



New South Wales

# Public Health (Tobacco) Regulation 1999

under the  
Public Health Act 1991

His Excellency the Governor, with the advice of the Executive Council, has made the following Regulation under the *Public Health Act 1991*.

CRAIG KNOWLES  
Minister for Health

## Explanatory note

The objects of this Regulation are:

- (a) to regulate advertising on packages containing tobacco products, and
- (b) to regulate the display of tobacco products in shops and retail premises, and
- (c) to provide for the display of health warnings and notices regarding sales of tobacco products generally and sales to minors in particular, and
- (d) generally to prescribe matters arising under the *Public Health Amendment (Tobacco Advertising) Act 1997*.

The Regulation makes a consequential amendment to the *Public Health Regulation 1991*, and repeals and replaces Schedule 2 to the *Public Health Act 1991*, which prescribes health warnings to be displayed on packages containing tobacco products. The new Schedule 2 to the Act adopts the provisions of Part 3 of the *Trade Practices (Consumer Product Information) (Tobacco) Regulations* made under the *Trade Practices Act 1974* of the Commonwealth, as in force from time to time, which prescribe similar health warnings.

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Public Health (Tobacco) Regulation 1999

Explanatory note

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The Regulation is made under Part 6 of the *Public Health Act 1991*, in particular sections 61B and 61P (as inserted by the *Public Health Amendment (Tobacco Advertising) Act 1997*) and sections 80 and 82 of that Act. Clause 13 is made under section 61 of the *Public Health Act 1991*, and the maximum penalty prescribed by section 82 (5) of that Act attaches to the offence created by that clause.

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## Public Health (Tobacco) Regulation 1999

### Part 1 Preliminary

#### 1 Name of Regulation

This Regulation is the *Public Health (Tobacco) Regulation 1999*.

#### 2 Commencement

This Regulation commences on 31 August 1999.

#### 3 Definitions

(1) In this Regulation:

*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 them 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 them contained in the retail package in which they are sold, and
- (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.

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Part 1              Preliminary

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*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 where sales of tobacco products are ordinarily effected.

*the Act* means the *Public Health Act 1991*.

- (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.

### 4 Notes

The explanatory note, table of contents and notes in the text of this Regulation do not form part of this Regulation.

## Part 2 Advertising on packaging

### 5 Size of package containing tobacco products

For the purposes of section 61B (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.

### 6 Certain advertising prohibited on package containing tobacco products

- (1) A person who packs a tobacco product 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: 10 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 the commencement of this Regulation.

### 7 Advertising within package containing tobacco products

- (1) If a package containing tobacco products also contains within it any tobacco advertisement (not being an advertisement printed on the products themselves), the advertisement must also display a health warning.

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Part 2             Advertising on packaging

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- (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) The person who packaged the tobacco product is guilty of an offence if this clause is contravened.

Maximum penalty: 10 penalty units.



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## **Part 3 Advertising on premises**

### **Division 1 Arrangements of packages at shops and retail outlets**

#### **8 General requirements relating to display of packages**

- (1) This clause applies to packages included in an arrangement referred to in section 61B (4) of the Act.
- (2) 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 or retail premises—the aggregate of such arrangements.
- (3) 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.
- (4) 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).
- (5) 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.
- (6) No package is to have a price written on it or any other thing attached to it.
- (7) No package that is a cigarette carton is to contain more than 300 cigarettes.
- (8) 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.

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Part 3 Advertising on premises  
Division 1

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(9) In this clause:

*cigarette carton* means a package that:

- (a) contains only cigarette packets containing cigarettes of the same product line, and
- (b) contains four or more such cigarette packets.

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

*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.

(10) For the purposes of this clause, a package facing is visible if any part of it is visible.

**Note.** *Package* is widely defined in section 53 of the Act. It includes a box, carton, cylinder, packet, pouch and tin.

### 9 Placing of the arrangement

(1) A package forming part of an arrangement referred to in section 61B (4) of the Act 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 other item, object or thing (other than 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 tobacco product 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 or retail premises.
- (4) In this clause, *smoking accessories* means matches, filters, lighters, cigarette papers and other things used for smoking.

## Division 2 General

### 10 Advertisements in registered clubs prohibited

- (1) The defined premises of a registered club, to the extent that they would not constitute a public place, are a prescribed place for the purposes of section 61B (1) of the Act.
- (2) In this section:

*defined premises* of a registered club are the premises defined or described as referred to in section 5 (1) (a) of the *Registered Clubs Act 1976*.

*registered club* means a club registered under that Act.

### 11 Display of retail prices of tobacco products

- (1) For the purposes of section 61B (3) (e) of the Act, retail prices of tobacco products may be displayed within a shop or retail outlet only by means of either:
  - (a) price tickets that comply with subclause (2), or
  - (b) a single price board that complies with subclause (3),but not both.

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Clause 11 Public Health (Tobacco) Regulation 1999

Part 3 Advertising on premises  
Division 2

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- (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 sq cm 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 only once for each product line carried by the retailer in or on each sales unit in which the product is displayed, and
  - (h) must be attached to a sales unit containing tobacco products, and
  - (i) must have no other article or thing attached to it, 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 sq cm 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 be placed directly adjacent to a sales unit, and
  - (f) must not be highlighted by any lighting.

## **Part 4 Health warnings and other notices**

### **12 Health warning at point of sale**

- (1) In any shop or any retail premises from which tobacco products are sold, the health warning illustrated in Form 1 in Schedule 1 must be conspicuously displayed at each place where such products are exposed for sale.
- (2) If in the shop or premises 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) have an area not less than 2,000 sq cm, 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 premises is guilty of an offence if this clause is contravened.

Maximum penalty: 10 penalty units.

### **13 Notice regarding sales to minors at point of sale**

- (1) In any shop or any retail premises from which tobacco products are sold, a notice regarding sales to minors must be conspicuously displayed at each place where such products are sold.

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Clause 13 Public Health (Tobacco) Regulation 1999

Part 4 Health warnings and other notices

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- (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 premises is guilty of an offence if this clause is contravened.

Maximum penalty: 20 penalty units.

### 14 Statement to be displayed on machines

For the purposes of section 61F (2) of the Act, the prescribed form of statement is:

- (a) a health warning that:
  - (i) has an area not less than 1,000 sq cm, 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 61F (2) of the Act, guilty of an offence if such a statement is not kept conspicuously displayed on the front of the machine.

## **Part 5      Miscellaneous**

### **15    Amendment of Public Health Act 1991 No 10**

The *Public Health Act 1991* is amended by omitting Schedule 2 and by inserting instead the following Schedule:

#### **Schedule 2    Health warnings**

(Sections 55, 56)

Health warnings must meet the requirements of Part 3 of the *Trade Practices (Consumer Product Information) (Tobacco) Regulations* made under the *Trade Practices Act 1974* of the Commonwealth, as in force from time to time, in so far as they relate to marking, display, position, prominence and rotation.

### **16    Amendment of Public Health Regulation 1991**

The *Public Health Regulation 1991* is amended by omitting clause 85.

**Schedule 1 Tobacco health warnings (shops)**

(Clauses 7, 12 and 14)

Smoking kills  
Call the Quitline  
131 848

**Form 1**

Smoking is  
addictive  
Call the Quitline  
131 848

**Form 2**

Need help to quit  
smoking?  
Call the Quitline  
131 848

**Form 3**



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**Schedule 2 Notice regarding sales to minors**

(Clauses 13 and 14)

**NOTICE**

**Public Health Act 1991**

**SELLING TOBACCO PRODUCTS TO PERSONS  
UNDER  
18 YEARS OF AGE IS A CRIMINAL OFFENCE  
MAXIMUM PENALTY \$5,500**

**Report offences to the NSW Department of Health on  
(02) 9391 9111 or to your nearest police station.**

**NSW Department of Health**