in and around licensed premises and premises to which permits relate; and

(b) ensuring the use of the premises does not adversely affect the amenity of the areas in which they are located.

(3) A licensee commits an offence who contravenes subsection (1) [+ penalty].

Advertising

[5] (1) A licensee must not advertise or allow any other person to advertise—

(a) the availability of the following for consumption on the licensed premises—

(i) free liquor;

(ii) multiple quantities of liquor, such as 2 drinks for the price of 1; or

(b) the sale price of liquor at the on-licensed premises; or

(c) a promotion (such as, happy hours or all you can drink) that is likely to indicate to an ordinary person the availability of liquor, for consumption on the on-licensed premises, at a price less than that normally charged for the liquor.

(2) A person does not contravene subsection (1) if—

(a) the advertising happens only within the licensed premises; and

(b) the advertisement is not visible or audible to a person who is outside the licensed premises.

(3) A licensee must not advertise or allow any other person to advertise anything that is, or would be if it were engaged in, an unacceptable practice or promotion under [section 2].

(4) A licensee commits an offence who contravenes subsection (1) or (3) [+ penalty]

(5) In this section—
"advertise" means to advertise in any way including, in any of the following ways—

(a) by signage;

(b) in print;

(c) orally;

(d) electronically.

Compliance notices – Application

[6] (1) This section applies if [LA] reasonably believes a licensee—

(a) is engaging in an unacceptable practice or promotion that contravenes [section 2]; or

(b) has engaged in an unacceptable practice or promotion that contravenes [section 2] in circumstances that make it likely the contravention will continue or be repeated; or

(c) is advertising a matter that contravenes [section 5]; or

(d) has advertised a matter that contravenes [section 5] in circumstances that make it likely the contravention will continue or be repeated.

(2) This section also applies if the [LA]—

(a) reasonably believes a licensee—

(i) is engaging in a practice or promotion in the conduct of business on the licensed premises; or

(ii) has engaged in a practice or promotion in the conduct of business on the licensed premises in circumstances that make it likely the practice or promotion will continue or be repeated; or

(iii) is advertising a matter relating to the business conducted on the licensed premises; or

(iv) has advertised a matter relating to the business conducted on the licensed premises in circumstances that make it likely the advertisement will continue or be repeated; and

(b) considers that, having regard to the purposes of this Act, the practice, promotion or advertisement is contrary to the public interest.

(3) A regulation may be made about practices, promotions or advertisements that may be considered to be contrary to the public interest for subsection (2).

Giving of notice

[7] (1) The [LA] may give to the licensee a notice (a ***compliance notice***) stating the following—

(a) that the [LA]—

(i) holds the belief mentioned in section 6(1); or

(ii) holds the belief mentioned in subsection 6(2)(a) and considers the practice, promotion or advertisement is contrary to the public interest;

(b) a description of the practice, promotion or advertisement;

(c) briefly—

(i) section 6(1), how it is believed [section 2 or 5] is being contravened or has been contravened; or

(ii) for section 6(2), why the [LA] considers the practice, promotion or advertisement is contrary to the public interest;

(d) whichever of the following that is licensed—

(i) that the licensee must not engage, or continue to engage, in the practice or promotion;

(ii) that the licensee must not continue or repeat the advertisement;

(iii) that the licensee must take particular action to remedy the contravention, or avoid further contravention, of [section 2 or 5];

(e) that it is an offence to fail to comply with the compliance notice unless the licensee or permittee has a reasonable excuse.

(2) For subsection (1)(d)(iii), a licensee may be required to ensure stated harm minimisation measures are in place whenever a licensee engages in a particular practice.

Complying with notice

[8] (1) The licensee must comply with the compliance notice unless the licensee has a reasonable excuse.

(2) The compliance notice may state other matters the [LA] considers appropriate.

(3) [offence + penalty].

Licensee may apply to amend or revoke notice

[9] The licensee given a compliance notice may, at any time while the notice is in force, apply to the [LA] to amend or revoke the notice.

Validity and review of notice

[10] (1) A compliance notice continues to have effect until it is revoked except the compliance notice states otherwise.

(2) While a compliance notice remains in force, the [LA] must review it at 1 yearly intervals to ensure it remains appropriate.

Division 2 - Labelling

Labelling of liquor[132]

[11](1) A person must not sell or supply liquor unless the label states the alcohol content:

(a) in mL/100 g, mL/100 mL or as the percentage of alcohol by volume, if liquor contains at least 1.15% alcohol by volume; or

(b) in words to the effect 'CONTAINS NOT MORE THAN X% ALCOHOL BY VOLUME' if the liquor contains:

(i) up to 1.15% alcohol by volume; or

(ii) at least 0.5% and up to 1.15% alcohol by volume.

(2) The statement on the label must be accurate to within:

(a) for beer, cider or perry—0.3% alcohol by volume;

(b) for spirits, liqueurs, fortified wine, fortified fruit or vegetable wine, and all other alcoholic beverages containing more than 1.15% alcohol by volume—0.5% alcohol by volume;

(c) for wine and fruit wine (including sparkling forms), and wine products and fruit or vegetable wine products containing more than 6.5% alcohol by volume—1.5% alcohol by volume.

(3) [offence + penalty].

Statement of the number of standard drinks

[12](1) This section applies if the label states standard drinks and the liquor contains more than 0.5% alcohol by volume, measured at 20°C.

(2) A person must not sell or supply the liquor unless the label on the liquor states the number of standard drinks capable of being consumed for that liquor.

(3) The statement in the label must be accurate to:

(a) the first decimal place, for up to 10 standard drinks; or

(b) the nearest whole number of standard drinks, for more than 10 standard drinks.

(4) In this section:

standard drink, for a liquor, means the amount which contains 10 grams of ethanol when measured at 20°C.

(5) A statement is not required for liquor packaged prior to [date].

(6) [offence + penalty].

Representations

[13](1) A person must not sell or supply liquor that:

(a) contains more than 1.15% alcohol by volume; and

(b) is represented as a low alcohol beverage.

(2) A person must not sell or supply liquor that the label:

(a) states that it is more than 0.5% alcohol by volume; and

[132] Adapted from the Australia and New Zealand Food Standards Code – Standard 2.7.1 – Labelling of alcoholic beverages and food containing alcohol

(b) includes the words 'non intoxicating' or words of similar meaning.

(3) A person must not sell or supply a food product that:

(a) contains liquor; and

(b) is represented in a form which expressly or by implication suggests that the product is a non-alcoholic confection or non-alcoholic beverage.

(4) [offence + penalty].

PART 6 – YOUNG PERSONS

Definition[133]

[14] In this Part:

"**young person**" means a person aged under [21] years.

Exemption

[15] This Part does not apply to liquor when it is supplied or used (but not to be consumed) for the purpose of young persons' employment or training.

Sale and supply of liquor

[16] (1) A person must not:

(a) sell or supply liquor to a young person; or

(b) sends a young person to purchase or collect liquor from a licensed premises; or

(c) gives possession or control of liquor at the licensed premises to a young person; or

(d) allows a young person to possess or control liquor at the licensed premises.

(2) [offence + penalty].

Allowed if cooked meals are provided

[17] (1)A licensee must not allow a young person into the licensed premises unless:

(a) the licensed premises provide cooked meals; and

(b) the young person:

(i) is accompanied by a responsible adult; and

(ii) is at the licensed premises to have a meal.

(2) A young person has the right to be in a licensed restaurant to have meal only.

(3) [offence + penalty].

Due diligence check on age

[18] (1) This section applies:

(a) if there is doubt about the age of a person who is buying or is intending to buy or be supplied with liquor; or

(b) to prohibited premises.

(2) A young person must not:

(a) for subsection (1)(a) or (b), be sold or supplied with liquor; or

(b) for subsection (1)(b), enter or remain in prohibited premises unless the young person:

(i) is accompanied by a responsible adult; or

(ii) is a licensee's employee aged between [18 and 21[134]] years when working in the premises.

(3) A licensee may remove from prohibited premises a young person who enters or remains at the premises contrary to subsection (2)(b).

(4) A licensee commits an offence who contravenes subsection (2)(a) or (b) [+ penalty].

False identification

[19] A person commits an offence who uses another person's document of identification that is forged or fraudulently altered:

(a) to enter or remain (or both) in prohibited premises; or

(b) to buy or be supplied liquor.

[+ penalty].

Defence

[133] Definitions may be moved to the general definition clause

[134] PICTs to check range.

[20] It is a defence to prove that the document of identification of a person was produced, inspected and checked to verify the person's identity and age.

PART 7 – ADMINISTRATION

PART 8 – ENFORCEMENT

Division 1 – Offences

Definitions
…
Offences by licensees
[creates offences against licensees]
Bar restrictions
[imposes restrictions on sale of liquor at the bar, such more than 1 drinks being served in the customer]
Use as brothel
[prohibit use of licensed premises and brothel]
Intoxicated persons
[controlling intoxicated persons when buying or being served with liquor]
Preserving order
[duty of licensees to preserve peach and order at the premises]
Name of manager, etc., to be displayed
[requires the name and contact of manager to be displayed inside the licensed premises]
Liquor to be received and stored only at licensed premises
[regulates receiving and storage of liquor]
Disturbance or disorderly conduct from licensed premises
[power of licensees to deal with any disorderly conduct or any disturbance at the licensed premises]
Alteration of licensed premises
[Rules about any alterations, especially, to the boundary of the licensed premises]
Consumption restrictions at off-licensed and on-licensed premises
[Rules on restrictions at the premises of an on-licence or off-licence premises]
Restrictions outside permitted times
[Deals with any restriction outside permitted times]
Absence from licensed premises
[Dealing with long-term absence of the licensee/associated from licensed]
Duty of licensees to prevent offences on licensed premises
[prevention of commission of offences at licensed premises]
Liquor not to be brought onto licensed premises
[Only liquor purchased at the licensed premises is to be consumed there]
Prohibited behavior and language at licensed premises
[regulate behaviour at licensed premises]
Sanitary conditions
[Duty of licensees to ensure that the premises are kept in sanitary conditions]
Liquor sale or storage without licence
[Selling or storing liquor without a licence]
Signs on unlicensed premises
[Prohibits signs on unlicensed premises as if the premises is licensed]
Signs on sale of liquor
[regulate signs on sale of liquor]
Public places
[prohibits drinking in public places]
Obstruction of duties
[offence to obstruct a person when carrying out the duties and powers]
False or misleading statement
[offence of giving false or misleading statements]
Adulterated liquor
[offence of selling adulterated liquor]
Offence by corporation

[vicarious liability of directors when a corporation commits an offence]
On-the-spot fines
[Procedure for administrative fixed penalty notices]

PART 9 – MISCELLANEOUS

Regulations
[power to make regulation]
Saving an transition
[deals with saving and transitional matters]

ANNEX 2-2 – Drink driving provisions

[1] Definition

"blood alcohol limit" means[80] milligrams of alcohol per [100] millilitres of blood;

"**blood specimen**" means a person's blood specimen taken under [section [9] or [10] for use only for the purpose of this Act;

"blood test" means a test under [section [6] to determine the blood alcohol limit in a person's blood;

"breath alcohol limit" means [40] micrograms of alcohol per [100] millilitres of breath;

"breath screening test" means a preliminary screening test taken under [section [5] to determine the breath alcohol limit in a person's breath;

"drug" has the meaning in the [illicit/dangerous drug legislation];

[2] Driving under the influence of drug

A person commits an offence who drives a vehicle under the influence of a drug, to an extent as to be incapable of having proper control of the vehicle.

[3]. Driving exceeding the breath alcohol limit

A person commits an offence who drives a vehicle while the proportion of alcohol in the person's breath, exceeds the breath alcohol limit that is confirmed after a test under [section [6]; or

[2A] Driving exceeding the blood alcohol limit

A person commits an offence who drives a vehicle while the proportion of alcohol in the person's breath, in the person's blood exceeds the blood alcohol limit that is confirmed under [section [9] or 10];

[3A] Zero alcohol level

[PICTs to determine whether they will have list of those that should have zero alcohol level when driving a vehicle, for example, person under [18] years or over [65] year, etc.]

[4] Driving disqualification

(1) A person who is convicted of an offence under [section 2, 2A, 3 or 3A] is automatically disqualified from driving a motor vehicle for 12 months from the date of conviction.

(2) However the court may:

(a) may reverse the automatic disqualifications in subsection (1) if there are special reasons or circumstances relating to the offending; and

(b) make another order to reduce or increase the period of disqualification.

(3) The person's driving licence is suspended during the period of disqualification.

[5] Breath screening test

[Power to require a person to undergo breath screening test]

[6] Evidential breath test or blood test

[Power to require a person to undergo evidential breath test or blood test]

[Power to arrest person to undertake test]

[7] Further evidential breath test

[power to require further tests]

[8] Right to elect blood test

[right to request for blood test to confirm blood alcohol level]

[9] Who must give blood specimen at places other than hospital or surgery

[requirement to give blood specimen, including the power of arrest for that purpose]

[10] Blood specimen for person under medical care

[Doctor permitted to take blood specimen from person under medical care]

[11] Taking specimen from unconscious person

[Doctor permitted to take blood specimen from unconscious person under medical care]

[12] Procedure for dealing with blood specimens

[Procedures for taking blood specimen]

[13] Private analyst

[Right of person for blood specimen to be analyst by a private analyst]

[14] Certificates in blood-alcohol proceedings

[Evidentiary certificates]

[15] Certificates of compliance for evidential breath testing devices

[certificate to calibrate breath testing devices]

[16] Presumptions relating to blood specimens

[Presumption on blood specimen taken from a person]

[17] Presumptions relating to alcohol–testing-

[Presumptions on portion of alcohol in the breath or blood]

[18] Circumstances in which certificate not admissible in proceedings

[Cases where certificate on alcohol in the blood not admissible as evidence]

[19] Failure or refusal to remain at specified place or to accompany enforcement officer

[Offence provision]

[20] Failure or refusal to permit blood specimen to be taken

[offence provision]

[21] Drivers and other road users to comply with directions of enforcement officers, etc.

[Offence provision]

[22] Defences

[Defence to offences]

[23] Arrest of persons for alcohol or drug-related offences, or assault on enforcement officer

[offence provision]

ANNEX 3 – Health Foundation Bill

HEALTH PROMOTION FOUNDATION BILL

TABLE OF CONTENTS

[A BILL FOR]

AN ACT TO ESTABLISH THE HEALTH PROMOTION FOUNDATION AND THE HEALTH PROMOTION FUND AND FOR RELATED PURPOSES

ENACTED by [Parliament…] –

PART 1 – PRELIMINARY MATTERS

1. Short title and commencement

This Act may be cited as the Health Promotion Foundation Act [20…].

This Act commences on [...].

2. Interpretation

In this Act:

"**Foundation**" means the Health Promotion Foundation established by [section xx];

"**Fund**" means the Health Promotion Fund established under [section xx];

"**objects**" means the objects listed in [section 3];

[Add other definitions if required]

3. Objects

(1) The objects of the Foundation are:

(b) to promote and encourage health promotion under the public health policies of the Government; and

(c) to fund activities about promotion of good health, safety or about prevention and early detection of diseases; and

(d) to increase awareness of programmes to promote good health through the sponsorship of sports, the arts and culture; and

(e) to encourage healthy lifestyles and support activities about participation in healthy pursuits; and

(f) to fund or conduct studies or research on objects, including to encourage study, research, training or organising meetings to support objects; and

(g) to monitor, evaluate and build evidence relating to preventative health; and[135]

(h) to generate partnership, agreement or arrangement for workplace, community and school interventions; and

(i) to assist in developing and strengthening the health promotion workforce; and

(j) to coordinate and implement a national approach to social marketing for preventative health programmes.

(2) Regulations may prescribe other objects.

PART 2 – HEALTH PROMOTION FOUNDATION

4. Establishment

(1) The Health Promotion Foundation is established as a perpetual corporation.[136]

(2) The Foundation:

(a) may sue and be sued; and

(b) may enter into contracts, agreements or other arrangements; and

[135] Paragraphs (g) to (h) are taken from the Australian National Preventive Health Agency Act 2010. PICTs may add to the list of objectives or reduce the list to suit their circumstances.
[136] The proposed draft is based on a statutory body with legal personality. However, a PICT may decide to establish it without a legal personality.

(c) may own and deal with property; and

(d) has all other legal rights, duties and powers to carry out its objects, duties and powers under this Act.

5. Board

(1) The Board of the Foundation is established comprising:[137]

(a) a chairperson;

(b) […] other members.

(2) The [XX] may appoint [suitable and experienced] persons as members.

(3) At least […] members are to be women.

(4) A person is not eligible to be appointed if the person:

(a) is, or [was in the last [2] years], an employee or engaged by, company that manufactures, imports or sells any tobacco product or liquor; or

(b) is, or [was in the last [5] years], a director or manager of a company that manufactures, imports or sells any tobacco product or liquor.

6. Terms and allowance

[Terms of office and sitting allowances]

7. Resignation, suspension, etc.

[Rules on resignation, suspension and termination of appointment]

8. Functions

The Foundation has the following functions:

(a) to promote its objects; and

(b) for the purposes of its objects:

(i) to carry out and provide funding for any activities, facilities, projects or research programmes; and

(ii) to sponsor any sporting, cultural or other activities; and

(iii) to keep statistics, information or other records of objects achieved; and

(iv) to advise the [Minister] on matters about its objects referred to it by the [Minister]; and

(c) to consult regularly with any other relevant government Ministry or agency and to liaise with any other person or organisation; and

(d) to seek and secure funds for the Foundation; and

(e) [list other functions] …

9. Meetings and declaration of interests

[Rules on meeting procedures and declaration of interests]

10. Committees

[Establishment of committees]

11. Delegation

[Power to delegate functions, duties and powers]

12. Staff

[Appointment of a CEO and other staff]

PART 4 – HEALTH PROMOTION FUND

[137] Countries to decide membership, including public office holders

13. Establishment and source

(1) The Health Promotion Fund is established comprising the following:

(a) any money appropriated to the Fund by Parliament; and

(b) any grant made by the Government to the Fund; and

(c) any other money received by or on behalf of the Foundation; and

(d) [tax earmarked or hypothecated for health promotion]; and

(e) …

(2) The Fund is treated as a fund for charitable purposes.

14. Management and use

(1) The Board manages and administers the Fund.

(2) The Fund is to be used only on activities and services under its approved annual or supplementary budget.

(3) In this section:

"**activities and service**" includes:

(a) any object; or

(b) any other matter approved by the Board to give effect to any function, duty or powers under this Act; or

(c) any other expenses, fees and allowances for the purposes of this Act.

15. Annual budget

[Function to prepare annual budget]

16. Control of Fund

[Control of fund]

17. Investment

[Power to invest Fund]

18. Tax exemption

[Tax exemptions]

19. Annual reports

[Duty to prepare annual report]

PART 5 – MISCELLANEOUS

20. False information

[Offence of giving false information]

21. Personal liabilities

[exemption from personal liability for carrying out powers and duties]

22. Ministerial directions

[Power of Minister to give policy directions]

23. Regulations

[Power to make regulations]

24. Consequential amendments

[Insert any consequential amendment]

25. Transition and saving

[Insert any saving]

ANNEX 4 – Marketing of breastmilk substitutes

FOOD [… ACT 20…]

FOOD (BREASTMILK SUBSTITUTES) REGULATIONS [20…]

Table of contents

IN exercise of the powers conferred upon me by [section xx] of the Food [… Act 20…], I make these Regulations –

PART 1 – PRELIMINARY

Citation and commencement

(1) These Regulations may be cited as the Food (Breastmilk Substitutes) Regulations [20…].

(2) These Regulations commence on [*insert date*].

Definition

In these Regulations:

"**advertise**":

(a) means to promote the sale or use of a designated product through any means of communication or representation; and

(b) includes to promote the sale or use through:

(i) a written publication, television, radio, film or any other electronic transmission such as the internet, social media, video, telephone or mobile application; or

(ii) the display of a sign, billboard or notice; or

(iii) the exhibition of a picture or model;

"**artificial feeding**" means feeding with a manufactured food product which partially or totally replaces breastmilk;

"**brand name**" means the name of a designated product or range of designated products;

"**bottle feeding**" means feeding liquid or semi-solid food from a bottle with a nipple;

"**Code**" means the International Code of Marketing of Breast-milk Substitutes adopted by the World Health Assembly of the World Health Organization in 1981;

"**Codex**":

(a) means the relevant Codex for foods for infants and children; and

(b) includes:

(i) any other standards recommended by the Codex Alimentarius Commission for foods for infants and children; and

(ii) any other standard on food for infants and young children prescribed under the Act;

"**complementary food**" means a food suitable or represented as suitable as an addition to breastmilk, infant formula or follow-up formula for infants aged from 6 months to [36][138] months and young children;

"**complementary food product**" means a complementary food that is processed for commercial purposes;

"**container**":

(a) means a form of packaging of a designated product for the sale of the product as a retail unit; and

(b) includes a wrapper;

"**cross-promote**" means to promote another product, such as to use a similar brand name, packaging design, label, text, image, colour scheme, symbol or slogan;

"**designated product**":

(a) means:

(i) an infant formula, a young child formula or a follow-up formula; or

(ii) a ready-to-use therapeutic food or a complimentary food product; or

(iii) a product marketed or represented as suitable for feeding infants aged up to 6 months; and

(b) includes:

(i) an equipment for containing or delivering food or drink for infants or young children, such as a feeding bottle or a teat or a pacifier; or

(ii) a product declared as such under [regulation xx];

"**distributor**" means a person who engages in the business of marketing a designated product, whether wholesale or retail;

"**exempted information**" means an information exempted under [regulation 15(1)];

"**follow-up formula**":

(a) means a milk or milk-like product of animal or vegetable origin:

(i) formulated industrially under the Codex for follow-up formula; and

(ii) marketed or represented as suitable for feeding of infants aged over 6 months to 12 months or young children; and

(b) includes:

(i) a follow-up formula for special medical purposes or dietary requirement; or

(ii) a ready-to-use therapeutic food that is a follow-up milk product for acutely malnourished infants or young children;

"**gift**" includes:

(a) a benefit, contribution or sponsorship (financial or otherwise and of whatever value); or

(b) a fellowship or research grant; or

(c) funding for a meeting, seminar, continuing education course or conference or other similar matter.

"**health care facility**":

(a) means a facility or entity (whether public or private) that, directly or indirectly, provides health care or health care education; and

(b) includes a day-care centre, a nursery or any other facility for the care of infants and young children;

"**health**" in the context of health claim, means a state of complete physical, mental and social wellbeing, other than merely the absence of disease or infirmity;

"**health claim**":

(a) means a representation that states, suggests, or implies that a relationship exists between:

(i) a food or its constituent; and

(ii) the health, growth or development of the human body or the psychological role of a nutrient in the growth, development or normal functions of the human body; and

(b) includes:

(i) a nutrient function claim that describes the physiological role of the nutrient in the growth, development and normal functions of the human body; or

[138] PICTs to determine upper age limit

(ii) any other function claim about a specific beneficial effect of consuming a food or its constituent that relates to a positive contribution to health, an improvement of a function or any modification or preservation of health; and

(iii) a reduction of disease risk claim on consuming a food or its constituent, in the context of the total diet or a reduction of the risk of developing a disease or a health-related condition;

"**health professional**" means a health worker with a professional degree, diploma or licence, such as:

(a) a medical practitioner or a nurse or midwife designated or licensed under the [relevant health legislation]; or

(b) any other person designated or licensed under the [relevant health legislation];

"**health worker**":

(a) means:

(i) a health professional; or

(ii) any other person who provides a health care service in a health care facility; and

(b) includes a trainee or unpaid volunteer engaged to provide health care service in a health care facility;

"**infant**" means a child aged under 12 months;

"**Infant formula**":

(a) means a milk or milk-like product of animal or vegetable origin:

(i) formulated industrially pursuant to Codex for infant formula; and

(ii) intended to satisfy, by itself, the nutritional requirements of infants from birth or during the first 6 months; and

(b) includes:

(i) a product that continues to meet part of an infant's nutritional requirements after the first 6 months;

(ii) a formula for special medical purposes or dietary requirements; or

(iii) a ready-to-use therapeutic food that is a milk product for acutely malnourished children; or

"**information**" includes educational material;

"**label**":

(a) means a descriptive matter, such as a tag, mark or pictorial, appearing in any form (whether written, printed, stencilled, marked, embossed or attached) on the container of a designated product; and

(b) for [regulations 6(2) or (3), or 10], includes a packaging or an insert;

"**labelling**" includes a matter (whether written, printed or in graphic form) that:

(a) appears on the label; or

(b) accompanies the designated product; or

(c) is displayed near the designated product; or

(d) promotes the sale or disposal of the designated product;

"**logo**" means a matter (such as an emblem, picture or symbol) by means of which a company or a designated product is identified;

"**manufacturer**":

(a) means a person who engages in the business of manufacturing a designated product; and

(b) includes when the person engages in that business through an agent or a person controlled by or under an agreement;

"**market**":

(a) means to promote, distribute, sell, or advertise a designated product; and

(b) includes to provide for product public relation or product information;

"**nutrition claim**":

(a) means a representation which states, suggests or implies that a food has a particular nutritional property, such as, the energy value, the content of a protein, fat or carbohydrate, the content of a vitamin or mineral or any other nutritional food property; but

(b) does not include a statement about:

(i) the substances in the list of ingredients; or

(ii) the nutrients as a mandatory part of nutrition labelling; or

(iii) the declaration amount or quality of certain nutrients or ingredients on the label if required by the Act;

"**pacifier**" means an artificial teat for infants or young children to suck;

"**place**" includes an area, facility, premises, building, vehicle or vessel;

"**promote**" means to employ any method of directly or indirectly encouraging a person, a health facility or any other entity to purchase or use a designated product whether or not there is reference to a brand name, including:

(a) to cross-promote;

(b) to sell or promote through a sale device, such as, special display, discount coupon, premium, rebate, special sale, loss-leader, tie-in sale, prize or gift;

(c) to give a sample;

(d) to donate or distribute information about feeding of infants or young children or performance of educational functions about feeding of infants or young children, other than exempted information;

(e) to use a health claim or a nutrition claim on the label of a designated product or in an information referring to feeding of infants or a young children, other than exempted information;

(f) to use a method to, directly or indirectly, encourage a person or a health facility to buy or use a designated product, whether or not there is reference to a brand name;

"**ready-to-use therapeutic food**" means any food that is specifically designed to treat severe acute malnutrition in infants aged 6 to 12 months and young children, such as energy-dense food, vitamin-enriched food or mineral-enriched food;

"**sample**" means a single or small amount, provided without cost, of a designated product;

"**sponsorship**" means an assistance, whether financial, in-kind or free;

"**vehicle**" has the meaning in the [traffic legislation];

"**vessel**" has the meaning in the [shipping legislation];

"**young child**" means a child aged from 1 year to 3 years;

"**young child formula**" means an industrially formulated milk or milk-like product of animal or vegetable origin that is marketed or represented as suitable for feeding young children.

Purpose of Regulations

The purposes of these Regulations are:

(a) to protect, promote and encourage 6 months of exclusive breastfeeding, followed by the provision of safe and appropriate complementary foods, with continued breastfeeding for up to two years of age or beyond, as the ideal nutrition for growing and developing infants and young children; and

(b) to protect the rights of adequate nourishment of infants and young children and mothers in order to attain and maintain their health; and

(c) to encourage and protect breastfeeding, as vital to primary health care, and to promote healthy growth and development of infants and young children; and

(d) to give effect to the child's right to attain the highest standard of health under the United Nations Convention on the Rights of Child 1989; and

(e) to regulate the sale, advertisement, promotion, labelling of designated products; and

(f) to ensure the proper use of designated products, when necessary, on the basis of adequate information and through appropriate marketing and distribution; and

(g) to implement the recommendations in the Code, including the global goals and targets to increase the rate of exclusive breastfeeding in the first 6 months of the birth of infants; and

(h) to … (list other objectives – if any).

PART 2 – MANUFACTURE, SALE AND ADVERTISEMENT OF DESIGNATED PRODUCTS

Definition

In this Part:

"**event**" includes a telephone counselling line, campaign, programmes or similar event;

"**material**" includes:

(a) any equipment or service; or

(b) any other material, such as, a pen, calendar, poster, note pad, growth chart or toy.

Standards for designated products

(1) A person must not manufacture a product that is commercially processed for feeding of infants or young children unless the product is manufactured or processed under the requirement of the Codex.

(2) The manufacturer or distributor of a designated product must:

(a) monitor its marketing practices; and

(b) take steps to ensure that its business conduct, at any level, conforms with these Regulations and the Act; and

(c) inform other manufacturers or distributor of its marketing employees.

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

Sale of designated products

(1) A person must not manufacture, import or sell a product that is commercially processed for feeding of infants or young children unless the product is a designated product.

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

Advertisement and promotion

(1) A person must not:

(a) advertise or promote a designated product, subject to subregulation (2); or

(b) donate a designated product to a health worker or a health care facility; or

(c) waive payment (through any means) or provide at lower than any published wholesale price, and if no wholesale price, lower than 80% of the retail price, of a designated product to a health worker or a health care facility; or

(d) provide a health care facility with any materials; or

(e) offer or give a gift to a health worker (including an association of health workers) engaged in maternal health and the health of infant and young children; or

(g) sponsor an event about reproductive health, pregnancy, childbirth, feeding of infants or young children or related areas or matters; or

(f) directly or indirectly establish relationships with a parent and any other caregiver through any means, such as a baby club, social media group, child care class or contest; or

(g) include the volume of sales of designated products:

(i) to calculate employees remuneration or bonuses; or

(ii) to set quotas for sales of designated products.

(2) A person may advertise or promote a complementary food product if:

(a) the advertisement or promotion is carried out in a place other than a health care facility; and

(b) the material used to advertise or promote a complementary food product includes a statement in characters[139] on:

(i) the importance of exclusive breastfeeding for the first 6 months and of continued breastfeeding for up to 2 years or beyond; and

(ii) the recommended age of introduction of 6 months and over and a statement that early introduction of a complementary food negatively affects breastfeeding.

(3) Despite subregulation (2), a person must not advertise or promote a complementary food product through any means under [regulation 8(2)].

(4) A person who contravenes subregulation (1) commits an offence [+ penalty].

Declaration of other designated products

The Minister may, by Notice [in the *Gazette*], declare a product as a designated product.

PART 3 – LABELLING OF DESIGNATED PRODUCTS

[139] [...insert particulars relating to character size, placement, appearance, etc. For example, "no less than one-third the size of the characters in the product name, and in no case less than 2mm in height"...]

Definition

In this Part:

"**sell**" incudes to distribute or to offer or to display, for sale;

"**text**" includes a word or expression.

General labelling requirements for designated products

(1) A person must not sell a designated product if its label contains:

(a) a photograph, or drawing or a graphic representation, other than a representation on the methods of preparation; or

(b) a health claim or nutrition claim.

(2) A person must not sell a designated product unless its label states in a manner that is clear, conspicuous and easily readable in […language] the following particulars:

(a) any instruction to prepare and use the product must be in words or graphic representations that are easy to understand;

(b) the age must be stated in numeric figures after which the designated product is recommended;

(c) a warning about the health risks about:

(i) improper use, preparation or storage of the product; and

(ii) introducing the designated product prior to the recommended age;

(d) the list of ingredients and the declaration of nutritional value under the relevant Codex;

(e) the required storage conditions both before and after opening, taking into account climatic conditions;

(f) the batch number, date of manufacture and date before which the product is to be consumed, taking into account climatic and storage conditions;

(g) the name and national address of the manufacturer or distributor.

(3) Subregulation (2) does not apply to feeding bottle, teat or pacifier.

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

Labelling requirements for infant formula, follow-up formula and young child formula

(1) The labelling requirements in this regulation are in addition to those required under [regulation 6 - general] and the Act.

(2) A person must not sell any infant formula or follow-up formula unless its label or container:

(a) contains the words, "IMPORTANT NOTICE" in capital letters and the following statement under it:

"*Breastfeeding is the normal and optimal way to feed infants and young children. Breastmilk is important for the healthy growth and development of infants and young children. Breastmilk protects against diarrhoea and other illnesses*" in characters[140];

(b) contains the word, "WARNING" and the following statement under it:

"*Before deciding to supplement or replace breastfeeding with this product, seek the advice of a health professional. It is important for your baby's health that you follow all preparation instructions carefully. If you use a feeding bottle, your baby may refuse to feed from the breast. It is more hygienic to feed from a cup*" in characters[141];

(c) has preparation instructions for infant formula in powdered form stating that:

(i) powdered formula is not sterile and may be contaminated with pathogenic microorganisms during the manufacturing process or may become contaminated during preparation;

(ii) it is necessary for the formula to be prepared one feed at a time using water first boiled and then cooled to not less than 70 °C; and

(iii) any unused milk must be discarded immediately after each feed; or

(d) includes a feeding chart in the preparation instructions;

(e) specifies the source of the protein; and

[140] Insert particulars relating to character size, placement, appearance, etc. For example, "no less than one-third the size of the characters in the product name, and in no case less than 2mm in height

[141] […insert particulars relating to character size, placement, appearance, etc. For example, "no less than one-third the size of the characters in the product name, and in no case less than 1.5mm in height"…]

(f) for follow-up formula, states that it is not be used for infants aged under 6 months or as the sole source of nutrition of infants in characters.[142]

(3) A person must not sell:

(a) an infant formula or follow-up formula if its label or container uses a term:

(i) to compare the infant formula or follow-up formula with or that it is similar to breastmilk, such as, maternalised or humanised; or

(ii) that may tend to discourage breastfeeding; or

(b) a formula for young children if the label or container states that the formula is to be used:

(i) to feed infants; or

(ii) as the sole source of nutrition for young children.

(4) A person commits an offence who contravenes subregulation (2) or (3).

Labelling requirements for ready-to-feed therapeutic food or complimentary food

(1) The labelling requirements in this regulation are in addition to those required under [regulation xx – general] and the Act.

(2) A person must not sell a ready-to-feed therapeutic food or a complementary food product ("**product**") if its container or label contains any of the following:

(a) a representation that suggests the suitability of the product for infants aged under 6 months including, but not limited to, references to development milestones clearly reached before 6 months or the use of pictures of infants appearing to be younger than 6 months;

(b) a representation that idealises the product or is likely to undermine or discourage breastfeeding or to create a belief that the product is equivalent or superior to breastmilk;

(c) a representation that undermines or discourages appropriate complementary feeding or that may suggest that the product is inherently superior to home-prepared complementary foods;

(d) a recommendation to feed the product in a bottle or to promote the use of bottle feeding;

(e) an endorsement, or anything that may be conveyed or construed as an endorsement by a health professional, an association of health professional or other body; and

(f) an element that allows for cross-promotion of any other designated product.

(3) A person must not sell a ready-to-feed therapeutic food or a complementary food product unless the label or container has all of the following information:

(a) a statement in characters [143] on:

(i) the importance of exclusive breastfeeding for the first 6 months and of continued breastfeeding up to 2 years or beyond; and

(ii) the recommended age of introduction of 6 months or over and a statement that early introduction of complementary food negatively affects breastfeeding;

(b) instructions for preparation, storage, handling and use; and

(c) a feeding chart showing the appropriate ration or serving size consistent with guiding principles issued by the World Health Organization.

(4) A person commits an offence who contravenes subregulation (2) or (3).

Labelling of skimmed or condensed milk and low-fat and standard milk

(1) A person must not sell:

(a) skimmed or condensed milk in powder or liquid form, unless its container or label contains the words:

"*This product should not be used to feed infants*" in characters[144]; or

(b) low-fat milk or standard milk (in powder or liquid form), unless its container or label contains the words:

"*This product should not be used as the sole source of nourishment of infants*" in characters.[145]

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

[142] [...insert particulars relating to character size, placement, appearance, etc. ...]
[143] [...insert particulars relating to character size, placement, appearance, etc. For example, "no less than one-third the size of the characters in the product name, and in no case less than 2mm in height"...]
[144] [...insert particulars relating to character size, placement, appearance, etc....]
[145] [...insert particulars relating to character size, placement, appearance, etc....]

Labelling of feeding bottle, teat and pacifiers

(1) The labelling requirements in this regulation are in addition to those required under [regulation xx – general] and the Act.

(2) A person must not sell:

(a) a feeding bottle or teat unless its package or label indicates in a clear, conspicuous and easily readable manner, in [… language], the following particulars:

(i) the words, "IMPORTANT NOTICE" in capital letters and the following statement:

"*Breastfeeding is best. Breastmilk is the ideal food for the healthy growth and development of infants and young children. It protects against diarrhoea and other illnesses*" in characters[146]; and

(ii) the following statement:

"***Warning**: It is important for your baby's health that you follow the cleaning and sterilisation instructions very carefully. If you use a feeding bottle, your baby may no longer want to feed from the breast*" in characters[147]; and

(iii) the instructions for cleaning and sterilisation in words and graphics; and

(iv) a statement explaining that feeding with a cup is more hygienic than bottle feeding; and

(v) a warning that young children should not be left to self-feed for long periods of time because extended contact with sweetened liquids, including infant formula, may cause severe tooth decay; and

(vi) the name and national address of the manufacturer or the distributor; or

(b) a pacifier unless its label has the words:

"***Warning**: Use of a pacifier can interfere with breastfeeding*" in characters[148].

(3) A person commits an offence who contravenes subregulation (2).

PART 4 – INFORMATION

Definition

In this Part:

"**artificial feeding**" includes a feeding bottle or utensil;

"**contaminated**" means contaminated:

(a) during the manufacturing process with a pathogenic microorganism; or

(b) when it is prepared;

"**brand name**" includes the logo of the product or the name of the manufacturer or distributor of a designated product;

"**health risk**" includes health risk about using feeding bottle or improper preparation of artificial feeding;

"**image**" includes a picture, graphic, text or any other similar matter;

"**information**" includes educational material.

Information on infant feeding

(1) Any information about feeding of an infant or a young child must:

(a) be written in the […] language[149]; and

(b) be correct and current; and

(c) clearly and conspicuously explain all of the following matters:

(i) any benefit or superiority of breastfeeding;

(ii) the value of exclusive breastfeeding for 6 months followed by sustained breastfeeding for at least 2 years;

(iii) how to initiate and maintain exclusive and sustained breastfeeding;

[146] […insert particulars relating to character size, placement, appearance, etc. For example, "no less than one-third the size of the characters in the product name, and in no case less than 2mm in height"…]

[147] [… insert particulars relating to character size, placement, appearance, etc. For example, "no less than one-third the size of the characters in the product name, and in no case less than 2mm in height"…]

[148] […insert particulars relating to character size, placement, appearance, etc. For example, "no less than one-third the size of the characters in the product name, and in no case less than 1.5mm in height"…]

[149] May include vernacular language of PICT.

(iv) why it is difficult to reverse a decision not to breastfeed;

(v) the importance of introducing complementary food from the age of 6 months;

(vi) how and why any introduction of artificial feeding, the use of feeding bottle or the early introduction of complimentary food negatively affects breastfeeding;

(vii) that complimentary food can easily be prepared at home using local ingredients.

(2) The information must not:

(a) use any image that:

(i) encourages artificial feeding or using of feeding bottles, teats or pacifiers; or

(ii) discourages breastfeeding or using of breastmilk; or

(b) give an impression or create a belief that a designated product is equivalent to, comparable with or superior to breastmilk or breastfeeding;

(c) contain a brand name, other than excepted information.

(3) A person commits an offence who provides an information that does not comply with a requirement of this regulation.

Information on artificial feeding

(1) This regulation applies if [regulation xx – infant feeding] includes any information about artificial feeding or using feeding bottle.

(2) The information must include all of the following matters:

(a) instruction on how to properly prepare, store or use artificial feeding or to clean and sterilise a feeding utensil;

(b) how to feed an infant with a cup;

(c) the health risk of artificial feeding;

(d) the approximate cost of feeding an infant or a young child with the recommended amount of artificial feeding;

(e) that it is not a necessary practice to provide a follow-up formula or young child formula;

(f) explain that:

(i) powdered formula is not sterile and may be contaminated; and

(ii) it is necessary for powdered formula to prepare one feed at a time using water first boiled and then cooled to not less than 70 °C; and

(iii) any unused milk is to be discarded immediately after each feed.

(3) The information on artificial feeding must not contain any health claim or nutrition claim except information provided under [regulation 15].

(4) A person commits an offence who provides any information that does not comply with this regulation.

Exempted information to health professionals

(1) The manufacturer or distributor of a designated product may give a health professional any of the following exempted information about the designated product:

(a) any scientific or factual information or matter about the technical aspect or method to use the designated product; or

(b) any reference information or matter provided for a study that is published or peer-reviewed to support a representation or claim that states or suggests that a relationship exists between the designated product or its constituent and the health, growth or development of human body; or

(c) information provided under [regulation 13 or 14].

(2) A manufacturer or distributor commits an offence who gives any other information (other than exempted information) to a health professional.

PART 5 – ADMINISTRATION

Division 1 - General

Definition

In this Part:

"**by any means**" includes any form or manner of communication or technology, including the internet, social media, telephone or other similar matter;

"**head of health care facility**" means the person who:

(a) is the executive or administrative head of a health care facility; or

(b) manages the day-to-day operation of the facility;

(c) is designated, in writing, by [XX] as head of the facility for the purpose of these Regulations.

Duties of [COE/PS Health]

The duties of the [CEO/PS Health] are:

(a) to administer and implement these Regulations;

(b) to formulate policies relating to these Regulations for approval by Cabinet;

(c) to coordinate the administration and implementation of these Regulations with other Ministries and interested persons and organisations;

(d) to ensure that these Regulations are enforced;

(e) to carry out other duties to give effect to or for the purposes of these Regulations.

Advisory committees

(1) The [Minister] may appoint committees to advise the [Minister] on matters relating to the administration and implementation of these Regulations.

(2) A committee comprises up to [7] members appointed from Ministries, other government agencies and other persons or organisations, including national, regional and international organisations.

(3) The [Minister] must approve a term of reference of an advisory committee.

(4) A term of reference may include the following functions:

(a) to advise on national policy for the promotion and protection of breastfeeding and on the Code;

(b) to advise on designing a strategy for:

(i) developing communication and public education programmes for the promotion of breastfeeding;

(ii) informational and educational materials on the topics of infant and young child feeding;

(iii) continuing education for health workers on lactation management and the requirements of these Regulations;

(iv) curricula for students in the health professions that include lactation management;

(c) to review breach or other matters relating to these Regulations;

(d) scrutinize materials and recommend appropriate actions breach of these Regulations; and

Division 2 – Health workers

Heads of health care facilities

(1) The head of a health care facility must:

(a) take measures to protect breastfeeding; and

(b) inform and advise other health workers about their duties under these Regulations; and

(c) ensure that the health care facility is not used to market or promote a designated product; and

(d) ensure that a health worker employed or engaged by the facility does not market or promote a designated product; and

(e) ensure that a person (whether paid or not) engaged by a manufacturer or distributor does not provide professional or other health services about designated product or have any direct or indirect contact with parents or caregivers; and

(f) ensure that other health workers are familiar with information under [regulations 13 to 15]

(2) It is an offence if:

(a) under subregulation (1)(d), a health worker markets or promotes by any means a designated product at a health care facility or any other place; or

(b) under subregulation (1)(e), a person provides a professional or other health service about designated product; or

(c) a person markets or promotes a designated product at a health care facility.

(3) Subregulation (2) does not apply to;

(a) health workers when carrying out their duties under these Regulations, including advising or assisting mothers on matters relating to designated products, artificial feeding, breastmilk or breastfeeding; or

(b) exempted information.

Duties of health workers

(1) A health worker must:

(a) encourage, support or protect breastfeeding; and

(b) know and understand these Regulations, in particular the nature of duties of health workers; and

(c) know and understand the information under [regulations 13 to 15]; and

(d) discourage or eliminate any practice that impedes initiating and continuing breastfeeding, such as a pre-lacteal feed; and

(e) give the [head of the health facility] a written report about:

(i) any sample, gift or other benefit received by the health worker; or

(ii) a breach of these Regulations.

(2) The [head of the health facility] must, as soon as possible, send the written report to the [XX].

Health workers not to accept gifts, etc.

(1) A health worker engaged in maternal health and health of infants or young children must not:

(a) directly or indirectly, accept a gift, contribution, sponsorship or benefit (whether financial or otherwise) of whatever value; or

(b) give or, directly or indirectly, accept a sample; or

(c) demonstrate the use of infant formula other than to mothers or caregivers who have decided to use infant formula.

(2) Subregulation (2)(c) does not apply to demonstration by a health worker to mothers or members of their families in very special cases of need, and in such cases, the health worker must give:

(a) a clear explanation of the risks of the use of infant formula; and

(b) any other information required by [regulations 13 to 15]

(3) A person commits an offence who, for anything specified in subsection (1):

(a) gives it to a health worker; or

(b) being a health worker, accepts or receives it from the person.

PART 6 – ENFORCEMENT

Enforcement officers[150]

[Appointment of enforcement officers]

Powers of enforcement officers

[Power of enforcement officers]

Warrants for place of residence

[Power to issue warrant to search residence]

Product recall

[Power to recall the designated product]

Obstruction etc. of enforcement officers

[Offence for obstructing officers when carrying out duties and powers]

Infringement notices for spot fines

[Issuing of infringement notices for on-the-spot-fine]

Service of infringement notices

[Manner in which notices are to be served]

Directors, etc., liability

[Directors, etc., are also liable if the corporation commits an offence]

[150] Delete if the Act provides for the appointment of enforcement officers/enforcement officers, etc.

Penalties

[Fixing of maximum penalties in a Schedule]

PART 7 – MISCELLANEOUS

Right to breastfeed at workplaces

[statutory duty of employers to ensure that the rights of working mothers at their workplaces are not affected][151]

Immunity from personal liability

[Protection from personal liability for carrying out duties and power]

Repeal/consequential amendments

[*Repeal or amend existing regulations*]

SCHEDULE

(regulation xx)

PENALTIES

Part 1 – Fixed penalties[152]

1 regulation	2 Individual (first offence)	3 Individual (second or subsequent offence	4 company (first offence	5 company (second or subsequent offence

Part 2 – General penalties

1 regulation	2 Individual (first offence)	3 Individual (second or subsequent offence	4 company (first offence	5 company (second or subsequent offence

[151] Employment law to be checked if it has already cover this right

[152] Fixed penalties should tagged at around 20 – 25% of the fines fixed for that than offence in Part 2 of the Schedule. It should be an amount fixed by law and not an official.

ANNEX 5-1 – Salt, Sugar and Trans-fat Regulations

FOOD … [ACT 20…]

FOOD (SALT, SUGAR AND TRANS-FAT) REGULATIONS [20…]

Table of contents

FOOD (SALT, SUGAR AND TRANS-FAT) REGULATIONS [20…]

IN exercise of the powers conferred on me by [section xx] of the [Food … Act 20…], I make these Regulations –

PART 1 – PRELIMINARY

Citation and commencement

(1) These Regulations may be cited as the Food (Salt, Sugar and Trans-fat) Regulations [20…].

(2) These Regulations commence on [*insert date*].

Definitions

In these Regulations:

"**designated product**" means salt, sugar or trans-fat;

"**iodized salt**" means salt that is processed under the Codex standard or otherwise standard prescribed under the Act;

"**place**" includes an area, facility, premises, building, vehicle or vessel;

"**restaurant**" means a place that sells food to be consumed at the place or elsewhere;

"**salt**" means…

"**standard**" means a standard for salt, sugar or trans-fat specified in Schedule 1;

"sugar" means …

"**trans-fat**" means industrially produced trans-fatty acid, which is primarily found in:

(a) partially hydrogenated oil, vegetable oil or fish oil converted from a liquid state into a solid state through the addition of hydrogen; or

(b) oils and fats that have been hydrogenated, but not to complete or near complete saturation, and with an iodine value greater than 4;[153]

"**vehicle**" has the meaning in the [traffic legislation];

"**vessel**" has the meaning in the [shipping legislation];

Purpose or Regulations

The purposes of these Regulations are:

(a) to regulate the safe level of salt and trans-fat in food preparation and processing in order to protect health of persons;

(b) to …

PART 2 – SALT

Non-iodized salt

(1) A person must not:

(a) manufacture, import, distribute or sell salt that is not iodized pursuant to standards for iodized salt; or

(b) manufacture, import, distribute or prepare food to be sold using salt that is not iodized.[154]

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

Maximum salt level for certain food products

[153] Definition (paragraph (b)) in the United States Food and Drug Administration
[154] Check other means of regulating non-iodized salt.

(1) This regulation applies to food products listed in Part 1 of Schedule 2.

(2) A person must not manufacture, import, distribute or sell a food product if the level of salt exceeds the standard for salt.

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

Standard for salt

(1) Part 1 of Schedule 1 sets out the standard on the maximum level of salt in a food product specified that Part.

(2) The [Minister/CEO/PS] must consult the food industry when setting the maximum standard for salt in food.

(3) A salt sachet must not exceed [xx] gram of salt.

Duty of owners of restaurants

(1) This regulation applies to restaurants selling food that contains salt.

(2) The owner of a restaurant must:

(a) must place a notice at a conspicuous part of the restaurant about the health effect of excess salt on health; or

(b) must not place free salt on the serving table except on request by the customer; or

(c) may offer to a customer any food without added salt.

(3) The [CEO/PS Health] may approve the form of notice and wording (including diagrams).

(4) A person commits an offence who contravenes subregulation (2)(a) or (b).

Labelling

- *[Front-of-pack labelling]*
- *[back-of-the-pack – nutrient declaration]*
- *[colour code – nutritional value]*
- *[warning labels - food with high salt content]*
- *[Health claims may be allowed only if the salt content in a food is less than [xx] grams.*
- *[Labelling – point-of-sale and shelf labelling]*
- *[Labelling – Restaurant menu to display salt level in serve of meal]*

Misleading marketing

A person commits an offence who markets any food in a manner that misleads consumers about:

(a) the high content of salt in the food; or

(b) using a word (such as “antioxidant”) in the label of a food that is high in salt that leads a consumer to think that the food is healthy.

PART 3 – SUGAR

Sugar standards

(1) Part 2 of Schedule 1 sets out the standard on the maximum level of trans-fat in a food product specified in that Part.

(2) The [Minister/CEO/PS] must consult the food industry when setting the maximum standard for sugar in food.

Labelling

[Front-of-pack labelling]

[back-of-the-pack – nutrient declaration]

[colour code – nutritional value]

[warning labels - food with high sugar content]

Misleading marketing

Misleading marketing

A person commits an offence who markets any food in a manner that misleads consumers about:

(a) the high content of sugar in the food; or

(b) using a word in the label of a food that is high in sugar that leads a consumer to think that the food is healthy.

PART 4 – TRANS-FAT

Level of trans-fat in food

(1) A person must not manufacture, import or sell oil, fat or any other food if it has a content of trans-fat higher than [2 g per 100 g of oil or fat[155].]

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

Standard for trans-fat

Part 3 of Schedule 1 sets out the standard on the maximum level of trans-fat in a food product specified in that Part.

Ban on use of trans-fat[156]

(1) A person must not:

(a) use any trans-fat when manufacturing any food product or preparing any food to be sold in a restaurant; or

(b) import, distribute or sell a food product that contains trans-fat; or

(c) manufacture, import, distribute or sell trans-fat.

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

Trans-fat labelling

[Front-of-pack labelling]

[back-of-the-pack – nutrient declaration]

[colour code – nutritional value]

[warning labels - food with high trans-fat content]

Misleading marketing

A person commits an offence who markets any food in a manner that misleads consumers about:

(a) the high content of trans-fat in the food; or

(b) using a word, such as “antioxidant”, in the label of a food that is high in trans-fat that leads a consumer to think that the food is healthy.

[155] The level is based on the Denmark law. The maximum per serving may also be used.

[156] PICTs are to consider either regulating the maximum level of trans-fat in any food product or total ban on use of trans-fat in any food product. Alternatively both provisions can be used to phase out use of trans-fat in food products over a period of time. Also it can be regarded as unsafe for human consumption. For example, under section 3(3) of the Food Safety Act 2003 of Fiji, the Central Board of Health can make an Order to declare a food as unfit for consumption.

PART 5 – ADMINISTRATION

National strategies for salt, sugar and trans-fat

(1) The [Minister] must prepare:

(a) a National Strategy for Salt (including elimination of iodine deficiency); and

(b) a National Strategy for Sugar; and

(c) a National Strategy for Trans-fat.

(2) The [Minister] may:

(a) appoint a committee (for each of the Strategies) comprising government and non-government representatives (including representatives of any food industry and any experts or consultants from any regional or international bodies); or

(b) one committee to prepare all of the 3 National Strategies.

(3) The members are to be suitably qualified and experienced to undertake research and the development, formulation and settling of each of the National Strategies.

(4) The [Minister] must approve the terms of reference of a committee, including the matters and issues to be covered and the time within which the Strategy is to be completed.

(5) A National Strategy must:

(a) include initiatives through community settings, such as, schools, workplaces and hospitals;

(b) be operative for a period of not more than [5] years;

(b) be approved by [Cabinet];

(c) after it is approved by [Cabinet], be tabled as soon as practicable in [Parliament] by the [Minister];

(c) be reviewed not later than [12 months] from expiry.

(6) The National Strategy for Salt may include policies to eliminate iodine deficiency.

Functions

The functions of [CEO/PS/DH] on these Regulations are:

(a) to administer these Regulations; and

(b) to monitor and implement any programme or recommendations in a National Strategy;

(c) to review these Regulations every [2] years; and

(d) to carry out public awareness and education on use, consumption, risks and other related matters about salt, sugar or trans-fat;

(e) to carry out other functions to give effect to or for the purposes of these Regulations.

PART 6 – ENFORCEMENT[157]

Enforcement officers[158]

[Appointment of enforcement officers]

Powers of enforcement officers

[Power of enforcement officers]

Warrants for place of residence

[157] Check that the enforcement provisions in these Regulations are not repeated in the parent Act.
[158] Delete if the Act provides for the appointment of enforcement officers/enforcement officers, etc.

[Power to issue warrant to search residence]

Product recall

[Power to recall the designated product]

Obstruction etc. of enforcement officers

[Offence for obstructing officers when carrying out duties and powers]

Infringement notices for spot fines

[Issuing of infringement notices for on-the-spot-fine]

Service of infringement notices

[Manner in which notices are to be served]

Directors, etc., liability

[Directors, etc., are also liable if the corporation commits an offence]

Penalties

[Fixing of maximum penalties in a Schedule]

PART 7 – MISCELLANEOUS

Right to breastfeed at workplaces

[statutory duty of employers to ensure that the rights of working mothers at their workplaces are not affected][159]

Immunity from personal liability

[Protection from personal liability for carrying out duties and power]

Repeal/consequential amendments

[*Repeal or amend existing regulations*]

[159] Employment law to be checked if it has already cover this right

SCHEDULE 1

(regulation xx)

STANDARDS FOR SALT, TRANS-FAT AND SUGAR

Part 1 – Salt standards

Food[160]	**Maximum salt level**[161] **(Target by 20…)**	**Maximum salt level Target by [20…]**[162]	**Maximum salt level Target by [20…]**
Bread, croissants			
Cereals and salted cookies			
Margarines and butter			
Salty snacks			
Chips, such as potato chips			
Processed food (including processed or cured meats and sausages)			
Gravy and soup mixes and dressings			
Instant noodles			
Stock cubes			
Foods prepared in restaurants			
Dairy and cheese products			
Pizza and pastas			

Part 2 – Trans-fat standards

Food	**Maximum trans-fat**	

Part 3 – Sugar

Food	**Maximum**	

[160] List of food items used by South Africa which PICTs can use as the basis for listing those targeted food items.
[161] PICTs to decide the method (weight, per serving, etc.) of maximum salt content for each food or a class.
[162] PICTs can phase-in the salt level over a period to reach target maximum level.

SCHEDULE 2

(regulation xx)

PENALTIES

Part 1 – Fixed penalties

Regulation	Individual (first offence)	Individual (second or subsequent offence)	company (first offence)	Company (second or subsequent offence)

Part 2 – Penalties for offences

Regulations	Individual (first offence)	Individual (second or subsequent offence)	company (first offence)	Company (second or subsequent offence)

ANNEX 5-2 – Marketing of Unhealthy Food and Sugary Drinks to Children Regulations

FOOD [… ACT…]

FOOD (MARKETING OF UNHEALTHY FOOD AND SUGARY DRINKS TO CHILDREN) REGULATIONS [20…]

Part 1 – Preliminary

Part 2 – Marketing of designated products

Part 3 – Administration

Part 4 – Enforcement

Part 5 – Miscellaneous

FOOD [… ACT…]

FOOD (MARKETING OF UNHEALTHY FOOD AND SUGARY DRINKS TO CHILDREN) REGULATIONS [20…]

IN exercise of the powers conferred on me by [section xx] of the [Food … Act 20…], I make these Regulations –

PART 1 – PRELIMINARY

Citation and commencement

These Regulations may be cited as the Food (Marketing of Unhealthy Food and Drinks to Children) Regulations [20…].

These Regulations commence on [*insert date*].

Definitions

In these Regulations:

"**advertisement**" means any public presentation or promotion of designated products or services that is intended to bring the designated products or services to the attention of children through any means of media channel.

"**brand**" means:

(a) means:

(i) the brand for an unhealthy food or a sugary drink; or

(ii) the brand for a range of unhealthy food or sugary drink; and

(b) includes:

(i) the name of the manufacturer of unhealthy food or sugary drinks;

(ii) the name of a range of unhealthy food or sugary drinks, including any word, design or image relating to the range;

"**child**" means a person aged [18][163] years or under;

"**designated product**" means any unhealthy food or sugary drink designated under [regulation xx];

"**marketing**":[164]

[163] Each PICT to decide the age limit

[164] Definition recommended in the WHO Framework for implementing the set of recommendations on the marketing of foods and non-alcoholic beverages to children.

(a) means any form of commercial communication of message that is designed to, or has the effect of, increasing the recognition, appeal or consumption of a designated product or service; and

(b) includes anything that acts to advertise or to promote a designated product or service;

"**media channel**" includes broadcast and cable television, radio, print, billboards, the internet or personal contact;

"**nutritional content**" includes the [high level/presence] of saturated fat, trans-fatty acids, free sugar or salt;

"**place**" includes an area, facility, premises, building, vehicle or vessel;

"**premium**" means a promotional item that can be received for a small fee when redeeming proofs of purchase which come with or on retail product;

"**sugary drink"** or **"drink"** means a non-alcoholic sugar sweetened beverage that is high in sugar and is a designated product;

"**unhealthy food**" means any food listed in Part 1 of Schedule 1;

"**vehicle**" has the meaning in the [traffic legislation];

"**vessel**" has the meaning in the [shipping legislation];

Purpose of Regulations

The purposes of these Regulations are:

(a) to ensure that children are protected against the effect of marketing of designated products in order for them to grow and develop in food environment that promotes or encourages healthy dietary choices and maintenance of healthy weight;

(b) to regulate marketing [and labelling] of designated products;

(c) to protect children from health risks arising from eating unhealthy food or drinking sugary drinks;

(d) to provide programmes and awareness about the health risks arising from eating unhealthy food or drinking sugary drinks.

PART 2 – MARKETING OF DESIGNATED PRODUCTS

Designated product[165]

(1) The [XX] may declare a food a food product or non-alcoholic beverage as a designated product:
  (a) if the nutritional content of the product or beverage makes the consumption of that food or beverage detrimental to the health of children; and
  (b) the product or beverage is only suitable for occasional consumption.

(2) The following unhealthy food and sugary drinks are taken to be designated products:[166]
  (a) soda, … [*sugar sweetened beverages*]
  (b) chips, cookies, ramen, pastries [*high in salt*]
  (c) iced candy, etc. [*sweet food*]

Criteria for declaring designated product

(1) The [XX] may:
  (a) publish criteria for a product to be declared a designated product and considering any or all of the following:
    (i) the nutritional content of products or beverages;
    (ii) the presence of food additives in products or beverages;
    (iii) production techniques used for products or beverages
    (iv) any other matters that the [XX]considers appropriate;
  (b) adopt criteria developed by national or international organisations.

Advertising and promotion of designated products

(1) A person must not:

[165] Adapted from the Cook Islands Food Regulations (Part 7)

[166] PCITs to identify unhealthy food and sugary drinks in their respective jurisdictions and complete the list. Listing on specific items will facilitate enforcement. The power to designate other products can be exercised when new products are introduced into the market.

(a) if an advertisement or promotion of a designated product undermines the education of children as to the importance of healthy and balanced nutritious diet;
(i) publish, or arrange for any other person to publish, the advertisement;
(ii) arrange or undertake the promotion; or
(b) publish or arrange for the publication of an advertisement for a designated product or its brand name to children;
(b) undertake or arrange for a promotion of a designated product or its brand name to children;

(3) An advertisement or promotion is taken to be to children if any of the following apply—
(a) it is likely to appeal to children;
(b) it is organised or published at any time, place, situation or in a medium where the percentage of children in the audience, or as likely recipients of the advertisement or promotion, is likely to exceed [30%].

(4) The factors that may be considered under subregulation (3)(a) include any or all of the following—
(a) the nature of the product to be designated, including the level of nutritional contents of the products and likely health effect when consumed by children;
(b) the themes, content, presentation and design of the advertisement or promotion;
(c) the age of persons participating in the advertisement or involved in the promotion;
(d) any images, graphics, language, sounds, music, objects, animals, personalities, characters, activities, games or sport in the advertisement or promotion.

Appearance of child in advertisement

A person must not arrange for, or permit or authorise a child to appear or be used in any advertisement or promotion for any designated product, or in association with a designated product brand name.

Use of characters

A person must not arrange for, or permit, or authorise the use of any person or character well known or likely to appeal to children for the purpose of advertising or promoting a designated product or designated product brand name.

Use of game, internet, etc

A person must not arrange for, or permit, or authorise the use of any game or any internet site or other electronic or communication medium intended to appeal to children for the purpose of advertising a designated product or designated product brand name.

Broadcast

A person must not broadcast any advertisement or promotion for a designated product between [6 am and 9 pm].

Advertisement in schools, etc

A person must not:
(a) arrange for, or permit, or authorise, or use the advertising or promotion of any designated product or any designated product brand name, at any settings where children are likely to gather (including schools, playgrounds, day care centres and wellness clinics);
(b) displays, or permits, authorises or arranges for the display of any advertisement or promotion for a designated product within [200] metres of the entrance to a school, health facility or child care facility, or any other setting where children are likely to gather.

Use of brand

A person must not:
(a) use a designated product brand name in any of the following—
(i) on any article or thing intended for sale to or supply or use by children, other than on the package or container of a designated product;
(ii) for the purpose of advertising or promoting any article or thing that is not a designated product, any service, activity or event or a scholarship, fellowship or any other educational benefit
(b) uses or permits to be used, any designated product or designated product brand name in association with any children's activities;

Premiums

A person must not:
(a) supply or offer a premium, for the purpose or effect of promoting a designated product, to a child; or
(b) pack a designated product, or cause, or permit or authorise the packaging of a designated product, in a manner which is directed to a child.

Offences

A person commits an offence who contravenes [regulation xx, xx, xx, …].

PART 3 – ADMINISTRATION

Functions

The functions of [CEO/PS Health] on these Regulations are:

(f) to administer these Regulations;

(g) to formulate policies on marketing of unhealthy food and sugar sweetened beverages to children;

(h) to review the standards or these Regulations every [2] years;

(i) to carry out other functions to give effect to or for the purposes of these Regulations.

PART 4 – ENFORCEMENT

Enforcement officers[167]

[Appointment of enforcement officers]

Powers of enforcement officers

[Power of enforcement officers]

Warrants for place of residence

[Power to issue warrant to search residence]

Product recall

[Power to recall the designated product]

Obstruction etc. of enforcement officers

[Offence for obstructing officers when carrying out duties and powers]

Infringement notices for spot fines

[Issuing of infringement notices for on-the-spot-fine]

Service of infringement notices

[Manner in which notices are to be served]

Directors, etc., liability

[Directors, etc., are also liable if the corporation commits an offence]

Penalties

[Fixing of maximum penalties in a Schedule]

PART 5 – MISCELLANEOUS

Right to breastfeed at workplaces

[statutory duty of employers to ensure that the rights of working mothers at their workplaces are not affected][168]

Immunity from personal liability

[Protection from personal liability for carrying out duties and power]

Repeal/consequential amendments

[*Repeal or amend existing regulations*]

SCHEDULE 1

(regulation xx)

DESIGNATED PRODUCTS

PART 1 – UNHEALTHY FOOD

[167] Delete if the Act provides for the appointment of enforcement officers/enforcement officers, etc.
[168] Employment law to be checked if it has already cover this right

SCHEDULE 2

(regulation xx)

PENALTIES

Part 1 – Fixed penalties

Regulations	Individual (first offence)	Individual (second or subsequent offence)	company (first offence)	Company (second or subsequent offence)

Part 2 – Penalties for offences

Regulations	Individual (first offence)	Individual (second or subsequent offence)	company (first offence)	Company (second or subsequent offence)