

**DEPARTMENT OF HEALTH**

**GUIDE TO INTERNET POINT-OF-SALE  
TOBACCO ADVERTISING**

**November 2015**

## **Guide to Internet Point-of-Sale Tobacco Advertising – November 2015**

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### **Internet sites**

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## INTRODUCTION

Since 6 September 2012, the *Tobacco Advertising Prohibition Act 1992* (the Act), with certain limited exceptions, makes it an offence for a person to publish a tobacco advertisement on the internet or by other electronic media in Australia, for example, via mobile phone.

A key exception is for online point-of-sale tobacco advertising that complies with:

- State or territory legislation expressly dealing with internet point-of-sale tobacco advertising; or
- in the absence of such legislation, Australian Government regulations.

Currently, no state or territory has passed legislation expressly dealing with internet point-of-sale advertising.<sup>1</sup> The *Tobacco Advertising Prohibition Regulation 1993* (the Regulation) governing internet point-of-sale tobacco advertising took effect on 6 September 2012.

Internet point-of-sale tobacco advertisements that fail to comply with the Regulation may constitute tobacco advertisements in breach of the Act. The maximum penalty for an offence against the Act is \$21,600 for an individual and \$108,000 for a corporation. The Department of Health investigates complaints about potential breaches of the Act.

### **Purpose of this guide**

This guide explains the Regulation governing online point-of-sale tobacco advertising. The guide is provided for general information only and you should not rely on the information in this guide as a legal interpretation of the Act for the purpose of a particular matter. Anyone who needs a legal interpretation of the Act should seek independent legal advice before any action or decision is taken on the basis of the material in this guide.

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<sup>1</sup> South Australia bans the sale of tobacco products over the internet. Western Australia requires internet tobacco retailers to be licensed and imposes a number of safeguards to ensure that tobacco products bought over the internet are not delivered to persons less than 18 years of age.

## Internet point-of-sale tobacco advertising

Tobacco retail websites come in a wide variety of designs. Some may be part of websites retailing a wide range of products, while others may be stand-alone tobacco retail websites. However, a website from which tobacco products can be purchased would typically include:

- a 'virtual shopfloor' providing information about the tobacco products available for sale on the website. This 'shopfloor' might be a single webpage or comprise a number of webpages providing progressively more detailed information about products; and
- a purchase facility comprising:
  - a 'virtual shopping trolley' – typically a webpage (linked to the 'virtual shopfloor') that keeps track of the products the customer has indicated they may buy, the individual prices of these products and the total cost of the products,; and
  - a 'virtual check-out' – typically, a facility to enable a customer to purchase a tobacco product would include the final list of products the customer wishes to buy, the individual price of these products, the total cost of the products, an online mechanism for paying for the products (for example, via the entry of credit card details or a secure third party payment facility), a means of allowing the customer to enter customer details (for example, delivery address) and any other element that is essential to the completion of the purchase without any part of the transaction being done 'off-line'.

The exception in the Act for internet point-of-sale advertising only applies to websites that provide for the online purchase of tobacco products to consumers. Websites that only advertise tobacco products, without providing consumers with a facility to purchase tobacco products, fall outside the exception and may, therefore, be in breach of the Act. Even if the tobacco advertisements are linked to an online purchase facility, they also need to comply with the other requirements in the Regulation; for example requirements about the size and font of text and the display of age and health warnings.

## The Regulation

The Regulation contains rules governing:

- the format of internet point-of-sale tobacco advertising – Regulation 8A(2);
- content *permitted* to be included in internet point-of-sale advertising – Regulation 8A(4) and (5);
- content *required* to be included in internet point-of-sale advertising – Regulation 8A(3); and
- content *prohibited* from being included in internet point-of-sale advertising – Regulation 8A(6).

The Regulation also requires that tobacco retail websites include a system to limit access to persons of at least 18 years of age – Regulation 8A(3)(c).

### 1. Format

The format requirements set out below apply to ‘virtual shopfloor’ tobacco advertising but *not* to purchase facilities. However, retailers should take care to ensure that the webpages comprising their purchase facilities do not contain ‘shopfloor’ tobacco advertising. If they do, the format requirements may apply to these webpages.

#### *Layout*

Tobacco advertisements must use a standardised layout and format using the same font and font size, so that no tobacco product is displayed more prominently than any other tobacco product.

The Regulation therefore gives retailers flexibility to choose the layout and format of their online tobacco advertisements, but within a set of broad rules.

The overarching requirement is that no individual product be displayed more prominently than any other product – that is, no single product should be more conspicuous in advertising than any other product.

To this end, advertising must use a 'standardised layout and format' – that is, each individual tobacco product advertised on a tobacco retail website should be advertised in the same layout and format. In practice, retailers should consider using a 'table-like' format for displaying tobacco products, or list of products in a standard format.

Consistent with this approach, while tobacco retailers may choose the font and font size for the text in their point-of-sale advertising, the same font and font size must be used for all text in the advertising.

### *Permitted colours*

Tobacco advertisements must use black text on a white background, other than hyperlinks to information about tobacco products, which may change from black to blue text after use.

No other colours may be used.

### *Taxes*

All webpages showing tobacco product prices must include a statement that these prices include all taxes.

### *Examples*

Examples of tobacco advertisements that would comply with the format requirements in the Regulation are given below (the examples also reflect the permitted content requirements discussed in section 2 below).

## Examples

### Example One

[Product name] 30 pack of cigarettes	\$17 [icon: 'add to shopping trolley']
[Product name] 25 pack of cigarettes	\$14 [icon: 'add to shopping trolley']
[Product name] 25 pack of cigarettes	\$15 [icon: 'add to shopping trolley']

\*Prices include all taxes.

### Example Two

[Product name] Pack of 30 cigarettes \$17 [icon: 'add to shopping trolley']	[Product name] Pack of 25 cigarettes \$14 [icon: 'add to shopping trolley']	[Product name] Pack of 25 cigarettes \$15 [icon: 'add to shopping trolley']
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\*Prices include all taxes.

### Example Three

#### *First page*

[Product name]	Price	[Link to second page containing further information]
[Product name]	Price	[Link to second page containing further information]

\*Prices include all taxes.

#### *Second page*

[Product name] Pack of 30 cigarettes Made in Australia Item code: XXYA12 \$17 [icon: 'add to shopping trolley']	[Product name] Pack of 25 cigarettes Made in New Zealand Item code: XXYA13 \$14 [icon: 'add to shopping trolley']	[Cigar product name] Box of 25 Length 150mm Made in Cuba Item code: XXYA14 \$25 [icon: 'add to shopping trolley']
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\*Prices include all taxes.

## 2. Permitted content

Internet point-of-sale tobacco advertisements are permitted to include the following information:

- product names;
- prices (inclusive of all taxes) and information about any other charges payable (for example, delivery charges);
- package size or weight of products;
- item numbers or codes for products; and
- country of origin of products.

Internet point-of-sale tobacco advertisements are not *required* to include all of this information. Retailers may choose which information they include in their advertising. However, no information other than the information listed above may be included in advertisements.

Information on the country of origin of tobacco products must not otherwise describe the product or the components of the product.

### *Examples*

<i>Permitted</i>	<i>Not permitted</i>
“Made in Australia from imported tobacco”	“Made in Australia from imported premium tobacco”
“Product of Cuba”	“Made from premium Cuban tobacco”



### 3. Required content

'Virtual shopfloor' tobacco advertising *and* purchase facilities must include a graphic health warning and age warnings.

#### *Graphic health warnings*

Internet point-of-sale tobacco advertisements, including purchase facilities, must display one of the five graphic health warnings included in the Regulation. Online retailers may choose which graphic health warning they wish to display. The five graphic health warnings are available for download at: <http://www.health.gov.au/tobaccoadvertising>.

Graphic health warnings for internet point-of-sale tobacco advertisements have two components – a health warning message and its corresponding graphic. Both components must be displayed together.

#### *Age warnings*

Internet point-of-sale tobacco advertisements, *including* purchase facilities, must include warnings indicating:

- that it is illegal to sell tobacco products to a person under 18; and
- that it is illegal to purchase a tobacco product for use by a person under 18.

#### *Displaying health and age warnings*

Graphic health warnings and age warnings must be displayed prominently, in a legible and undistorted form, and in English.

Where tobacco advertisements are *specifically designed to be accessed only from a mobile phone* – for example, via a mobile phone application (or 'app') – graphic health warnings and age warnings must be displayed using prominent 'pop-ups'.

- A pop-up is a window that appears automatically on a mobile phone screen when a tobacco advertisement is accessed.

- Pop-ups must be prominently displayed – that is, they must be able to be easily seen and read by customers.

In all other cases, graphic health warnings and age warnings must be placed in a prominent position at the top and bottom of the tobacco advertisement.

The Regulation provides retailers with flexibility as to how to display warnings. For example, the requirement that warnings be placed at the ‘top’ and ‘bottom’ of an advertisement does not mean that there cannot be any content above or below the warnings. Placing an advertisement near to the top or bottom would be sufficient.

However, warnings must always be:

- prominently displayed – that is, warnings must stand out so as to be easily seen by consumers;
- legible – that is, consumers must be able to read the warnings with ease; and
- undistorted – that is, graphic health warnings must not be twisted out of their original shape, degraded or otherwise changed so that their impact is materially diminished.

#### **4. Prohibited content**

Tobacco advertisements, *including* purchase facilities, must not include any of the following:

- words that make claims about or describe the appeal of tobacco products – for example, ‘lite’ and low-tar;
- words or images that entice, or are intended to entice, a person to purchase a tobacco product – for example, ‘cheap’, ‘discount’, ‘bulk savings’, ‘buy one get one free’, ‘tax free’;
- words that contradict, qualify or modify a health warning marked, or that is required to be marked, on the tobacco product being advertised;
- images of tobacco products;
- more than one price for each tobacco product – that is, advertisements may not display a ‘regular’ price and a ‘sale’ price; and

- content that promotes another internet site that contains a tobacco advertisement, or solicits internet traffic to a tobacco advertisement – for example, a link to a social media site that contains tobacco advertisements.
  - It is important to note that the Act defines ‘tobacco advertisement’ more broadly than the everyday meaning of the term. The definition includes any writing, still or moving picture, sign, symbol, image or any audible message that gives publicity to, or is intended to, promote smoking or the purchase or use of tobacco products. The prohibition on content that promotes another website containing a tobacco advertisement is therefore commensurately broad.

## 5. Access to tobacco retail websites

Tobacco retail websites must include a system that limits access to all tobacco advertisements and the purchase facility within a site to people of at least 18 years of age.

In practice, such a system would usually be on the first webpage that customers access when entering a website, or at least on a webpage customers must traverse before viewing any tobacco advertisements or accessing the purchase facility.

Retailers may design their own system as long as it complies with the Regulation.

### *Examples*

Systems that would comply with the Regulation include:

- a system that stops a person accessing the advertisement, including the purchase facility for the advertisement, unless the person declares that he or she is at least 18 years of age; and
- a system that stops a person accessing the advertisement, including the purchase facility for the advertisement, unless the person specifies his or her date of birth and the date specified indicates that the person is at least 18 years of age.