



New South Wales

# Public Health (Tobacco) Regulation 2016

under the

Public Health (Tobacco) Act 2008

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

JILLIAN SKINNER, MP  
Minister for Health

## Explanatory note

The object of this Regulation is to remake, with some amendments, the provisions of the *Public Health (Tobacco) Regulation 2009*, which is repealed on 1 September 2016 by section 10 (2) of the *Subordinate Legislation Act 1989*.

This Regulation makes provision with respect to the following:

- (a) requirements in relation to advertising on packaging of tobacco products and e-cigarettes,
- (b) requirements in relation to advertising of tobacco products and e-cigarettes on retail premises, including the manner in which prices of tobacco products and e-cigarettes 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 and e-cigarette vending machines,
- (d) the form of giving notice of the commencement of tobacco retailing,
- (e) offences against the *Public Health (Tobacco) Act 2008* and this Regulation for which penalty notices may be issued.

This Regulation is made under the *Public Health (Tobacco) Act 2008*, including sections 4 (definition of *e-cigarettes*), 6 (4), 7 (4), 9 (2) (c), 14 (1), 15A (3), 16, 39 (2), 50 and 58 (the general regulation-making power).

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## Public Health (Tobacco) Regulation 2016

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Public Health (Tobacco) Act 2008

### Part 1 Preliminary

#### 1 Name of Regulation

This Regulation is the *Public Health (Tobacco) Regulation 2016*.

#### 2 Commencement

This Regulation commences on 1 September 2016 and is required to be published on the NSW legislation website.

**Note.** This Regulation replaces the *Public Health (Tobacco) Regulation 2009*, which is repealed on 1 September 2016 by section 10 (2) of the *Subordinate Legislation Act 1989*.

#### 3 Definitions

(1) In this Regulation:

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

**Note.** The Act and the *Interpretation Act 1987* contain definitions and other provisions that affect the interpretation and application of this Regulation.

(2) Notes included in this Regulation do not form part of this Regulation.

#### 4 Exclusion from definition of “e-cigarette” in Part 3 of Act

For the purposes of paragraph (a) of the definition of *e-cigarette* in section 4 (1) of the Act, a device that is an authorised product (within the meaning of section 22 of the Act) is excluded from the definition for the purposes of its application to Part 3 of the Act.

## Part 2 Advertising on packaging

### 5 Certain sales of prescribed amount of tobacco product prohibited

For the purposes of section 6 (4) of the Act, 100 grams is the prescribed quantity of tobacco product presumed to be for the purposes of sale.

### 6 Packing and sale of prescribed amount of tobacco product without health warning prohibited

For the purposes of section 7 (4) of the Act, the prescribed quantity of tobacco product presumed to be for the purposes of sale is:

- (a) for cigarettes, 50 cigarettes, or
- (b) for any other tobacco product, 50 grams.

### 7 Exclusion from definition of “e-cigarette advertisement”

For the purposes of the definition of *e-cigarette advertisement* in section 15A (3) of the Act, a trademark or brand name of an e-cigarette where it appears on an e-cigarette or a package in which an e-cigarette is to be sold is excluded from the definition.

### 8 Certain advertising prohibited on package containing tobacco products or e-cigarettes

- (1) A person must not cause or permit a tobacco product or e-cigarette 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
  - (c) depicts, wholly or in part, cartoon characters, or
  - (d) depicts scenes or activities, or contains words, representations or illustrations, that have appeal to children or young persons, or
  - (e) displays any hologram,Maximum penalty: 20 penalty units.
- (2) Subclause (1) (b) does not apply to a package containing cigars if the cigars were packaged in the package before 31 August 1999.

### 9 Advertising on or within package containing tobacco products

- (1) A person must not cause or permit a tobacco product to be packaged in a package that contains a tobacco advertisement, whether on the external or internal surfaces of the package, unless the tobacco advertisement also displays a health warning that:
  - (a) occupies at least one quarter of the area used (both for text and space) for the tobacco advertisement, and
  - (b) has a white background, and
  - (c) contains text in black characters in the form illustrated in Form 1 of Schedule 1 and maintains approximately the same proportions of character size and empty space as the illustrated form.Maximum penalty: 20 penalty units.
- (2) Subclause (1) does not apply to an advertisement printed only on the tobacco products inside the package concerned.

## Part 3 Advertising on premises

### 10 Therapeutic goods and other authorised products may be displayed

Section 9 of the Act does not apply to the display of authorised products (within the meaning of section 22 of the Act) on premises on which tobacco products or non-tobacco smoking products are sold.

### 11 Sale from one place applies only to retail premises

Premises on which tobacco products, e-cigarettes, non-tobacco smoking products, smoking accessories or e-cigarette accessories are sold only by wholesale are not premises for the purposes of section 10 of the Act.

### 12 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.

### 13 Display of retail prices of tobacco products or e-cigarettes

- (1) For the purposes of section 16 (3) (e) of the Act, the retail prices of tobacco products or e-cigarettes may be displayed within a shop or other retail outlet from which tobacco products or e-cigarettes are sold, but only if all of the retail prices 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 2 colours—1 for the ticket and 1 for the price and other information permitted to be on the ticket, 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 cm<sup>2</sup> 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 the name of the product line 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 cm<sup>2</sup> 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 name of the product line 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.

(4) In this clause:

***product line*** means a kind of tobacco product or e-cigarette that differs from other kinds by one or more of the following characteristics:

- (a) its trademark,
- (b) its brand name,
- (c) its nicotine content,
- (d) its tar content,
- (e) its flavour,
- (f) the quantity of that kind 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 or e-cigarettes are dispensed when sold by retail, but does not include a tobacco or e-cigarette vending machine.

## Part 4 Health warnings and other notices

### 14 Health warning at point of sale

- (1) The occupier of a shop or other retail outlet from which tobacco products are sold must ensure that a health warning that complies with this clause is conspicuously displayed at the point of sale of those products in the shop or other retail outlet.

Maximum penalty: 25 penalty units.

- (2) A health warning complies with this clause if it:
- (a) is between 50 and 100 cm wide and has an area not less than 2,000 cm<sup>2</sup>, and
  - (b) has a white background, and
  - (c) contains text in black characters in the form illustrated in Form 1 of Schedule 1 and maintains approximately the same proportions of character size and empty space as the illustrated form.

### 15 Notice regarding sales to minors at point of sale

- (1) The occupier of a shop or other retail outlet from which tobacco products are sold must ensure that a notice regarding sales to minors that complies with this clause is conspicuously displayed at the point of sale of those products in the shop or other retail outlet.

Maximum penalty: 25 penalty units.

- (2) A notice complies with this clause if it:
- (a) is at least 15 cm high and at least 21 cm wide, and
  - (b) has a white background, and
  - (c) contains text in black characters in the form illustrated in Form 2 of Schedule 1 and maintains approximately the same proportions of character size and empty space as the illustrated form.

### 16 Statements to be displayed on vending machines

For the purposes of section 14 (1) of the Act, the following forms of statement are prescribed:

- (a) with respect to a tobacco vending machine—a health warning that:
  - (i) has an area not less than 1,000 cm<sup>2</sup>, and
  - (ii) has a white background, and
  - (iii) contains text in black characters in the form illustrated in Form 1 of Schedule 1 and maintains approximately the same proportions of character size and empty space as the illustrated form,
- (b) with respect to a tobacco vending machine or e-cigarette vending machine—a notice 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 Form 3 of Schedule 1 and maintains approximately the same proportions of character size and empty space as the illustrated form.

**Note.** The owner and lessee of a tobacco or e-cigarette 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.

**17 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 14 must also be displayed next to each sign referred to in subclause (2).



## Part 5 Miscellaneous

### 18 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.service.nsw.gov.au](http://www.service.nsw.gov.au).

### 19 Penalty notice offences and penalties

For the purposes of section 50 of the Act:

- (a) each offence created by a provision specified in Column 1 of Schedule 2 is an offence for which a penalty notice may be served, and
- (b) the penalty prescribed for each such offence is:
  - (i) in the case of a penalty payable by an individual—the amount specified opposite the provision in Column 2 of the Schedule, and
  - (ii) in the case of a penalty payable by a corporation—the amount specified opposite the provision in Column 3 of the Schedule.

### 20 Savings

- (1) Any act, matter or thing that, immediately before the repeal of the *Public Health (Tobacco) Regulation 2009*, had effect under that Regulation continues to have effect under this Regulation.
- (2) A health warning or notice that was displayed at premises or on a vending machine immediately before the commencement of this Regulation and that was displayed at that time in compliance with a requirement of the *Public Health (Tobacco) Regulation 2009* is taken, until such time as it is removed or altered or until the expiry of the period of 12 months from the date of commencement of this Regulation, whichever occurs first, to satisfy an equivalent requirement under this Regulation that a warning or notice be displayed.

## **Schedule 1 Form of warning and notices**

(Clauses 9, 14, 15, 16)

### **Form 1 Tobacco health warnings (shops and vending machines)**

Smoking kills  
Call the Quitline  
137 848 or 13 QUIT

### **Form 2 Notice regarding sales to minors (shops)**

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 Ministry of Health on 1800 357 412 or to your nearest police station.  
Ministry of Health

### **Form 3 Notice regarding sales to minors (vending machines)**

NOTICE  
Public Health (Tobacco) Act 2008  
SELLING TOBACCO PRODUCTS OR E-CIGARETTES TO PERSONS UNDER 18 YEARS OF  
AGE IS A CRIMINAL OFFENCE  
MAXIMUM PENALTY \$110,000  
Report offences to the Ministry of Health on 1800 357 412 or to your nearest police station.  
Ministry of Health

## Schedule 2 Penalty notice offences

(Clause 19)

<b>Column 1</b>	<b>Column 2</b>	<b>Column 3</b>
<b>Provision</b>	<b>Penalty for an individual</b>	<b>Penalty for a corporation</b>
<b>Offences under the Act</b>		
Section 9 (1)	\$360	\$1,800
Section 10 (1)	\$360	\$1,800
Section 14 (1)	\$360	\$1,800
Section 30 (1)	\$250	—
Section 30 (2)	\$250	—
Section 39 (1)	\$360	\$1,800
Section 46 (1)	\$360	\$1,800
<b>Offences under the Regulation</b>		
Clause 14	\$250	\$1,250
Clause 15	\$250	\$1,250