

South Australia

Tobacco Products Regulations 2004

under the *Tobacco Products Regulation Act 1997*

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Legislative history

1—Short title

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

3—Interpretation

- (1) In these regulations, unless the contrary intention appears—

Act means the *Tobacco Products Regulation Act 1997*;

capsule cigarette means a cigarette that contains a capsule designed to release flavour into the cigarette;

fruit or confectionary flavoured cigarette means a cigarette—

- (a) that possesses, or the smoke of which possesses, a distinctive fruity, sweet or confectionary-like character; and
- (b) that is advertised in a way that might encourage young people to smoke,

but does not include a cigarette the flavouring of which is primarily of a menthol character;

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;

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.
- (2) For the purposes of these regulations, a reference to a tobacco product includes a reference to a part of a tobacco product.
- (3) For the purposes of these regulations, a requirement that the text on a sign, price board or price ticket in particular premises be a **standardised font** means that the text on each such sign, price board or price ticket in the premises must be written (whether handwritten or otherwise) in a single font.
- (4) 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% 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,

and a reference to a specialist tobacconist has a corresponding meaning.

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 \$271.

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".

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.

9—Display of signs

- (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 1 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 1 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, a person is permitted to display not more than 1 prescribed tobacco notice inside premises where tobacco products are sold by retail.
- (3) In this regulation—

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

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

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.

10—Prescribed actions—general

- (1) 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) the sale or delivery of a product containing an advertisement—
 - (i) of a kind referred to in the preceding paragraphs; or
 - (ii) 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 advertisement of a tobacco product consisting of, or reasonably incidental to, the display, at the request of a customer, of the tobacco product to the customer inside premises where tobacco products are sold by retail;
 - (e) the advertisement of a tobacco product that is reasonably incidental to—
 - (i) the sale or delivery of a tobacco product;
 - (ii) the genuine restocking of an area in which the tobacco products are stored in accordance with the Act pending their sale;
 - (f) 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 millimetres high on a white background, the words "cartons only sold here";
 - (g) 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;
 - (h) 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.
- (2) For the purposes of section 40(3)(c) of the Act, the advertisement of tobacco products in premises where tobacco products are sold by retail consisting of a single price board is prescribed if—
- (a) the total surface area of the board (including, in the case of a sandwich board, the combined surface area of both sides) does not exceed—
 - (i) if the price board is in the premises of a specialist tobacconist—1 square metre; or
 - (ii) in any other case—0.5 square metres; and

- (b) the board consists of black text on a completely white background; and
 - (c) the text on the board is a standardised font not exceeding 20 millimetres in height; and
 - (d) the information on the board does not relate to—
 - (i) fruit or confectionary flavoured cigarettes; or
 - (ii) capsule cigarettes; and
 - (e) the information on the board is 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.
- (3) For the purposes of section 40(3)(c) of the Act, the advertisement of tobacco products in premises where tobacco products are sold by retail consisting of price tickets relating to particular product lines is prescribed if—
- (a) all price tickets are of an approximately equal size (but in any case not exceeding 80 millimetres x 40 millimetres);
 - (b) each price ticket consists of black text on a completely white background;
 - (c) the text on each price ticket is a standardised font not exceeding 15 millimetres in height;
 - (d) the price ticket does not relate to—
 - (i) fruit or confectionary flavoured cigarettes; or
 - (ii) capsule cigarettes;
 - (e) the information on each price ticket is 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.
- (4) In any proceedings for an offence against section 40 of the Act in which the defendant claims that the advertisement constituting the alleged offence was authorised by subregulation (1)(e), the onus will be on the defendant to prove that the restocking was genuine, and that the advertisement was reasonably incidental to such restocking.
- (5) Nothing in this regulation authorises an advertisement comprising a retail display or an advertisement of a tobacco product in or on a vending machine.

12—Prescribed actions—vending machines

- (1) For the purposes of section 40(3)(c) of the Act, an advertisement of a tobacco product consisting of the display in accordance with this regulation of any combination of the following in or on a vending machine is prescribed:
 - (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.
- (2) An advertisement will only be taken to be in accordance with this regulation if it complies with the following provisions:
 - (a) if the information referred to in subregulation (1) is displayed on tickets—
 - (i) all tickets must be of an approximately equal size (but in any case not exceeding 80 millimetres x 40 millimetres); 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;
 - (b) the advertisement must not be an advertisement for, or in relation to—
 - (i) fruit or confectionary flavoured cigarettes; or
 - (ii) capsule cigarettes;
 - (c) 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;
 - (d) the number of product lines advertised in relation to a particular vending machine must not exceed 40;
 - (e) there must be no more than 1 ticket in respect of a particular product line displayed in or on the vending machine;
 - (f) there must be no internal lighting in the vending machine;

- (g) 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 or a ticket displayed in or on the vending machine.

13—Expiry of certain provisions

The following provisions of these regulations will expire on 31 December 2014:

- (a) regulation 10(2)(f);
- (b) regulation 10(3)(f);
- (c) regulation 10(6);
- (d) regulation 11.

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

SALE OF TOBACCO PRODUCTS

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

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.

Schedule 2—Transitional provision

1—References in documents

- (1) A reference in a document to a provision of these regulations (being a provision that was in force immediately before the commencement of the *Tobacco Products Variation Regulations 2011*) will, unless the contrary intention appears, be taken to be a reference to the provision of these regulations, as varied by the *Tobacco Products Variation Regulations 2011*, that has the same effect as that provision.

- (2) For the purposes of this clause, a reference to a document includes a reference to a licence under Part 2 of the Act.

Legislative history

Notes

- Variations of this version that are uncommenced are not incorporated into the text.
- 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.

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
2007	298	<i>Gazette 13.12.2007 p4818</i>	13.12.2007: r 2
2008	34	<i>Gazette 10.4.2008 p1298</i>	10.4.2008: r 2
2008	119	<i>Gazette 5.6.2008 p2100</i>	1.7.2008: r 2
2009	114	<i>Gazette 4.6.2009 p2553</i>	1.7.2009: r 2
2010	73	<i>Gazette 10.6.2010 p2742</i>	1.7.2010: r 2
2011	16	<i>Gazette 3.3.2011 p606 as varied by 21/2011</i>	1.1.2012: r 2
2011	21	<i>Gazette 31.3.2011 p939</i>	31.3.2011: r 2
2011	56	<i>Gazette 9.6.2011 p2059</i>	1.7.2011: r 2
2012	63	<i>Gazette 31.5.2012 p2294</i>	1.7.2012: r 2
2012	239	<i>Gazette 22.11.2012 p5181</i>	22.3.2013: r 2
2013	151	<i>Gazette 6.6.2013 p2416</i>	1.7.2013: r 2
2014	94	<i>Gazette 19.6.2014 p2544</i>	1.7.2014: r 2
2015	113	<i>Gazette 18.6.2015 p2689</i>	1.7.2015: r 2
2016	165	<i>Gazette 23.6.2016 p2468</i>	1.7.2016: r 2
2017	100	<i>Gazette 22.6.2017 p2256</i>	1.7.2017: r 2

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 3		
r 3(1)	r 3 redesignated as r 3(1) by 16/2011 r 4(2)	1.1.2012
capsule cigarette	inserted by 239/2012 r 4	22.3.2013
fruit or confectionary flavoured cigarette	inserted by 16/2011 r 4(1)	1.1.2012
packet	inserted by 16/2011 r 4(1)	1.1.2012
periodical	inserted by 16/2011 r 4(1)	1.1.2012
product line	inserted by 16/2011 r 4(1)	1.1.2012
r 3(2)—(4)	inserted by 16/2011 r 4(2)	1.1.2012
r 4	varied by 245/2006 r 4	1.1.2007
	varied by 149/2007 r 4	1.7.2007
	varied by 119/2008 r 4	1.7.2008
	varied by 114/2009 r 4	1.7.2009
	varied by 73/2010 r 4	1.7.2010
	varied by 56/2011 r 4	1.7.2011
	varied by 63/2012 r 4	1.7.2012
	varied by 151/2013 r 4	1.7.2013
	varied by 94/2014 r 4	1.7.2014
	varied by 113/2015 r 4	1.7.2015
	varied by 165/2016 r 4	1.7.2016
r 4A	inserted by 249/2006 r 4	10.11.2006
<i>r 6 before deletion by 16/2011</i>		
<i>r 6(2)</i>	<i>varied by 273/2006 r 4(1), (2)</i>	<i>1.11.2007</i>
<i>r 6(2a)</i>	<i>inserted by 273/2006 r 4(3)</i>	<i>1.11.2007</i>
	<i>varied by 34/2008 r 4(1)</i>	<i>10.4.2008</i>
<i>r 6(2b)</i>	<i>inserted by 273/2006 r 4(3)</i>	<i>1.11.2007</i>
<i>r 6(2c)</i>	<i>inserted by 273/2006 r 4(3)</i>	<i>1.11.2007</i>
	<i>varied by 34/2008 r 4(2)</i>	<i>10.4.2008</i>
<i>r 6(2d) and (2e)</i>	<i>inserted by 273/2006 r 4(3)</i>	<i>1.11.2007</i>
<i>r 6(2ea)</i>	<i>inserted by 298/2007 r 4(1)</i>	<i>13.12.2007</i>
<i>r 6(2f)</i>	<i>inserted by 273/2006 r 4(3)</i>	<i>1.11.2007</i>
	<i>varied by 34/2008 r 4(3)</i>	<i>10.4.2008</i>
<i>r 6(2g)</i>	<i>inserted by 273/2006 r 4(3)</i>	<i>1.11.2007</i>
	<i>varied by 34/2008 r 4(4)</i>	<i>10.4.2008</i>
<i>r 6(2h)</i>	<i>inserted by 273/2006 r 4(3)</i>	<i>1.11.2007</i>

Tobacco Products Regulations 2004—1.7.2016 to 30.6.2017

Legislative history

	<i>varied by 34/2008 r 4(5)</i>	10.4.2008
<i>r 6(2i)—(2l)</i>	<i>inserted by 273/2006 r 4(3)</i>	1.11.2007
<i>r 6(3)</i>		
<i>floor area</i>	<i>inserted by 298/2007 r 4(2)</i>	13.12.2007
<i>fruit or confectionary flavoured cigarette</i>	<i>inserted by 34/2008 r 4(6)</i>	10.4.2008
<i>packet</i>	<i>inserted by 273/2006 r 4(4)</i>	1.11.2007
<i>prescribed shop</i>	<i>inserted by 273/2006 r 4(5)</i>	1.11.2007
	<i>varied by 298/2007 r 4(3)</i>	13.12.2007
<i>product line</i>	<i>inserted by 273/2006 r 4(6)</i>	1.11.2007
<i>retail display</i>	<i>inserted by 273/2006 r 4(6)</i>	1.11.2007
<i>sign</i>	<i>deleted by 273/2006 r 4(4)</i>	1.11.2007
	<i>inserted by 273/2006 r 4(6)</i>	1.11.2007
<i>r 6</i>	<i>deleted by 16/2011 r 5</i>	1.1.2012
<i>r 7</i>	<i>deleted by 298/2007 r 5</i>	13.12.2007
<i>r 8</i>		
<i>r 8(1)</i>	<i>varied by 298/2007 r 6(1), (2)</i>	13.12.2007
<i>r 8(2)—(4)</i>	<i>deleted by 298/2007 r 6(3)</i>	13.12.2007
<i>r 8(5)</i>	<i>varied by 298/2007 r 6(4)</i>	13.12.2007
<i>r 8(6)</i>	<i>deleted by 298/2007 r 6(5)</i>	13.12.2007
<i>r 9</i>	<i>inserted by 16/2011 r 6</i>	1.1.2012
<i>r 10</i>	<i>inserted by 16/2011 r 6</i>	1.1.2012
<i>r 10(2)</i>	<i>varied by 239/2012 r 5(1)</i>	22.3.2013
	<i>(f) expired: r 13(a)—omitted under Legislation Revision and Publication Act 2002</i>	(31.12.2014)
<i>r 10(3)</i>	<i>varied by 239/2012 r 5(2)</i>	22.3.2013
	<i>(f) expired: r 13(b)—omitted under Legislation Revision and Publication Act 2002</i>	(31.12.2014)
<i>r 10(6)</i>	<i>expired: r 13(c)—omitted under Legislation Revision and Publication Act 2002</i>	(31.12.2014)
<i>r 11 before expiry</i>	<i>inserted by 16/2011 r 6 as varied by 21/2011 r 4</i>	1.1.2012
<i>r 11(2)</i>	<i>varied by 239/2012 r 6</i>	22.3.2013
<i>r 11</i>	<i>expired—omitted under Legislation Revision and Publication Act 2002: r 13(d)</i>	(31.12.2014)
<i>r 12</i>	<i>inserted by 16/2011 r 6</i>	1.1.2012
<i>r 12(2)</i>	<i>varied by 239/2012 r 7</i>	22.3.2013
<i>r 13</i>	<i>inserted by 16/2011 r 6</i>	1.1.2012
<i>Sch 2</i>	<i>deleted by 298/2007 r 7</i>	13.12.2007
<i>Sch 2</i>	<i>inserted by 16/2011 r 7</i>	1.1.2012
<i>Sch 3</i>	<i>omitted under Legislation Revision and Publication Act 2002</i>	10.11.2006

Historical versions

10.11.2006
1.1.2007
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13.12.2007
10.4.2008
1.7.2008
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22.3.2013
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1.7.2015