

HE303

TOBACCO CONTROL ACT 1990**TOBACCO CONTROL (PACKAGE LABELS) REGULATIONS 1994**

Made by the Lieutenant-Governor and deputy of the Governor in Executive Council.

PART 1 — PRELIMINARY**Citation**

1. These regulations may be cited as the *Tobacco Control (Package Labels) Regulations 1994*.

Commencement

2. (1) Subject to this regulation, these regulations come into operation on the day on which they are published in the *Gazette*.
- (2) Parts 2, 3 and 4 come into operation on 1 April 1995.

PART 2 — GENERAL**Interpretation**

3. (1) In these regulations, unless the contrary intention appears —
 - “cigar” means a roll of cut tobacco for smoking, enclosed in tobacco leaf or the leaf of another plant;
 - “cigarette” means a roll of cut tobacco for smoking, enclosed in paper;
 - “corresponding explanatory message”, in relation to a warning message, means the explanatory message that appears in the same item in Schedule 1 as the warning message;
 - “explanatory message” means a message set out in Column 3 of Schedule 1;
 - “face”, in relation to a package of which the outer surface includes 2 or more flat areas that are bounded by edges of the package, means any of those flat areas;
 - “flip-top pack” means a package of the kind commonly called a flip-top pack or hinge-top pack;

"irregular package" means a package (other than a pouch) that has only one flat surface, or no flat surfaces;

"pouch" means a package that is —

- (a) made from flexible material; and
- (b) takes the form of a rectangular pocket with a flap that covers the opening;

"soft pack" means a package of the kind commonly called a soft pack or soft cup;

"warning message" means a message set out in Column 2 of Schedule 1.

(2) For the purposes of these regulations, unless the contrary intention appears, openings, gaps or edges that are created in a face of a package when the package is opened are to be disregarded.

(3) For the purposes of these regulations, unless the contrary intention appears, a surface that bears decorative ridges, embossing, bulges or other irregularities but is otherwise flat is taken to be flat.

(4) For the purposes of these regulations —

- (a) a soft pack is taken to be a solid that has all its faces rectangular and that has edges equal in length to the edges of the smallest rectangular solid inside which the pack will fit when it is not compressed; and
- (b) a face that has rounded corners but is otherwise square or rectangular is taken to be square or rectangular, as the case requires.

(5) For the purposes of these regulations, the surface area of an irregular package is the area that would be covered by the outer layer of the package if it were opened out and pressed flat.

(6) To avoid doubt, it is declared that a reference in these regulations to a cylindrical package includes a package that is, in one plane, elliptical, rather than circular, in cross-section.

(7) For the purposes of these regulations, a message that is printed on an adhesive label attached to a package in accordance with regulation 13 is taken to be printed on the package to which the label is attached.

Application

4. For the purposes of the Act a package containing a tobacco product is labelled in accordance with these regulations if it bears the messages required by these regulations in accordance with these regulations.

Regulations do not apply to cigars sold singly

5. These regulations do not apply to cigars sold singly.

Package must bear warning message and, in certain cases, explanatory message

6. Subject to this Part, a package must bear —

- (a) a warning message and the corresponding explanatory message; or
- (b) if permitted or required by another provision of these regulations —
 - (i) a warning message, the same warning message repeated and the corresponding explanatory message; or
 - (ii) a warning message and the same warning message repeated.

Messages on certain smaller packages

7. (1) If the largest face of a package (other than an irregular package) —
- (a) has an area of 40 square centimetres or less; and
 - (b) would, but for this subregulation, be required to bear an explanatory message,

then —

- (c) an explanatory message need not be printed on that face; and
- (d) both that face and the face on which the warning message is to be printed must bear the same warning message.

(2) An irregular package that has a total surface area of 145 square centimetres or less must bear a warning message printed on the package twice.

Format of warning message and explanatory message

8. A warning message or an explanatory message must be in the following format:

- (a) the text must be printed —
 - (i) within a black rectangular or square border of which the lines are no wider than an upper-case letter "I" in the type size used for the text of the message; and
 - (ii) on a white background within the border referred to in subparagraph (i);
- (b) the text must be printed in the type face known as Helvetica, in upper-case and lower-case letters as the text of the message is set out in Schedule 1, in type that is —
 - (i) clear and legible;
 - (ii) subject to paragraph (c), of the same height throughout the message;
 - (iii) black;
 - (iv) of normal weight; and
 - (v) of such a size that the text as nearly as possible fills the background on which it is printed;and
- (c) the words "Government Health Warning" must be in type of a point size not greater than 50% of the point size of the type used for the remainder of the message.

Position of warning message and explanatory message

9. (1) A warning message is to be printed —
- (a) on a package of a kind mentioned in Schedule 2 —
 - (i) on the face of the package specified in Schedule 2 for a package of that kind; and
 - (ii) so that the upper edge of the background is no further than 3 millimetres below the upper edge of that face;
- or

- (b) on an irregular package —
 - (i) in the case of an irregular package that has a total surface area less than 145 square centimetres — in 2 places as far apart as possible; or
 - (ii) in any other case — anywhere on the outside of the package.
- (2) An explanatory message is to be printed on a package (other than a pouch or an irregular package) —
 - (a) on the face of the package that is opposite to the face on which the warning message is to be printed; and
 - (b) so that the upper edge of the background is no further than 3 millimetres below the upper edge of that face.
- (3) In the case of a pouch, the explanatory message must be printed —
 - (a) if the flap is, in area, at least 33⅓% of the area of the face on which the warning message is to be printed — on the outside of the flap; or
 - (b) in any other case — on the face that is not covered or partly covered by the flap when the package is closed.
- (4) If an irregular package is required by these regulations to carry an explanatory message, the explanatory message must be printed on the outside of the package in a position as nearly as possible opposite to the warning message.

Area to be covered by warning message and explanatory message

10. (1) A warning message must cover —
- (a) in the case of a warning message printed on an irregular package — at least 15% of the total surface area of the package; or
 - (b) in any other case — at least 25% of the area of the face on which it is printed.
- (2) An explanatory message must cover —
- (a) in the case of an explanatory message printed on an irregular package — at least 20% of the total surface area of the package; or
 - (b) in any other case — at least 33⅓% of the area of the face on which it is printed.

Orientation of a message

11. The text of a warning message or an explanatory message must be oriented as follows:

- (a) if the face on which the message is to be printed has other text printed on it, and all, or the majority of, that other text is oriented in one direction — the text must be oriented in that direction; or
- (b) if paragraph (a) does not apply — the text may be oriented in any direction.

Messages not to be obscured etc.

12. (1) If a message that is required by these regulations to be printed on a package is likely to be obscured or obliterated by a wrapper on the package, the message must be printed on both the wrapper and the package.

(2) A message must not be likely to be obliterated, removed or rendered permanently unreadable when the package on which it is printed is opened in the normal way.

Use of adhesive labels

13. (1) A message that is required by these regulations to be printed on a package may be printed on an adhesive label that is affixed to the package.

(2) Subregulation (1) does not apply to a flip-top pack or a soft pack after 30 June 1996.

(3) An adhesive label referred to in subregulation (1) must —

- (a) comply with these regulations in all respects other than as specifically set out in this regulation;
- (b) be affixed to the face of the package on which the message that it bears is required to be printed, but may be affixed anywhere on that face; and
- (c) be fastened firmly to the package so as not to be easily removable.

(4) An adhesive label referred to in subregulation (1) may be affixed in any orientation.

Messages to appear in rotation

14. (1) Each warning message and (where required by these regulations) the corresponding explanatory message must be printed in rotation on packages so that, during the period of 12 months beginning on 1 January in each year, each message appears as nearly as possible on an equal number of packages of each kind of tobacco product.

(2) A tobacco product is of different kinds for the purposes of subregulation (1) if —

- (a) it is sold under different brand names; or
- (b) it is sold under one brand name but is distinguished in one or more of the following ways:
 - (i) containing or not containing menthol;
 - (ii) being otherwise differently flavoured;
 - (iii) having different contents of tar;
 - (iv) allegedly differing in "mildness";
 - (v) having or not having filter tips or cork tips;
 - (vi) being sold in packages containing different numbers of pieces;
 - (vii) being of different length or mass.

PART 3 — PACKAGES CONTAINING CIGARETTES

Application of Part

15. This Part applies to a package containing cigarettes.

Message to be printed on the side of a package of cigarettes

16. (1) For the purposes of this regulation, a reference to the sides of a package containing cigarettes is a reference —

- (a) in the case of a cylindrical package — to those parts of the curved surface of the package that, if the vertical centre-line of the largest brand-name on the curved surface of the package is taken to be 0°, extend —
 - (i) from 60° to 120°; and
 - (ii) from 240° to 300°;around the circumference of a flat face of the package;
- (b) in the case of a package that has 2 faces that are hexagonal or octagonal, and of which all the other faces are square or rectangular — to the square or rectangular faces of the package, other than the front and the back; and
- (c) in any other case — to the surfaces of the package, other than the back and the front, that are vertical when the package is held so that the axis of the cigarettes within it is vertical.

(2) For the purposes of subregulation (1) —

- (a) the front of a retail package (other than an irregular package) is that face of the package on which the warning message is required to be printed; and
- (b) the back of a retail package (other than an irregular package) is the face —
 - (i) on which the explanatory message is required to be printed; or
 - (ii) on which the explanatory message would, but for regulation 7(1), be required to be printed.

(3) The following message must be printed on a package of cigarettes —

“
The smoke from each cigarette contains, on average:
[xx] milligrams or less of tar — condensed smoke containing many chemicals, including some that cause cancer;
[yy] milligrams or less of nicotine — a poisonous and addictive drug;
[zz] milligrams or less of carbon monoxide — a deadly gas which reduces the ability of blood to carry oxygen.
”

(4) The message required by subregulation (3) —

- (a) in the case of a package other than an irregular package — must be printed —
 - (i) if both or all of the sides of the package are the same in area — on one side of the package;
 - (ii) if one side of the package is larger than the other or others — on the larger or largest side; or
 - (iii) if 2 or more sides of the package are larger than the other or others — on one of those larger sides;or
- (b) in the case of an irregular package — may be printed anywhere on the package.

(5) The message required by subregulation (3) must be printed —

- (a) in the type face known as Helvetica, in type that is —
 - (i) clear and legible;
 - (ii) black;
 - (iii) of normal weight; and
 - (iv) of such a size that the text as nearly as possible fills the background on which it is printed;
- (b) in upper and lower case, as the text of the message is set out in subregulation (3);
- (c) if the message is required to appear on the side of the package, oriented so that the lines of type making up the message are parallel to the longest edges of the face on which the message is printed; and
- (d) on a rectangular or square background of the kind set out in subregulation (6).

(6) The background referred to in paragraph (5) (d) —

- (a) must be white; and
- (b) must occupy —
 - (i) in the case of a package other than a flip-top pack or an irregular package — the whole of one side;
 - (ii) in the case of a flip-top pack — the whole of one side except the part of that side that forms part of the top;
 - (iii) in the case of an irregular package — at least 9% of the total surface area of the package.

(7) When the message required by subregulation (3) is printed on a package, “[xx]”, “[yy]” and “[zz]” are to be replaced by —

- (a) the average amount of tar, nicotine or carbon monoxide, respectively, produced by a cigarette of the kind contained in the package, when cigarettes of that kind are tested according to the testing methods specified in regulation 17; or
- (b) if, when cigarettes of that kind are tested according to those testing methods —
 - (i) the average amount of tar produced by a cigarette does not exceed 16 milligrams;
 - (ii) the average amount of nicotine produced by a cigarette does not exceed 1.5 milligrams; and
 - (iii) the average amount of carbon monoxide produced by a cigarette does not exceed 20 milligrams,

a figure worked out by taking from the column of Schedule 3 that relates respectively to tar, nicotine, or carbon monoxide the lowest figure that is greater than the average amount of tar, nicotine, or carbon monoxide, respectively, produced by a cigarette of that kind.

Testing methods

17. (1) The testing methods to be used for the purposes of regulation 16(7) to determine the average amount of tar, nicotine and carbon monoxide produced by a cigarette are the following standard methods published by the International Standards Organisation:

- (a) tar — ISO 4387 (Determination of total and nicotine-free dry particulate matter using a routine analytical smoking machine);

- (b) nicotine — ISO 10315 (Cigarettes — determination of nicotine in smoke condensates — gas chromatographic method);
- (c) carbon monoxide — ISO 8454 (Cigarettes — determination of carbon monoxide in the vapour phase of smoke (NDIR method)).

(2) The testing methods specified in subregulation (1) are to be used in accordance with the following standards published by the International Standards Organisation:

- (a) ISO 3308 (Routine analytical cigarette-smoking machine — definitions and standard conditions);
- (b) ISO 8243 (Cigarettes — sampling);
- (c) ISO 3402 (Tobacco and tobacco products — atmosphere for conditioning and testing).

PART 4 — PACKAGES CONTAINING CIGARS

Application of Part

18. This Part applies to a package containing cigars.

Packages of cigars must bear certain messages

19. A package containing cigars must bear —

- (a) a warning message, and the corresponding explanatory message, in accordance with Part 2;
- (b) a warning message, the warning message repeated, and the corresponding explanatory message, in accordance with regulation 20; or
- (c) a warning message, and the corresponding explanatory message, in accordance with regulation 21.

Messages on package with hinged lid

20. (1) A warning message and explanatory message may be printed on a package in accordance with this regulation if and only if the package has a hinged lid formed by one face of the package.

(2) A package containing cigars bears a warning message and the corresponding explanatory message in accordance with this regulation if —

- (a) the warning message is printed on both the outside of the lid and the base of the package;
- (b) each warning message occupies at least 25% of the area of the face on which it is printed;
- (c) the explanatory message is printed on the inside surface of the lid;
- (d) the explanatory message occupies at least 33% of the area of the inside surface of the lid;
- (e) the warning message and the explanatory message are otherwise in accordance with Part 2.

Messages on other packages of cigars

21. A package containing cigars bears a warning message and the corresponding explanatory message in accordance with this regulation if —

- (a) the warning message is printed on the face of the package that is specified in Schedule 2 for a package of that kind;

- (b) the corresponding explanatory message is printed on the face of the package that is opposite to the face on which the warning message is, under paragraph (a), to be printed;
- (c) the areas occupied by the warning message and the explanatory message are as set out in the item of Schedule 4 that applies to that package; and
- (d) the warning message and the explanatory message are otherwise in accordance with Part 2.

PART 5 — MISCELLANEOUS

Repeals

22. (1) The *Tobacco Control (Package Labels) Regulations 1993* are repealed.

(2) The *Tobacco (Warning Labels) Regulations 1987* are repealed on 1 April 1995.

(3) It is a defence to a charge under the *Tobacco (Warning Labels) Regulations 1987* alleged to have been committed on or after 1 January 1995 and before 1 April 1995 to prove that the labelling on the package of tobacco would comply with Parts 2, 3 and 4 of these regulations if they were then in operation.

SCHEDULE 1

[reg. 3]

WARNING MESSAGES AND EXPLANATORY MESSAGES

Col.1	Column 2	Column 3
Item No.	Warning message	Explanatory message
1	SMOKING CAUSES LUNG CANCER Government Health Warning	SMOKING CAUSES LUNG CANCER. Tobacco smoke contains many cancer-causing chemicals including tar. When you breathe the smoke in, these chemicals can damage the lungs, and can cause cancer. Lung cancer is the most common cancer caused by smoking. Lung cancer can grow and spread before it is noticed. It can kill rapidly. For more information, call 13 2130. Government Health Warning
2	SMOKING IS ADDICTIVE Government Health Warning	SMOKING IS ADDICTIVE. Nicotine, a drug in tobacco, makes smokers feel they need to smoke. The more you smoke, the more your body will depend on getting nicotine and you may find yourself hooked. It may be difficult to give up smoking once you are hooked on nicotine. For more information, call 13 2130. Government Health Warning

Col.1	Column 2	Column 3
Item No.	Warning message	Explanatory message
3	SMOKING KILLS Government Health Warning	SMOKING KILLS. In Australia, tobacco smoking causes more illness and early death than using any other drug. Tobacco smoking causes more than four times the number of deaths caused by car accidents. For more information call 13 2130. Government Health Warning
4	SMOKING CAUSES HEART DISEASE Government Health Warning	SMOKING CAUSES HEART DISEASE. Tobacco smoking is a major cause of heart disease. It can cause blockages in the body's arteries. These blockages can lead to chest pain and heart attacks. Heart attack is the most common cause of death in Australia. Smokers run a far greater risk of having a heart attack than people who don't smoke. For more information call 13 2130. Government Health Warning
5	SMOKING WHEN PREGNANT HARMS YOUR BABY Government Health Warning	SMOKING WHEN PREGNANT HARMS YOUR BABY. Poisons in tobacco smoke reach your baby through the blood stream. If you smoke when you are pregnant, you greatly increase the chance of having a baby of low birth-weight. Smoking may lead to serious complications which could harm your baby. For more information call 13 2130. Government Health Warning
6	YOUR SMOKING CAN HARM OTHERS Government Health Warning	YOUR SMOKING CAN HARM OTHERS. Tobacco smoke causes cancer and poisons people. People who breathe in your tobacco smoke can be seriously harmed. Your smoking can increase their risk of lung cancer and heart disease. Children who breathe your smoke may suffer asthma attacks and chest illnesses. For more information call 13 2130. Government Health Warning

SCHEDULE 2

[reg. 9]

POSITIONS ON PACKAGES WHERE WARNING MESSAGE
IS TO BE PRINTED

<i>Col.1 Column 2</i>		<i>Column 3</i>
Item No.	Type of package	Face of the package on which warning message is to be printed
1	Flip-top pack	That face that includes the front face of the flip-top.
2	Soft pack	If the brand name is printed on only one of the largest faces, or is printed in larger type on one of those faces, that face; otherwise, either of the largest faces.
3	Any other package (except a pouch) all of the faces of which are rectangular or square	If one of the largest faces of the package forms, or forms part of, a lid, that face; otherwise, that one of the largest faces of the package that is towards a person who holds the package for the purpose of removing the contents.
4	Pouch	That one of the largest faces of the folded package that is not overlapped by the flap of the package.
5	Cylindrical package containing cigarettes or cigars	That part of the curved surface of the package that extends one-twelfth of the circumference of the package each side of the vertical centre line of the brand name label on that surface (or, if that label appears more than once on that surface, the larger or largest of those labels).
6	Cylindrical package containing tobacco	That one of the circular faces that forms, or forms part of, the lid.
7	Package in the shape of a hexagonal or octagonal prism, containing cigarettes or cigars	That one of the rectangular faces of the package that bears the brand name label; or, if that label appears on more than one of those faces, the face on which the larger or largest of those labels appears.

SCHEDULE 3

[reg. 16(7)]

FIGURES FOR DESCRIBING AVERAGE AMOUNTS OF TAR,
NICOTINE AND CARBON MONOXIDE

Tar (milligrams)	Nicotine (milligrams)	Carbon monoxide (milligrams)
1	0.2	2
2	0.3	3
4	0.4	5
8	0.8	10
12	1.2	15
16	1.5	20

SCHEDULE 4

[reg. 21..(c)]

AREAS TO BE OCCUPIED BY MESSAGES ON
CERTAIN PACKAGES OF CIGARS

<i>Col.1</i>	<i>Column 2</i>	<i>Column 3</i>	<i>Column 4</i>
Item No.	Area of front and back face of package (cm ²)	Area to be occupied by warning message (cm ²)	Area to be occupied by explanatory message (cm ²)
1	less than 70	15	20
2	not less than 70 but less than 90	20	27
3	not less than 90 but less than 110	25	33
4	not less than 110 but less than 130	30	40
5	not less than 130 but less than 150	35	46
6	not less than 150 but less than 170	40	53
7	not less than 170 but less than 250	53	70
8	not less than 250 but less than 330	73	96
9	330 or greater	73	96

By His Excellency's Command,

M. C. WAUCHOPE, Clerk of the Council.