

NORTHERN TERRITORY OF AUSTRALIA

TOBACCO CONTROL REGULATIONS

As in force at 18 May 2005

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NORTHERN TERRITORY OF AUSTRALIA

As in force at 18 May 2005

TOBACCO CONTROL REGULATIONS

Regulations under the *Tobacco Control Act*

1 Citation

These Regulations may be cited as the *Tobacco Control Regulations*.

2 Commencement

- (1) Part 1, Part 2 (other than regulation 9) and Part 3, Division 1 come into operation on the commencement of Part 1, Part 2 and Part 3, Division 1 respectively of the Act.
- (2) Part 3, Division 2 comes into operation on the commencement of sections 23 and 27 of the Act to the extent that those sections relate to a health warning referred to in section 23(1)(a) and 27(a) of the Act.
- (3) Regulation 9 and Part 4 come into operation on 31 May 2003.
- (4) Part 5 comes into operation on the commencement of sections 23 and 27 of the Act to the extent that those sections relate to a notice referred to in section 23(1)(b) and 27(b) of the Act.
- (5) Part 6 comes into operation on the commencement of Part 4 (other than section 28) of the Act.
- (6) Part 7 comes into operation on the commencement of Part 7 of the Act.

3 Definitions

In these Regulations, unless the contrary intention appears:

casino has the same meaning as in the *Gaming Control Act*.

gaming machine has the same meaning as in the *Gaming Machine Act*.

gaming machine area has the same meaning as in the *Gaming Machine Act*.

gaming machine licence has the same meaning as in the *Gaming Machine Act*.

marked, in relation to a package, means printed on the package or affixed to the package by an adhesive label or other means.

occupier of an educational facility means the principal or other person who is responsible for the day to day administration of an educational facility.

restaurant means liquor licensed premises categorised in the liquor licence as a restaurant subject to conditions to the effect that liquor may be sold for consumption on or at the premises:

- (a) ancillary to a meal; or
- (b) without a meal if the premises have the appearance of, and trade predominantly as, a restaurant.

4 Prescribed class of food for food service area

For the purposes of section 5A(2) of the Act, food that is free of charge is a prescribed class of food.

5 Photographic identification

For the purposes of paragraph (c) of the definition of ***photographic identification*** in section 5 of the Act, the card known as the "18 Plus Card", which is issued by the Registrar of Motor Vehicles, is a form of photographic identification.

Part 2 Requirements relating to smoke-free areas

Division 1 Signs for smoke-free areas

6 Form of signs

For the purposes of section 8(1) of the Act, a sign indicating that an area is a smoke-free area is to comply with the following requirements:

- (a) the size of the sign is to be at least A5 (148 millimetres x 120 millimetres);
- (b) the sign is to have a white background;

- (c) the sign is to contain the phrase "NO SMOKING" marked in a bold, sans serif font in black capital letters at least 13 millimetres high so that the whole phrase is at least 13 centimetres wide;
- (d) the sign is to contain the international no smoking symbol of a circle (at least 98 millimetres in diameter) with a diagonal line across it, both printed in red, over a depiction of a cigarette and smoke printed in black;
- (e) the sign is to contain the phrase "*Tobacco Control Act 2002*" marked in an italicised, sans serif font in black capital and lower case letters at least 10 millimetres and 7 millimetres high respectively so that the whole phrase is at least 13 centimetres wide;
- (f) the sign is to contain the phrase "Penalties Apply" marked in a sans serif font in black capital and lower case letters at least 7.5 millimetres and 6 millimetres high respectively.

7 Smoke-free areas that are not required to display signs

For the purposes of section 8(4) of the Act, signs are not required to be displayed in any of the following classes of smoke-free areas:

- (a) enclosed workplace areas;
- (b) educational facilities;
- (c) places of worship;
- (d) courts;
- (da) Parliament House;
- (e) libraries;
- (f) museums and art galleries;
- (g) cinemas and theatres;
- (h) dance floors.
- (i) entrance areas into or onto any of the classes of smoke-free areas specified in paragraphs (a) to (h) (inclusive).

Division 2 Conditions of exempt areas

9 Liquor licensed premises – on and after 31 May 2003

- (1) For the purposes of section 11(1) of the Act, the occupier of liquor licensed premises (other than a restaurant) is permitted to designate an area within the premises (other than an area, or part of an area, to which subregulation (2), (3) or (4) applies) to be an exempt area, subject to the following conditions:
 - (a) that the occupier establishes and maintains a smoke-free area of equal amenity to the exempt area;
 - (b) that the occupier has in place reasonable measures to minimise employees' exposure to environmental tobacco smoke.
- (2) For the purposes of section 11(1) of the Act, the occupier of liquor licensed premises in respect of which there is issued a gaming machine licence authorising the use of not more than 25 gaming machines is permitted to designate a gaming machine area, or part of a gaming machine area, within the premises to be an exempt area, subject to the condition that the occupier has in place reasonable measures to minimise employees' exposure to environmental tobacco smoke.
- (3) For the purposes of section 11(1) of the Act, the occupier of liquor licensed premises in respect of which there is issued a gaming machine licence authorising the use of more than 25 gaming machines:
 - (a) is permitted to designate a gaming machine area, or part of a gaming machine area, within the premises in which are located 25 of the gaming machines authorised for use to be an exempt area, subject to the condition that the occupier has in place reasonable measures to minimise employees' exposure to environmental tobacco smoke; and
 - (b) is permitted to designate a gaming machine area, or part of a gaming machine area, within the premises in which are located not more than half of the remaining number of gaming machines authorised for use to be an exempt area, subject to the following conditions:
 - (i) that the occupier establishes and maintains a smoke-free area of equal amenity to the exempt area in which are located at least half of the remaining number of those gaming machines;

- (ii) that the occupier has in place reasonable measures to minimise employees' exposure to environmental tobacco smoke.
- (4) For the purposes of section 11(1) of the Act, the occupier of liquor licensed premises that are a casino is permitted to designate an area, or part of an area, within the casino in which are located gaming tables and gaming machines to be an exempt area, subject to the following conditions:
 - (a) that the occupier establishes and maintains a smoke-free area of equal amenity to the exempt area that contains gaming tables and gaming machines;
 - (b) that the occupier has in place reasonable measures to minimise employees' exposure to environmental tobacco smoke.

10 Educational facilities

For the purposes of section 11(1) of the Act, the occupier of an educational facility is permitted to designate an area within the facility to be an exempt area, subject to the following conditions:

- (a) that a majority of staff at the facility (including non-teaching staff) agree to an area being so designated;
- (b) that the area so designated is not normally accessible to children and is not in the line of sight of children during the times when it is designated as an exempt area.

11 Outdoor public venues

For the purposes of section 11(1) of the Act, the occupier of an outdoor public venue is permitted to designate an area within the venue to be an exempt area, subject to the following conditions:

- (a) that the area so designated does not contain more than 50% of the venue's fixed seating;
- (b) that the occupier establishes and maintains a smoke-free area of equal amenity to the exempt area that contains at least 50% of the venue's fixed seating.

12 Outdoor food service areas

For the purposes of section 11(1) of the Act, the occupier of an outdoor food service area is permitted to designate the area, or part of the area, to be an exempt area and, in doing so, is not subject to any conditions.

13 Personal living areas in shared accommodation

For the purposes of section 11(1) of the Act, a resident of shared accommodation is permitted to designate the resident's personal living area within the shared accommodation to be an exempt area, subject to the condition that the occupier of the shared accommodation has in place reasonable measures to minimise employees' and other residents' exposure to environmental tobacco smoke.

14 Public transport

For the purposes of section 11(1) of the Act, the occupier of public transport that is a vessel is permitted to designate the upper deck or decks of the vessel to be an exempt area, subject to the condition that the occupier has in place reasonable measures to minimise employees' and passengers' exposure to environmental tobacco smoke.

15A Oil and gas platforms

For the purposes of section 11(1) of the Act, the occupier of an oil or gas platform is permitted to designate an enclosed workplace area on the platform to be an exempt area, subject to the condition that the area is adequately ventilated.

Part 3 Health warnings

Division 1 Health warnings on packaging

16 Prescribed health warnings

For the purposes of section 12 of the Act, a package is to display a warning message, and (if applicable) a corresponding explanatory message, in compliance with the *Trade Practices (Consumer Product Information Standards) (Tobacco) Regulations* of the Commonwealth as in force from time to time.

Division 2 Health warnings at points of sale

17 Health warnings on vending machines

For the purposes of section 23(1)(a) of the Act, a health warning for display on a vending machine is to comply with the following requirements:

- (a) the size of the warning is to be at least A3 (420 millimetres x 297 millimetres);

- (b) the warning is to have a white background;
- (c) the warning is to contain one of the following statements marked in black letters of the maximum, proportionate size that can be accommodated within the size of the warning:
 - (i) "WANT TO QUIT SMOKING?";
 - (ii) "SMOKING KILLS";
 - (ii) "SMOKING CAN KILL YOU";
 - (iv) "NEED HELP TO QUIT SMOKING?";
- (d) the warning is to contain the phrase "Call the Quitline on" marked in black capital and lower case letters at least 28 millimetres and 18 millimetres high respectively so that the whole phrase is at least 334 millimetres wide;
- (e) the warning is to contain the number "137 848" in bold, black numbers at least 35 millimetres high;
- (f) the warning may (but need not) include an attribution to the Northern Territory Government.

18 Health warnings at other points of sale

For the purposes of section 27(a) of the Act, a health warning for display at a point of sale other than a vending machine is the same as a health warning prescribed by regulation 17 for display on a vending machine.

Part 4 Restrictions on advertising, displays and points of sale

19 Price boards

- (1) For the purposes of section 18 of the Act, the requirements with which a price board is to comply are set out in this regulation.
- (2) There is to be only one price board for tobacco products at a point of sale (other than a vending machine) in or on premises and then only if there are no shelf tickets for tobacco products at the point of sale.
- (3) The area of the price board cannot exceed 1 square metre.

- (4) For the purposes of subregulation (3), section 21(9), (10), (11), (12) and (13) of the Act applies (with the necessary modifications) in relation to a price board as if a reference to a display of tobacco products were a reference to the price board.
- (5) The price board is to be within 3 metres from the display of tobacco products (if any) at the point of sale.
- (6) The price board cannot be within 1 metre from a display of products designed or marketed for consumption or use by children (including but not limited to displays of confectionary and toys).
- (7) The information on the price board is limited to the following:
 - (a) names of tobacco products;
 - (b) sizes or quantities of tobacco products;
 - (c) prices of tobacco products;
 - (d) tar contents of tobacco products;
 - (e) countries of origin of tobacco products;
 - (f) barcodes or reference numbers for tobacco products.
- (8) The information referred to in subregulation (7) (other than barcodes) is to be in letters that are:
 - (a) all the same font and size and not more than 2 centimetres high or 1.5 centimetres wide; and
 - (b) marked only in black on a white background or only in white on a black background.

20 Shelf tickets

- (1) For the purposes of section 18 of the Act, the requirements with which shelf tickets are to comply are set out in this regulation.
- (2) There may be shelf tickets for tobacco products at a point of sale (other than a vending machine) in or on premises only if there is no price board for tobacco products at the point of sale.
- (3) The size of a shelf ticket cannot exceed 70 millimetres x 50 millimetres.
- (4) The information on a shelf ticket is limited to the following:
 - (a) the name of a tobacco product;

- (b) the size or quantity of the tobacco product;
 - (c) the price of the tobacco product;
 - (d) the tar content of the tobacco product;
 - (e) the country of origin of the tobacco product;
 - (f) the barcode or reference number for the tobacco product.
- (5) The information referred to in subregulation (4) is to be marked only in black on a white background or only in white on a black background.
- (6) All shelf tickets at a point of sale are to be marked identically in accordance with subregulation (5).

21 Displays other than at specialist tobacconists or on vending machines

- (1) For the purposes of section 21(3) of the Act, the numbers of packets of cigarettes, cigars (other than cigars sold singly) or other tobacco products that are displayed cannot exceed one packet of each kind of packet for each kind of cigarette, cigar or other tobacco product that is available under each brand name.
- (2) For the purposes of section 21(4) of the Act, the numbers of cigars sold singly that are displayed cannot exceed 2 cigars of each size for each kind of cigar that is available under each brand name.
- (3) For the purposes of section 21(5) of the Act, the numbers of cartons of cigarettes that are displayed cannot exceed one carton of each kind of packet for each kind of cigarette that is available under each brand name.
- (4) For the purposes of section 21(7) of the Act, a display cannot be within 2 metres from a display of products designed or marketed for consumption or use by children (including but not limited to displays of confectionary and toys).
- (5) For the purposes of section 21(8) of the Act, the area occupied by a display cannot exceed 4 square metres.

21A Displays at specialist tobacconists

- (1) For the purposes of section 20(1)(b)(ii) of the Act, the conditions specified in this regulation apply in relation to displays of tobacco products that are at points of sale at specialist tobacconists in substitution of the conditions specified in section 21(3), (4), (5) and (8) of the Act.

- (2) The area occupied by a display cannot exceed 12 square metres.
- (3) The area of the part of a display occupied by packets of cigarettes cannot exceed 4 square metres.
- (4) The area of the part of a display occupied by cigars cannot exceed 4 square metres.
- (5) The area of the part of a display occupied by loose tobacco cannot exceed 2 square metres.
- (6) The area of the part of a display occupied by cartons of cigarettes cannot exceed 2 square metres.

22 Vending machines in bar areas

For the purposes of section 22(2) of the Act, if a vending machine is one of 2 points of sale in a bar area of liquor licensed premises, the availability and price of tobacco products may be displayed on the machine in letters that are:

- (a) in a sans serif font not more than 2 centimetres high; and
- (b) marked in black on a white background.

Part 5 Notices prohibiting sale or supply to children

23 Notices on vending machines

For the purposes of section 23(1)(b) of the Act, a notice on a vending machine indicating that selling tobacco products to children is prohibited is to comply with the following requirements:

- (a) the size of the notice is to be at least A4 (210 millimetres x 297 millimetres);
- (b) the notice is to have a white background;
- (c) the notice is to contain the word "NOTICE" marked in a sans serif font in black capital letters at least 12 millimetres high so that the whole word is at least 60 millimetres wide;
- (d) below the word referred to in paragraph (c), there is to be marked a red, horizontal line at least 275 millimetres wide and 3 millimetres thick;
- (e) below the line referred to in paragraph (d), the phrases "The sale and supply of tobacco products to children is prohibited. You must be at least 18 years old to purchase tobacco

products. Photographic identification may be required." are to be marked in a sans serif font in black capital and lower case letters at least 13 millimetres and 9 millimetres high respectively;

- (f) below the phrases referred to in paragraph (e), there is to be marked another red, horizontal line at least 275 millimetres wide and 3 millimetres thick;
- (g) below the line referred to in paragraph (f), the phrase "*Tobacco Control Act 2002*" is to be marked in an italicised, sans serif font in black capital and lower case letters at least 10 millimetres and 7 millimetres high respectively;
- (h) below the phrase referred to in paragraph (g), the phrase "Severe Penalties Apply" is to be marked in a bold, sans serif font in black capital and lower case letters at least 7.5 millimetres and 6 millimetres high respectively so that the whole phrase is at least 7.5 centimetres wide;
- (i) the notice may (but need not) include an attribution to the Northern Territory Government.

24 Notices at other points of sale

- (1) For the purposes of section 27(b) of the Act, a notice at a point of sale other than a vending machine indicating that selling tobacco products to children is prohibited is the same as a notice prescribed by regulation 23.
- (2) A notice referred to in subregulation (1) is to be conspicuously displayed in the line of sight of customers at the point of sale.

Part 6 Requirements relating to tobacco retail licences

25 Application for grant of licence

- (1) For the purposes of section 29(1)(c) of the Act, an application for the grant of a tobacco retail licence is to be accompanied by a criminal history report (involving a name check only) issued by or on behalf of the Commissioner of Police about the manager, or proposed manager, of the business being conducted, or to be conducted, on the premises to which the application relates.
- (2) Subregulation (1) does not apply to an application for the grant of a tobacco retail licence made before 31 May 2003.

26 Application for approval to transfer licence

For the purposes of section 36(1)(b) of the Act, an application for approval to transfer a tobacco retail licence is to be accompanied by a criminal history report (involving a name check only) issued by or on behalf of the Commissioner of Police about the proposed manager of the business to be conducted on the premises to which the application relates.

Part 7 Infringement notices**27 When infringement notice may be served**

If an authorised officer believes that a person has committed an offence against a provision of the Act or these Regulations specified in column 1 of the Schedule, he or she may serve an infringement notice on the person.

28 Prescribed amount

The prescribed amount that may be paid, instead of the penalty that may otherwise be imposed, for an offence specified in column 1 of the Schedule is the amount specified opposite in column 2.

29 Particulars to be included in infringement notice

An infringement notice is to include the following particulars:

- (a) the name and address of the alleged offender, if known;
- (b) the date, time and place of the offence;
- (c) the nature of the offence and the prescribed amount payable in respect of that offence;
- (d) the person to whom the alleged offender may pay the prescribed amount and the address of that person;
- (e) the date of the infringement notice and a statement that the prescribed amount may be paid within 28 days after that date;
- (f) a statement to the effect that, if the alleged offender wishes to pay the prescribed amount, he or she should complete the relevant part of the infringement notice and return the notice with the prescribed amount to the person specified in the notice;
- (g) a statement to the effect that, if the alleged offender wishes to be dealt with by a court in relation to the offence, he or she

should not pay the prescribed amount but should complete the relevant part of the infringement notice and return the notice to the person specified in the notice;

- (h) a statement that, if the alleged offender does nothing in response to the infringement notice, a summons may be issued requiring the alleged offender to appear before a court of summary jurisdiction to be dealt with in relation to the offence;
- (i) any other particulars approved by the Chief Health Officer.

30 Expiation of offence

- (1) If an alleged offender pays the prescribed amount specified in an infringement notice in accordance with the notice, the alleged offender is taken to have expiated the offence and no further proceedings are to be taken in respect of the offence.
- (2) If an alleged offender tenders a cheque in payment of a prescribed amount, the amount is not taken to have been paid unless the cheque is cleared on presentation.

31 Withdrawal of infringement notice

An infringement notice may be withdrawn at any time within 28 days after it is served, but before payment of the prescribed amount specified in the infringement notice, by serving on the alleged offender a notice:

- (a) signed by the Chief Health Officer; and
- (b) stating that the infringement notice is withdrawn.

32 How service effected

Service of an infringement notice, or a notice of withdrawal of an infringement notice, is effected:

- (a) by serving it personally on the alleged offender;
- (b) by posting it to the alleged offender at his or her last known address; or
- (c) by leaving it for the alleged offender at his or her last known place of residence or business with a person apparently resident or employed there and apparently not less than 16 years of age.

33 General

This Part:

- (a) does not prevent more than one infringement notice in respect of the same offence being served on an alleged offender, but it is sufficient for the application of regulation 30 to an alleged offender on whom more than one infringement notice has been served for the alleged offender to pay the prescribed amount in accordance with any one of those notices;
- (b) does not prejudice or affect (except as provided by regulation 30) the institution or prosecution of proceedings, and does not limit the penalty that may be imposed by a court, for an offence; and
- (c) does not require an infringement notice to be served and does not affect the liability of a person to be prosecuted in a court for an offence in respect of which an infringement notice has not been served.

Schedule Infringement notices prescribed offences and amounts

regulations 27 and 28

| Column 1 Offence Provision | Column 2 Prescribed Amount |
|---|---------------------------------------|
| Section 8(1) Failing to display sign or signs about area being smoke-free area | \$100 |
| Section 9(1) Offence by person smoking in smoke-free area | \$100 |
| Section 10(1) Offence by occupier if person smokes in smoke-free area | \$100 |
| Section 11(4) Smoking in exempt area in contravention of prescribed conditions | \$100 |
| Section 12(1) Selling tobacco products enclosed in package without health warning | \$100 |
| Section 12(2) Selling tobacco products enclosed in 2 or more packages without health warning on each package | \$100 |
| Section 12(3) Selling tobacco products in package with wording to effect that smoking not health hazard | \$100 |
| Section 13 Selling cigarettes other than in packets containing 20 or more | \$100 |
| Section 14 Selling loose tobacco other than in packets containing 25 grams or more | \$100 |
| Section 15(1) Displaying, publishing or broadcasting advertisement for tobacco product in public place | \$500 |

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| Section 16 Brand marketing or value-added marketing | \$500 |
| Section 17 Advertising price discounting | \$100 |
| Section 18 Price board or shelf ticket that contravenes prescribed requirements | \$100 |
| Section 19(1) Sponsoring public event where sponsorship arrangement includes display, publication or broadcast of tobacco products etc. | \$500 |
| Section 20(1) Displaying tobacco products in contravention of Act or Regulations | \$100 |
| Section 23(1) Failing to display health warning or notice indicating prohibition on sale of tobacco products to children | \$100 |
| Section 24(1) Point of sale that contravenes Act | \$100 |
| Section 33 Failing to display tobacco retail licence | \$100 |
| Section 37 Failing to notify Director of change relevant to tobacco retail licence | \$100 |
| Section 45 False identification | \$100 |
| Section 46 Selling children's products resembling tobacco products | \$500 |
| Section 48(2) Failing to return identity card | \$100 |
| Section 52 Obstructing or hindering authorised officer | \$100 |

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| Section 54 Providing false or misleading information | \$100 |
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ENDNOTES
1 KEY

Key to abbreviations

| | |
|------------------------------|-------------------------------------|
| amd = amended | od = order |
| app = appendix | om = omitted |
| bl = by-law | pt = Part |
| ch = Chapter | r = regulation/rule |
| cl = clause | rem = remainder |
| div = Division | renum = renumbered |
| exp = expires/expired | rep = repealed |
| f = forms | s = section |
| Gaz = Gazette | sch = Schedule |
| hdg = heading | sdiv = Subdivision |
| ins = inserted | SL = Subordinate Legislation |
| lt = long title | sub = substituted |
| nc = not commenced | |

2 LIST OF LEGISLATION***Tobacco Control Regulations (SL No. 59, 2002)***

| | |
|-----------|---|
| Notified | 18 December 2002 |
| Commenced | r 9 and pt 4: 31 May 2003; rem: 1 January 2003 (r 2, s 2 <i>Tobacco Control Act 2002</i> (Act No. 68, 2002) and Gaz G50, 18 December 2002, p 6) |

Amendments of Tobacco Control Regulations (SL No. 32, 2003)

| | |
|-----------|-------------|
| Notified | 1 July 2003 |
| Commenced | 1 July 2003 |

Amendment of Tobacco Control Regulations (SL No. 38, 2003)

| | |
|-----------|--------------|
| Notified | 11 July 2003 |
| Commenced | 11 July 2003 |

Tobacco Control Amendment (Quitline Number) Regulations 2005 (SL No. 12, 2005)

| | |
|-----------|-------------|
| Notified | 18 May 2005 |
| Commenced | 18 May 2005 |

3 LIST OF AMENDMENTS

| | |
|-------|---|
| r 3 | amd No. 32, 2003, r 2 |
| r 4 | sub No. 32, 2003, r 3 |
| r 7 | amd No. 32, 2003, r 4 |
| r 8 | exp No. 59, 2002, r 8(2) |
| r 9 | amd No. 32, 2003, r 5 |
| r 10A | ins No. 38, 2003, r 2 exp No. 38, 2003, r 10A(4) |
| r 12 | amd No. 32, 2003, r 6 |
| r 15 | exp No. 59, 2002, r 15(2) |
| r 15A | ins No. 32, 2003, r 7 |
| r 17 | amd No. 12, 2005, r 3 |
| r 21 | amd No. 32, 2003, r 8 |
| r 21A | ins No. 32, 2003, r 9 |