

South Australia

## **Tobacco Products Regulations 2004**

under the *Tobacco Products Regulation Act 1997*

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Schedule 1—Sign under section 38A(5) of the Act (regulation 5(2))

Legislative history

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#### **1—Short title**

These regulations may be cited as the *Tobacco Products Regulations 2004*.

#### **3—Interpretation**

In these regulations, unless the contrary intention appears—

*Act* means the *Tobacco Products Regulation Act 1997*.

#### **4—Licence fee (section 10(3))**

For the purposes of section 10(3) of the Act, the fee for the issue or renewal of a licence is \$208.

#### **4A—Tobacco product packages**

For the purposes of section 30(1) of the Act, a package in which cigarettes are sold by retail must be designed to hold not less than 20 cigarettes and must not be designed to be, or be readily able to be, divided into portions that contain less than 20 cigarettes each.

#### **5—Sale or supply of tobacco products to children (section 38A)**

- (1) For the purposes of section 38A(2) of the Act, the following kinds of identification are prescribed:
  - (a) a current photographic driver's licence issued under the *Motor Vehicles Act 1959* or under a corresponding law of another State or a Territory;
  - (b) a current photographic Proof of Age card issued by the Registrar of Motor Vehicles or by a corresponding public authority of the Commonwealth or another State or a Territory;

- (c) a current passport issued by the Commonwealth or under the law of another country, bearing a photograph of the person and enabling the age of the person to be determined;
  - (d) a current photographic Keypass identification card issued by Alfa Omega Nominees Pty Ltd, trading as Commonwealth Key and Property Register.
- (2) For the purposes of section 38A(5) of the Act—the form of sign set out in Schedule 1 is prescribed.
- (3) The following requirements apply to a sign referred to in subregulation (2):
- (a) the dimensions of the sign and of the letters, figures and symbols comprised in the signs must be the same as those set out in the relevant form;
  - (b) the following parts of the sign must be printed in red:
    - (i) the passages "18 years" and "proof of age";
    - (ii) the circle and diagonal of the no smoking symbol;
    - (iii) the lines under the headings "SALE OF TOBACCO PRODUCTS" and "PENALTIES".

## **6—Certain advertising prohibited (section 40)**

- (1) For the purposes of section 40(3)(a) of the Act, a person is permitted to display the following signs outside premises where tobacco products are sold by retail:
- (a) a sign or signs displaying—
    - (i) the company name or trading name; or
    - (ii) the company name or trading name and the corporate logo,of the business, erected or displayed in accordance with any other Act or law relating to such signage;
  - (b) either—
    - (i) not more than one prescribed tobacco notice on each external wall of the premises that is visible to the public, or on a window in such a wall; or
    - (ii) a sign displaying not more than one prescribed tobacco notice, erected or displayed in accordance with any other Act or law relating to such signage.
- (2) For the purposes of section 40(3)(c) of the Act, the following kinds of action are prescribed:
- (a) the advertisement of a tobacco product in or on a periodical—
    - (i) that is printed outside Australia; and
    - (ii) that is not principally intended for distribution or use in Australia; and
    - (iii) in relation to which there is no notice in force under section 17(2) of the *Tobacco Advertising Prohibition Act 1992* of the Commonwealth;

- (b) the advertisement of a tobacco product that is an accidental or incidental accompaniment to the publication of other matter;
- (c) subject to subregulation (2a) and (2c), the advertisement of a tobacco product in or on a package containing the tobacco product (being a package in which the tobacco product is offered for sale in the ordinary course of business);
- (d) the sale or delivery of a product containing an advertisement of a kind referred to in the preceding paragraphs;
- (e) subject to subregulation (2f), the advertisement of a tobacco product consisting of—
  - (i) 1 picture of a packet of the tobacco product displayed in or on a button or other device that forms part of a vending machine used to select a tobacco product to be dispensed by the machine; or
  - (ii) the display (either electronic or on tickets) of any combination of the following in or on a vending machine:
    - (A) the name of the tobacco product;
    - (B) the price of the tobacco product;
    - (C) the packet size of the tobacco product (by weight or by number of tobacco products contained in the packet);
    - (D) the nicotine or tar content of the tobacco product;
    - (E) the country of origin of the tobacco product;
- (f) subject to subregulation (2g), the advertisement of tobacco products in premises where tobacco products are sold by retail consisting of a single price board;
- (g) subject to subregulation (2h), the advertisement of a tobacco product in premises where tobacco products are sold by retail consisting of price tickets relating to particular product lines;
- (ga) the advertisement of tobacco products in premises where tobacco products are only sold by retail in cartons consisting of a single sign attached to or adjacent to a point of sale containing only, in black standardised font no larger than 40 mm high on a white background, the words "cartons only sold here";
- (h) the advertisement of a tobacco product on the premises of a distributor or manufacturer of tobacco products consisting of a sign or signs displaying—
  - (i) the company name or trading name; or
  - (ii) the company name or trading name and the corporate logo,of the distributor or manufacturer, erected or displayed in accordance with any other Act or law relating to such signage;
- (i) the advertisement of a tobacco product to a group of people all of whom are involved in the manufacture, distribution or sale of tobacco products.

- (2a) An advertisement of a kind referred to in subregulation (2)(c) consisting of a tobacco product displayed in a retail display of tobacco products in the premises of a specialist tobacconist is only prescribed for the purposes of section 40(3)(c) of the Act if the following provisions are complied with:
- (a) there must, subject to subregulations (2d) and (2e), be only 1 uninterrupted retail display in the premises;
  - (b) the area of the retail display must not exceed—
    - (i) in the case where at least 1 square metre of the retail display consists of the display of cigars (whether in a separate retail display under subregulation (2d) or otherwise)—4 square metres; or
    - (ii) in any other case—3 square metres;
  - (c) the retail display must not be located on, nor form part of, a counter containing a point of sale, or from which customers are otherwise served;
  - (d) the retail display must not be able to be accessed by customers or potential customers without the assistance of a sales assistant;
  - (e) warnings of a kind approved from time to time by the Minister—
    - (i) in the case of a retail display not exceeding 1 square metre—of A4 size; or
    - (ii) in the case of a retail display exceeding 1 square metre—of A3 size, must be displayed in accordance with the conditions of the relevant licence under Part 2 of the Act;
  - (f) subject to subregulation (2b), there must be no more than the following quantities of the specified tobacco products visible on the retail display (not including the top of any tobacco product packets visible due to the slope of a shelf in the retail display in which the packets are displayed):
    - (i) in the case of cigarettes—2 packets, or 2 pictures of a packet, of each particular product line;
    - (ii) in the case of cigars—2 packets, or 2 pictures of a packet, or an unrestricted number of individual cigars, of each particular product line;
    - (iii) in the case of cigarette or pipe tobacco—2 packets, or 2 pictures of a packet, of each particular product line;
    - (iv) in the case of cigarillos—2 packets, or 2 pictures of a packet, of each particular product line;
    - (v) in the case of cigarette papers—2 packets, or 2 pictures of a packet, of each particular product line;
    - (vi) in any other case—2 items of each particular product line;
  - (g) the retail display must not display—
    - (i) cartons of tobacco products; or
    - (ii) empty packets or empty cartons of tobacco products;
  - (h) any picture of a tobacco product displayed on the retail display—

- (i) must be no larger than the actual tobacco product; and
  - (ii) must contain the health warning (if any) appropriate for the tobacco product required by or under the Act or any other Act;
- (i) there must be no highlighting in any way (including, to avoid doubt, by the use of a sign or other device not forming part of the retail display) of the retail display or a part of the retail display, or a tobacco product displayed in the retail display.
- (2b) Despite subregulation (3), for the purposes of subregulation (2a)(f), a product line will be taken to be a separate product line if the packaging of the product line is substantially different (other than a mere visual difference) from another product line containing the same tobacco product.
- (2c) An advertisement of a kind referred to in subregulation (2)(c) consisting of a tobacco product displayed in a retail display of tobacco products in premises where tobacco products are sold by retail (other than the premises of a specialist tobacconist) is only prescribed for the purposes of section 40(3)(c) of the Act if the following provisions are complied with:
  - (a) there must, subject to subregulations (2d) and (2e), be only 1 uninterrupted retail display in the premises;
  - (b) the area of the retail display must not exceed 3 square metres;
  - (c) the retail display must not be located on, nor form part of, a counter containing a point of sale, or from which customers are otherwise served;
  - (d) the retail display must not be able to be accessed by customers or potential customers without the assistance of a sales assistant;
  - (e) warnings of a kind approved from time to time by the Minister—
    - (i) in the case of a retail display not exceeding 1 square metre—of A4 size; or
    - (ii) in the case of a retail display exceeding 1 square metre—of A3 size, must be displayed in accordance with the conditions of the relevant licence under Part 2 of the Act;
  - (f) there must be no more than the following quantities of the specified tobacco products visible on the retail display (not including the top of any tobacco product packets visible due to the slope of a shelf in the retail display in which the packets are displayed):
    - (i) in the case of cigarettes—1 packet, or 1 picture of a packet, of each particular product line;
    - (ii) in the case of cigars—1 packet, 1 picture of a packet or 1 cigar of each particular product line;
    - (iii) in the case of cigarette or pipe tobacco—1 packet, or 1 picture of a packet, of each particular product line;
    - (iv) in the case of cigarillos—1 packet, or 1 picture of a packet, of each particular product line;

- (v) in the case of cigarette papers—1 packet, or 1 picture of a packet, of each particular product line;
    - (vi) in any other case—1 item of each particular product line;
  - (g) the retail display must not display—
    - (i) cartons of tobacco products; or
    - (ii) empty packets or empty cartons of tobacco products;
  - (h) any picture of a tobacco product displayed on the retail display—
    - (i) must be no larger than the actual tobacco product; and
    - (ii) must contain the health warning (if any) appropriate for the tobacco product required by or under the Act or any other Act;
  - (i) there must be no highlighting in any way (including, to avoid doubt, by the use of a sign or other device not forming part of the retail display) of the retail display or a part of the retail display, or a tobacco product displayed in the retail display;
  - (j) in the case of a retail display situated in a prescribed shop the area of the retail display in or on which tobacco products, or pictures of tobacco products, are displayed must not be visible to a person outside of the shop.
- (2d) Despite subregulation (2a)(a) or (2c)(a), there may be a separate retail display (the area of which must not exceed 1 square metre) for cigars consisting of part of a humidified room, or a humidified container, however the area of that retail display must be counted in determining the area of the retail display referred to in subregulation (2a)(b) or (2c)(b).
- (2e) Despite subregulation (2c)(a), premises licensed under the *Liquor Licensing Act 1997* may, if the relevant licence conditions under Part 2 of the Act permit more than 1 point of sale, have a retail display at each point of sale other than a point of sale consisting of a vending machine (but not so that the combined area of such retail displays exceeds 3 square metres).
- (2ea) Subregulation (2c)(j) does not apply in the case of a retail display that is—
  - (a) situated in a prescribed shop that is a service station or other premises at which fuel for motor vehicles is sold; and
  - (b) visible to a person who is outside of the prescribed shop but who is in an area in which such fuel is dispensed, or other services provided, by the prescribed shop (including a car park provided by the prescribed shop); and
  - (c) not visible to a person outside of the prescribed shop other than a person referred to in paragraph (b).
- (2f) An advertisement of a kind referred to in subregulation (2)(e) is only prescribed for the purposes of section 40(3)(c) of the Act if the following provisions are complied with:
  - (a) all pictures must be of an approximately equal size (but in any case not exceeding 80 mm x 40 mm);
  - (b) all pictures must contain the health warning (if any) appropriate for the tobacco product required by or under the Act or any other Act;

- (c) if the information referred to in subregulation (2)(e)(ii) is displayed on tickets—
    - (i) all tickets must be of an approximately equal size (but in any case not exceeding 80 mm x 40 mm); and
    - (ii) each ticket must consist of black text on a completely white background; and
    - (iii) the text on each ticket must be a standardised font not exceeding 15 millimetres in height;
  - (d) an A4 size warning of a kind approved from time to time by the Minister must be displayed on the vending machine in accordance with the conditions of the relevant licence under Part 2 of the Act;
  - (e) the number of product lines so advertised in relation to a vending machine must not exceed 40;
  - (f) there must be no more than 1 picture of a packet of, or 1 ticket in respect of, each particular product line displayed in or on the vending machine;
  - (g) there must be no internal lighting in the vending machine;
  - (h) there must be no highlighting in any way (including, to avoid doubt, by the use of a sign or other device not forming part of the vending machine) of the vending machine, a picture of a tobacco product or ticket displayed in or on the vending machine.
- (2g) An advertisement of a kind referred to in subregulation (2)(f) is only prescribed for the purposes of section 40(3)(c) of the Act if the following provisions are complied with:
- (a) the total surface area of the board (including, in the case of a sandwich board, the combined surface area of both sides) must not exceed—
    - (i) in the case of a board in the premises of a specialist tobacconist—1 square metre; or
    - (ii) in the case of a board in any other premises—0.5 square metres;
  - (b) the board must consist of black text on a completely white background;
  - (c) the text on the board must be a standardised font not exceeding 20 millimetres in height;
  - (d) the information on the board must be limited to any combination of the following:
    - (i) the names of particular product lines;
    - (ii) the prices of particular product lines (displayed in a way that does not indicate that a particular product line has been discounted);
    - (iii) the packet size of particular product lines (by weight or number of tobacco products contained in the packet or carton);
    - (iv) nicotine or tar content of particular product lines;
    - (v) the country of origin of particular product lines;
    - (vi) a bar code or similar identification code used in the point of sale system of the business;

- (e) the information relates only to product lines consisting of either or both of the following:
  - (i) cartons of tobacco products offered for sale in the premises;
  - (ii) tobacco products offered for sale in the premises that are not visibly displayed in a retail display.
- (2h) An advertisement of a kind referred to in subregulation (2)(g) is only prescribed for the purposes of section 40(3)(c) of the Act if the following provisions are complied with:
  - (a) all price tickets must be of an approximately equal size (but in any case not exceeding 80mm x 40mm);
  - (b) each price ticket must consist of black text on a completely white background;
  - (c) the text on each price ticket must be a black standardised font not exceeding 15 millimetres in height;
  - (d) the information on each price ticket must be limited to any combination of the following:
    - (i) the name of the product line;
    - (ii) the price of the product line (displayed in a way that does not indicate that the product line has been discounted);
    - (iii) the packet size (by weight or by number of tobacco products contained in the packet);
    - (iv) the nicotine or tar content of the product line;
    - (v) the country of origin of the product line;
    - (vi) a bar code or similar identification code used in the point of sale system of the business;
    - (vii) any other information reasonably required for the efficient conduct of the business;
  - (e) each price ticket must—
    - (i) in the case of a product line that is visibly displayed in a retail display—be attached to or adjacent to the retail display; or
    - (ii) in any other case—be adjacent to the retail display.
- (2i) If a provision of this regulation requires the text on a sign or price board, or on price tickets, in particular premises to be written in a *standardised font*, the text on each such sign, price board and price ticket in the premises must be written (whether handwritten or otherwise) in a single font.
- (2j) For the purposes of this regulation, premises will be taken to be the premises of a *specialist tobacconist* if—
  - (a) a person sells tobacco products by retail in the premises in the ordinary course of business; and
  - (b) during—



- (i) in the case of a business that has been trading for a period of more than 1 financial year—the immediately preceding financial year; or
- (ii) in any other case—the period for which the business has been trading,

the gross turnover of all tobacco products sold at the premises constitutes 80 per cent or more of the gross turnover of all products sold at the premises during the relevant period; and

- (c) in the case where the premises are situated within another shop—
  - (i) the premises are separated from the other shop by means of internal walls or doors; and
  - (ii) a person is not able to use the premises as a thoroughfare to gain entry to the other shop from outside the premises; and
  - (iii) the retail display in the premises is not able to be seen by persons in the other shop.

(2k) For the purposes of this regulation, a retail display will be taken not to be located on, nor form part of, a counter containing a point of sale, or from which customers are otherwise served, if the whole of the retail display is more than 1.7 metres above the floor (whether or not the retail display is connected to the counter in any way).

(2l) For the purposes of this regulation, a reference to a tobacco product includes a reference to a part of a tobacco product.

(3) In this regulation—

***floor area***, in relation to a prescribed shop, does not include the following areas of the shop:

- (a) any outdoor area (whether enclosed or otherwise);
- (b) any toilet or bathroom area;
- (c) any area to which members of the public do not have access and in which products are stored;

***packet*** includes a tin or other container;

***periodical*** means an issue (however described) of a newspaper, magazine, journal, newsletter, or other similar publication, issues of which are published at regular or irregular intervals;

***prescribed shop*** means premises where tobacco products are sold by retail, the floor area of which exceeds 200 square metres;

***prescribed tobacco notice*** means a sign containing only, in black text no larger than 40 mm high on a white background, the words—

- (a) tobacco products sold here; or
- (b) cigarette cartons sold here; or
- (c) cigarettes sold here;

**product line**, in relation to a tobacco product, means a particular retail line of the tobacco product, distinguishable from similar tobacco products by 1 or more of the following characteristics:

- (a) brand name, trade mark or other description of the tobacco product;
- (b) nicotine or tar content;
- (c) flavour;
- (d) in the case of a packet of cigarettes, cigars or cigarillos—the number or size of cigarettes, cigars or cigarillos in the packet;
- (e) in the case of cigarette or pipe tobacco—the weight of the packet in which the tobacco is sold;

**retail display** means an area in which tobacco products, or pictures of tobacco products, are displayed or visible to members of the public (whether the tobacco products are contained in a cabinet or on a shelf or otherwise), but does not include—

- (a) in the case of the premises of a specialist tobacconist—an area not exceeding 2 square metres in which cigarette cartons are stored (provided such area is located immediately behind a counter containing a point of sale and the cigarette cartons are not visible to a person standing more than 2 metres from the counter); or
- (b) in any case—
  - (i) an area in which tobacco products are temporarily visible during a genuine restocking of a retail display, the sale of the tobacco products or the carriage of the tobacco products into or out of the relevant premises; or
  - (ii) a vending machine;

**sign** includes every painted sign, mural or other sign, signboard, visual display screen, visual display image, visual display or projection device, other advertising device, lamp, globe, floodlight, banner, bunting, and streamer, including any background as well as any lettering and any advertising structure.

## **8—Requirement that certain signs be displayed in enclosed public places**

- (1) An occupier of an enclosed public place must display signs that contain—
  - (a) the phrase "no smoking" or "smoking prohibited" in letters that are at least 20 mm in height and the smoking prohibited symbol with a diameter of at least 70 millimetres; or
  - (b) other words or symbols that indicate clearly that smoking is not permitted,

in such numbers and in positions of such prominence that the signs are likely to be seen by persons at any public entrance to the place and within the place.

Maximum penalty: \$1 250.

Expiation fee: \$160.

- (5) A sign required to be displayed under this regulation must be displayed in such a way that a person (other than the occupier or an employee of the occupier) cannot readily remove or relocate the sign.

## Schedule 1—Sign under section 38A(5) of the Act (regulation 5(2))

### **SALE OF TOBACCO PRODUCTS**

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It is an offence to sell or supply cigarettes or other tobacco products to any person under the age of **18 years**.

Retailers may require **proof of age** for purchase of tobacco products.

### **PENALTIES**

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Penalties for retailers can be a fine of up to \$5,000 and possible disqualification from applying for or holding a tobacco merchant's licence for up to six months.



Section 38A Tobacco Products Regulation Act, 1997.  
Offences may be reported to the Department of Health.

## Legislative history

### Notes

- Please note—References in the legislation to other legislation or instruments or to titles of bodies or offices are not automatically updated as part of the program for the revision and publication of legislation and therefore may be obsolete.
- Earlier versions of these regulations (historical versions) are listed at the end of the legislative history.
- For further information relating to the Act and subordinate legislation made under the Act see the Index of South Australian Statutes or [www.legislation.sa.gov.au](http://www.legislation.sa.gov.au).

### Legislation revoked by principal regulations

The *Tobacco Products Regulations 2004* revoked the following:

*Tobacco Products Regulations 1997*

### Principal regulations and variations

New entries appear in bold.

Year	No	Reference	Commencement
2004	243	<i>Gazette 2.12.2004 p4452</i>	6.12.2004 except r 5—31.3.2005: r 2
2006	245	<i>Gazette 9.11.2006 p3956</i>	1.1.2007: r 2
2006	249	<i>Gazette 9.11.2006 p3970</i>	10.11.2006: r 2
2006	273	<i>Gazette 14.12.2006 p4393</i>	1.11.2007: r 2
2007	149	<i>Gazette 7.6.2007 p2541</i>	1.7.2007: r 2
<b>2007</b>	<b>298</b>	<b><i>Gazette 13.12.2007 p4818</i></b>	<b>13.12.2007: r 2</b>

### Provisions varied

New entries appear in bold.

Entries that relate to provisions that have been deleted appear in italics.

Provision	How varied	Commencement
<i>r 2</i>	<i>omitted under Legislation Revision and Publication Act 2002</i>	<i>10.11.2006</i>
r 4	varied by 245/2006 r 4	1.1.2007
	varied by 149/2007 r 4	1.7.2007
r 4A	inserted by 249/2006 r 4	10.11.2006
r 6		
r 6(2)	varied by 273/2006 r 4(1), (2)	1.11.2007
r 6(2a)—(2e)	inserted by 273/2006 r 4(3)	1.11.2007
<b>r 6(2ea)</b>	<b>inserted by 298/2007 r 4(1)</b>	<b>13.12.2007</b>
r 6(2f)—(2l)	inserted by 273/2006 r 4(3)	1.11.2007
r 6(3)		

<b>floor area</b>	<b>inserted by 298/2007 r 4(2)</b>	<b>13.12.2007</b>
packet	inserted by 273/2006 r 4(4)	1.11.2007
prescribed shop	inserted by 273/2006 r 4(5)	1.11.2007
	<b>varied by 298/2007 r 4(3)</b>	<b>13.12.2007</b>
product line	inserted by 273/2006 r 4(6)	1.11.2007
retail display	inserted by 273/2006 r 4(6)	1.11.2007
sign	deleted by 273/2006 r 4(4)	1.11.2007
	inserted by 273/2006 r 4(6)	1.11.2007
<i>r 7</i>	<i>deleted by 298/2007 r 5</i>	<i>13.12.2007</i>
<b>r 8</b>		
<b>r 8(1)</b>	<b>varied by 298/2007 r 6(1), (2)</b>	<b>13.12.2007</b>
<i>r 8(2)—(4)</i>	<i>deleted by 298/2007 r 6(3)</i>	<i>13.12.2007</i>
<b>r 8(5)</b>	<b>varied by 298/2007 r 6(4)</b>	<b>13.12.2007</b>
<i>r 8(6)</i>	<i>deleted by 298/2007 r 6(5)</i>	<i>13.12.2007</i>
<i>Sch 2</i>	<i>deleted by 298/2007 r 7</i>	<i>13.12.2007</i>
<i>Sch 3</i>	<i>omitted under Legislation Revision and Publication Act 2002</i>	<i>10.11.2006</i>

## Historical versions

10.11.2006  
1.1.2007  
1.7.2007  
1.11.2007