



ANALYSIS

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1987, No. 3

An Act to regulate the sale, importing, advertising and use of tobacco products.

(10 July 1987)

1. Short title and commencement - (1) This Act may be cited as the "Tobacco Products Control Act, 1987".

(2) This Act shall come into force on the first day of August 1987.

2. Interpretation - In this Act, unless the contrary intention appears -

"Advertisement" includes advertisements in any newspaper, book, magazine or other written publication, and also includes any advertisement broadcast by radio or television or by videotape;

"Aircraft" has the same meaning ascribed to it by section 2 of the Air Services Licencing Act 1984;

"Child" means a person who has not attained the age of 15 years;

"Health warning" in relation to a tobacco product means a warning prescribed by notice in the Gazette for the purposes of this Act in relation to tobacco products of that class;

"Public Health Officer" means an Officer of the Ministry of Health appointed pursuant to the provisions of the Public Service Act 1975 as a Public Health Officer;

"Public place" means every place to which the public has or are permitted to have access whether on payment or otherwise.

"Sell" includes -

(a) to barter or exchange;

- (b) to offer or expose for sale, barter or exchange;
- (c) to supply, or offer to supply, in circumstances in which the supplier derives, or would derive, a direct or indirect pecuniary benefit;
- (d) to supply, or offer to supply, gratuitously but with a view to gaining or maintaining custom, or otherwise with a view to commercial gain.

"Tobacco products" means tobacco, cigarettes, cigars and all other products the main ingredient of which is tobacco and which are designed for human consumption.

3. Sale of tobacco products - No person shall sell a tobacco product unless it is enclosed in a package that displays a health warning in the prescribed manner and form.

4. Importing of tobacco products - (1) No person shall import tobacco products that have been packed for sale unless each package displays a health warning in the prescribed manner and form.

(2) Every person who is in possession of tobacco products for sale shall ensure that each package displays a health warning in the prescribed manner and form.

(3) Where tobacco products have been packed for sale by retail in two or more packages, each package and the warning it displays shall be taken into account when determining whether or not there has been compliance with this section.

5. Advertisements - (1) Subject to subsection (3), no person shall publish, or cause to be published, an advertisement for a tobacco product unless the advertisement incorporates, or appears in conjunction with, a health warning.

(2) The warning must be published in the prescribed manner and form.

(3) The Minister may, from time to time by notice in the Gazette, exclude a class of advertisements from the operation of this section.

(4) The notice must be in a form approved by the Minister of Health and must be displayed in a manner and position that is likely to attract the attention of persons who purchase those tobacco products.

6. Sales to children - (1) No person shall supply, or offer to supply, (whether by sale, gift or any other means) a tobacco product to a child, or to a person who the supplier knows or has reason to believe will supply the product to a child.

(2) No person shall permit a child to obtain a tobacco product from a vending machine situated on premises that he or she occupies.

(3) Every person who sells tobacco products by retail, or who occupies premises on which a vending machine designed to sell tobacco products is situated, shall display

a notice setting out the effect of and the penalty for an offence against subsection (1) or subsection (2) in a manner and position that is likely to attract the attention of customers.

7. Smoking in aircraft - No person shall smoke any tobacco product in an aircraft that is carrying members of the public on any journey beginning and ending in the Cook Islands without any intermediate stop outside the Cook Islands, whether or not the aircraft leaves and returns to the same airport without any intermediate stop.

8. Smoking in buses - No person shall smoke any tobacco product in a bus that is carrying members of the public.

9. Smoking in taxis - No person shall smoke any tobacco product in a taxi that is carrying or is available to carry, passengers for the payment of a fare.

10. Powers of Public Health Officers - (1) A Public Health Officer may, at any reasonable time:-

- (a) enter premises that he believes on reasonable grounds are being used to sell or store tobacco products for sale;
- (b) require any person who is in a position to provide information relating to the sale, purchase, supply, packing or importing of tobacco products to answer any question on those subjects.

(2) A Public Health Officer may examine tobacco products and packages used, or intended to be used for packing tobacco products, that are on premises entered under subsection (1).

(3) No person shall:

- (a) hinder a Public Health Officer in the exercise of powers conferred by this section;
- (b) fail, without reasonable excuse, to comply with a requirement of a Public Health Officer under this section;
- (c) fail, without reasonable excuse, to answer to the best of that person's knowledge, information and belief, a question put by a Public Health Officer.

11. Offences - Every person who contravenes or fails to comply with any provision of this Act commits an offence and is liable on conviction to a fine not exceeding \$200.

12. Form of warnings - (1) The Minister may, by notice in the Gazette -

- (a) prescribe warnings that must be displayed on packages containing tobacco products and in, or in conjunction with, advertisements of tobacco products;
- (b) prescribe the manner and form in which those warnings must be displayed or published.

(2) Such notices may prescribe a warning in relation to tobacco products generally or to a particular class of tobacco products.

13. No smoking areas - (1) The Queen's Representative may from time to time by Order in Executive Council designate any public place or part of a public place as an area in which smoking of a tobacco product is prohibited.

(2) No person shall smoke a tobacco product in any area designated as a no-smoking area pursuant to subsection (1).

14. Restaurants - (1) The owner or manager of every restaurant shall at all times when the public has access designate an area as a no-smoking area, such area to be not less than such proportion of that area used for the consumption of food by the public as the Minister may from time to time designate by Notice in the Gazette.

(2) No person shall smoke a tobacco product in any area designated as a no-smoking area pursuant to subsection (1).

15. Delegation of powers - (1) The Minister may from time to time, by writing under his hand, either generally or particularly, delegate to the Director-General of Health all or any of the powers which are conferred on him by this Act but not including the power to delegate under this section.

(2) Subject to any general or special directions given, or conditions attached by the Minister, the Director-General of Health may exercise any powers delegated to him under this section in the same manner and with the same effect as if they had been conferred on him directly by this section and not by delegation.

(3) Where the Director-General of Health purports to act pursuant to any delegation under this section, he shall be presumed to be acting in accordance with the terms of the delegation in the absence of proof to the contrary.

(4) Every such delegation shall be revocable at will, and no such delegation shall prevent the exercise of any power by the Minister.

(5) Unless and until any such delegation is revoked, it shall continue in force according to its tenor. In the event of the Minister by whom any such delegation has been made ceasing to hold office, it shall continue to have effect as if made by the person for the time being holding office as Minister and, in the event of the Director-General of Health to whom any such delegation has been made ceasing to hold office, it shall continue to have effect as if made to the person for the time being holding office as Director-General of Health or, if there is no Director-General of Health in office or if he is absent from duty, to the person for the time being acting in the place of the Director-General of Health.

16. Regulations - The Queen's Representative may from time to time by Order in Executive Council make such regulations as are contemplated by this Act or as are necessary or expedient for the purposes of this Act.

This Act is administered by the Ministry of Health.