



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The object of this Regulation is to remake, with minor changes, the *Public Health (Tobacco) Regulation 2016*, which is repealed on 1 September 2022 by the *Subordinate Legislation Act 1989*, section 10(2).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 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Note— This Regulation replaces the *Public Health (Tobacco) Regulation 2016*, which is repealed on 1 September 2022 by the *Subordinate Legislation Act 1989*, section 10(2).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 35cm² in area, and
 - (e) not contain text that is more than—

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Public Health (Tobacco) Regulation 2022 [NSW]

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

- (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 2,000cm² 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 2,000cm² but not more than 3,200cm² 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 1,000cm² 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.

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
Offences under the Act		
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