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TOBACCO CONTROL (FIXED PENALTY NOTICES) REGULATIONS 2023

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The Cabinet makes the following Regulations under Section 19A(2) of the *Tobacco Control Act 2009*:

1 Citation

These Regulations may be cited as the *Tobacco Control (Fixed Penalty Notices) Regulations 2023*.

2 Commencement

These Regulations commence on the date they are notified in the Gazette.

3 Interpretation

'*Act*' means the *Tobacco Control Act 2009*;

'*authorised officer*' has the meaning given to it under Section 2 of the Act;

'*fixed penalty*' means the penalty payable by a person served with a fixed penalty notice for the commission of a fixed penalty offence;

'*fixed penalty notice*' means the Tobacco Control Infringement Notice;

'*legal practitioner*' has the meaning given to it under Section 4 of the *Legal Practitioners Act 2019*; and

'*Secretary*' means the Secretary for Health and Medical Services.

4 Fixed penalty offences

(1) A person who commits a fixed penalty offence under the Act and is served with a fixed penalty notice shall pay the fixed penalty.

(2) The fixed penalty offences are consolidated and provided in column 2 of Schedule 1.

(3) The fixed penalties are consolidated and provided in column 3 of Schedule 1.

5 Tobacco Control Infringement Notice

(1) A fixed penalty notice shall:

(a) state the date, time and place of the fixed penalty offence;

(b) state:

(i) the name of the individual; and

(ii) the residential address or district of the individual to whom the notice is served;

(c) state the fixed penalty to be paid;

(d) state the place where the fixed penalty is to be paid;

(e) require the person served with the fixed penalty notice to pay within 14 days of the service of the fixed penalty notice on the person; and

(f) state the date of issuance of the fixed penalty notice.

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- (2) The Secretary may cause the fixed penalty notice to be printed with serial numbers and in requisite copies.
- (3) A fixed penalty notice which conforms to the requirements of the Regulations is admissible evidence in court for the purposes of any proceedings or administrative action.

6 Service of fixed penalty notice

- (1) An authorised officer shall serve a fixed penalty notice in the form as set out in Schedule 2.
- (2) A fixed penalty notice shall be served to the person who commits a fixed penalty offence.
- (3) The authorised officer who serves a fixed penalty notice shall inform the person served with the fixed penalty notice:
 - (a) of the contents of the fixed penalty notice;
 - (b) that he or she shall pay the fixed penalty or appear in court to contest or defend the fixed penalty notice; and
 - (c) that the fixed penalty shall be paid within 14 days of the service of the fixed penalty notice.
- (4) The authorised officer who serves a fixed penalty notice shall cause a signed copy of the fixed penalty notice to be produced before the Nauru Revenue Office and the court as specified in the fixed penalty notice within 14 days of the service of the fixed penalty notice.
- (5) A person served with a fixed penalty notice by an authorised officer shall accept such notice.
- (6) A person who does not accept a fixed penalty notice when it is served on him or her commits an offence and upon conviction is liable to a fine not exceeding \$1,000 or a term of imprisonment not exceeding 12 months or both, in addition to the fixed penalty.

7 Acceptance of a fixed penalty notice

- (1) Where a proceeding is instituted by serving upon a person a fixed penalty notice and the fixed penalty notice has been accepted by the payment of the fixed penalty within 14 days of the service of the fixed penalty notice, that acceptance shall be deemed a conviction for the offence in respect of which a fixed penalty notice was issued.
- (2) Where a fixed penalty notice served upon a person has not been accepted by the payment of the fixed penalty within 14 days of the service of the fixed penalty notice, the fixed penalty notice shall be regarded for all purposes as a summons issued under the *Criminal Procedure Act 1972*.

8 Payment of fixed penalties

- (1) A person who is served a fixed penalty notice under Regulation 6 shall:
 - (a) pay the fixed penalty to the Nauru Revenue Office; and
 - (b) provide a copy of the official receipt to the Registrar of Courts.
- (2) Where a person provides a copy of the official receipt under subregulation (1), the Registrar of Courts shall not list the person's case before the court.

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9 Failure to pay fixed penalty

- (1) Where a person served with a fixed penalty notice fails to pay the fixed penalty within 14 days of the service of the fixed penalty notice, he or she is summoned to attend court on the date and time provided in Part 3 of the fixed penalty notice.
- (2) Where a person is summoned to attend court, he or she may:
 - (a) represent himself or herself; or
 - (b) be represented by a legal practitioner.

10 Court appearances

- (1) Where a person summoned to attend court pleads guilty to the fixed penalty offence, the court shall:
 - (a) impose a penalty equivalent to the fixed penalty; and
 - (b) order court costs of \$150.
- (2) Where the person is present or represented by a legal practitioner and pleads not guilty, the matter shall be dealt with in accordance with the procedure of the court.
- (3) Where the person does not plead guilty to the offence contained in the fixed penalty notice and subsequently the court determines that the person is guilty of an offence under the Act, the court shall:
 - (a) impose a fine which shall be in excess of the fixed penalty or a term of imprisonment or both; and
 - (b) order court costs of \$150.

11 Court may proceed to hearing for failure to attend

The court may hear and determine any offence under these Regulations where a person fails to attend court by himself or herself or by a legal representative on the date so required by the fixed penalty notice.

12 Jurisdiction

The District Court shall have the jurisdiction to hear and determine any cause or matter under these Regulations.

13 List of unpaid fines and costs to be issued by Deputy Registrar of the District Court

- (1) The Deputy Registrar of the District Court shall from time to time issue a list of unpaid fines and costs to the Secretary and the Director of Public Prosecutions.
- (2) The list under subregulation (1), shall contain but is not limited to the:
 - (a) fixed penalty notice serial or case number;
 - (b) name of the offender;
 - (c) date of the offence;

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- (d) offence in the fixed penalty notice;
 - (e) date of the fine ordered by the court; and
 - (f) amount of the fine ordered by the court.
- (3) The Secretary, upon the receipt of the list under subregulation (1), shall cause to register such fines and costs against the offenders who have obtained importer, distributor or retail licences required under the Act.
- (4) The Secretary shall not issue or renew any licences without a report from the court that no fines and costs in respect of a fixed penalty notice or any other offences under the Act are registered.
- (5) The Director of Public Prosecutions shall upon receipt of the list under subregulation (1), forward such list to the Secretary.
- (6) The Secretary upon receipt of the list under subregulation (5), shall ensure that the fines and costs are registered against the offender's importer, distributor or retail licence.

14 Consequence of non-payment of penalty and costs

Any unpaid penalties and costs under these Regulations shall be a bar to the:

- (a) renewal of any licence under the Act; and
- (b) issuance of a new licence.

15 Application of the *Criminal Procedure Act*

For the purposes of any proceedings under the Act and these Regulations, for any offences, the *Criminal Procedure Act 1972 mutatis mutandis* applies.

SCHEDULE 1

FIXED PENALTY OFFENCES AND FIXED PENALTIES

(Regulation 4)

Tobacco Control Act 2009

Section	Fixed Penalty Offence under the Act	Fixed Penalty under the Act	Court Costs
3(1)	Tobacco product advertisements	Individual: \$1,000 Body Corporate: \$10,000	\$150
4(1)	Giving or distributing free samples or offering prizes	Individual: \$1,000 Body Corporate: \$10,000	\$150
8	Selling cigarettes in a broken package	Individual: \$1,000 Body Corporate: \$10,000	\$150
9(1)	Supplying any tobacco product to a person under the age of 20 years Purchasing a tobacco product for the use of a person under the age of 20 years	Individual: \$1,000 Body Corporate: \$10,000	\$150
10A	Prohibition of online sale of tobacco products	Individual: \$1,000 Body Corporate: \$10,000	\$150
11(1)	Selling, offering for sale or supplying any tobacco product in a restaurant	Individual: \$1,000 Body Corporate: \$10,000	\$150

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Section	Fixed Penalty Offence under the Act	Fixed Penalty under the Act	Court Costs
12(1) 12(2) 12(2A)	<p>Selling, or importing into the Republic for sale, confectionery, or a toy, that is designed to resemble a tobacco product</p> <p>Selling, or importing into the Republic for sale, confectionery, or a toy, contained in packaging that is designed to resemble a tobacco product or the packaging of a tobacco product</p> <p>Selling, or importing into the Republic for sale or distribution any product that is not a tobacco product but that has the brand name, logo, trademark or other similar association of a tobacco product</p> <p>Selling, or importing into the Republic for sale or distribution any counterfeit tobacco product</p>	<p>Individual: \$1,000</p> <p>Body Corporate: \$10,000</p>	\$150
13(1)	Smoking a tobacco product in any school, hospital, enclosed workplace or enclosed public place	<p>Individual: \$100</p> <p>Body Corporate: \$10,000</p>	\$150
14(1)	Failure to display a 'no smoking sign' in enclosed workplaces or enclosed public places	<p>Individual: \$1,000</p> <p>Body Corporate: \$10,000</p>	\$150
17A	Importing, distributing or selling tobacco products for a commercial purpose without a licence	<p>Individual: \$1,000</p> <p>Body Corporate: \$10,000</p>	\$150
17L(1)	Failure to display licence in a conspicuous place in or at the licensee's place of business	<p>Individual: \$1,000</p> <p>Body Corporate: \$10,000</p>	\$150

SCHEDULE 2

TOBACCO CONTROL INFRINGEMENT NOTICE

(Regulation 6)



PART 1: OFFENCE DETAILS

Name of offender:
Residential address or district:
Nature of offence:
Date: . . . / /20. Time: Place:
Details of the circumstances alleged to constitute the offence:
.....
.....
.....

Fixed Penalty: \$ Authorised Officer's Signature:
Authorised Officer's Name: Issued on this date: / /20
Acknowledgement of Service of Fixed Penalty Notice by: Name and Signature:
.....

(If a person refuses to accept this Fixed Penalty Notice, an Authorised Officer may note the refusal of acceptance)

Note:

- 1. This Fixed Penalty Notice shall only be served to the offender at the time of the offence or as soon as practicable.
- 2. If the offender refuses to accept the Notice, he or she commits an offence under Regulation 6(6) for which he or she is liable to a fine not exceeding \$1,000 or a term of imprisonment not exceeding 12 months or both, in addition to the fixed penalty.

PART 2: TIME FOR PAYMENT OF PENALTY

A. Take notice that the penalty shall be paid to the Nauru Revenue Office within 14 days of the date of service of this Fixed Penalty Notice.

B. **Contesting this Fixed Penalty Notice:** If you intend to contest or defend this Fixed Penalty Notice, you are to appear in person or by a legal representative in court on the date and at the time provided in Part 3.

PART 3: NOTICE TO ATTEND TO COURT

Take notice that if you fail to pay the fixed penalty or intend to contest or defend this Fixed Penalty Notice, you are summoned to attend the District Court at Yaren on the day of 20 at am/pm for the hearing.

If you fail to attend the hearing, the court will proceed to the hearing of the Fixed Penalty Notice in your absence and may impose a fine, costs or a term of imprisonment or any of them in accordance with the *Tobacco Control Act 2009*. If you fail to abide by any order of the court, you will be arrested under a committal warrant without any further notice.

AFFIDAVIT OF SERVICE

I,, Authorised Officer make oath/solemnly affirm that I did on the day of 20 served the offender this Fixed Penalty Notice at (time) on (date) AND he/she acknowledged service by affixing his/her signature to this Fixed Penalty Notice.

Authorised Officer:

Before me:

(Commissioner for Oaths)