



New South Wales

Public Health (Tobacco) Regulation 2009

under the

Public Health (Tobacco) Act 2008

Her Excellency the Governor, with the advice of the Executive Council, has made the following Regulation under the *Public Health (Tobacco) Act 2008*.

Minister for Health

Explanatory note

The object of this Regulation is to prescribe the following matters for the purposes of the *Public Health (Tobacco) Act 2008*:

- (a) requirements in relation to advertising on packaging of tobacco products,
- (b) requirements in relation to advertising of tobacco products on retail premises, including the manner in which prices of tobacco products may be displayed,
- (c) health warnings and other notices and statements that must or may be displayed at retail premises at which tobacco products are sold and on tobacco vending machines,
- (d) savings and transitional provisions consequent on the enactment of that Act, including requirements in relation to the display of tobacco products and non-tobacco smoking products by existing retailers of those products during lead-in periods allowed by that Act in relation to certain new offences,
- (e) the fee for an application to be classified as a specialist tobacconist for the purposes of the savings and transitional provisions and the manner of making such applications,
- (f) the form of giving notice of the commencement of tobacco retailing,
- (g) offences against that Act for which penalty notices may be issued.

This Regulation is made under the *Public Health (Tobacco) Act 2008*, including sections 9 (2) (c), 14 (1), 16, 39 (2) and 58 (the general regulation-making power) and clauses 1 and 5 of Schedule 1.

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Public Health (Tobacco) Regulation 2009

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Part 1 Preliminary

1 Name of Regulation

This Regulation is the *Public Health (Tobacco) Regulation 2009*.

2 Commencement

This Regulation commences on 1 July 2009 and is required to be published on the NSW legislation website.

3 Definitions

(1) In this Regulation:

package facing means the surface (or any one of the surfaces) of a package whose area is greater than the area of any other of its surfaces.

product line means:

- (a) in relation to cigars—a kind of cigar distinguishable from other kinds by one or more of the following characteristics:
 - (i) its flavour,
 - (ii) its length or mass,
 - (iii) its tar content,
 - (iv) its country of origin,
 - (v) the number of cigars of that kind contained in the retail package in which they are sold, and
- (b) in relation to cigarettes—a kind of cigarette distinguishable from other kinds by one or more of the following characteristics:
 - (i) its brand name,
 - (ii) its flavour,
 - (iii) its tar content,
 - (iv) the number of cigarettes of that kind contained in the retail package in which they are sold, and

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- (c) in relation to block or loose leaf tobacco—a kind of tobacco distinguishable from other kinds by one or more of the following characteristics:
- (i) its flavour,
 - (ii) its tar content,
 - (iii) the mass of tobacco contained in the retail package in which it is sold.

sales unit means a receptacle, an area of shelving or any other thing from which tobacco products are dispensed when sold by retail, but does not include a tobacco vending machine.

service area means an area of a shop or retail premises to which members of the public do not ordinarily have access and from which sales of tobacco products are ordinarily effected.

specialist tobacconist means a person determined by the Director-General in accordance with the Act and this Regulation to be a specialist tobacconist for the purposes of clause 5 of Schedule 1 to the Act.

the Act means the *Public Health (Tobacco) Act 2008*.

- (2) Without affecting the definition of *product line* in subclause (1), tobacco products are not distinguishable, for the purposes of that definition, by any feature of their packaging.
- (3) For the purposes of this Regulation, a package facing is visible if any part of it is visible.

Note. *Package* is widely defined in section 4 (1) of the Act. It includes a box, carton, cylinder, packet, pouch and tin and a wrapping (other than a transparent wrapping).

Part 2 Advertising on packaging

4 Size of package containing tobacco products

For the purposes of section 16 (3) (c) (ii) of the Act, the prescribed maximum size of a package containing a tobacco product (not being cigars) is 1,800 cubic centimetres.

Note. The effect of this provision is that a package of cigarettes of or smaller than the size commonly called a "carton" may feature a tobacco advertisement. The display of such packages within a shop, however, is subject to Division 1 of Part 3.

5 Certain advertising prohibited on package containing tobacco products

(1) A person who causes or permits a tobacco product to be packed in a package that:

- (a) contains any statement alluding to sporting, sexual or business success, or
- (b) depicts, wholly or in part, people or cartoon characters, or
- (c) depicts scenes or activities, or contains words, representations or illustrations, that have appeal to children or young persons, or
- (d) displays any hologram,

is guilty of an offence.

Maximum penalty: 20 penalty units.

(2) Subclause (1) (b), in so far as it mentions depicting people, does not apply to packages containing cigars if the depiction was printed on packages of the same product line before 31 August 1999.

6 Advertising within package containing tobacco products

(1) If a package containing tobacco products also contains any tobacco advertisement, whether on the external or internal surfaces of the package, the advertisement must also display a health warning.

(2) The health warning must:

- (a) occupy at least one quarter of the area used (both for text and space) for the advertisement, and
- (b) have a white background, and
- (c) contain text in black characters as illustrated in Form 1 in Schedule 1 and maintain approximately the same proportions of character size and empty space as the illustrated form.

- (3) Subclause (1) does not apply to an advertisement printed only on the tobacco products inside the package concerned.
- (4) A person who causes or permits a tobacco product to be packaged in contravention of this clause is guilty of an offence.
Maximum penalty (subclause (4)): 20 penalty units.

Part 3 Advertising on premises

Division 1 Arrangements of packages containing tobacco products at shops

7 Definitions

In this Division:

cigarette carton means a package that:

- (a) contains only cigarette packets containing cigarettes of the same product line, and
- (b) contains four or more cigarette packets in one or more outer wrappings (whether or not any such wrapping is transparent).

cigarette packet means a package containing not more than 50 cigarettes.

smoking accessories means matches, filters, lighters, cigarette papers and other things used for smoking.

8 Application of Division

- (1) This Division applies to a package forming part of the means by which an advertisement is created and displayed as referred to in section 16 (4) of the Act.
- (2) For the purposes of section 16 (4) of the Act, a package or other thing is displayed in accordance with the regulations if it is displayed in accordance with this Division.

9 Display of packages must not contravene other provisions of Act

A package to which this Division applies must not be displayed if the occupier of the premises on which it is displayed would be guilty of an offence against section 9 of the Act by displaying the package.

Note. Section 9 (1) of the Act requires the occupier of premises on which tobacco products, non-tobacco smoking products and smoking accessories are sold to ensure that those products and accessories are not seen from inside or outside the premises. However, clause 5 of Schedule 1 to the Act provides that certain tobacco retailers do not commit an offence against section 9 during specified lead-in periods.

10 Requirements until 1 July 2010 relating to display of arrangements of packages by existing retailers

- (1) This clause has effect until 1 July 2010.

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- (2) This clause applies to a person engaged in tobacco retailing during any period occurring before 1 July 2010 in which the person does not, because of clause 5 of Schedule 1 to the Act, commit an offence against section 9 of the Act.
 - (3) If a package to which this Division applies forms part of any arrangement of two or more packages containing a tobacco product, the arrangement must comply with this clause.
 - (4) Not more than one cigarette carton per product line of cigarettes may be included in:
 - (a) any such arrangement, or
 - (b) if there is more than one such arrangement in the shop concerned—the aggregate of such arrangements.
 - (5) Subclause (4) does not prevent the placement of cigarette cartons one behind the other so that some surfaces (but not the whole or part of any of the package facings) of cartons placed behind the first are visible.
 - (6) Not more than two package facings per product line of tobacco product (not being cigarettes in cartons or individual cigars) may be visible in:
 - (a) any such arrangement, or
 - (b) if there is more than one such arrangement in the shop or retail premises—the aggregate of such arrangements.
 - (7) Every package (other than a cigar box) must be completely filled with tobacco products and remain unopened (that is, as packed by or on behalf of the manufacturer).
 - (8) Packages are not to be arranged so as to create a composite picture or other meaningful visual image whose component parts are printed on the individual packages.
 - (9) No package is to have a price written on it or any other thing attached to it.
 - (10) No package that is a cigarette carton is to contain more than 300 cigarettes.
 - (11) No package other than a cigarette carton is to contain:
 - (a) more than 50 cigarettes or cigars, or
 - (b) more than 50 grams of any other tobacco product.

11 Requirements from 1 July 2010 until 1 July 2013 relating to display of arrangements of packages by specialist tobacconists

- (1) This clause has effect on and from 1 July 2010 until 1 July 2013.

- (2) This clause applies to a person engaged in tobacco retailing during any period occurring on or after 1 July 2010 but before 1 July 2013 in which the person does not commit an offence against section 9 of the Act because the Director-General has determined that the person is a specialist tobacconist for the purposes of clause 5 of Schedule 1 to the Act.
- (3) If a package to which this Division applies forms part of any arrangement of two or more packages containing a tobacco product, the arrangement must comply with this clause.
- (4) No cigarette cartons may be displayed in any such arrangement.
- (5) Not more than one package facing per product line of tobacco product (not being cigarettes in cartons or individual cigars) may be visible in:
 - (a) any such arrangement, or
 - (b) if there is more than one such arrangement in the shop concerned—the aggregate of such arrangements.
- (6) Every package (other than a cigar box) must be completely filled with tobacco products and remain unopened (that is, as packed by or on behalf of the manufacturer).
- (7) Packages are not to be arranged so as to create a composite picture or other meaningful visual image whose component parts are printed on the individual packages.
- (8) No package is to have a price written on it or any other thing attached to it.
- (9) No package is to contain:
 - (a) more than 50 cigarettes or cigars, or
 - (b) more than 50 grams of any other tobacco product.
- (10) This clause is subject to the requirements of clause 1 of Schedule 4.
Note. Further requirements are contained in clause 1 of Schedule 4 in relation to the display of tobacco products on and from 1 July 2010 until 1 July 2013.

12 Requirements for placing of arrangement

- (1) If a package to which this Division applies forms part of any arrangement of two or more packages containing a tobacco product, a package forming part of the arrangement may only be displayed in a sales unit that is routinely used for effecting sales and that complies with the requirements of this clause.
- (2) The sales unit:
 - (a) must not be placed or situated on any counter, and
 - (b) must have not less than 50 packages in it, and

- (c) must not display any item, object or thing, other than packages containing tobacco products, smoking accessories or a price ticket or price board displayed in accordance with this Regulation, and
 - (d) must have no device that causes movement, visible to the public, of any part of the sales unit or any package of tobacco products in the unit, and
 - (e) must not contain any mirror (or other reflective device), interior lighting, exterior lighting attached to the sales unit or external spotlighting, and
 - (f) must not be positioned so that it causes the packages to face more or less towards a window unless:
 - (i) the direction in which the packages are facing is perpendicular to the plane of the window, or
 - (ii) the window is at least 2 metres distant from the display.
- (3) The sales unit must be wholly within the service area of the shop concerned.
- (4) This clause is subject to the requirements of clause 1 of Schedule 4.
- Note.** Further requirements are contained in clause 1 of Schedule 4 in relation to the display of tobacco products on and from 1 July 2010 until 1 July 2013.

Division 2 General

13 Section 10 applies only to retail premises

For the purposes of section 10 of the Act, premises are taken to be premises on which tobacco products, non-tobacco smoking products or smoking accessories are sold only if such products or accessories are sold by retail on the premises (regardless of whether such products and accessories are also sold otherwise than by retail).

14 Advertisements in registered clubs prohibited

The premises of a registered club (within the meaning of the *Registered Clubs Act 1976*), to the extent that they would not constitute a public place, are a prescribed place for the purposes of section 16 (1) of the Act.

15 Display of retail prices of tobacco products

- (1) For the purposes of section 16 (3) (e) of the Act, the retail prices of tobacco products may be displayed within a shop or other retail outlet from which tobacco products are sold, but only if all of the retail prices

displayed for tobacco products are displayed in accordance with either of the following paragraphs (but not both):

- (a) price tickets that comply with subclause (2),
- (b) a single price board that complies with subclause (3).

(2) Price tickets:

- (a) must use only two colours—one for the ticket and one for the price, and
- (b) must not be coloured in fluorescent colours or in a more distinctive manner than price tickets used for other merchandise in the retail outlet, and
- (c) must not be highlighted by any lighting, and
- (d) must be no larger than 35 cm² in area, and
- (e) must contain lettering that is not more than 2 cm in height and not more than 1.5 cm in width, and
- (f) must not contain information other than the name of the product line, a bar code or other identifying codes, the price and a symbol indicating the country of origin, and
- (g) must display the price and product name only once for each product line carried by the retailer, and
- (h) must be attached to a sales unit, and
- (i) must have no other article or thing attached to them, and
- (j) must not be arranged with other price tickets so as to create an image or visual effect from the arrangement that would be incomplete if any one ticket were removed.

(3) A price board:

- (a) must not contain information other than the names of the product lines and prices, and
- (b) must be no larger than 2,000 cm² in area, and
- (c) must have a black background with white lettering or a white background with black lettering (but not both), and
- (d) must contain lettering that is not more than 2 cm in height and not more than 1.5 cm in width, and
- (e) must display the price and product name only once for each product line carried by the retailer, and
- (f) must be placed directly adjacent to a sales unit, and
- (g) must have no other article or thing attached to it, and
- (h) must not be highlighted by any lighting.

Part 4 Health warnings and other notices

16 Health warning at point of sale

- (1) In any shop or other retail outlet from which tobacco products are sold, the health warning illustrated in Form 1 in Schedule 1 must be conspicuously displayed at the point of sale of those products in the shop or other retail outlet.
- (2) Any health warning required by this clause must:
 - (a) be between 50 and 100 centimetres wide and have an area not less than 2,000 cm², and
 - (b) have a white background, and
 - (c) contain text in black characters printed in the same case (upper or lower), and maintain approximately the same proportions of character size and empty space, as Form 1 in Schedule 1.
- (3) The occupier of the shop or other retail outlet concerned is guilty of an offence if this clause is contravened.
Maximum penalty (subclause (3)): 25 penalty units.

17 Notice regarding sales to minors at point of sale

- (1) In any shop or other retail outlet from which tobacco products are sold, a notice regarding sales to minors must be conspicuously displayed at the point of sale of those products in the shop or other retail outlet.
- (2) The notice must:
 - (a) be at least 15 cm high and at least 21 cm wide, and
 - (b) have a white background, and
 - (c) contain text in black characters in the form illustrated in Schedule 2 and maintain approximately the same proportions of character size and empty space as the illustrated form.
- (3) The occupier of the shop or other retail outlet concerned is guilty of an offence if this clause is contravened.
Maximum penalty (subclause (3)): 25 penalty units.

18 Statement to be displayed on vending machines

For the purposes of section 14 (2) of the Act, the prescribed form of statement is:

- (a) a health warning that:
 - (i) has an area not less than 1,000 cm², and
 - (ii) has a white background, and

- (iii) contains text in black characters as illustrated in Form 1 in Schedule 1 and maintains approximately the same proportions of character size and empty space as the illustrated form, and
- (b) a statement regarding sales to minors that:
 - (i) is at least 15 cm high and at least 21 cm wide, and
 - (ii) has a white background, and
 - (iii) contains text in black characters in the form illustrated in Schedule 2 and maintains approximately the same proportions of character size and empty space as the illustrated form.

Note. The owner and lessee of a tobacco vending machine are each, by virtue of section 14 (1) of the Act, guilty of an offence if such a statement is not kept conspicuously displayed on the front of the machine.

19 Statement as to point of sale of tobacco on retail premises

- (1) A statement may be displayed in accordance with this clause at a shop or other retail outlet from which tobacco products, non-tobacco smoking products or smoking accessories are sold if:
 - (a) products other than tobacco products, non-tobacco smoking products or smoking accessories are also sold by retail from the shop or other retail outlet, and
 - (b) the shop or other retail outlet has more than one cash register.
- (2) The statement may include the following wording only on a sign no larger than 21 cm by 30 cm (A4):

Tobacco sold at this cash register only.
- (3) The lettering on the sign must be black on a white background and be no larger in size than 60 point type.
- (4) More than one sign referred to in subclause (2) may be displayed.
- (5) A health warning that complies with clause 16 (2) must also be displayed next to each sign referred to in subclause (2).

Part 5 Miscellaneous

20 Manner of giving notice of commencement of tobacco retailing

For the purposes of section 39 (2) of the Act, the manner of giving notice is by electronic communication in accordance with the relevant instructions on the website www.licence.nsw.gov.au.

21 Penalty notice offences and penalties

- (1) For the purposes of section 50 of the Act:
 - (a) each offence created by a provision specified in Column 1 of Schedule 3 is prescribed as a penalty notice offence, and
 - (b) the penalty prescribed for each such offence is the amount specified opposite the provision in Column 2 of the Schedule.
- (2) If the reference to a provision in Column 1 of Schedule 3 is qualified by words that restrict its operation to specified kinds of offences, an offence created by the provision is a prescribed penalty notice offence only if it is an offence of a kind so specified or committed in the circumstances so specified.

22 Repeal

Division 1 of Part 3 is repealed on the repeal of section 16 (4) of the Act.

Schedule 1 Tobacco health warnings (shops and vending machines)

(Clauses 6, 16, 18 and clause 2 of Schedule 4)

Form 1

Smoking kills
Call the Quitline
137 848 or 13 QUIT

Form 2

Smoking is addictive
Call the Quitline
137 848 or 13 QUIT

Form 3

Need help to quit smoking?
Call the Quitline
137 848 or 13 QUIT

Schedule 2 Notice regarding sales to minors

(Clauses 17 and 18)

NOTICE

Public Health (Tobacco) Act 2008

**SELLING TOBACCO PRODUCTS TO PERSONS UNDER 18 YEARS OF AGE IS A
CRIMINAL OFFENCE**

MAXIMUM PENALTY \$110,000

Report offences to the NSW Department of Health on 1800 357 412 or to your
nearest police station.

NSW Department of Health

Schedule 3 Penalty notice offences

(Clause 21)

Column 1	Column 2
Provision	Penalty
Offences under the Act	
Section 30 (1)	\$250
Section 30 (2)	\$250
Section 39 (1)	\$250
Section 46 (1)	\$250

Schedule 4 Savings and transitional provisions

1 General requirements for display of tobacco products by specialist tobacconists from 1 July 2010 until 1 July 2013

- (1) This clause applies on and from 1 July 2010 until 1 July 2013 to a person who is a specialist tobacconist.
- (2) A specialist tobacconist may display tobacco products and non-tobacco smoking products only in accordance with the following requirements:
 - (a) not more than one package for each product line of tobacco products and non-tobacco smoking products may be displayed,
 - (b) no cartons may be displayed,
 - (c) the total area of the package facings of tobacco products and non-tobacco smoking products displayed must be no more than 3 square metres,
 - (d) the display of tobacco products and non-tobacco smoking products must be at least 2 metres from any door or window that opens or looks out on to a public place.

Note. Clause 5 (3) (b) of Schedule 1 to the Act provides that a specialist tobacconist does not commit an offence against section 9 of the Act by displaying tobacco products, non-tobacco smoking products or smoking accessories during the period of 3 years from 1 July 2010 until 1 July 2013 if those products and accessories are displayed in accordance with the regulations.

2 Health warning at point of sale

- (1) This clause applies to a shop or other retail outlet from which tobacco products are sold during any period in which the occupier of the premises does not commit an offence against section 9 of the Act by displaying tobacco products on the shop or other retail outlet because of clause 5 of Schedule 1 to the Act.
- (2) If in the shop or other retail outlet to which this clause applies there is any sales unit adjoining or adjacent to an area to which the public has access and having transparent surfaces through which tobacco products may be seen by the public, a health warning in the form set out as Form 2 or Form 3 in Schedule 1 must be prominently displayed on a transparent surface that faces toward the area.
- (3) If two or more health warnings are required by subclause (2) in a particular situation, health warnings in the forms set out as Form 2 and Form 3 in Schedule 1 are to be displayed in equal or approximately equal numbers.

- (4) Any health warning required by this clause must:
- (a) be between 50 and 100 centimetres wide and have an area not less than 2,000 cm², and
 - (b) have a white background, and
 - (c) contain text in black characters printed in the same case (upper or lower), and maintain approximately the same proportions of character size and empty space, as the relevant form in Schedule 1.
- (5) The occupier of the shop or other retail outlet concerned is guilty of an offence if this clause is contravened.
Maximum penalty (subclause (5)): 25 penalty units.

3 Applications for specialist tobacconists

- (1) Despite clause 5 (5) of Schedule 1 to the Act, the Director-General may also make a determination under that subclause that a person is a specialist tobacconist for the purposes of that clause if the Director-General is satisfied that:
- (a) the person had entered into a binding lease or franchise agreement in respect of retail premises in the period from 25 March 2008 up to and including 24 December 2008 for the purpose of conducting the business of retailing tobacco products, and
 - (b) had commenced tobacco retailing before 25 March 2009, and
 - (c) for the period of 6 months after the person commenced tobacco retailing, that business conducted by the person had a gross turnover at least 80 per cent of which was obtained from the sale of tobacco products, non-tobacco smoking products or smoking accessories.
- (2) For the purposes of clause 5 (6) of Schedule 1 to the Act, the prescribed fee is \$250.
- (3) An application referred to in clause 5 (6) of Schedule 1 to the Act is to be made by electronic communication in accordance with the relevant instructions on the website www.licence.nsw.gov.au.
- (4) Despite clause 5 (6) of Schedule 1 to the Act, an application referred to in that subclause may be made within 12 months after the commencement of section 9 of the Act.
- (5) Despite clause 5 (8) of Schedule 1 to the Act, a reference in that clause to the introduction date is to be read as a reference to the date of commencement of section 9 of the Act.