

South Australia

# **Tobacco Products Variation Regulations 2011**

under the *Tobacco Products Regulation Act 1997*

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## **Part 1—Preliminary**

### **1—Short title**

These regulations may be cited as the *Tobacco Products Variation Regulations 2011*.

### **2—Commencement**

These regulations will come into operation on 1 January 2012.

### **3—Variation provisions**

In these regulations, a provision under a heading referring to the variation of specified regulations varies the regulations so specified.

## Part 2—Variation of *Tobacco Products Regulations 2004*

### 4—Variation of regulation 3—Interpretation

- (1) Regulation 3—after the definition of *Act* insert:

*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) Regulation 3—after its present contents (now to be designated as subregulation (1)) insert:

- (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.

## **5—Revocation of regulation 6**

Regulation 6—delete the regulation

## **6—Insertion of regulations 9 to 13**

After regulation 8 insert:

### **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 fruit or confectionary flavoured 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;
  - (f) if the price board is in premises of a prescribed specialist tobacconist—the information on the price board does not relate to any tobacco product advertised in a retail display in the premises.
- (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 fruit or confectionary flavoured 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;

- (f) if the price ticket is in premises of a prescribed specialist tobacconist containing a retail display that visibly displays the relevant product line—the price ticket is attached to or adjacent to the retail display.
- (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.
- (6) In this regulation—  
*prescribed specialist tobacconist* and *retail display* have the same meanings as in regulation 11.

### **11—Prescribed actions—retail displays**

- (1) For the purposes of section 40(3)(c) of the Act, the advertisement in accordance with this regulation of a tobacco product in a retail display in the premises of a prescribed specialist tobacconist is prescribed.
- (2) Subject to this regulation, an advertisement will only be taken to be in accordance with this regulation if it complies with the following provisions:
  - (a) there must be only 1 uninterrupted retail display in the premises;
  - (b) the area of the retail display does not exceed—
    - (i) if at least 1 square metre of the retail display consists of the display of cigars (whether in a separate retail display in accordance with subregulation (3) 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) 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) the retail display must not display fruit or confectionary flavoured cigarettes;
- (i) 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;
- (j) 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;

- (k) the retail display must not be visible to a person outside of the premises of the prescribed specialist tobacconist.
- (3) Despite subregulation (2)(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 that paragraph.
- (4) For the purposes of section 40(3)(c) of the Act, the advertisement of a tobacco product that is reasonably incidental to the genuine restocking of a retail display is prescribed.
- (5) For the purposes of this regulation, 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.
- (6) 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).
- (7) For the purposes of this regulation—
  - (a) the premises of a ***prescribed specialist tobacconist*** means premises at which a person was, immediately before the commencement of this subregulation, carrying on business as a specialist tobacconist pursuant to a licence under Part 2 of the Act, but does not include such premises if, at any time after the commencement of this subregulation—
    - (i) the person—
      - (A) ceases (whether temporarily or permanently) for any reason to be a specialist tobacconist in respect of the premises; or
      - (B) ceases for any reason to hold a current licence under Part 2 of the Act in respect of the premises; or
      - (C) transfers or assigns the licence under Part 2 of the Act in respect of the premises to another person; or

**Note—**

Once premises cease to be the premises of a prescribed specialist tobacconist they cannot regain that status.

- (ii) a new licence under Part 2 of the Act is issued to another person in respect of the premises (whether or not the same business was being carried on at the premises by another person immediately before the commencement of this subregulation pursuant to another licence),  
and a reference to a prescribed specialist tobacconist has a corresponding meaning; and
  - (b) a reference to the premises of a prescribed specialist tobacconist will be taken not to include a reference to premises at which the prescribed specialist tobacconist first carries on business as a specialist tobacconist after the commencement of this subregulation (whether pursuant to the same licence or otherwise).
- (8) 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 (4), the onus will be on the defendant to prove that the restocking was genuine, and that the advertisement was reasonably incidental to such restocking.
- (9) In this regulation—  
***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) 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) an area in which tobacco products are temporarily visible during a genuine restocking of a retail display; or
  - (c) 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, fruit or confectionary flavoured 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.

## **7—Insertion of Schedule 2**

After Schedule 1 insert:

### **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.

#### **Made by the Governor**

with the advice and consent of the Executive Council  
on 3 March 2011

No 16 of 2011

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