



New South Wales

# Public Health (Tobacco) Regulation 2022

under the

Public Health (Tobacco) Act 2008

[*The following enacting formula will be included if this Regulation is made—*]

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The object of this Regulation is to remake, with minor changes, the *Public Health (Tobacco) Regulation 2016*, which is repealed on 1 September 2022 by the *Subordinate Legislation Act 1989*, section 10(2).

This Regulation provides for the following—

- (a) exclusions from the definitions of *e-cigarette* and *e-cigarette advertisement* in the *Public Health (Tobacco) Act 2008*,
- (b) requirements relating to the packing, display, advertisement and sale of tobacco and other smoking products,
- (c) health warnings and other notices and statements for display—
  - (i) at retail outlets from which tobacco and other smoking products are sold, and
  - (ii) on tobacco and e-cigarette vending machines,
- (d) giving notice of the commencement of tobacco or e-cigarette retailing,
- (e) offences under the *Public Health (Tobacco) Act 2008* and this Regulation for which penalty notices may be issued and the amounts payable under the penalty notices.

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# public consultation draft

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Public Health (Tobacco) Regulation 2022 [NSW]  
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## Public Health (Tobacco) Regulation 2022

under the

Public Health (Tobacco) Act 2008

### 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 and is required to be published on the NSW legislation website.

**Note—** This Regulation replaces the *Public Health (Tobacco) Regulation 2016*, which is repealed on 1 September 2022 by the *Subordinate Legislation Act 1989*, section 10(2).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 price board that complies with subsection (3).
- (2) A price ticket must—
  - (a) only display the following information—
    - (i) the name of a tobacco product or e-cigarette's product line, displayed once,
    - (ii) the price of a tobacco product or e-cigarette, 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—

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

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- (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) A price board must—
  - (a) only display the following information—
    - (i) the name of a tobacco product or e-cigarette's product line, displayed once, and
    - (ii) the price of a tobacco product or e-cigarette, 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 the 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.

<b>Column 1</b>	<b>Column 2</b>	<b>Column 3</b>
<b>Provision</b>	<b>Penalty— individuals</b>	<b>Penalty— corporations</b>
<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
<b>Offences under this Regulation</b>		
Section 15(1)	\$250	\$1,250
Section 16(1)	\$250	\$1,250