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Western Australia

**Tobacco Products Control Amendment
Regulations (No. 2) 2010**

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Tobacco Products Control Act 2006

Tobacco Products Control Amendment Regulations (No. 2) 2010

Made by the Governor in Executive Council.

1. Citation

These regulations are the *Tobacco Products Control Amendment Regulations (No. 2) 2010*.

2. Commencement

These regulations come into operation as follows —

- (a) regulations 1 and 2 — on the day on which these regulations are published in the *Gazette*;
- (b) regulation 26 — on 22 September 2011;
- (c) the rest of the regulations — on 22 September 2010.

3. Regulations amended

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

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4. Regulation 3 amended

- (1) In regulation 3 in the definition of *section* delete “Act.” and insert:

Act;

- (2) In regulation 3 insert in alphabetical order:

liquor licensed premises means licensed premises as defined in the *Liquor Control Act 1988* section 3(1);

specialist retailer has the meaning given in section 23(1);

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 1 m or less in height; and
- (b) of which more than 50% of its total vertical surface is open.

5. Regulation 7 amended

- (1) In regulation 7 delete the definitions of:

occupier

wall

- (2) In regulation 7 in the definition of *roof* paragraph (b) delete “roof;” and insert:

roof.

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6. Regulation 8 amended

In regulation 8(4)(a)(i) delete “one metre” and insert:

1 m

7. Regulation 12 amended

(1) In regulation 12(1) before “licensed premises” insert:

liquor

(2) Delete regulation 12(4).

Note: The heading to amended regulation 12 is to read:

Display of no smoking signs in entrances to liquor licensed premises

8. Part 4A inserted

After Part 3 insert:

Part 4A — Smoking in outdoor public places**Division 1 — Outdoor eating areas****16A. Term used: non-smoking zone**

In this Division —

non-smoking zone means a part of an outdoor eating area that is not allocated under section 107B(4).

16B. Display of no smoking signs in non-smoking zones

(1) A responsible person in relation to liquor licensed premises who allocates a smoking zone for the

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premises must display, or cause to be displayed, at the non-smoking zones 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 non-smoking zone.

Penalty: a fine of \$1 000.

- (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) A responsible person in relation to liquor licensed premises who allocates a smoking zone for the premises must ensure that any adjoining non-smoking zone is separated from the smoking zones by a wall or by some other means as would ensure that the boundary between the zones is clearly identifiable to a person in either zone.

Penalty: a fine of \$1 000.

16C. Investigators to notify occupiers before taking action under Division 1

- (1) An investigator must take reasonable steps to notify the occupier of an outdoor eating area of the investigator’s presence before the investigator takes any action for

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the purposes connected with the operation of this Division, section 107B and regulation 16D as far as it relates to section 107B.

- (2) Subregulation (1) does not apply to action of a kind mentioned in section 85.

Division 2 — Miscellaneous**16D. Directions by investigators**

- (1) If an investigator has reason to believe that a person is committing an offence under section 107A, 107B, 107C or 107D, the investigator may direct the person to stop smoking in contravention of that section.
- (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.

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9. Regulation 20 amended

- (1) In regulation 20(1):
 - (a) in paragraph (d) delete “agent; and” and insert:

agent.
 - (b) delete paragraph (e).
- (2) In regulation 20(2):
 - (a) in paragraph (b)(ii) delete “age;” and insert:

age.
 - (b) after paragraph (b) delete “and”;
 - (c) delete paragraph (c).

10. Regulation 24 replaced

Delete regulation 24 and insert:

24. Records to be kept

All records containing the particulars that are required to be recorded for the purposes of section 56(1) and (2) are prescribed for the purposes of section 58(1)(a).

11. Regulation 30 amended

- (1) In regulation 30 delete the definition of *cigar cabinet*.
- (2) In regulation 30 insert in alphabetical order:

cigar cabinet means a fully enclosed cabinet or box that is used to store only cigars;

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retailer means the holder of a retailer's licence;

retail premises, in relation to a retailer's licence, means premises specified in the licence as premises at which tobacco products and smoking implements are sold;

sales place means, in relation to retail premises, means the place on the premises from which tobacco products and smoking implements are sold.

- (3) In regulation 30 in the definition of ***dispensing unit*** paragraph (a)(iii) delete "the holder of a retailer's licence or the employee or agent of the holder of a retailer's licence; and" and insert:

a retailer or an agent or employee of the retailer; and

- (4) In regulation 30 in the definition of ***price ticket*** delete "form." and insert:

form;

12. Part 6 Division 4 heading replaced

Delete the heading to Part 6 Division 4 and insert:

**Division 4 — Location and display of tobacco products
and smoking implements**

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13. Regulation 33 amended

- (1) In regulation 33 delete “The following kinds of package are prescribed for the purposes of section 22(3)(b) —” and insert:

A specialist retailer must not display, or authorise or allow to be displayed, any of the following kinds of package —

- (2) At the end of regulation 33 insert:

Penalty: a fine of \$2 000.

Note: The heading to amended regulation 33 is to read:

Packages that cannot be displayed by specialist retailer

14. Regulation 34 replaced

Delete regulation 34 and insert:

34. Location of tobacco products or smoking implements on retail premises

- (1) A retailer must ensure that tobacco products and smoking implements are located —
- (a) on premises specified in the retailer’s licence; and
 - (b) at a place, if any, on premises specified in the retailer’s licence.

Penalty: a fine of \$2 000.

- (2) A retailer must ensure that tobacco products and smoking implements are not sold from more than one place on the retail premises.

Penalty: a fine of \$2 000.

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- (3) A retailer, except a specialist retailer or a retailer operating from liquor licensed premises, must ensure that —
- (a) tobacco products, other than cigars, and smoking implements kept at the sales place on the premises are located —
 - (i) behind (but not on) a counter across which customers are served on the seller's side; or
 - (ii) directly above a counter across which customers are served so that the vertical distance between the bottom of the storage facility and the floor level on the customer's side of the counter is at least 1.7 m;
- and
- (b) cigars kept at the sales place on the premises are kept in one or 2 cigar cabinets located in accordance with paragraph (a).

Penalty: a fine of \$2 000.

- (4) A retailer operating from liquor licensed premises, must ensure that —
- (a) tobacco products, other than cigars, and smoking implements kept at the sales place on the premises are located —
 - (i) behind (but not on) a counter across which customers are served on the seller's side; or
 - (ii) directly above a counter across which customers are served so that the vertical distance between the bottom of the storage facility and the floor level on the

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customer's side of the counter is at least 1.7 m;

and

- (b) cigars kept at the sales place on the premises are located in accordance with paragraph (a) or in one or 2 cigar cabinets on either side of a counter across which customers are served.

Penalty: a fine of \$2 000.

- (5) A retailer must ensure that tobacco products and smoking implements kept on the retail premises —
 - (a) are not located within 1 m of confectionery or products that are designed specifically for, or marketed specifically to, children; or
 - (b) if at particular premises it is not practicable to comply with paragraph (a), are located at the greatest distance practicable from confectionery or products that are designed specifically for, or marketed specifically to, children.

Penalty: a fine of \$2 000.

15. Regulation 35 amended

In regulation 35 delete “cabinet,” and insert:

cabinet under section 23(4)(b),

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r. 16

16. Regulations 36, 37 and 38 replaced

Delete regulations 36, 37 and 38 and insert:

36. Type of tobacco products on retail premises and manner of storage

- (1) A retailer must ensure that only tobacco products or smoking implements that are available for sale, or that are usually available for sale, are kept on the retail premises.

Penalty: a fine of \$2 000.

- (2) A retailer must ensure that tobacco products kept on the retail premises comprise only one or more of the following —
- (a) unopened packages of tobacco products;
 - (b) opened packages of single cigars that are intended to be sold separately;
 - (c) single cigars that are intended to be sold separately.

Penalty: a fine of \$2 000.

- (3) A retailer, except a specialist retailer, must ensure that tobacco products are stored on the retail premises in such a way that the tobacco products visible at the time of sale —
- (a) comprise no more than 150 product lines; and
 - (b) occupy no more than 1 m² in area.

Penalty: a fine of \$2 000.

- (4) A retailer, except a specialist retailer, must ensure that tobacco products comprising a product line that is packed in one type of package are stored on the retail

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premises in such a way that only one stored package is visible at the time of sale.

Penalty: a fine of \$2 000.

- (5) A retailer, except a specialist retailer, must ensure that tobacco products comprising a product line that is packed in more than one type of package are stored on the retail premises in such a way that only one of each type of those stored packages is visible at the time of sale.

Penalty: a fine of \$2 000.

37. Display of tobacco products, smoking implements or product lines by specialist retailer

A specialist retailer must ensure that any display of tobacco products or smoking implements —

- (a) is not illuminated or otherwise presented so as to make the display stand out from, or appear brighter than, its surroundings; and
- (b) does not illuminate or otherwise present a tobacco product, smoking implement or product line so as to make the tobacco product, implement or product line stand out from, or appear brighter than, its surroundings or any other tobacco product, implement or product line in the display.

Penalty: a fine of \$2 000.

17. Part 6 Division 5 heading amended

In the heading to Part 6 Division 5 after “**products**” insert:

or smoking implements

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r. 18**18. Regulation 39 amended**

In regulation 39:

- (a) delete “products —” and insert:

products or smoking implements —

- (b) in paragraph (a) after “products” insert:

or smoking implements

Note: The heading to amended regulation 39 is to read:

**Information signs about availability or prices of tobacco products
or smoking implements sold by retailers — location****19. Regulation 40 amended**

- (1) At the beginning of regulation 40 insert:

- (1) For the purposes of section 24(1), a sign giving information about the availability or price of tobacco products or smoking implements must comply with either subregulation (2) or subregulation (3).

- (2) In regulation 40:

- (a) delete “For the purposes of section 24(1) a sign giving information about the availability or price of tobacco products —” and insert:

- (2) The sign —

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- (b) in paragraph (a) after “information” insert:

relating to the availability or price
 - (c) in paragraph (a)(iii) and (iv) delete “products;” (each occurrence) and insert:

products or smoking implements;
- (3) At the end of regulation 40 insert:
- (3) The sign must contain only the words —
 - (a) “Tobacco products sold here”; or
 - (b) “Tobacco products and smoking implements sold here”,as the case requires.
 - (4) For the purposes of section 24(1), a health warning sign referred to in regulation 51 must be displayed adjacent to a sign referred to in subregulation (2) or subregulation (3).

Note: The heading to amended regulation 40 is to read:

**Information signs about availability or prices of tobacco products
or smoking implements sold by retailers — contents**

20. Regulation 41 amended

In regulation 41:

- (a) delete “products —” and insert:

products or smoking implements —

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r. 21

- (b) delete paragraph (a) and insert:
- (a) must not exceed —
 - (i) in the case of a sign referred to in regulation 40(2) — 1 m² in area (not including the area occupied by the Quitline logo required by regulation 40(2)(d)); and
 - (ii) in the case of a sign referred to in regulation 40(3) — 297 mm x 210 mm in area;
- and
- (c) in paragraph (b) delete “1 m; and” and insert:
- 1 m²; and
- (d) in paragraph (c) delete “must” and insert:
- must, except for any warning referred to in regulation 40(4),

Note: The heading to amended regulation 41 is to read:

**Information signs about availability or prices of tobacco products
or smoking implements sold by retailers — specifications**

21. Regulation 43 amended

Delete regulation 43(2) and insert:

- (2) For the purposes of section 24(2) there must not be displayed on a vending machine or dispensing unit more than 4 price tickets for each product line available from the vending machine or dispensing unit.

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22. Regulation 46 amended

In regulation 46 delete “cigars in a cigar cabinet or humidified room” and insert:

tobacco products or smoking implements

Note: The heading to amended regulation 46 is to read:

Price lists for tobacco products or smoking implements sold by retailers

23. Regulation 47 replaced

Delete regulation 47 and insert:

47. Facsimiles of tobacco products displayed on a price list

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 on a price list mentioned in regulation 46; and
- (b) 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
- (c) 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
- (d) 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.

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24. Regulation 51 amended

- (1) In regulation 51(1):
 - (a) after “section 25(2)(b) and (3)” insert:

and regulation 40(4)
 - (b) in paragraph (b) delete “one of the signs” and insert:

a sign

- (2) In regulation 51(2) and (3) after “section 25(2)(b) and (3)” (each occurrence) insert:

and regulation 40(4)

25. Regulations 59, 60 and 61 inserted

At the end of Part 7 insert:

59. Restricted investigators

For the purposes of section 77 the following classes of persons are prescribed —

- (a) Environmental Health Officers as defined in the *Health Act 1911* section 3(1);
- (b) persons employed or engaged by a local government to ensure compliance with State or local government legislation;
- (c) wardens appointed under the *Road Traffic Act 1974* section 7;
- (d) officers designated or appointed under the *Taxi Act 1994* section 31;

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- (e) officers as defined in the *Transport Co-ordination Act 1966* section 4(1).

60. Prescribed offences and modified penalties

- (1) The offences specified in Schedule 4 are offences for which an infringement notice may be issued under the *Criminal Procedure Act 2004* Part 2.
- (2) The modified penalty specified opposite an offence in Schedule 4 is the modified penalty for that offence for the purposes of the *Criminal Procedure Act 2004* section 5(3).

61. Authorised officers and approved officers

- (1) The CEO may, in writing, appoint persons or classes of persons to be authorised officers or approved officers for the purposes of the *Criminal Procedure Act 2004* Part 2.
- (2) The CEO is to issue to each authorised officer a certificate, badge or identity card identifying the officer as a person authorised to issue infringement notices.

62. Forms

The forms set out in Schedule 5 are prescribed in relation to the matters specified in those forms.

26. Schedule 2 amended

In Schedule 2 delete the sign that is headed “Smoking — a leading cause of death in Australia”.

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27. Schedules 4 and 5 inserted

After Schedule 3 insert:

Schedule 4 — Prescribed offences and modified penalties

[r. 60]

<i>Offences under Tobacco Products Control Act 2006</i>	<i>Modified penalty</i>
	\$
s. 6	1 000
s. 7	1 000
s. 8(1)	1 000
s. 8(2)	1 000
s. 9	1 000
s. 10	1 000
s. 11	1 000
s. 16(1)	1 000
s. 17	1 000
s. 18	1 000
s. 19	1 000
s. 20(1)	1 000
s. 21	1 000
s. 22(1)	1 000
s. 24(1)	1 000
s. 24(2)	1 000
s. 25(1)	1 000
s. 25(2)	1 000
s. 25(3)	1 000

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<i>Offences under Tobacco Products Control Act 2006</i>	Modified penalty
	\$
s. 26(2)	1 000
s. 26(3)	1 000
s. 27(1)	1 000
s. 27(2)	1 000
s. 28(2)	1 000
s. 28(3)	1 000
s. 29	1 000
s. 30	1 000
s. 31(1)	1 000
s. 31(2)	1 000
s. 31(3)	1 000
s. 31(4)	1 000
s. 33(1)	1 000
s. 34	1 000
s. 52(1)	1 000
s. 53	1 000
s. 56(1)	1 000
s. 56(2)	1 000
s. 107A	200
s. 107B(1)	300
s. 107B(2)	300
s. 107C	200
s. 107D(2)	200

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<i>Offences under Tobacco Products Control Regulations 2006</i>	Modified penalty
	\$
r. 10(1)	300
r. 11(1)	300
r. 12(1)	300
r. 15(3)	300
r. 16B(1)	200
r. 16B(3)	200
r. 16D(3)	300
r. 33	300
r. 34(1)	300
r. 34(2)	300
r. 36(1)	300
r. 36(2)	300
r. 36(3)	300
r. 37	300

Schedule 5 — Forms

[r. 62]

Form 1 — Infringement notice

<i>Tobacco Products Control Act 2006</i>		Infringement notice no.
Infringement notice		
Alleged offender	Name: Family name	
	Given names	
	or	Company name

	ACN	
Address		
_____		Postcode

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Alleged offence	Description of offence _____
	<i>Tobacco Products Control Act 2006 s.</i> or <i>Tobacco Products Control Regulations 2006 r.</i>
	Date / /20 Time a.m./p.m.
	Modified penalty \$
Officer issuing notice	Name
	Signature
	Office
Date	Date of notice / /20
Notice to alleged offender	<p>It is alleged that you have committed the above offence. If you do not want to be prosecuted in court for the offence, pay the modified penalty within 28 days after the date of this notice.</p> <p>How to pay</p> <p>By post: Send a cheque or money order (payable to 'Approved Officer — <i>Tobacco Products Control Act 2006</i>') to:</p> <p style="padding-left: 40px;">Approved Officer — <i>Tobacco Products Control Act 2006</i> [<i>Relevant authority and address</i>]</p> <p>In person: Pay the cashier at: [<i>Relevant authority and address</i>]</p> <p>If you do not pay the modified penalty within 28 days, you may be prosecuted or enforcement action may be taken under the <i>Fines, Penalties and Infringement Notices Enforcement Act 1994</i>. Under that Act your driver's licence and/or vehicle licence may be suspended.</p> <p>If you need more time to pay the modified penalty, you can apply for an extension of time by writing to the Approved Officer at the above postal address.</p>

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	<p>If you want this matter to be dealt with by prosecution in court, sign here:</p> <p>_____</p> <p>and post this notice to the Approved Officer at the above postal address within 28 days after the date of this notice.</p>
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Form 2 — Withdrawal of infringement notice

<i>Tobacco Products Control Act 2006</i>		Withdrawal no.
Withdrawal of infringement notice		
Alleged offender	Name: Family name	
	Given names	
	or Company name	
	ACN	
Address		Postcode
Infringement notice	Infringement notice no.	
	Date of issue / /20	
Alleged offence	Description of offence	
	<i>Tobacco Products Control Act 2006 s.</i>	
	or <i>Tobacco Products Control Regulations 2006 r.</i>	
Date / /20		Time a.m./p.m.
Officer withdrawing notice	Name	
	Signature	
	Office	

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Date	Date of withdrawal / /20
<p data-bbox="352 595 523 725">Withdrawal of infringement notice</p> <p data-bbox="352 770 504 842">[*delete whichever is not applicable]</p>	<p data-bbox="560 595 1198 658">The above infringement notice issued against you has been withdrawn.</p> <p data-bbox="560 674 1190 736">If you have already paid the modified penalty for the alleged offence you are entitled to a refund.</p> <p data-bbox="560 748 895 779">* Your refund is enclosed.</p> <p data-bbox="560 792 592 824">or</p> <p data-bbox="560 835 1238 929">* If you have paid the modified penalty but a refund is not enclosed, to claim your refund sign this notice and post it to:</p> <p data-bbox="603 943 1177 1005">Approved Officer — <i>Tobacco Products Control Act 2006</i></p> <p data-bbox="603 1016 999 1048">[<i>Relevant authority and address</i>]</p> <p data-bbox="560 1059 1158 1090">Signature / /20</p>

By Command of the Governor,

PETER CONRAN, Clerk of the Executive Council.