Specialist tobacconist guide

Incorporating amendments passed by the Victorian Parliament in 2009

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This document is also available in PDF format on the internet at: www.health.vic.gov.au/tobaccoforms

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Message from the Minister

In late 2009 the Victorian Parliament passed a number of amendments to the Tobacco Act 1987 which will help prevent young people from taking up smoking, protect children from exposure to second-hand smoke and support adults to quit and stay quit.

These new laws strengthen existing legislation and include:

- banning the display of tobacco products in retail outlets (1 January 2011);
- banning smoking in cars carrying a person under 18 years of age (1 January 2010);
- banning the sale of cigarettes from temporary outlets (1 January 2010);
- providing the Minister with the power to ban youth-orientated tobacco products and related products (1 January 2010); and
- an increase in penalties and the introduction of body corporate offences.

On 1 January 2011 the amendments relating to the display of tobacco products will take effect. The new laws will mean that retailers will no longer be able to display any tobacco products or packaging in their shops.

In recognition of the fact that a small number of retail businesses derive their income significantly from tobacco products, an exemption from the point-of-sale display ban has been provided for specialist tobacconists.

This ban will remove the visual cues to smokers at points-of-sale and thereby help to reduce the initiation of smoking and facilitate smoking reduction and cessation. It will also continue to de-normalise smoking by reducing the visual presence of tobacco products.

Tobacco retailers have an important role to play in preventing children and adolescents from obtaining tobacco products and must ensure that they comply with the laws around the sale and display of these products.

Retailers should also be aware of other changes to the Tobacco Act 1987 which came into effect on 1 January 2010.

This guide provides more details on how these amendments affect certified specialist tobacconists and is designed to offer clear and concise advice regarding specialist tobacconists’ obligations under the law. If you require further information please call the Tobacco Information Line on 1300 136 775 or visit www.health.vic.gov.au/tobaccoreforms

Hon David Davis MP
Minister for Health
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1 How to use this guide

This guide provides information for retailers whose retail outlets may be eligible for an exemption to the point-of-sale display ban, which comes into effect on 1 January 2011. The guide provides information for retailers who are certified specialist tobacconists and for retailers wanting to apply for certification.

The guide also contains information to help you and your staff comply with new and existing laws in relation to sale of tobacco products. We encourage you to read all sections thoroughly to make sure you know your responsibilities when selling tobacco in Victoria.

The guide is constructed in a question-and-answer format, and grouped into sections that cover the main areas of the Tobacco Act 1987 that apply to you and your staff.

The guide contains some relevant definitions to help you understand the terms and phrases used.

1.1 Further information

For further information about the laws relating to the sale of tobacco products, call the Tobacco Information Line on 1300 136 775. Fact sheets and other information are also available from the Tobacco reforms website www.health.vic.gov.au/tobaccoreforms
2 Overview of the new tobacco laws

Amendments to the Tobacco Act apply from 1 January 2011. From that date retailers of tobacco products cannot display any tobacco products or packaging.

An exemption exists for certified specialist tobacconists, who will continue to be able to display tobacco products in line with restrictions prior to 1 January 2011.

Amendments to the Tobacco Act that have already come into effect in 2010 include laws that:

- ban smoking in motor vehicles when a person under 18 is present
- ban the sale of tobacco products from temporary or mobile outlets
- give the Minister for Health new powers to ban tobacco products that appeal to children and young people
- increase the penalties for offences, including penalties for selling tobacco products to people under 18.
3 Certified Specialist Tobacconists

Q 1 What is a certified specialist tobacconist?

A certified specialist tobacconist is a retail business which:

1. Derived 80% or more gross turnover from the sale of tobacco products in the 12 months immediately preceding the application; and
2. Operates from a premises which is separated from any other retail premises by a wall; and
3. Operates from a premises which does not open directly to another retail premises; and
4. Does not sell products or services for children or adolescents; and
5. Does not sell dairy products, bread and bakery products, breakfast cereals or food or beverages other than low-risk, shelf stable foods and beverages; and
6. Clearly identifies itself as a specialist tobacconist through the use of external branding containing the words: tobacco and/or tobacconist and/or cigarettes; and
7. Does not identify itself as a newsagent through external or internal branding and only sells local, state and national/ daily/ weekly newspapers; and
8. Is certified by the Secretary, Department of Health.

Q 2 How do I become a certified specialist tobacconist?

You must apply using the Application Form for Specialist Tobacconist Certification which can be requested by calling the Tobacco Information Line on 1300 136 775, or you may download the application form from the Tobacco Reforms website: www.health.vic.gov.au/tobaccoreforms

You must supply all the requested information or your application will not be assessed.

If your retail outlet does not receive certification, you will be notified by mail.

If your retail outlet does receive certification, you will be notified by mail and you will receive a certificate, which must be displayed in your retail outlet in a conspicuous place.

Q 3 But I’m already a specialist tobacconist; do I still need to apply?

Yes.

It does not matter if you already think you are a specialist tobacconist, you will still need to apply and receive certification to have the exemption to the tobacco product display ban.

Q 4 Am I guaranteed to get certification?

No.

The Secretary may refuse to certify a retail outlet as a specialist tobacconist if it does not meet the criteria detailed in this guide and the application form.

The Secretary may also refuse to certify a retail outlet as a specialist tobacconist if the applicant does not comply with any requirement of the Tobacco Act 1987 or Tobacco Regulations 2007.

If your application is going to be refused, you will have the opportunity to make a written submission to the Secretary, Department of Health.

Q 5 What if my application for certification is refused?

You must comply with the ban on the display of tobacco products the same as all other retailers which do not have certification as specialist tobacconists.

If your application is going to be refused, you will have the opportunity to make a written submission to the Secretary, Department of Health.
If you decide to make a written submission to the Secretary and your application is still refused, you must comply with the ban on the display of tobacco products the same as all other retailers without certification as specialist tobacconists. See the Tobacco Retailer Guide for information on how to comply with the ban on display of tobacco products.

Q 6 I want to start a new business as a specialist tobacconist; what do I have to do to get certification?
You may apply to be a certified specialist tobacconist by showing that you will derive 80% of gross turnover from the sale of tobacco products in the 12 months immediately following the commencement of trading.
You must also show that your retail outlet will be separated from any other retail premises by a wall and that any doorway will not open or exit directly into any other retail premises.
You must also show that you will meet all other criteria for certification as a specialist tobacconist as detailed in this guide and the Application Form for Specialist Tobacconist Certification.
You must notify the Secretary, Department of Health within 7 days of the tobacco retailing business commencing.

Q 7 How long does certification last?
Certification is ongoing unless the tobacco retailing business ends or moves to another premises.
Certification also ends if the original applicant is no longer carrying on the tobacco retailing business.

Q 8 Can certification be cancelled?
Yes.
Specialist tobacconist certification can be cancelled if:
• the holder does not comply with a requirement of the Tobacco Act or Tobacco Regulations; or
• the retail outlet no longer satisfies the criteria for exemption; or
• the holder requests it.

Q 9 What does it mean to be a certified specialist tobacconist?
Certified specialist tobacconists are exempt from the ban on the display of tobacco products.
It is important to remember that an exemption does not mean that certified specialist tobacconists can display tobacco products however they want. Certified specialist tobacconists face the same tobacco display restrictions as those which existed for tobacco retailers before 1 January 2011. Part 4 of this guide contains information about display and advertising restrictions for certified specialist tobacconists.
3.1 Penalties for breaches of laws relating to certified specialist tobacconists

<table>
<thead>
<tr>
<th>Breach of tobacco law</th>
<th>Infringement notice</th>
<th>Maximum penalties – Magistrates Court</th>
</tr>
</thead>
<tbody>
<tr>
<td>Specialist tobacconist does not display certificate as specified</td>
<td>1 penalty unit</td>
<td>10 penalty units</td>
</tr>
<tr>
<td></td>
<td>5 penalty units</td>
<td>50 penalty units</td>
</tr>
<tr>
<td>Providing false or misleading information or documentation</td>
<td></td>
<td>60 penalty units</td>
</tr>
<tr>
<td></td>
<td></td>
<td>300 penalty units</td>
</tr>
</tbody>
</table>

The value of a penalty unit changes every year. For the current value, visit the Office of the Chief Parliamentary Counsel website www.ocpc.vic.gov.au
4 Display and advertising restrictions for certified specialist tobacconists

Q 10 Can I have more than one display area?
No.
You can only have one display area of dry tobacco products within your retail outlet.

Q 11 Can I have more than one point of sale?
Yes.
You can sell tobacco products from more than one point of sale in your retail outlet, but you are only permitted one display area.

Q 12 What must my tobacco display look like?
If you are a certified specialist tobacconist you are only allowed to have a limited display of tobacco products in your retail outlet.
The display must be consistent with the definition of ‘product line’ in the Tobacco Act.
‘Product line’ is a tobacco product that differs from other products on the basis of:
(a) Flavour;
(b) Nicotine or tar content; or
(c) Brand name.
You can only display one of each product line of a tobacco product. Different size packages are not treated as different product lines. This means you cannot display different sizes of cigarette packages with the same flavour, nicotine or tar content, or brand name.

For example, you cannot display Brand A 30s Blue, as well as Brand A 40s Blue. However, you can display Brand A Blue 20s, Brand A Purple 20s and Brand A Green 20s. For example:
The following options show you some ways you can display your tobacco products.

**Option A**
Single immediate package where a single package is displayed, the front of one product line can be displayed but any other of the same product line must be covered.
Your display will look like this:

**Option B**
When cigarette packages are stacked directly on top of each other, you are only allowed to display the top and bottom package of each stack.
Your display will look like this:

**Option C**
When packages are stacked directly behind each other. You can display the front face of a tobacco package of each product line as well as the tops, sides and front health warning.

Not like this:
Q 13 How big can my tobacco display be?
Your display of dry tobacco products including cigarettes, roll your own tobacco and dry cigars must be displayed in a maximum area of four square metres, regardless of which option you choose.

You may not be able to display your full product range in four square metres. Extra products must be blocked from view by customers. You can use price tickets and price boards to inform customers about the blocked products.

Q 14 How do I measure the display area?
The display area is measured from the outer edge of the first package face on display to the outer edge of the package that is furthest from that first package.

All space in this area is considered to be the display area regardless of whether all packages are on display, or are covered by price tickets.
Q 15  How can I display cigars?

Dry cigars sold in packages can be displayed in the same way as cigarettes, as outlined in Q12—What must my tobacco display look like?

As an alternative to these stack dispenser displays, you may choose to display up to 13 of each product line of cigars outside a stack dispenser (in an open box, container, or compartment), and/or a closed box of each product line of cigars.

Cigars must comply with product line definition. This means that you can’t display different sizes of cigars that are the same brand name, nicotine or tar content or flavour.

Dry cigars must be displayed within the maximum four square metre display for tobacco products. Cigars in operating humidors are not included in the maximum display area.

Q 16  Can I display cartons?

No.

You can not display cigarette cartons. You can sell them but customers must not be able to see them.

Only duty free shops beyond the barrier at Melbourne Airport are permitted to have a limited display of cigarette cartons.

Q 17  What are price tickets and how can I use them?

Price tickets can be used to show the price and other information about each tobacco product you sell. Usually, they would be the same size as the product or pack.

Price tickets can list information including:

• The name of the product line.
• The strength of the product line (for example 4 mg, 8 mg).
• The flavour and number of items contained in the product line (for example menthol, 30s).
• The average weekly sales of the product line.
• Any identifying category information related to the product line.
• A barcode or similar identifying code of the product line.
• The country of origin of the product line, including any symbol representing the country of origin.
Price tickets must:

- be no bigger than the biggest immediate package on display
- have lettering no bigger that 2.1cm high and 1cm wide
- be black and white, or up to four (4) colours, none of which is fluorescent
- not be lit or displayed in a way that makes the price ticket more noticeable than other signs or price tickets in your retail outlet
- be consistent with price tickets or signs in the rest of your retail outlet.

Price tickets cannot be set out together in a way which forms an image or has a visual effect.

Price tickets can be used to hide tobacco products that you are not permitted to display under the legislation. For example, to comply with product line display restrictions, you can not display different pack sizes (20s, 25s, 30s, 35s) of a product line of cigarettes. If you decided to display the pack of 25s, you could use price tickets to hide all the other packets in the same product line.
Q 18 What are price boards and how can I use them?

You can use a price board to list the price and details of the tobacco products you sell. You may wish to use a price board for products that you can't display, like cartons or those products that do not fit within your maximum display area. You may have one price board at each point of sale.

Price boards can list information about:

- the brand of tobacco products available for sale
- the flavour of tobacco products available for sale (for example, menthol)
- the pack sizes available for sale (for example, 25s, 30s, cartons)
- the prices of tobacco products available for sale, including any current discounts.

The price boards in your retail outlet must:

- be no bigger than 1.5 m by 1.5 m (150 cm x 150 cm)
- have lettering no bigger than 2.1 cm high by 1.5 cm wide
- be printed on one side only in either black and white or in up to four (4) colours, none of which is fluorescent
- not be lit or displayed in a way that makes the price board more noticeable than other signs or price tickets in your retail outlet

<table>
<thead>
<tr>
<th>Product</th>
<th>Type</th>
<th>Size</th>
<th>Price</th>
</tr>
</thead>
<tbody>
<tr>
<td>Brand A</td>
<td>Menthol</td>
<td>20s</td>
<td>$11.00</td>
</tr>
<tr>
<td>Brand A</td>
<td>Regular</td>
<td>20s</td>
<td>$11.00</td>
</tr>
<tr>
<td>Brand A</td>
<td>Menthol</td>
<td>25s</td>
<td>$12.30</td>
</tr>
<tr>
<td>Brand A</td>
<td>Regular</td>
<td>40s</td>
<td>$14.50</td>
</tr>
<tr>
<td>Brand A</td>
<td>Menthol</td>
<td>50s</td>
<td>$16.00</td>
</tr>
<tr>
<td>Brand B</td>
<td>Regular</td>
<td>30s</td>
<td>$13.60</td>
</tr>
<tr>
<td>Brand B</td>
<td>Menthol</td>
<td>30s</td>
<td>$13.60</td>
</tr>
<tr>
<td>Brand B</td>
<td>Regular</td>
<td>50s</td>
<td>$16.00</td>
</tr>
<tr>
<td>Brand B</td>
<td>Menthol</td>
<td>Carton</td>
<td>$70.00</td>
</tr>
<tr>
<td>Brand C</td>
<td>Menthol</td>
<td>25s</td>
<td>$12.30</td>
</tr>
</tbody>
</table>

Q 19 Can I advertise tobacco products?

No.

You must not display any branded or unbranded tobacco advertising anywhere inside or outside your retail outlet. This includes the display of posters, desk pads, flags, stickers, back-lit tobacco advertising signs and tobacco advertising on vending machines.
Q 20 Can I offer free or discounted products to customers with the purchase of tobacco products

No.

You must not offer or supply any free or discounted products (such as CDs, tins or carry cases) or other benefits (such as vouchers or credits) with the purchase of, or to promote the sale of, a tobacco product.

4.1 Penalties for breaches of display and advertising restrictions

<table>
<thead>
<tr>
<th>Breach of tobacco law</th>
<th>Infringement notice</th>
<th>Maximum penalties – Magistrates Court</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Natural person</td>
<td>Body corporate</td>
</tr>
<tr>
<td>Incorrect display of tobacco products, for example non-compliance with product line definition; the display is larger than the maximum display area; or cartons are on display.</td>
<td>3 penalty units</td>
<td>30 penalty units</td>
</tr>
<tr>
<td>Display of branded or non-branded tobacco advertisement or display of advertisements for cigarette papers</td>
<td></td>
<td>60 penalty units</td>
</tr>
<tr>
<td>Display of signs outside the retail outlet, such as ‘cheap smokes’ or ‘discount cigarettes’</td>
<td></td>
<td>60 penalty units</td>
</tr>
</tbody>
</table>

The value of a penalty unit changes every year. For the current value, visit the Office of the Chief Parliamentary Counsel website www.ocpc.vic.gov.au
5 General information about selling tobacco products in Victoria

Q 21 Do I need a licence to sell tobacco products in Victoria?
No.

You do not currently need a licence to sell tobacco products in Victoria, but you must comply with all laws concerning the sale of tobacco products at all times. Reading this guide should help you to understand your responsibilities when selling tobacco.

Certified specialist tobacconists must display their certificate in a noticeable place in a way that is likely to attract attention.

Q 22 Do people who sell tobacco products have to be above a certain age?
There is no age requirement for people who can sell tobacco products in Victoria.

Anyone who sells tobacco products must do so responsibly and comply with the law.

Everyone, no matter how old, must comply with laws banning the sale of tobacco products to people under 18.

Younger people sometimes find it hard to work out how old a person is, and may not wish to ask someone for proof of age. You may decide to have only adults sell tobacco products, or to require younger staff to check with an adult before selling tobacco products.

The manager is responsible for making sure that anyone they allow to sell tobacco products does so responsibly and complies with the law. If someone in your retail outlet sells tobacco to a person under 18, you may be held responsible and fined.

Q 23 What signs must I display if I sell tobacco products?
If you sell tobacco products, you must display this A4 size sign in your retail outlet:

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“WE DON’T SELL TOBACCO TO U/18s.”
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Penalties apply Tobacco Act 1987
Specialist tobacconist guide

Low-tar cigarettes kill too

Smoking destroys more than your lungs

Smoking damages almost every organ

Smoking Kills

Smoking causes cancer of the stomach, bladder, lung, mouth, kidney, cervix and pancreas

Toxins in tobacco smoke travel everywhere blood goes

You must also display one of these A3 size black-and-white health warning signs:
Mobile selling of tobacco products is also banned. You must not sell tobacco products that are carried about on a person’s body.

If you own or operate a tobacco product vending machine, you must adhere to the restrictions concerning its location. See our Tobacco retailer guide for more information about tobacco product vending machines.

Q 26 What tobacco products can’t I sell?

The Minister can ban tobacco products that are designed to appeal to children and young people if:

- the tobacco product or its smoke has a distinctive fruity, sweet or confectionery-like character
- the tobacco product has packaging that appeals to children or young people
- the tobacco product is of a nature or is advertised in a way that may encourage children or young people to smoke.

The Minister can also ban a product that resembles a tobacco product.

Q 27 How do I know what tobacco products are banned from sale?

Ban orders are published in the Victoria Government Gazette. The Minister will notify known suppliers of banned products.

A list of banned tobacco products is available from the Tobacco Information Line on 1300 136 775 or from the Tobacco reforms website www.health.vic.gov.au/tobaccoreforms.

A list of currently banned products can be found on page 22 of this guide.
This table shows currently banned products:

<table>
<thead>
<tr>
<th>Product</th>
<th>Manufacturer/ supplier</th>
</tr>
</thead>
<tbody>
<tr>
<td>DJ Mix Lemon Fresh</td>
<td>D J Tobacco Co Ltd</td>
</tr>
<tr>
<td>DJ Mix Iced Green Apple</td>
<td>D J Tobacco Co Ltd</td>
</tr>
<tr>
<td>DJ Mix Strawberry</td>
<td>D J Tobacco Co Ltd</td>
</tr>
<tr>
<td>Peel Menthol Orange</td>
<td>D J Tobacco Co Ltd</td>
</tr>
<tr>
<td>Peel Sunny Peach</td>
<td>D J Tobacco Co Ltd</td>
</tr>
<tr>
<td>Peel Sweet Melon</td>
<td>D J Tobacco Co Ltd</td>
</tr>
<tr>
<td>Peel Super Lights Iced Green Apple</td>
<td>D J Tobacco Co Ltd</td>
</tr>
<tr>
<td>Peel Super Lights Strawberry</td>
<td>D J Tobacco Co Ltd</td>
</tr>
<tr>
<td>Peel Super Lights Lemon Fresh</td>
<td>D J Tobacco Co Ltd</td>
</tr>
<tr>
<td>Black Devil</td>
<td>Heupink and Bloemen Tabak B.V.</td>
</tr>
<tr>
<td>Pink Elephant</td>
<td>Heupink and Bloemen Tabak B.V.</td>
</tr>
</tbody>
</table>

5.1 Penalties for breaches of tobacco laws

<table>
<thead>
<tr>
<th>Breach of tobacco law</th>
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<th>Maximum penalties – Magistrates Court</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Natural person</td>
<td>Body corporate</td>
</tr>
<tr>
<td>Failure to display health warning</td>
<td>2 penalty units</td>
<td>5 penalty units</td>
</tr>
<tr>
<td>Failure to display U18 sign</td>
<td>2 penalty units</td>
<td>5 penalty units</td>
</tr>
<tr>
<td>Sale of fruit-flavoured or confectionery-flavoured cigarettes</td>
<td>4 penalty units</td>
<td>60 penalty units</td>
</tr>
<tr>
<td>Sale of tobacco from a temporary outlet</td>
<td>3 penalty units</td>
<td>30 penalty units</td>
</tr>
<tr>
<td>Sale of single cigarettes or cigarettes in a pack containing fewer than 20</td>
<td>3 penalty units</td>
<td>60 penalty units</td>
</tr>
</tbody>
</table>

The value of a penalty unit changes every year. For the current value, visit the Office of the Chief Parliamentary Counsel website www.ocpc.vic.gov.au
6 Laws banning tobacco sales to people under 18

Q 28 What are the laws about selling tobacco products to a person under 18?
Selling tobacco products, including cigarettes, cigars or loose tobacco, to any person under 18 is illegal. This includes the sale of tobacco products from vending machines to a person under 18.
If you sell tobacco products, you must display the sign below:

“WE DON’T SELL TOBACCO TO U/18s.”

This sign must be displayed next to each point of sale for tobacco products or near the entrance of your retail outlet where customers can easily see it.
This sign is produced by the Department of Health and is available free of charge. Call the Tobacco Information Line on 1300 136 775 to request a sign, or download a copy of a sign from the Tobacco reforms website www.health.vic.gov.au/tobacco reforms

Q 29 Who is responsible when tobacco products are sold to a person under 18?
The employee who sold the tobacco product is responsible.
The manager or employer of the employee (the primary offender) who sold the tobacco product may also be held responsible.

Q 30 What happens if tobacco products are sold to a person under 18?
An individual (natural person) may receive an on-the-spot fine of four (4) penalty units. If found guilty of an offence in court, an individual may be fined up to 120 penalty units.
A company (body corporate) may receive an on-the-spot fine of 60 penalty units. If found guilty of an offence in court, a company may be fined as much as 600 penalty units.
The value of a penalty unit changes each year. For the current value of a penalty unit, visit the Office of the Chief Parliamentary Counsel website www.ocpc.vic.gov.au

Q 31 Who should I ask for identification (ID)?
It’s not always easy to tell how old a person is. It’s a good idea to ask for identification from any person who may be under 25.
Q 32 What are acceptable forms of identification (ID)?

Only identification that provides photographic proof of age is acceptable. For example:

- a Victorian or interstate proof-of-age card
- a Victorian or interstate driver’s licence
- an Australian or international passport
- a Keypass
- a Victorian learner’s permit.

This sign shows your customers acceptable forms of identification:

![Image of acceptable forms of identification]

Q 33 How do I work out if a customer is over 18 and can purchase tobacco products?

Using an acceptable form of ID, these charts will help you to work out how old a person is:

6.1 Calculating if a person is under 18 – 2010

<table>
<thead>
<tr>
<th>Year of birth</th>
<th>Can I sell tobacco?</th>
</tr>
</thead>
<tbody>
<tr>
<td>Before 1992</td>
<td>Yes</td>
</tr>
<tr>
<td>1992</td>
<td>CHECK DAY AND MONTH OF BIRTH:</td>
</tr>
<tr>
<td></td>
<td>• if date is on or before purchase date, customer is 18 — YES</td>
</tr>
<tr>
<td></td>
<td>• if date is after purchase date, customer is not 18</td>
</tr>
<tr>
<td></td>
<td>NO — REFUSE SALE</td>
</tr>
<tr>
<td>After 1992</td>
<td>NO — REFUSE SALE</td>
</tr>
</tbody>
</table>

6.2 Calculating if a person is under 18 – 2011

<table>
<thead>
<tr>
<th>Year of birth</th>
<th>Can I sell tobacco?</th>
</tr>
</thead>
<tbody>
<tr>
<td>Before 1993</td>
<td>Yes</td>
</tr>
<tr>
<td>1993</td>
<td>CHECK DAY AND MONTH OF BIRTH:</td>
</tr>
<tr>
<td></td>
<td>• if date is on or before purchase date, customer is 18 — YES</td>
</tr>
<tr>
<td></td>
<td>• if date is after purchase date, customer is not 18</td>
</tr>
<tr>
<td></td>
<td>NO — REFUSE SALE</td>
</tr>
<tr>
<td>After 1993</td>
<td>NO — REFUSE SALE</td>
</tr>
</tbody>
</table>

These charts only apply in 2010 and 2011. To use the charts in 2012, add another year to the ‘Year of birth’ column and calculate from 1994. This method can be repeated each successive year.

This sign is produced by the Department of Health and is available free of charge. Call the Tobacco Information Line on 1300 136 775 to request a sign, or download a copy of a sign from the Tobacco reforms website www.health.vic.gov.au/tobaccoreforms.
Q 34 I am a manager. What should I do to make sure I am not held responsible for employees selling tobacco products to a person under 18?

Managers are responsible for ensuring that anyone allowed to sell tobacco products does so responsibly and in accordance with the law. You can be fined if an employee sells tobacco products to a person under 18 (see Q 29 Who is responsible when tobacco products are sold to a person under 18?).

You may be able to avoid a fine by training every employee every six months. The training must cover each of these things:

• That employees must not sell tobacco products to persons under 18 for any reason.
• That employees must ask for and see identification (ID) before selling a tobacco product to a person who might be under 18.
• That if employees sell tobacco products to a person under 18, they are committing an offence and may be fined.

Managers must have written confirmation from employees that they have received this training. See Part 10 for the Training Acknowledgement form.

6.3 Penalties for breaches of laws relating to the sale of tobacco to minors

<table>
<thead>
<tr>
<th>Breach of tobacco law</th>
<th>Infringement notice</th>
<th>Maximum penalties – Magistrates Court</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Natural person</td>
<td>Body corporate</td>
</tr>
<tr>
<td>Manager/proprietor whose staff or agent sells tobacco to a minor</td>
<td>4 penalty units</td>
<td>60 penalty units</td>
</tr>
<tr>
<td>Person who sells tobacco to a minor</td>
<td>4 penalty units</td>
<td>60 penalty units</td>
</tr>
<tr>
<td>Failure to display U18 sign</td>
<td>2 penalty units</td>
<td>5 penalty units</td>
</tr>
</tbody>
</table>

The value of a penalty unit changes every year. For the current value, visit the Office of the Chief Parliamentary Counsel website www.ocpc.vic.gov.au
7 Tobacco inspectors

Q 35 What is the role of tobacco inspectors?
Environmental Health Officers (EHOs) at Victoria’s local councils are authorised to enforce tobacco legislation, and they enforce the laws by:
• making education visits to tobacco retailers
• undertaking test purchases in retail outlets that sell tobacco to determine compliance with laws preventing the sale of tobacco products to people under 18.

Q 36 What powers do tobacco inspectors have?
Tobacco inspectors have the power to:
• inspect parts of the tobacco retail outlet that are open to the public
• request the name and address of anyone they believe may have committed an offence under the Tobacco Act
• inspect and measure tobacco displays located behind the counter
• direct the occupier to remove any tobacco advertisement placed or displayed in contravention of the Tobacco Act.

Tobacco inspectors do not need written consent or a search warrant to inspect and measure the tobacco display, but they must show their identity card before going behind the counter.

Q 37 What are my rights and obligations when being interviewed by an inspector?
By law, you must provide your full name and address to tobacco inspectors.
You have the right to an interpreter.
You have the right to refuse to answer any questions asked by tobacco inspectors at any stage in the interview. However, the interview is an opportunity for you to explain the circumstances that led to the breach of the Act.
# 8 Definitions

<table>
<thead>
<tr>
<th>Term</th>
<th>Meaning</th>
</tr>
</thead>
<tbody>
<tr>
<td>Acceptable form of identification</td>
<td>a document that—</td>
</tr>
<tr>
<td></td>
<td>a) is—</td>
</tr>
<tr>
<td></td>
<td>i) a Victorian proof-of-age card or an interstate proof-of-age card or</td>
</tr>
<tr>
<td></td>
<td>ii) a Victorian driver's licence or an interstate driver's licence or</td>
</tr>
<tr>
<td></td>
<td>iii) an Australian or foreign passport or</td>
</tr>
<tr>
<td></td>
<td>iv) an approved issuer document (this currently includes a Keypass card) and</td>
</tr>
<tr>
<td></td>
<td>b) contains a photograph of the bearer and</td>
</tr>
<tr>
<td></td>
<td>c) indicates, by reference to a date of birth or otherwise, that the bearer is of or over a particular age.</td>
</tr>
<tr>
<td>Branding</td>
<td>trade name, brand name, brand or name given to product or service.</td>
</tr>
<tr>
<td>Carton</td>
<td>a package that contains packages of a tobacco product, or a package designed to contain packages of a tobacco product, but does not include a package containing individually wrapped cigars (unless the package contains a further package or packages of cigars).</td>
</tr>
<tr>
<td>Certified specialist tobacconist</td>
<td>a tobacco retailing business where—</td>
</tr>
<tr>
<td></td>
<td>(a) tobacco retailing is carried on or proposed to be carried on at the premises; and</td>
</tr>
<tr>
<td></td>
<td>(b) the gross turnover of tobacco products at the premises—</td>
</tr>
<tr>
<td></td>
<td>(i) if the tobacco retailing business is carried on at the premises at the time of the application, constitutes 80 per cent or more of the gross turnover of all products sold at the premises in the 12 months immediately preceding the application or the applicant’s period of trading at the premises, whichever is shorter; or</td>
</tr>
<tr>
<td></td>
<td>(ii) if the tobacco retailing business is proposed to be carried on at the premises at the time of the application, is projected to constitute 80 per cent or more of the projected gross turnover of all products to be sold at the premises in the 12 months immediately following the commencement of trading by the applicant at the premises; and</td>
</tr>
<tr>
<td></td>
<td>(c) certification of the premises is consistent with the objects of this Act; and</td>
</tr>
<tr>
<td></td>
<td>(d) certification of the premises is consistent with any strategic plan, policy statement, code or guideline relating to specialist tobacconists that has been adopted by the Minister; and</td>
</tr>
<tr>
<td></td>
<td>(e) the premises are separated from other retail premises by a wall and that any doorway or entrance to or exit from the premises does not open directly into any other retail premises.</td>
</tr>
<tr>
<td>Display</td>
<td>in relation to a tobacco product at a retail outlet, a display to customers of the retail outlet.</td>
</tr>
<tr>
<td>Low-risk food</td>
<td>foods that are unlikely to contain pathogenic micro-organisms and will not normally support their growth due to food characteristics.</td>
</tr>
</tbody>
</table>
**Manager of a primary offender**
- an employer of the primary offender or
- a person who authorised the primary offender to sell tobacco products as the person’s agent or
- if the primary offence was committed in the course of carrying on a business — a person who owns, manages, controls, conducts or operates that business.

**Package**
- a bundle, container, box or case; something that is packed and wrapped or boxed; a parcel
- does not include a transparent wrapping, unless the wrapping has a tobacco advertisement printed on it.

**Point of sale**
- a place where tobacco products are sold within a retail outlet, including a vending machine from which tobacco products are sold.

**Premises**
- includes any part of the premises, including a vehicle or vessel and permanent or temporary structures.

**Primary offender**
- the person who sells cigarettes to a minor in breach of the Tobacco Act.

**Product line**
- a kind of tobacco product distinguishable from other kinds by one or more of these characteristics:
  - brand name
  - nicotine or tar content
  - flavour
- but not by the size of the package containing the tobacco product.

**Retail outlet**
- premises where tobacco products are available for sale by retail.

**Service counter**
- at an approved venue or casino, is a counter at which gaming tokens (within the meaning of the *Gaming Regulation Act 2003*) may be issued or redeemed
- at a bottle shop, is a counter in the bottle shop across which liquor is supplied directly to customers.

**Shelf-stable food**
- food of a type that has been processed so that it can be safely stored in a sealed container at room or ambient temperature for a usefully long shelf life.

**Temporary outlet**
- a temporary display stand, booth or tent, or other temporary or mobile structure or enclosure, whether or not a part of that display stand, booth, tent, structure or enclosure is permanent.

**Tobacco advertisement**
- 1) any writing, still or moving picture, sign, symbol or other visual image, or any audible message, or any combination of two (2) or more of those things, that publicises or otherwise promotes or is intended to promote —
  - smoking or
  - the purchase or use of a tobacco product or a range of tobacco products or
  - the whole or a part of a trade mark that is registered under the *Trade Marks Act 1955* of the Commonwealth in respect of goods that are or include tobacco products or
t  - a whole or part of a design that is registered under the *Designs Act 2003* of the Commonwealth in relation to products that are or include tobacco products or
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e) the whole or a part of the name of a person—
   i) who is a manufacturer of tobacco products and
   ii) whose name appears on, or on the packaging of, some or all of those products or
f) any other words (for example, the whole or a part of a brand name) or design, or
   combination of words and designs, that are closely associated with a tobacco product or a
   range of tobacco products (whether also closely associated with other kinds or products)

2) a reference in subsection 1 to a visual image or a design includes a reference to an
   image or a design consisting of a colour or a scheme of colours

3) without limiting subsection 1, a tobacco advertisement includes—
   a) the display of an immediate package of a tobacco product
   b) the advertisement of cigarette papers

4) words, signs or symbols that appear as part of the standard wording of an invoice,
   statement, order form, letterhead, business card, cheque, manual or other document,
   ordinarily used in the normal course of the business of a manufacturer, distributor
   or retailer of tobacco products (a ‘business document’) do not, when so appearing,
   constitute a tobacco advertisement (but this does not prevent a still or moving picture,
   or other visual image, of a tobacco product, of the packaging of a tobacco product, or
   of a business document, from being a tobacco advertisement)

5) words, signs or symbols that appear in or on land or buildings occupied by a
   manufacturer of tobacco products do not, when so appearing, constitute a tobacco
   advertisement (but this does not prevent a still or moving picture, or other visual image,
   of words, signs or symbols that so appear from being a tobacco advertisement)

6) For the avoidance of doubt, the taking of any action to prevent a product from causing
   injury to anyone, including action—
   a) to recall a product or
   b) to disclose a defect in, or a dangerous characteristic of, a product, or
   c) to disclose circumstances in which the use of a product is or may be dangerous or
   d) to disclose procedures for disposing of a product— does not constitute a tobacco
      advertisement

7) if—
   a) apart from this subsection, something (‘the advertisement’) would, technically, be a
      tobacco advertisement and
   b) it is clear from the advertisement that its sole or principal purpose is to discourage
      smoking or the use of tobacco products— then, despite subsection 1, the
      advertisement is not a tobacco advertisement for the purposes of this Act

8) in this section— ‘words’ includes abbreviations, initials and numbers.

| Tobacco product | tobacco, cigarette or cigar or any other product, the main ingredient of which is tobacco, and which is designed for human consumption. |
| Vending machine | a machine, device or contrivance that is constructed to contain tobacco products that may be obtained from it by an operation that involves the insertion of a coin, note, token or similar object. |
9 Staff training checklist

Training should be completed every 6 months. Once training has been completed, you should ask each member of staff to sign a Training Acknowledgement form like that on the next page.

Training must cover the following topics

- Inform that it is illegal to sell tobacco to a person under 18, under any circumstances, even if the tobacco products are for, or claimed to be for, a person over 18.
- Inform that they should sight an acceptable form of identification (photo ID) for a person before selling a tobacco product to the person.
- Inform of examples of acceptable forms of identification (photo ID):
  - Victorian or interstate proof of age card
  - Victorian or interstate drivers license
  - A Victorian learner’s permit
  - Keypass
  - Australian or foreign passport
- Inform that it is illegal to sell cigarettes in a package containing less than 20 cigarettes.
- Inform of the penalties for selling tobacco to a person under 18.
- Warn if they sell tobacco products to a person under 18 in disregard of the instructions mentioned above, they are committing an offence against the Tobacco Act 1987.
10 Training acknowledgement form

You should only sign this form once you understand the instructions in the Staff Training Checklist and the warning set out below. If you have any questions about the instructions, ask your employer before signing this form. If you are unsure whether or not to sign this form, call the Tobacco Information Line on 1300 136 775.

Date Name

I was instructed:

Not to sell tobacco products to a person under 18 in any circumstances, even if the tobacco products are for, or claimed to be for, a person over 18 years; and

To sight an acceptable form of identification (photo ID) for a person before selling a tobacco product to the person; and

I have been warned that, having received the above two instructions, if I disregard these instructions and sell tobacco products to a person under 18, I commit an offence under the Tobacco Act 1987.

Date Signature

Manager/ Proprietor name and position

Date Manager/ Proprietor signature