

# RETAILER FACTSHEET

## Penalties and enforcement

**Penalties apply under the *Public Health (Tobacco) Act 2008*.**

### Penalties

The table on the following pages sets out some key penalties for individual retailers and corporations for non-compliance with certain sections of the Act.

An on-the-spot fine may be issued by NSW Health Authorised Inspectors for a number of offences under the Act, including:

- ✓ failure to notify NSW Health about tobacco retailing activities.
- ✓ failure to comply with a requirement or direction of a police officer or NSW Health Authorised Inspector - \$250
- ✓ provision of false or misleading information to a police officer or NSW Health Authorised Inspector - \$250

For a complete description of the full range of penalties under the Act, refer to the *Public Health (Tobacco) Act 2008* and the *Public Health (Tobacco) Regulation 2009*.

### Enforcing the legislation

NSW Health Authorised Inspectors in Public Health Units across NSW closely monitor compliance with the *Public Health (Tobacco) Act 2008* and the *Public Health (Tobacco) Regulation 2009*.

Retail outlets are randomly visited and prosecutions have been made against those who have been found to sell tobacco products to people under the age of 18. Businesses and individuals that have been prosecuted have included employers and staff working in newsagents, tobacconists, milk bars, supermarkets and petrol stations.

Authorised Inspectors conduct random inspections and will also follow up complaints from members of the public about other suspected breaches by retailers.

Authorised Inspectors have the power to:

- ✓ enter and inspect tobacco retailing premises
- ✓ take photos, films, audio, video or other recordings
- ✓ take samples of any items for analysis or to use as evidence
- ✓ require records to be produced for inspection
- ✓ examine, inspect and copy records or documents
- ✓ in some instances, seize tobacco products, if they are believed to be for the purposes of committing certain offences under the Act

Retailers may ask an Inspector to produce his or her certificate of authority.

## Continuing offences

For some provisions of the *Public Health (Tobacco) Act 2008*, a continuing state of affairs may be created, which provides for penalties to be enforced for each day the offence continues. For example, having more than one vending machine in contravention of s.12 of the Act gives rise to a maximum penalty of up to \$220,000 for each day the offence continues, in addition to the original penalty of up to \$55,000.

## Number of offences

A person or company which has been convicted of two offences against the same provision of the Act or Regulation within any three year period on the same business premises will be banned from selling tobacco products for three months.

A person or company which has been convicted of three offences against the same provision of the Act or Regulation within any three year period on the same business premises will be banned from selling tobacco products for 12 months.

## Penalties for prohibited retailers

Engaging in tobacco retailing while prohibited carries a penalty of \$55,000 for an individual for a first offence, and \$110,000 for a second or subsequent offence, and \$110,000 for a corporation's first offence or \$220,000 for a second or subsequent offence. This offence will also result in the immediate forfeiture of any tobacco products on the premises for sale to the Crown for destruction.

## How do retailers get more information?

Where retailers are unsure about their obligations or have queries about how to comply with the law, they are encouraged to contact their local Public Health Unit for advice. A list of Public Health Units can be found at [www.health.nsw.gov.au/Infectious/pages/phus.aspx](http://www.health.nsw.gov.au/Infectious/pages/phus.aspx). Alternatively retailers can call **1300 066 055** to be connected to their local Public Health Unit.

For further information about tobacco control, please access the NSW Health website: [www.health.nsw.gov.au/tobacco](http://www.health.nsw.gov.au/tobacco) or call the Tobacco Information Line on **1800 357 412**.

The Tobacco Information Line can be accessed by non-English speaking persons via the Translating and Interpreting Service (TIS) on **13 14 50**

| Section of the Act    | Offence Description   | Who can be fined          | Maximum penalty      |
|-----------------------|---|---------------------------|----------------------|
| Section 7             | Selling a tobacco product without a health warning  | Individual<br>Corporation | \$11,000<br>\$55,000 |
| Section 9             | Failure to remove tobacco products out of sight   | Individual<br>Corporation | \$11,000<br>\$55,000 |
| Section 10            | Selling tobacco products from more than one point of sale   | Individual<br>Corporation | \$11,000<br>\$55,000 |
| Section 12, 13 and 14 | <ul style="list-style-type: none"> <li>Placement of tobacco vending machines in premises not within s.12 of the Act</li> <li>Placement of more than one tobacco vending machine in premises not within s.12 of the Act</li> <li>Selling tobacco through a vending machine without staff controls</li> <li>Non-compliance with display and signage requirements</li> </ul> | Individual<br>Corporation | \$11,000<br>\$55,000 |

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|---------------------------|--|-------------------------------|---|
| Section 16, 17, 19 and 20 | <ul style="list-style-type: none"> <li>• Advertising and promotion of tobacco products</li> <li>• Engaging in tobacco products promotions involving prizes or gifts</li> <li>• Offering, giving or distributing a free tobacco product for the purpose of inducing or promoting a sale</li> <li>• Engaging in prohibited sponsorships</li> </ul> | Individual<br><br>Corporation | \$55,000<br>- 1st offence<br>\$110,000<br>- 2nd or subsequent offence<br><br>\$660,000<br>- 1st offence<br>\$1.1M - 2nd or subsequent offence       |
| Section 18                | Conducting a Shopper Loyalty Program including tobacco products  | Individual<br>Corporation     | \$11,000<br>\$55,000  |
| Section 21                | Manufacturing or selling a tobacco product designed for consumption otherwise than by smoking<br><br>Selling confectionery, food, toy, amusement or other product that resembles a tobacco product or is packaged to resemble a tobacco product  | Individual<br><br>Corporation | \$55,000<br>- 1st offence<br>\$110,000<br>- 2nd or subsequent offence<br><br>\$110,000<br>- 1st offence<br>\$220,000<br>- 2nd or subsequent offence |
| Section 22                | Selling tobacco products to Minors   | Individual<br><br>Corporation | \$11,000 - 1st offence<br>\$55,000<br>- 2nd or subsequent offence<br><br>\$55,000<br>- 1st offence<br>\$110,000<br>- 2nd or subsequent offence      |
| Section 23                | Purchasing tobacco products on behalf of those under 18 years of age   | Individual                    | \$2,200   |
| Section 24                | Supplying tobacco vending machines tokens to minors and activating machines for minors   | Individual<br><br>Corporation | \$11,000 - 1st offence<br>\$55,000<br>- 2nd or subsequent offence<br><br>\$55,000<br>- 1st offence<br>\$110,000<br>- 2nd or subsequent offence      |
| Section 25                | Obtaining tobacco vending machine tokens on behalf of minors   | Individual                    | \$2,200   |
| Section 29                | Selling a prohibited tobacco product   | Individual                    | \$55,000<br>- 1st offence<br><br>\$110,000<br>- 2nd or subsequent offence   |

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|-------------------|---|-------------------------------|---|
| Section 35 and 36 | Engaging in tobacco retailing while prohibited<br><br>Displaying tobacco and other smoking products while prohibited  | Individual<br><br>Corporation | \$55,000<br>- 1st offence<br>\$110,000<br>- 2nd or subsequent offence<br><br>\$110,000<br>- 1st offence<br>\$220,000<br>- 2nd or subsequent offence |
| Section 39        | Engaging in tobacco retailing without prior notification of tobacco retailing to NSW Health   | Individual                    | \$11,000  |
| Section 40        | Taking or attempting to retake any tobacco product seized in accordance with the Act or resisting or attempting to prevent such a seizure   | Individual<br><br>Corporation | \$55,000<br>- 1st offence<br>\$110,000<br>- 2nd or subsequent offence<br><br>\$110,000<br>- 1st offence<br>\$220,000<br>- 2nd or subsequent offence |
| Section 46        | Failure to comply with directions of inspectors   | Individual                    | \$11,000<br>\$250 on the spot   |
| Regulation 5      | Causing or permitting a tobacco product to be packed in a package that: <ul style="list-style-type: none"> <li>• contains any statement alluding to sporting, sexual or business success, or</li> <li>• depicts, wholly or in part, people or cartoon characters, or</li> <li>• depicts scenes or activities, or contains words, representations or illustrations, that have appeal to children or young persons, or</li> <li>• displays any hologram.</li> </ul> | Individual                    | \$2,200   |
| Regulation 6      | Advertising within package containing tobacco products  | Individual                    | \$2,200   |
| Regulation 16     | Failure to conspicuously display health warning sign at point of sale   | Individual                    | \$2,750   |
| Regulation 17     | Failure to conspicuously display sales to minors warning sign at point of sale  | Individual                    | \$2,750   |