

Western Australia

Tobacco Products Control Act 2006

**Tobacco Products Control Regulations
2006**

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Tobacco Products Control Regulations 2006

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Tobacco Products Control Regulations 2006

Part 1 — Preliminary

1. Citation

These regulations are the *Tobacco Products Control Regulations 2006*.

2. Commencement

These regulations come into operation on 31 July 2006.

3. Interpretation

In these regulations —

representative in relation to a responsible person, means a person acting on behalf of the responsible person;

section means a section of the Act.

[Regulation 3 amended in Gazette 28 Feb 2007 p. 643.]

[Part 2 deleted in Gazette 28 Feb 2007 p. 644.]

Part 3 — Smoking in enclosed public places

Division 1 — Preliminary

7. Terms used in Part 3

In this Part —

adequate ventilation means natural or mechanical ventilation that complies with FP4.3, FP4.4 and FP4.5, F4.5, F4.6 and F4.7 of the Building Code of Australia 2006 issued by the Australian Building Codes Board as amended from time to time;

enclosed public place has a meaning affected by regulation 8;

occupier, in relation to an enclosed public place, means a person having the management or control, or otherwise being in charge, of that place;

roof includes a ceiling, and any material —

- (a) through which air cannot flow; and
- (b) that is used for the same purpose as a ceiling or roof;

wall means a wall or any other vertical structure, covering or device, whether fixed or moveable, but does not include a balustrade —

- (a) that is one metre or less in height; and
- (b) of which more than 50% of its total vertical surface is open.

8. Enclosed public places

- (1) A public place or a part of a public place that has the features mentioned in subregulations (2) and (3) is an enclosed public place for the purposes of this Part.
- (2) An enclosed public place is covered by a roof or a part of a roof.
- (3) An enclosed public place is configured so that the total vertical surface area of the solid material in the walls is more than

- 50% of the notional vertical surface area of the place as assessed in accordance with regulation 9.
- (4) The total vertical surface area of the solid material in the walls is to be assessed by —
- (a) multiplying the following —
 - (i) the length of each wall under the roof or the part of a roof plus the length of each wall and each section of a wall that is one metre or less beyond the perimeter of the roof or the part of a roof when measured horizontally from the perimeter of the roof or the part of the roof;
 - (ii) the actual height of the walls and wall sections mentioned in subparagraph (i);and
 - (b) deducting the total vertical surface area of the open parts of the walls or wall sections mentioned in paragraph (a)(i).
- (5) The total vertical surface area of solid material in a wall is to be assessed as if each window, door or vertical retractable covering in or adjacent to the wall —
- (a) is closed; and
 - (b) forms part of the wall.
- (6) A place is not an enclosed public place for the purposes of this Part if it is covered by a roof or a part of a roof and is bounded by only —
- (a) one straight wall; or
 - (b) 2 straight walls that are set in an angle of 90 degrees or more.
- (7) A part of a public place may be an enclosed public place even though —
- (a) it is part of a public place that is not an enclosed public place; or

- (b) it is part of another part of a public place that is not an enclosed public place.

9. Notional vertical surface area

- (1) The notional vertical surface area of a public place is to be assessed by multiplying the following —
 - (a) the length of the perimeter of the roof, or the part of a roof, covering the public place;
 - (b) the average height of the roof, or the part of a roof, covering the public place.
- (2) The notional vertical surface area of a part of a public place is to be assessed by multiplying the following —
 - (a) the length of the perimeter of the roof, or the part of a roof, covering the part of the public place;
 - (b) the average height of the roof, or the part of a roof, covering the part of the public place.

Division 2 — Offences

10. Prohibition on smoking in enclosed public places

- (1) A person must not smoke in an enclosed public place.
Penalty: a fine of \$2 000.
- (2) Subregulation (1) does not apply to the International Room at the premises at Burswood Island that are the subject of a casino gaming licence granted under the *Casino Control Act 1984*, if the International Room has adequate ventilation.
- (3) A person does not commit an offence under subregulation (1) if —
 - (a) the person is an actor, artist or other performer who smokes for the purposes of a performance; and
 - (b) the occupier of the enclosed public place consented to the person's smoking for the purposes of the performance; and

- (c) the consent was given before the performance commenced.

11. Offence by occupier

- (1) If a person commits an offence under regulation 10(1) the occupier of the enclosed public place commits an offence.
Penalty: a fine of \$2 000.
- (2) It is a defence to a prosecution for an offence under subregulation (1) that —
 - (a) neither the accused nor any employee or agent of the accused was aware, or could reasonably be expected to have been aware, that the offence was occurring; or
 - (b) as soon as the accused or an employee or agent of the accused became aware that the offence was occurring, the accused or an employee or agent of the accused —
 - (i) informed the person concerned that the person was committing an offence; and
 - (ii) requested the person to stop smoking in the enclosed public place and to extinguish, and properly dispose of, the tobacco product; and
 - (iii) (if the person failed to comply with a request under subparagraph (ii)) requested the person to leave the enclosed public place until the person finished smoking the tobacco product.

12. Display of no smoking signs in entrances to licensed premises

- (1) An occupier of an enclosed public place that comprises, or is part of, licensed premises must display, or cause to be displayed, at the place signs that comply with the requirements of subregulation (2) —
 - (a) in such numbers; and
 - (b) in such positions,

as would ensure that a sign is clearly visible to a person at a public entrance to the place.

Penalty: a fine of \$2 000.

- (2) A sign must contain —
- (a) the phrase “no smoking” or “smoking prohibited” in letters that are at least 20 mm in height; or
 - (b) the symbol, designated in Australian Standard 2899.1 — 1986 published by Standards Australia, to indicate that smoking is prohibited and having a diameter of at least 70 mm; or
 - (c) other words or symbols that indicate clearly that smoking is prohibited.
- (3) Subregulation (1) does not apply to an occupier of an enclosed public place that is a subject of a restaurant licence.
- (4) In subregulation (3) —
- restaurant licence**, in relation to a place, means —
- (a) a restaurant licence granted under the *Liquor Licensing Act 1988* in relation to that place; or
 - (b) a condition of any other kind of licence, order or permit under the *Liquor Licensing Act 1988* —
 - (i) to the effect that a provision of that Act relating to restaurant licences applies to that place; or
 - (ii) that otherwise has an effect in relation to that place that is similar to a provision of that Act relating to restaurant licences.

13. Duty to prevent smoke entering enclosed public places

The occupier of an enclosed public place must, unless the place has adequate ventilation, take reasonable steps to ensure that smoke from a tobacco product does not enter the place.

Penalty: a fine of \$2 000.

Division 3 — Investigators

14. Investigators to notify occupiers before taking action under Part 3

- (1) An investigator must take reasonable steps to notify the occupier of an enclosed public place of the investigator's presence before the investigator takes any action for purposes connected with the operation of this Part.
- (2) Subregulation (1) does not apply to action of a kind mentioned in section 85.

15. Directions by investigators

- (1) If an investigator has reason to believe that a person is committing an offence under regulation 10(1) the investigator may direct the person to stop smoking in the enclosed public place.
- (2) A direction under subregulation (1) may be given orally or in writing and if given orally must be reduced to writing as soon as is practicable.
- (3) A person must comply with a direction given to the person under subregulation (1).
Penalty: a fine of \$2 000.
- (4) In proceedings for an offence under subregulation (3) a document purporting to have been signed or certified by the CEO, an investigator or a police officer —
 - (a) to which is attached a copy of a direction given under subregulation (1); and
 - (b) stating that the direction —
 - (i) was given by the person referred to in the document; and
 - (ii) was in force at the time specified in the document,

is, in the absence of evidence to the contrary, evidence of the direction and of the facts stated in the document.

**Part 4 — Western Australian Health Promotion
Foundation and administration**

16. Funds of the Foundation

For the purposes of section 71(2) the amount of \$18 153 000.00 is prescribed for the financial year beginning on 1 July 2006.

Part 5 — Licensing

[Heading inserted in Gazette 28 Feb 2007 p. 644.]

Division 1 — Licensing procedures

[Heading inserted in Gazette 28 Feb 2007 p. 644.]

17. Application for licence — proof of individual's identity

For the purposes of section 37(1)(c)(i), evidence of the identity of an applicant who is not a body corporate is to be by way of —

- (a) the applicant's birth certificate; or
- (b) the applicant's passport if the passport is either current or has not been expired for more than 24 months; or
- (c) the applicant's motor driver's licence; or
- (d) a certificate of the applicant's Australian citizenship; or
- (e) a document establishing the discharge of the applicant from any of the Australian defence forces; or
- (f) a document establishing the applicant's appointment as a Justice of the Peace; or
- (g) a certificate of the applicant's identity issued by the department of the Commonwealth public service responsible for the administration of foreign affairs; or
- (h) a certificate of the applicant's descent issued by the department of the Commonwealth public service responsible for the administration of immigration or issued by a consulate within Australia.

[Regulation 17 inserted in Gazette 28 Feb 2007 p. 644-5.]

18. Application for licence — other evidence

- (1) For the purposes of section 37(1)(c)(ii), the following evidence is prescribed for an application for a licence to be held by a body corporate —

- (a) written confirmation from one of the directors of the body corporate that the applicant is authorised by the body corporate to make the application;
 - (b) an extract or other evidentiary document obtained under the Corporations Law as to the identity of each of the officers of the body corporate;
 - (c) a document mentioned in the *Business Names Act 1962* section 24 as to the registration of the business name (if any) applicable to the business to be conducted by the body corporate at the premises that are the subject of the application;
 - (d) a document mentioned in the *Business Names Act 1962* section 24 as to the person or persons in relation to whom the business name is registered.
- (2) For the purposes of section 37(1)(c)(ii), the following evidence is prescribed for an application for a licence to be held by an individual who proposes to conduct a business selling tobacco products by way of retail sale in partnership with one or more other persons —
- (a) written confirmation from one of the partners that the applicant is authorised by the partnership to make the application;
 - (b) a document mentioned in the *Business Names Act 1962* section 24 as to the registration of the business name (if any) applicable to the business to be conducted by the partnership at the premises that are the subject of the application;
 - (c) a document mentioned in the *Business Names Act 1962* section 24 as to the person or persons in relation to whom the business name is registered.

[Regulation 18 inserted in Gazette 28 Feb 2007 p. 645-6.]

19. Application for renewal of licence

- (1) For the purposes of section 38(1)(c)(i), the following evidence is prescribed for an application for the renewal of a licence held by a body corporate —
 - (a) a document mentioned in the *Business Names Act 1962* section 24 as to the registration of the business name (if any) applicable to the business conducted by the body corporate at the premises that are the subject of the licence if there has been any change in the business name since the issue or most recent renewal of the licence;
 - (b) a document mentioned in the *Business Names Act 1962* section 24 as to any change as to the person or persons in relation to whom the business name is registered since the issue or most recent renewal of the licence.
- (2) For the purposes of section 38(1)(c)(i), the following evidence is prescribed for an application for the renewal of a licence held by an individual who conducts a business selling tobacco products by way of retail sale in partnership with one or more other persons —
 - (a) a document mentioned in the *Business Names Act 1962* section 24 as to the registration of the business name (if any) applicable to the business conducted by the partnership at the premises that are the subject of the licence if there has been any change in the business name since the issue or most recent renewal of the licence;
 - (b) a document mentioned in the *Business Names Act 1962* section 24 as to any change as to the person or persons in relation to whom the business name is registered since the issue or most recent renewal of the licence.

[Regulation 19 inserted in Gazette 28 Feb 2007 p. 646-7.]

20. Conditions of general application

- (1) For the purposes of section 41(2), a condition that is to be taken to be attached to a retailer's licence in relation to premises where tobacco products are sold (other than by way of a vending machine) is that before the holder of the licence allows an employee or agent to sell a tobacco product or smoking implement at the premises, the employee or agent —
- (a) is instructed not to sell a tobacco product or a smoking implement to a person who has not reached 18 years of age; and
 - (b) is instructed not to sell a tobacco product or a smoking implement to a person unless the employee or agent —
 - (i) sees a document mentioned in section 15(1) that satisfies the employee or agent that the person who is to take possession of the tobacco product or smoking implement has reached 18 years of age; or
 - (ii) has no reason to believe that the person who is to take possession of the tobacco product or smoking implement has not reached 18 years of age;
- and
- (c) is informed of the provisions of the Act Part 2 Division 1; and
 - (d) is warned that the employee or agent might be charged with an offence if he or she breaches section 6, 8, 10 or 11, as is relevant to the functions of the employee or agent; and
 - (e) provides written acknowledgment that the employee or agent has received the instructions, information and warning mentioned in paragraphs (a), (b), (c) and (d).
- (2) For the purposes of section 41(2), a condition that is to be taken to be attached to a retailer's licence in relation to premises

where tobacco products are sold by way of a vending machine is that each representative of the responsible person —

- (a) is instructed to take reasonable steps to ensure that a person who has not reached 18 years of age does not obtain a tobacco product from the vending machine; and
- (b) is instructed not to allow a person to obtain a tobacco product from a vending machine unless the representative —
 - (i) sees a document mentioned in section 15(1) that satisfies the representative that the person who is to obtain the tobacco product has reached 18 years of age; or
 - (ii) has no reason to believe that the person who is to obtain the tobacco product has not reached 18 years of age;

and

- (c) provides written acknowledgment that the representative has received the instructions mentioned in paragraphs (a) and (b).

[Regulation 20 inserted in Gazette 28 Feb 2007 p. 647-9.]

21. Application to amend licence

- (1) For the purposes of section 44(2)(c)(i), the following evidence is prescribed for an application for the amendment of a licence held by a body corporate —
 - (a) written confirmation from one of the directors of the body corporate that the applicant is authorised by the body corporate to make the application;
 - (b) a document mentioned in the *Business Names Act 1962* section 24 as to the registration of the business name (if any) applicable to the business conducted by the body corporate at the premises that are the subject of the application if there has been any change in the business

- name since the issue or most recent renewal of the licence;
- (c) a document mentioned in the *Business Names Act 1962* section 24 as to any change as to the person or persons in relation to whom the business name is registered since the issue or most recent renewal of the licence.
- (2) For the purposes of section 44(2)(c)(i), the following evidence is prescribed for an application for the amendment of a licence held by an individual who conducts a business selling tobacco products by way of retail sale in partnership with one or more other persons —
- (a) written confirmation from one of the partners that the applicant is authorised by the partnership to make the application;
- (b) a document mentioned in the *Business Names Act 1962* section 24 as to the registration of the business name (if any) applicable to the business conducted by the partnership at the premises that are the subject of the application if there has been any change in the business name since the issue or most recent renewal of the licence;
- (c) a document mentioned in the *Business Names Act 1962* section 24 as to any change as to the person or persons in relation to whom the business name is registered since the issue or most recent renewal of the licence.

[Regulation 21 inserted in Gazette 28 Feb 2007 p. 649-50.]

22. Register of licences

Particulars of the offences under the Act for which the holder of the licence has been convicted are prescribed for the purposes of section 45(1)(g).

[Regulation 22 inserted in Gazette 28 Feb 2007 p. 650.]

Division 2 — Further obligations of licence holders

[Heading inserted in Gazette 28 Feb 2007 p. 650.]

23. Licence details on invoices etc.

- (1) In the case of the holder of a retailer's licence or an indirect seller's licence, the name and address of the person who supplied the tobacco product if —
 - (a) the tobacco product was supplied from outside Western Australia; and
 - (b) the supplier was not a person to whom section 56(2) applies,

are prescribed for the purposes of section 56(1) and (3)(d).

- (2) The name and address of the person to whom the tobacco product was sold are prescribed for the purposes of section 56(2) and (3)(d).

[Regulation 23 inserted in Gazette 28 Feb 2007 p. 650-1.]

24. Records to be kept

The following records are prescribed for the purposes of section 58(1)(a) —

- (a) all records containing the particulars that are required to be recorded for the purposes of section 56(1) and (2);
- (b) all written acknowledgments mentioned in regulation 20(1)(e) and (2)(c).

[Regulation 24 inserted in Gazette 28 Feb 2007 p. 651.]

Division 3 — Fees

[Heading inserted in Gazette 28 Feb 2007 p. 651.]

25. Fees to be paid on application for issue of a licence

- (1) The application fee to be paid for the purposes of section 37(1)(c)(iii) is —

- (a) \$51.00 for a retailer's licence; and
 - (b) \$51.00 for an indirect seller's licence; and
 - (c) \$127.50 for a wholesaler's licence.
- (2) The licence fee to be paid for the purposes of section 37(1)(c)(iii) is —
- (a) \$153.00 for a retailer's licence; and
 - (b) \$153.00 for an indirect seller's licence; and
 - (c) \$383.00 for a wholesaler's licence.

*[Regulation 25 inserted in Gazette 28 Feb 2007 p. 651;
amended in Gazette 20 Aug 2010 p. 4069-70.]*

26. Fees to be paid on application for renewal of a licence

The licence fee to be paid for the purposes of section 38(1)(c)(ii) is —

- (a) \$173.50 for a retailer's licence; and
- (b) \$173.50 for an indirect seller's licence; and
- (c) \$434.00 for a wholesaler's licence.

*[Regulation 26 inserted in Gazette 28 Feb 2007 p. 652;
amended in Gazette 20 Aug 2010 p. 4069-70.]*

27. Fee to be paid on application for amendment of a licence

The application fee to be paid for the purposes of section 44(2)(c)(ii) is \$51.00.

*[Regulation 27 inserted in Gazette 28 Feb 2007 p. 652;
amended in Gazette 20 Aug 2010 p. 4069-70.]*

28. Fee to be paid for extract of registered particulars

The fee to be paid for the purposes of section 45(3) is \$25.50.

*[Regulation 28 inserted in Gazette 28 Feb 2007 p. 652;
amended in Gazette 20 Aug 2010 p. 4069-70.]*

29. Fee to be paid for duplicate licence

The fee to be paid for the purposes of section 54(2) is \$25.50.

*[Regulation 29 inserted in Gazette 28 Feb 2007 p. 652;
amended in Gazette 20 Aug 2010 p. 4069-70.]*

Part 6 — Sale and supply

[Heading inserted in Gazette 28 Feb 2007 p. 653.]

Division 1 — Terms used in this Part

[Heading inserted in Gazette 28 Feb 2007 p. 653.]

30. Terms used in this Part

In this Part —

approved Quitline logo means a logo —

- (a) modelled on any logo described as a “Quitline logo” in the document entitled “Quit brand guidelines” published by the Cancer Council of Victoria; and
- (b) containing a combination of words or numbers,

that is approved by the CEO for the purposes of these regulations;

cigar cabinet means a fully enclosed cabinet or box that —

- (a) has a transparent window; and
- (b) is used to display and store only cigars;

counter includes any facility across which customers are served;

dispensing unit means a device —

- (a) located at premises other than a duty free shop at an airport and —
 - (i) that stores and dispenses only tobacco products; and
 - (ii) that does not display tobacco products; and
 - (iii) that is operated by the holder of a retailer’s licence or the employee or agent of the holder of a retailer’s licence; and
 - (iv) that dispenses only single packets of cigarettes;

or

- (b) located at a duty free shop at an airport and —

- (i) that stores and dispenses only cartons of cigarettes; and
- (ii) that does not display tobacco products; and
- (iii) that may be operated by a customer;

humidified room means a room that —

- (a) has a humidification system or device to add or remove moisture from the room's atmosphere; and
- (b) is used to display and store only cigars; and
- (c) may be entered by potential purchasers of cigars;

price ticket includes the display of price in electronic form.

[Regulation 30 inserted in Gazette 28 Feb 2007 p. 653-4.]

Division 2 — Proof of age

[Heading inserted in Gazette 28 Feb 2007 p. 654.]

31. Proof of age

A proof of age card issued to a person under the *Liquor Licensing Regulations 1989* regulation 18B is prescribed for the purposes of section 15(1)(c).

[Regulation 31 inserted in Gazette 28 Feb 2007 p. 654.]

Division 3 — Labelling of tobacco products

[Heading inserted in Gazette 28 Feb 2007 p. 655.]

32. Labelling of tobacco products

For the purposes of section 19, a package is to be labelled in accordance with the provisions of the *Commonwealth Trade Practices (Consumer Product Information Standards) (Tobacco) Regulations 2004* that are in force from time to time and that apply to the package.

[Regulation 32 inserted in Gazette 28 Feb 2007 p. 655.]

Division 4 — Display of tobacco products

[Heading inserted in Gazette 28 Feb 2007 p. 655.]

33. Packages that cannot be displayed by retailer

The following kinds of package are prescribed for the purposes of section 22(3)(b) —

- (a) a package containing cigarettes that, when smoked, have a flavour or aroma of —
 - (i) any kind of fruit; or
 - (ii) mint (but not menthol), chocolate, vanilla, caramel, coconut or any other flavour (but not a spice) commonly used in the production of confectionery;
- (b) a package containing cigarettes that are, except for the paper around any filter tip, enclosed in paper of a colour that is not white, black or brown;
- (c) a package displaying a word or set of words, picture, sign, symbol or other visual image (including a colour or scheme of colours) or other visual message suggesting that the package contains cigarettes of a kind mentioned in paragraph (a) or (b);
- (d) a package that is designed or capable of being split into 2 or more portions each containing less than 20 cigarettes.

[Regulation 33 inserted in Gazette 28 Feb 2007 p. 655-6.]

34. Location of display of tobacco products or packages by retailer

- (1) For the purposes of section 22(4) the display of tobacco products or packages must be located at the place at which tobacco products are sold in the premises specified in the licence.

- (2) For the purposes of section 22(4) the display of tobacco products or packages for sale at premises other than cigars for sale at licensed premises must be located —
 - (a) behind (but not on) a counter across which customers are served on the seller's side; or
 - (b) directly above a counter across which customers are served so that the vertical distance between the bottom of the display and the floor level on the customer's side of the counter is at least 1.7 m.
- (3) For the purposes of section 22(4) the display of cigars for sale at licensed premises may be located on either side of a counter across which customers are served.
- (4) For the purposes of section 22(4) the display of cigars for sale at any premises —
 - (a) may be in one or 2 cigar cabinets; and
 - (b) may be in a humidified room.
- (5) For the purposes of section 22(4) the display of tobacco products or packages —
 - (a) must not be located within 1 m of a display of confectionery or products that are designed specifically for, or marketed specifically to, children; and
 - (b) if at particular premises it is not practicable to comply with paragraph (a), must be located at the greatest distance practicable from a display of confectionery or products that are designed specifically for, or marketed specifically to, children.

[Regulation 34 inserted in Gazette 28 Feb 2007 p. 656-7.]

35. Surface area of displays in cigar cabinets

For the purposes of assessing the surface area of tobacco products and packages in a cigar cabinet, the total surface area of the outside surface of the cigar cabinet's transparent window

is to be taken to be the total surface area of tobacco products and packages in the cabinet.

[Regulation 35 inserted in Gazette 28 Feb 2007 p. 657.]

36. Number of product lines that can be displayed by retailer

For the purposes of section 22(4) —

- (a) the display of tobacco products or packages must not show more than 150 different product lines unless —
 - (i) the holder of the retailer's licence is a 50% retailer or a specialist retailer; or
 - (ii) the display is in a cigar cabinet or a humidified room;

and

- (b) the display of a product line that is packed in one type of package must show only one package of the product line unless the display is in a cigar cabinet or a humidified room; and
- (c) the display of a product line that is packed in more than one type of package must show only one of each type of those packages unless the display is in a cigar cabinet or a humidified room.

[Regulation 36 inserted in Gazette 28 Feb 2007 p. 657-8.]

37. Display of tobacco products or packages by retailer — other requirements

- (1) For the purposes of section 22(4) the display of tobacco products or packages —

- (a) must show only tobacco products or packages of tobacco products that are available for sale, or that are usually available for sale, at the premises specified in the licence; and
- (b) must show only —
 - (i) unopened packages of tobacco products; or

- (ii) opened packages of single cigars that are intended to be sold separately; or
 - (iii) single cigars that are intended to be sold separately;
 - and
 - (c) must not be illuminated or otherwise presented so as to make the display stand out from, or appear brighter than, its surroundings; and
 - (d) must not illuminate or otherwise present a tobacco product, package or product line so as to make the tobacco product, package or product line stand out from, or appear brighter than, its surroundings or any other tobacco product, package or product line in the display.
- (2) For the purposes of section 22(4) the total surface area of tobacco products or packages facing customers must be contained within an area having a perimeter —
- (a) not exceeding 8 m in the case of a 50% retailer; and
 - (b) not exceeding 5 m in any case other than that of a specialist retailer.

[Regulation 37 inserted in Gazette 28 Feb 2007 p. 658-9.]

38. No display of tobacco products or packages on vending machines

For the purposes of section 22(4) tobacco products or packages must not be displayed in or on a vending machine.

[Regulation 38 inserted in Gazette 28 Feb 2007 p. 659.]

Division 5 — Information about availability, price of tobacco products

[Heading inserted in Gazette 28 Feb 2007 p. 659.]

39. Information signs about availability or prices of tobacco products sold by retailers — location

For the purposes of section 24(1) a sign giving information about the availability or price of tobacco products —

- (a) must be located at the place at which tobacco products are sold in the premises specified in the licence; and
- (b) must be located on the seller's side of a counter across which customers are served; and
- (c) must not be located on a counter across which customers are served.

[Regulation 39 inserted in Gazette 28 Feb 2007 p. 659.]

40. Information signs about availability or prices of tobacco products sold by retailers — contents

For the purposes of section 24(1) a sign giving information about the availability or price of tobacco products —

- (a) must not contain information other than that describing any of the following —
 - (i) the product lines available;
 - (ii) if a product line is packed in more than one type of package, the types of package available;
 - (iii) the country of origin of the available tobacco products;
 - (iv) the price or prices of the available tobacco products;

and

- (b) must not contain information appearing more than once about a particular product line but if a product line is packed in more than one type of package, may contain information that appears once about each type of those packages; and

- (c) must not contain information about the availability or price of a tobacco products in a package mentioned in regulation 33; and
- (d) must display at the top of the sign an approved Quitline logo that is at least 2 cm in height.

[Regulation 40 inserted in Gazette 28 Feb 2007 p. 659-60.]

41. Information signs about availability or prices of tobacco products sold by retailers — specifications

For the purposes of section 24(1) signage giving information about the availability or price of tobacco products —

- (a) must not exceed 1 m² in area (not including the area occupied by the Quitline logo required by regulation 40(d)); and
- (b) may comprise one or more signs as long as each sign is the same size and the total area of all the signs does not exceed 1 m; and
- (c) must have a white background with black lettering or a black background with white lettering and no other colouring; and
- (d) must not contain lettering or numbers that exceed 1 cm in height; and
- (e) must not contain lettering or numbers in different sizes or fonts; and
- (f) must not present any information about a product line so as to make it stand out from information about any other product line.

[Regulation 41 inserted in Gazette 28 Feb 2007 p. 660-1.]

42. Information signs about availability or prices of tobacco products sold by retailers — cigar cabinets

For the purposes of section 24(1), in addition to signage complying with regulation 41(a) and (b), there may be a sign

giving information about the availability or price of cigars in a cigar cabinet if —

- (a) the length of the sign's perimeter does not exceed 1 m (not including the perimeter of the Quitline logo required by subregulation (c)); and
- (b) the sign is affixed, or located immediately adjacent, to the cigar cabinet; and
- (c) there is displayed at the top of the sign an approved Quitline logo that is at least 1 cm in height; and
- (d) the sign complies with regulations 40(a) and (b) and 41(c), (d), (e) and (f).

[Regulation 42 inserted in Gazette 28 Feb 2007 p. 661.]

43. Price tickets for tobacco products sold by retailers — location and numbers

- (1) For the purposes of section 24(1) —
 - (a) there must not be more than one price ticket for each product line in a display of tobacco products; and
 - (b) the price ticket for a product line must be located immediately below the display of the product line; and
 - (c) if a facility is used to store but not display tobacco products, there must not be more than one price ticket displayed on the facility for each product line.
- (2) For the purposes of section 24(2) there must not be more than 4 price tickets for each product line available from a vending machine displayed in or on the vending machine.

[Regulation 43 inserted in Gazette 28 Feb 2007 p. 661-2.]

44. Price tickets for tobacco products sold by retailers — contents

For the purposes of section 24(1) and (2) a price ticket may display information about any of the following —

- (a) the brand name, nicotine content, tar content or flavour of a tobacco product;
- (b) the number of items in a package containing a tobacco product;
- (c) the country of origin of a tobacco product;
- (d) the price of a tobacco product.

[Regulation 44 inserted in Gazette 28 Feb 2007 p. 662.]

45. Price tickets for tobacco products sold by retailers — specifications

For the purposes of section 24(1) and (2) —

- (a) a price ticket must not exceed 35 cm² in area; and
 - (b) a price ticket must have —
 - (i) a white background with black lettering; or
 - (ii) a black background with white lettering; or
 - (iii) the same colour lettering and the same colour background as the other price tickets displayed in the premises unless the price ticket is in electronic form on a vending machine;
- and
- (c) all price tickets for tobacco products at the premises must have the same colour lettering and the same colour background; and
 - (d) a price ticket must not contain a fluorescent colour unless the price ticket is in electronic form on a vending machine; and
 - (e) a price ticket must not contain lettering or numbers for the product line information exceeding 8 mm in height; and
 - (f) a price ticket must not contain lettering or numbers for the product line information of a height exceeding that of the lettering or numbers for the price; and

- (g) the lettering and numbers for the product line information must be of the same height on all price tickets on vending machines at the premises;
- (h) the lettering and numbers for the product line information must be of the same height on all price tickets for tobacco products for sale at the premises other than by way of a vending machine; and
- (i) the lettering and numbers for the price must be of the same height on all price tickets on vending machines at the premises; and
- (j) the lettering and numbers for the price must be of the same height on all price tickets for tobacco products for sale at the premises other than by way of a vending machine.

[Regulation 45 inserted in Gazette 28 Feb 2007 p. 662-4.]

46. Price lists for cigars sold by retailers

For the purposes of section 24(1) information about the availability or price of cigars in a cigar cabinet or humidified room may be displayed in the form of a price list if —

- (a) the price list is available only on the request of a customer; and
- (b) the price list is not available to be taken away by a customer; and
- (c) the price list does not exceed 210 mm x 297 mm; and
- (d) in the case of a price list that comprises more than one page, the pages are bound or fixed together so that they cannot be separated easily; and
- (e) there is displayed at the top of each page of the price list an approved Quitline logo that is at least 1 cm in height.

[Regulation 46 inserted in Gazette 28 Feb 2007 p. 664.]

47. Facsimiles of tobacco products for information about availability of tobacco products sold by retailers or from vending machine

For the purposes of section 24(1) and (2) information about the availability of a tobacco product may be displayed in the form of a facsimile of the tobacco product or its package if —

- (a) the facsimile is located —
 - (i) on a dispensing unit; or
 - (ii) on a price list mentioned in regulation 46; or
 - (iii) on a vending machine that does not display, other than in electronic form, information about a product line that is the subject of the facsimile;and
- (b) in the case of a facsimile on a dispensing unit, there is no other display of packages of cigarettes at the premises; and
- (c) in the case of premises other than a duty free shop at an airport, the facsimile is not of a carton; and
- (d) in the case of a facsimile of a package, the size of the facsimile is not greater than 50% of the actual size of the front face of the package; and
- (e) in the case of a facsimile of a cigar, the size of the facsimile is not greater than the actual size of the cigar; and
- (f) in the case of a facsimile of a package, it is a facsimile of the front face of the package that is labelled as required by section 19; and
- (g) no more than 4 facsimiles of a particular product line are displayed at the premises; and
- (h) no more than 75 facsimiles are displayed at the premises; and

- (i) the total surface area of all the facsimiles located on a single dispensing unit or vending machine, as is relevant to the case, is 1 m² or less.

[Regulation 47 inserted in Gazette 28 Feb 2007 p. 664-5.]

Division 6 — Warnings

[Heading inserted in Gazette 28 Feb 2007 p. 666.]

48. Warning signs about purchase of tobacco products etc. to underage persons — location

- (1) For the purposes of section 25(1)(d) a sign must be located —
 - (a) immediately adjacent to —
 - (i) the place at which tobacco products are sold in the premises specified in the licence; or
 - (ii) if there is no display of tobacco products, the place at which tobacco products are sold in the premises,in such a position as to be clearly visible to a customer when purchasing a tobacco product; and
 - (b) above the height of the counter across which customers are served.
- (2) For the purposes of section 25(2)(a) a sign on a vending machine must be in such a position as to be clearly visible to a customer when purchasing a tobacco product from the vending machine.

[Regulation 48 inserted in Gazette 28 Feb 2007 p. 666.]

49. Warning signs about purchase of tobacco products etc. to underage persons — content and specifications

- For the purposes of section 25(1)(d) and (2)(a) a sign —
- (a) must be at least 210 mm x 148 mm; and

- (b) must have the content, and be in the form and colouring, set out in Schedule 1; and
- (c) may display a reference to the State, the Department of Health, the Act, or more than one of those; and
- (d) must not display any information other than required under paragraph (b) or allowed under paragraph (c); and
- (e) may display any information required under paragraph (b) or allowed under paragraph (c) in a language other than English in addition to the display in the English language.

[Regulation 49 inserted in Gazette 28 Feb 2007 p. 666-7.]

50. Health warning signs — location

For the purposes of section 25(2)(b) a health warning sign on a vending machine must be in such a position as to be clearly visible to a customer when purchasing a tobacco product from the vending machine.

[Regulation 50 inserted in Gazette 28 Feb 2007 p. 667.]

51. Health warning signs — content and specifications

- (1) For the purposes of section 25(2)(b) and (3) in relation to tobacco products other than cigars in a cigar cabinet or humidified room a health warning sign —
 - (a) must be at least 297 mm x 210 mm or in the case of a vending machine that is too small to display a sign of that size, 210 x 148 mm; and
 - (b) must have the content, and be in the form and colouring, of one of the signs set out in Schedule 2.
- (2) For the purposes of section 25(2)(b) and (3) in relation to tobacco products in a cigar cabinet or humidified room a health warning sign —
 - (a) must be at least 210 mm x 148 mm or in the case of a cigar cabinet that is designed to be portable and has a

volume not exceeding 50 cm³, at least 105 mm x 74 mm;
and

- (b) must have the content, and be in the form and colouring, set out in Schedule 3.
- (3) For the purposes of section 25(2)(b) and (3) a health warning sign —
- (a) may display a reference to the State, the Department of Health, the Act, or more than one of those; and
 - (b) must not display any information other than required under subregulation (1)(b) or (2)(b), as is relevant to the case, or allowed under paragraph (a); and
 - (c) may display any information required under subregulation (1)(b) or (2)(b), as is relevant to the case, or allowed under paragraph (a) in a language other than English in addition to the display in the English language.

[Regulation 51 inserted in Gazette 28 Feb 2007 p. 667-8.]

Division 7 — Information and advice

[Heading inserted in Gazette 28 Feb 2007 p. 668.]

52. Retailers providing purchasers of tobacco products with approved guides

For the purposes of section 26(2)(a) the provision of an approved guide must be by way of placing copies of the approved guide —

- (a) on a counter across which customers are served at the place at which tobacco products are sold in the premises specified in the licence; and
- (b) in such a manner as to enable a purchaser of a tobacco product to easily take a copy of the approved guide without the assistance of the holder of the retailer's licence or the employee or agent of the holder of a retailer's licence.

[Regulation 52 inserted in Gazette 28 Feb 2007 p. 668.]

53. Retailers making approved guides available to purchasers of tobacco products

For the purposes of section 26(2)(b) the making available of an approved guide must be by way of displaying the approved guide at the place at which tobacco products are sold in the premises specified in the licence in such a manner as to enable a purchaser of a tobacco product to easily see the approved guide.

[Regulation 53 inserted in Gazette 28 Feb 2007 p. 669.]

54. Wholesalers providing retailers with approved guides

For the purposes of section 26(3) approved guides are to be provided —

- (a) to an approved holder of a retailer's licence; and
- (b) in an approved manner; and
- (c) at an approved time.

[Regulation 54 inserted in Gazette 28 Feb 2007 p. 669.]

Division 8 — Vending machines

[Heading inserted in Gazette 28 Feb 2007 p. 669.]

55. Number of vending machines

The number of vending machines prescribed for the purposes of section 27(2)(a) is 2.

[Regulation 55 inserted in Gazette 28 Feb 2007 p. 669.]

56. Location of vending machines

For the purposes of section 27(2)(c) a vending machine that can be operated without the assistance of a responsible person in relation to the premises or his or her representative is to be located on the premises so that at all times during which members of the public can obtain a tobacco product from the

vending machine, it is visible to the responsible person or a representative.

[Regulation 56 inserted in Gazette 28 Feb 2007 p. 669.]

Division 9 — Smokeless tobacco

[Heading inserted in Gazette 28 Feb 2007 p. 670.]

57. Smokeless tobacco

- (1) A tobacco product that comprises tobacco in a powdered form (*snuff*) is prescribed for the purposes of section 30(2).
- (2) The circumstances of the manufacture or sale of snuff that are prescribed for the purposes of section 30(2) are that the snuff is prepared, packed and clearly labelled to be used by way of inhalation through the nostrils.

[Regulation 57 inserted in Gazette 28 Feb 2007 p. 670.]

Part 7 — Miscellaneous

[Heading inserted in Gazette 28 Feb 2007 p. 671.]

58. Confidentiality — exceptions

(1) In this regulation —

Commonwealth agency means —

- (a) a department of the Commonwealth public service; or
- (b) an instrumentality or agency of the Crown in right of the Commonwealth.

(2) The following circumstances are prescribed for the purposes of section 123(1)(f) —

- (a) assisting a police officer in the performance of a function relating to the investigation and enforcement of an offence under a written law;
- (b) assisting a member of, or a person performing a function in or for —
 - (i) the Australian Federal Police; or
 - (ii) the Australian Customs Service; or
 - (iii) the Australian Quarantine and Inspection Service,

in the performance of a function relating to the investigation and enforcement of an offence under a Commonwealth law;

- (c) assisting a person employed or engaged by the Commonwealth or a Commonwealth agency in the performance of a function relating to the administration or enforcement of —
 - (i) a customs law as defined in the *Commonwealth Customs Administration Act 1985* section 3; or
 - (ii) a taxation law as defined in the *Commonwealth Taxation Administration Act 1933* section 2; or

(iii) an Excise Act as defined in the Commonwealth
Excise Act 1901 section 4(1),
as that law applies to a tobacco product or conduct in
relation to a tobacco product.

[Regulation 58 inserted in Gazette 28 Feb 2007 p. 671-2.]

Schedule 1 — Warning signs about purchase of tobacco products

[r. 49(b)]

[Heading inserted in Gazette 28 Feb 2007 p. 673.]

GOVERNMENT OF WESTERN AUSTRALIA Department of Health TOBACCO PRODUCTS CONTROL ACT 2006

IT IS ILLEGAL
to sell a tobacco product or a smoking
implement to anyone under 18
or
purchase on their behalf

MAXIMUM PENALTY
Individual \$10,000 - Body corporate \$40,000

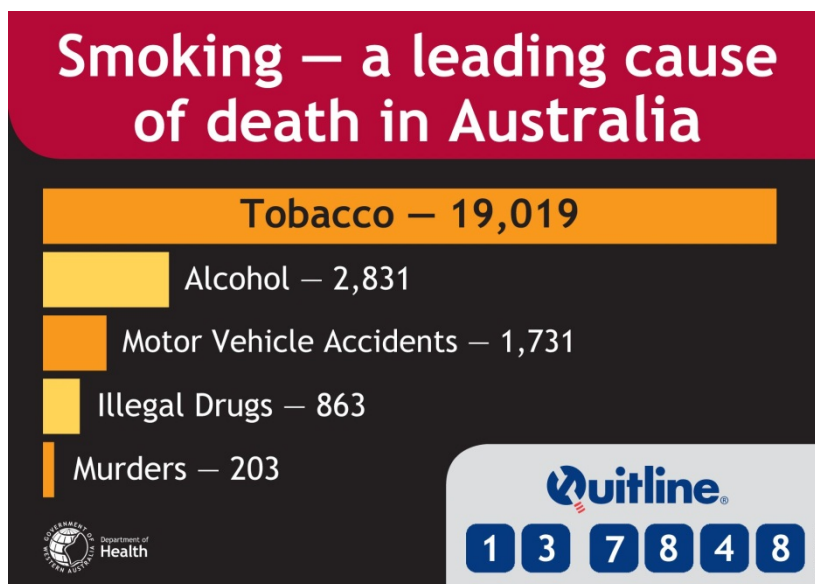
Proof of age may be required

[Schedule 1 inserted in Gazette 28 Feb 2007 p. 673.]

Schedule 2 — Health warning signs, general and vending machines

[r. 51(1)(b)]

[Heading inserted in Gazette 28 Feb 2007 p. 674.]



Tobacco Products Control Regulations 2006

Schedule 2 Health warning signs, general and vending machines

[Schedule 2 inserted in Gazette 28 Feb 2007 p. 674.]

**Schedule 3 — Health warning signs — cigar cabinets,
humidified rooms**

[r. 51(2)(b)]

[Heading inserted in Gazette 28 Feb 2007 p. 675.]



[Schedule 3 inserted in Gazette 28 Feb 2007 p. 675.]

Notes

¹ This is a compilation of the *Tobacco Products Control Regulations 2006* and includes the amendments made by the other written laws referred to in the following table.

Compilation table

Citation	Gazettal	Commencement
<i>Tobacco Products Control Regulations 2006</i>	25 Jul 2006 p. 2797-808	31 Jul 2006 (see r. 2)
<i>Tobacco Products Control Amendment Regulations 2007</i>	28 Feb 2007 p. 641-75	28 Feb 2007 (see r. 2)
<i>Tobacco Products Control Amendment Regulations 2010</i>	20 Aug 2010 p. 4069-70	r. 1 and 2: 20 Aug 2010 (see r. 2(a)); Regulations other than r. 1 and 2: 1 Sep 2010 (see r. 2(b))