

# Public Health (Tobacco) Regulation 2022

[2022-469]



New South Wales

## Status Information

### Currency of version

Current version for 19 August 2022 to date (accessed 21 May 2024 at 5:14)

Legislation on this site is usually updated within 3 working days after a change to the legislation.

### Provisions in force

The provisions displayed in this version of the legislation have all commenced.

### Notes—

- **Staged repeal status**

This legislation is currently due to be automatically repealed under the [Subordinate Legislation Act 1989](#) on 1 September 2027

### Authorisation

This version of the legislation is compiled and maintained in a database of legislation by the Parliamentary Counsel's Office and published on the NSW legislation website, and is certified as the form of that legislation that is correct under section 45C of the [Interpretation Act 1987](#).

File last modified 1 September 2022

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# Public Health (Tobacco) Regulation 2022



New South Wales

## Part 1 Preliminary

### 1 Name of Regulation

This Regulation is the *Public Health (Tobacco) Regulation 2022*.

### 2 Commencement

This Regulation commences on 1 September 2022.

**Note—**

This Regulation replaces the *Public Health (Tobacco) Regulation 2016*, which is repealed on 1 September 2022 by the *Subordinate Legislation Act 1989*, section 10(2).

### 3 Definitions

In this Regulation—

**authorised product** has the same meaning as in the Act, section 22.

**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.

### 4 Exclusion from definition of “e-cigarette”—the Act, s 4(1)

In the Act, Part 3, **e-cigarette** does not include an authorised product.

### 5 Exclusion from definition of “e-cigarette advertisement”—the Act, s 15A(3)

An **e-cigarette advertisement** does not include a trademark or brand name of an e-cigarette to the extent the trademark or brand name is displayed on—

- (a) an e-cigarette, or
- (b) a package in which an e-cigarette is sold.

## Part 2 Packing, advertisement and sale of tobacco and other smoking

## **products**

### **6 Certain sales prohibited—the Act, s 6**

For the Act, section 6(4), the prescribed amount is 100 grams.

### **7 Packing and sale of tobacco product without health warning prohibited—the Act, s 7**

For the Act, section 7(4), the following amounts are prescribed—

- (a) for cigarettes—50 cigarettes,
- (b) for other tobacco products—50 grams.

### **8 Display of tobacco products, non-tobacco smoking products and smoking accessories—the Act, s 9**

For the Act, section 9(2)(c), the display of authorised products on premises on which tobacco products or non-tobacco smoking products are sold is exempt from the Act, section 9.

### **9 Wholesalers excluded from requirement for single point of sale—the Act, s 58(2)**

For the Act, section 10, 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.

### **10 Advertisements in registered clubs prohibited—the Act, s 16**

- (1) For the Act, section 16(1), the premises of a registered club are prescribed to the extent the premises are not a public place.
- (2) In this section—

**registered club** has the same meaning as in the [Registered Clubs Act 1976](#).

### **11 Display of retail prices of tobacco products or e-cigarettes—the Act, s 16**

- (1) For the Act, section 16(3)(e), the retail prices of tobacco products or e-cigarettes may be displayed in a shop or other retail outlet from which tobacco products or e-cigarettes are sold, but only if all the prices are displayed on only 1 of the following—
  - (a) price tickets that comply with subsection (2),
  - (b) a single board that complies with subsection (3).
- (2) A price ticket must—
  - (a) only display the following information—
    - (i) the name of a product line, displayed once,

- (ii) the price of a product line, displayed once,
    - (iii) a barcode or other identifying codes,
    - (iv) a symbol indicating the country of origin, and
  - (b) use only 2 colours, being 1 colour for the ticket and 1 colour for information permitted under paragraph (a), and
  - (c) not be coloured in fluorescent colours or in a more distinctive manner than price tickets used for other merchandise in the retail outlet, and
  - (d) not be more than 35cm<sup>2</sup> in area, and
  - (e) not contain text that is more than—
    - (i) 2cm in height, or
    - (ii) 1.5cm in width, and
  - (f) use only 1 font, and
  - (g) be attached to a sales unit, and
  - (h) not have other articles or things attached to it, and
  - (i) not be arranged with other price tickets to create an image or visual effect that would be incomplete if a ticket were removed, and
  - (j) not be highlighted by lighting.
- (3) The board must—
- (a) only be used to display the following information—
    - (i) the name of a product line, displayed once,
    - (ii) the price of a product line, displayed once, and
  - (b) not contain moving images or text, and
  - (c) not be more than 2,000cm<sup>2</sup> in area, and
  - (d) have only 1 of the following—
    - (i) a black background with white text,
    - (ii) a white background with black text, and
  - (e) not contain text that is more than—
    - (i) 2cm in height, or

- (ii) 1.5cm in width, and
- (f) use only 1 font, and
- (g) be placed directly next to a sales unit, and
- (h) not have other articles or things attached to it, and
- (i) not be highlighted by lighting.

(4) In this section—

**product line** means a kind of tobacco product or e-cigarette that differs from other kinds by 1 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 the kind of tobacco product or e-cigarette in the retail package in which it is sold.

**sales unit** means a receptacle, an area of shelving or another 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.

## **12 Smokeless tobacco, confectionery and toys—the Act, s 21**

For the Act, section 21(1A), the prescribed amount is 35 grams.

## **13 Certain advertising prohibited on package containing tobacco products or e-cigarettes—the Act, s 58(1)(a) and (h)**

- (1) A person must not pack a tobacco product or e-cigarette in a package that—
  - (a) contains a 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 a hologram.

Maximum penalty—20 penalty units.

- (2) Subsection (1)(b) does not apply to a package containing cigars if the cigars were packed in the package before 31 August 1999.

**14 Packing certain tobacco products without health warning prohibited—the Act, s 58(1)(a) and (h)**

- (1) A person must not pack a tobacco product in a package that contains a tobacco advertisement on the package's external or internal surfaces unless the advertisement also displays a health warning that—
- (a) occupies at least one quarter of the area used for the text and space of the advertisement, and
  - (b) has a white background, and
  - (c) contains text in black characters in the form set out in Schedule 1, Form 1 in approximately the same proportions of character size and empty space as the form.

Maximum penalty—20 penalty units.

- (2) Subsection (1) does not apply to an advertisement printed only on tobacco products in the package.

**Part 3 Health warnings and other notices**

**15 Health warning at point of sale—the Act, s 58(1)(c)**

- (1) The occupier of a shop or other retail outlet from which tobacco products are sold must ensure that a health warning is displayed in accordance with this section.

Maximum penalty—25 penalty units.

- (2) The health warning must—
- (a) be at least 50cm but not more than 100cm wide, and
  - (b) be at least 2,000cm<sup>2</sup> but not more than 3,200cm<sup>2</sup> in area, and
  - (c) have a white background, and
  - (d) contain text in black characters in the form set out in Schedule 1, Form 1 in approximately the same proportions of character size and empty space as the form.
- (3) The health warning must be conspicuously displayed at the point of sale of tobacco products in the shop or other retail outlet.



**16 Notice about sales to minors at point of sale—the Act, s 58(1)(c)**

- (1) The occupier of a shop or other retail outlet from which tobacco products, e-cigarettes or e-cigarette accessories are sold must ensure that a notice about sales to minors is displayed in accordance with this section.

Maximum penalty—25 penalty units.

- (2) The notice must—

- (a) be at least 15cm high and at least 21cm wide, and
- (b) have a white background, and
- (c) contain text in black characters in the form set out in Schedule 1, Form 2 in approximately the same proportions of character size and empty space as the form.

- (3) The notice must be conspicuously displayed at the point of sale of tobacco products, e-cigarettes or e-cigarette accessories in the shop or other retail outlet.

**17 Statements to be displayed on vending machines—the Act, s 14**

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

- (a) for a tobacco vending machine—a health warning that—

- (i) is at least 1,000cm<sup>2</sup> in area, and
- (ii) has a white background, and
- (iii) contains text in black characters in the form set out in Schedule 1, Form 1 in approximately the same proportions of character size and empty space as the form,

- (b) for a tobacco vending machine or e-cigarette vending machine—a notice about sales to minors that—

- (i) is at least 15cm high and at least 21cm wide, and
- (ii) has a white background, and
- (iii) contains text in black characters in the form set out in Schedule 1, Form 2 in approximately the same proportions of character size and empty space as the form.

**18 Statement about point of sale of tobacco on retail premises—the Act, s 58(1)(c)**

- (1) A single statement may be displayed in accordance with this section 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 1 cash register.

(2) The statement must comprise only the following text displayed on a sign—

Tobacco sold at this cash register only.

(3) The sign must—

(a) not be more than A4 size, being 21cm by 30cm, and

(b) have a white background with black text that is not more than 60 point type.

## Part 4 Miscellaneous

### 19 Notification by person engaging in tobacco retailing or e-cigarette retailing—the Act, s 39

For the Act, section 39(2), the prescribed 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).

### 20 Savings

An act, matter or thing that, immediately before the repeal of the [Public Health \(Tobacco\) Regulation 2016](#), had effect under that Regulation continues to have effect under this Regulation.

## Schedule 1 Form of warning and notices

sections 14–17

### Form 1 Health warning

Smoking kills

Call the Quitline

137 848 or 13 QUIT

### Form 2 Notice about sales to minors

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**

**1 Application of Schedule**

- (1) For the Act, section 50—
- (a) each offence created by a provision specified in this Schedule is an offence for which a penalty notice may be issued, and
  - (b) the amount payable for the penalty notice is the amount specified opposite the provision.
- (2) If the provision is qualified by words that restrict its operation to limited kinds of offences or to offences committed in limited circumstances, the penalty notice may be issued only for—
- (a) the limited kind of offence, or
  - (b) an offence committed in the limited circumstances.

Column 1	Column 2	Column 3
Provision	Penalty—individuals	Penalty—corporations
<b>Offences under the Act</b>		
Section 6(2)	\$1,100	\$5,500
Section 7(1)	\$1,100	\$5,500
Section 7(2)	\$1,100	\$5,500
Section 9(1)	\$1,100	\$5,500
Section 10(1)	\$1,100	\$5,500
Section 14(1)	\$1,100	\$5,500
Section 30(1)	\$250	—
Section 30(2)	\$250	—
Section 39(1)	\$1,100	\$5,500
Section 46(1)	\$1,100	\$5,500

**Offences under this Regulation**

Section 15(1)	\$250	\$1,250
Section 16(1)	\$250	\$1,250