

RETAILER FACTSHEET

Penalties and enforcement

Penalties apply under the *Public Health (Tobacco) Act 2008*.

Penalties

The table on the following pages sets out some key penalties for individual retailers and corporations for non-compliance with certain sections of the Act.

On-the-spot fines of up to \$1800 may be issued by NSW Health Authorised Inspectors for a number of offences under the Act, including:

- ✓ failure to notify NSW Health about tobacco or e-cigarette retailing activities
- ✓ failure to comply with the display restrictions of tobacco products, non-tobacco smoking products, smoking accessories, e-cigarettes and e-cigarette accessories.
- ✓ selling tobacco products, non-tobacco smoking products, smoking accessories, e-cigarettes and e-cigarette accessories from more than one place on the premises
- ✓ failure to comply with a requirement or direction of a police officer or NSW Health Authorised Inspector

For a complete description of the full range of penalties under the Act, refer to the *Public Health (Tobacco) Act 2008* and the *Public Health (Tobacco) Regulation 2016*.

Enforcing the legislation

NSW Health Authorised Inspectors across NSW closely monitor compliance with the *Public Health (Tobacco) Act 2008* and the *Public Health (Tobacco) Regulation 2016*.

Retail outlets are randomly visited and prosecutions have been made against those who have been found to sell these products to people under the age of 18. Businesses and individuals that have been prosecuted have included employers and staff working in newsagents, tobacconists, milk bars, supermarkets and petrol stations.

Authorised Inspectors conduct random inspections and will also follow up complaints from members of the public about suspected breaches by retailers.

Authorised Inspectors have the power to:

- ✓ enter and inspect tobacco retailing premises
- ✓ take photos, films, audio, video or other recordings
- ✓ take samples of any items for analysis or to use as evidence
- ✓ require records to be produced for inspection
- ✓ examine, inspect and copy records or documents
- ✓ in some instances, seize tobacco products

Retailers may ask an Inspector to produce his or her certificate of authority.

Continuing offences

For some provisions of the *Public Health (Tobacco) Act 2008*, a continuing state of affairs may be created, which provides for penalties to be enforced for each day the offence continues. For example, having more than one vending machine in contravention of section 12 of the Act gives rise to a maximum penalty of up to \$220,000 for each day the offence continues, in addition to the original penalty of up to \$55,000 (in the case of a corporation).

Number of offences

A person or company which has been convicted of two offences against the same provision of the Act or Regulation within any three year period on the same business premises may be banned from selling tobacco products for three months. Three offences within any three year period may result in a 12 month ban.

Penalties for prohibited retailers

Engaging in tobacco retailing while prohibited carries a penalty of \$55,000 for an individual for a first offence or \$110,000 for a second or subsequent offence, and \$110,000 for a corporation's first offence or \$220,000 for a second or subsequent offence. This offence will also result in the immediate forfeiture and destruction of any tobacco products on the premises for sale.

Further information?

For further information about tobacco control, please access the NSW Health website and Tobacco Retailer online training: www.health.nsw.gov.au/tobacco or call the Tobacco Information Line on **1800 357 412**. The Tobacco Information Line can be accessed by non-English person via the Translating and Interpreting Service (TIS) on **13 14 50**.

Section of the Act	Offence Description	Who can be fined	Maximum penalty	On-the-spot fine
Section 7	Selling a tobacco product without a health warning	Individual Corporation	\$11,000 \$55,000	—
Section 9	Failure to remove tobacco or e-cigarette products out of sight	Individual Corporation	\$11,000 \$55,000	\$360 \$1800
Section 10	Selling tobacco or e-cigarette products from more than one point of sale	Individual Corporation	\$11,000 \$55,000	\$360 \$1800
Section 12, 13 and 14	<ul style="list-style-type: none"> Placement of tobacco or e-cigarette vending machines in premises not within s.12 of the Act Placement of more than one tobacco or e-cigarette vending machine in premises not within s.12 of the Act Selling tobacco or e-cigarette through a vending machine without staff controls Non-compliance with display and signage requirements 	Individual Corporation	\$11,000 \$55,000	\$360 \$1800 for Non-compliance with display and signage requirements on vending machine (section 14)
Section 16, 17, 19 and 20	<ul style="list-style-type: none"> Advertising and promotion of tobacco or e-cigarette products Engaging in tobacco or e-cigarette product promotions involving prizes or gifts Offering, giving or distributing a free tobacco or e-cigarette product for the purpose of inducing or promoting a sale Engaging in prohibited sponsorships 	Individual Corporation	\$55,000 - 1st offence \$110,000 - 2nd or subsequent offence \$660,000 - 1st offence \$1.1M - 2nd or subsequent offence	—

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Section of the Act	Offence Description	Who can be fined	Maximum penalty	On-the-spot fine
Section 18	Conducting a Shopper Loyalty Program including tobacco or e-cigarette products	Individual Corporation	\$11,000 \$55,000	—
Section 21	Manufacturing or selling a tobacco or e-cigarette product designed for consumption otherwise than by smoking Selling confectionery, food, toy, amusement or other product that resembles a tobacco product or is packaged to resemble a tobacco product	Individual Corporation	\$55,000 - 1st offence \$110,000 - 2nd or subsequent offence \$110,000 - 1st offence \$220,000 - 2nd or subsequent offence	—
Section 22	Selling tobacco or e-cigarette products to Minors	Individual Corporation	\$11,000 - 1st offence \$55,000 - 2nd or subsequent offence \$55,000 - 1st offence \$110,000 - 2nd or subsequent offence	—
Section 23	Purchasing tobacco or e-cigarette products on behalf of those under 18 years of age	Individual	\$2,200	—
Section 24	Supplying tobacco or e-cigarette vending machines tokens to minors and activating machines for minors	Individual Corporation	\$11,000 - 1st offence \$55,000 - 2nd or subsequent offence \$55,000 - 1st offence \$110,000 - 2nd or subsequent offence	—
Section 25	Obtaining tobacco or e-cigarette product vending machine tokens on behalf of minors	Individual	\$2,200	—
Section 29	Selling a prohibited tobacco or e-cigarette product	Individual	\$55,000 - 1st offence \$110,000 - 2nd or subsequent offence	—
Section 35 and 36	Engaging in tobacco retailing while prohibited Displaying tobacco and other smoking products while prohibited	Individual Corporation	\$55,000 - 1st offence \$110,000 - 2nd or subsequent offence \$110,000 - 1st offence \$220,000 - 2nd or subsequent offence	—

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Section of the Act	Offence Description	Who can be fined	Maximum penalty	On-the-spot fine
Section 39	Engaging in tobacco and/or e-cigarette retailing without prior notification of tobacco retailing to NSW Health	Individual Corporation	\$11,000 —	\$360 \$1800
Section 40	Taking or attempting to retake any tobacco product seized in accordance with the Act or resisting or attempting to prevent such a seizure	Individual Corporation	\$55,000 - 1st offence \$110,000 - 2nd or subsequent offence \$110,000 - 1st offence \$220,000 - 2nd or subsequent offence	—
Section 46	Failure to comply with directions of inspectors	Individual Corporation	\$11,000 \$250 on the spot —	\$360 \$1800
Section of the Regulation	Offence Description	Who can be fined	Maximum penalty	On-the-spot fine
Regulation 8	Causing or permitting a tobacco product or e-cigarette to be packed in a package that: <ul style="list-style-type: none"> contains any statement alluding to sporting, sexual or business success, or depicts, wholly or in part, people or depicts, wholly or in part, cartoon characters, or depicts scenes or activities, or contains words, representations or illustrations, that have appeal to children or young persons, or displays any hologram. 	Individual	\$2,200	—
Regulation 9	Advertising on or within package containing tobacco products	Individual	\$2,200	—
Regulation 14	Failure to conspicuously display health warning sign at point of sale	Individual Corporation	\$2,750 —	\$250 \$1250
Regulation 15	Failure to conspicuously display sales to minors warning sign at point of sale	Individual Corporation	\$2,750 —	\$250 \$1250