

# Tobacco Regulations 2007

Summary of Public Consultation

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# 1. Introduction

The *Tobacco Regulations 2007* (the Regulations) were made on 2 October 2007 replacing the *Tobacco Regulations 1997* (the existing Regulations), which expired on 7 October as a result of the operation of the *Subordinate Legislation Act 1994*.

The Regulations constitute the principal regulations made under the *Tobacco Act 1987* (the Act) and support the objectives of the Act in the discouragement of the smoking of tobacco, and the promotion of health and illness prevention. The proposed Regulations would replace the existing Regulations and the *Tobacco (Labelling) Regulations 1999* with essentially identical requirements.

The Regulations aim to reduce tobacco-related harms by restricting certain types of promotion and providing consumers with health information on the harmful effects of tobacco use. The Regulations seek to fulfil these objectives by limiting retail display areas; prescribing requirements for sale notices and price tickets; requiring health warning labels to be included on tobacco products; and requiring certain signage to be displayed by tobacco retailers.

Prior to making the Regulations an extensive consultation process was undertaken by the Department of Human Services (DHS). Initial consultation commenced in January 2007, whereby key stakeholders were invited by DHS to comment on the proposed Regulations.

Following receipt of the Victorian Competition & Efficiency Commission's (VCEC) assessment of adequacy in July 2007, the DHS publicly released a Regulatory Impact Statement (RIS) in connection with the proposed Regulations for Victoria. The RIS examined the costs and benefits of the proposed Regulations and assessed alternatives to the proposed Regulations. The RIS concluded that the benefits of the Regulations outweigh their costs, and that none of the alternatives provided a superior means of achieving the proposed Regulation's objectives.

The RIS was advertised for public comment in the public notices of the Herald Sun and The Age Newspapers on Saturday 28 July 2007 and in the Victoria Government Gazette dated Monday 30 July 2007.

Copies of the RIS and the proposed Regulations were made available by contacting the Tobacco Information Line on 1300 136775 or downloaded from the tobacco reforms website at <http://www.health.vic.gov.au/tobaccoreforms/legislation>.

The public notice advised that all comments and submissions were to be made in writing and received at the DHS, Tobacco Policy Section (TPS) by 5.00pm on Monday 27 August 2007. The public notice also advised that comments or submissions would be treated as a public document unless the author requested otherwise.

The Department of Human Services (DHS) carefully considered all submissions in reviewing the Regulations as part of the RIS process.

The Minister for Health issued a Notice of Decision to make the Regulations on 19 September 2007. The notice was advertised in the public notices of the Herald Sun and The Age Newspapers on Saturday 22 September 2007 and in the Victoria Government Gazette dated Monday 24 September 2007.

On 2 October 2007, the Governor-in-Council made the Regulations, which were published in the Victorian Government Gazette on this day.

## **2. Process of Consultation**

### **Initial Consultation**

On 22 January 2007, DHS conducted an initial consultation process by writing to over 50 key stakeholders, including tobacco companies/wholesalers, tobacco retailers, hotel associations, local government and health organisations inviting comment on any issues to be considered during the preparation of draft regulations by 28 February 2007.

In response, five written submissions were received by the following organisations:

- British American Tobacco Australasia
- Phillip Morris Limited
- Coles Group Limited
- Imperial Tobacco Australia Limited
- Quit Victoria/ VicHealth Centre for Tobacco Control.

On 23 April 2007, DHS wrote to the abovementioned organisations acknowledging their submissions and advising of DHS's intention to publicly release an RIS.

The Victorian Office of Small Business was also consulted with respect to determining the number of small businesses and relative impact on small businesses of the proposed Regulations.

Comments from tobacco companies were generally supportive of the proposed Regulations; however, Imperial Tobacco Australia raised concerns that the display restrictions effectively entrench the established brands in the marketplace. While it supported the prohibition of sale to minors signage, it considered that there was enough information in the public domain about the harms of smoking, and therefore considered health warning signage unnecessary. The Coles Group was supportive of the proposed Regulations; however, it noted that the differences in requirements across jurisdictions added to compliance costs, and called for national standards regarding display areas and signage. Quit/VCTC raised several technical issues concerning the proposed Regulations, making a general call to further tighten display, ticket and notice requirements.

Summaries of the submissions received by DHS include:

#### **British American Tobacco Australasia (BATA)**

28 February 2007 – BATA indicated that they did not have any issues to raise during the consultation process on the basis that the scope of the changes to the Regulations were only minimal to include the removal of the infringement notice requirements.

#### **Phillip Morris Limited**

27 February 2007 – Phillip Morris Limited recognised the public health objective of reducing the harm caused by tobacco use and that tobacco products should be subject to strong and effective regulations. They also noted the removal of infringement notice requirements now superseded and contained in the *Infringements Act 2006* and that remaining provisions of the Regulations be incorporated in the new Regulations.

### **Coles Group Limited**

9 February 2007 – Coles Group Limited indicated support for a national, uniform approach to point of sale tobacco display/advertising regulation.

### **Imperial Tobacco Australia Limited**

26 February 2007 - Imperial Tobacco Australia Limited commented on matters relating to anti-competitive regulation; youth access prevention; and tobacco displays. In particular they raised concerns about any proposals to ban or further restrict tobacco display areas and reduce visibility of tobacco products at point of sale.

### **Quit Victoria/ VicHealth Centre for Tobacco Control.**

(Incorporating a joint submission from the Victorian Centre for Tobacco Control (VCTC) and Quit Victoria)

1 March 2007 – The joint submission requested a range of amendments to the Regulations relating to point of sale notices about tobacco products (Regulation 5); price tickets or labels (Regulation 6); retail display areas (Regulation 7); and retail outlet warnings and cessation of smoking signage (Regulation 9). Additionally, in relation to *tobacco labelling* (Regulation 8), it was also requested that the Regulations cross-refer to the current *Trade Practices (Consumer Product Information Standards)(Tobacco) Regulations 2004 (Cth)*.

### **RIS Consultation**

Following receipt of the Victorian Competition & Efficiency Commission's (VCEC) assessment of adequacy, in July 2007 the Department of Human Services (DHS) publicly released a RIS in connection with the proposed Regulations for Victoria. The RIS examined the costs and benefits of the proposed Regulations and assessed alternatives to the proposed Regulations. The RIS concluded that the benefits of the Regulations outweigh their costs, and that none of the alternatives provided a superior means of achieving the proposed Regulation's objectives.

The RIS and proposed Regulations were released for public comment from Saturday 28 July 2007 to Monday 28 August 2007.

Advertisements for public comment were placed in the public notices of the Herald Sun and The Age newspapers on Saturday 28 July 2007 and in the Victoria Government Gazette dated Monday 30 July 2007.

On 2 August 2007, DHS also notified all key stakeholders by mail that the RIS and proposed Regulations were publicly available. The abovementioned stakeholders who provided comment in the initial consultation period were also sent hard copies of the RIS and advised that their earlier submissions would be considered as part of the RIS process.

The RIS and proposed Regulations were posted on the tobacco reforms website at <http://www.health.vic.gov.au/tobaccoreforms/legislation>. In addition hard copies were sent out upon request (It is noted that there were no requests for hard copies).

Further to the submissions received during the initial consultation period, 7 written submissions were received in response to the RIS and the proposed Regulations. These included submissions received from:

- FREECHOICE Stores
- Coles Group Limited
- 7- Eleven

- British American Tobacco Australasia
- Phillip Morris Limited
- Cigarette Tobacco Cigars
- The Cancer Council Victoria/Vic Health/Quit Victoria/Heart Foundation, Victoria (joint submission).

Submissions from the abovementioned retail organisations and tobacco companies were very supportive of the proposed Regulations, with many commending the Victorian Government on its efforts to reduce the regulatory compliance burden on business. The joint submission from the Cancer Council/Vic Health/Quit/VCTC/Heart Foundation raised a number of issues in relation to tobacco promotion on packaging and point of sale displays/advertising. Most of the issues raised were identical to the issues raised earlier in the joint submission by Quit/VCTC at the initial consultation stage.

Summaries of the Submissions include:

### **FREECHOICE Stores**

13 August 2007 – FREECHOICE Stores indicated that they did not see any problems with the new Regulations and that you would be pleased to support any government initiative that would curtail the sale of tobacco products to minors.

### **Coles Group Limited**

15 August 2007 – Coles Group Limited indicated their support for the Regulations as published in the RIS. In particular: noting their full support for the revocation of the Tobacco (Labelling) Regulations 1999 and the incorporation of these into the new Regulations; noting their full support for the removal of the current regulations that deal with the prescribed for of infringement notices and withdrawal of infringement notices due to new provisions under the Infringements Act 2006; and commending the Victorian Government on its efforts to reduce the regulatory compliance and administrative burden on business.

### **7- Eleven**

24 August 2007 – 7- Eleven indicated that they did not have any issues to raise and that they were pleased that the Department of Human Services had carefully considered the cost and burden on business in relation to retail tobacco displays.

### **British American Tobacco Australasia (BATA)**

27 August 2007 – BATA indicated their support for the Regulations as published in the RIS.

### **Phillip Morris Limited**

15 August 2007 – Phillip Morris Limited confirmed their agreement to the practical intentions of the Regulations and support for the Regulations.

### **Cigarette Tobacco Cigars**

13 August 2007 – Cigarette Tobacco Cigars indicated that they did not have any issues to raise and that they were pleased that the Department of Human Services had carefully considered the cost and burden on business in relation to retail tobacco displays.

**The Cancer Council Victoria/Vic Health/Quit Victoria/Heart Foundation, Victoria (joint submission).**

(Incorporating a joint submission from the Victorian Centre for Tobacco Control (VCTC) and Quit Victoria)

24 August 2007 – The submission requested consideration for various amendments that could be considered at a later date and immediate amendments to the Regulations including: a requirement that Regulation 9 include that signage at retail premises display graphic health warnings; and that Regulation 6 provide that “discount” or “specials” price tickets or labels must not be used in relation to tobacco products.

### **3. DHS Consideration and Response to Submissions**

DHS carefully considered each submission at both the initial consultation stage and RIS stage in reviewing the Regulations as part of the RIS process. The following consideration was given:

#### **FREECHOICE Stores**

DHS noted FREECHOICE Stores support for the Regulations and any government initiative that would curtail the sale of tobacco products to minors.

DHS Response: 9 October 2007 – DHS wrote to FREECHOICE Stores noting their support for the Regulations and confirming that the Minister for Health decided that the Regulations should be made as published in the RIS, and they are now in effect as of 2 October 2007.

#### **7- Eleven**

DHS noted 7- Eleven’s support for the Regulations and that they were pleased that DHS had carefully considered the cost and burden on business in relation to retail tobacco displays.

DHS Response: 9 October 2007 – DHS wrote to 7- Eleven noting their support for the Regulations and confirming that the Minister for Health decided that the Regulations should be made as published in the RIS, and they are now in effect as of 2 October 2007.

#### **Cigarette Tobacco Cigars**

DHS noted Cigarette Tobacco Cigars support for the Regulations and that DHS had carefully considered the cost and burden on business in relation to retail tobacco displays.

DHS Response: 9 October 2007 – DHS wrote to Cigarette Tobacco Cigars noting their support for the Regulations and confirming that the Minister for Health decided that the Regulations should be made as published in the RIS, and they are now in effect as of 2 October 2007.

### **British American Tobacco Australasia (BATA)**

DHS noted BATA's support for the Regulations.

DHS Response: 9 October 2007 – DHS wrote to BATA noting their support for the Regulations and confirming that the Minister for Health decided that the Regulations should be made as published in the RIS, and they are now in effect as of 2 October 2007.

### **Phillip Morris Limited**

DHS noted Phillip Morris's agreement to the practical intentions of the Regulations and support for the Regulations.

DHS Response: 9 October 2007 – DHS wrote to Phillip Morris noting their support for the Regulations and confirming that the Minister for Health decided that the Regulations should be made as published in the RIS, and they are now in effect as of 2 October 2007.

### **Coles Group Limited**

DHS considered the Coles Group Limited earlier submission of 9 February 2007, indicating their support for a national, uniform approach to point of sale tobacco display/advertising regulation. However, in redrafting the Regulations, it was identified that Victoria is unable to control the regulatory response of other jurisdictions to achieve national conformity and any immediate attempt to conform would place a significant regulatory burden on Victorian retailers.

DHS noted the Coles Group Limited submission of 15 August 2007, indicating their support for the Regulations as published in the RIS and commending the Victorian Government on its efforts to reduce the regulatory compliance and administrative burden on business.

DHS Response: 9 October 2007 – DHS wrote to the Coles Group Limited confirming its consideration of their earlier submission on 9 February 2007; noting their support for the Regulations in their submission of 15 August 2007; and confirming that the Minister for Health decided that the Regulations should be made as published in the RIS, and they are now in effect as of 2 October 2007.

### **Imperial Tobacco Australia Limited**

DHS noted Imperial Tobacco Australia's submission of 26 February 2007 commenting on matters relating to anti-competitive regulation; youth access prevention; and tobacco displays. In particular they raised concerns about any proposals to ban or further restrict tobacco display areas and reduce visibility of tobacco products at point of sale.

DHS Response: 9 October 2007 – DHS wrote to the Imperial Tobacco noting their comments in relation to anti-competitive regulation and youth prevention. In responding, DHS also advised that under the new Regulations the requirements for tobacco display areas and the display of tobacco products remain unchanged without further restrictions. The response also confirmed that the Minister for Health decided that the Regulations should be made as published in the RIS, and they are now in effect as of 2 October 2007.

### **Quit Victoria/ VicHealth Centre for Tobacco Control**

DHS carefully considered their submissions in reviewing the Regulations as part of the RIS process. DHS considered that the issues raised in their submissions are worthy of further examination. However, it was identified that reform options for tobacco point of sale displays/advertising and tobacco product promotion should be considered within a broader policy context. Community consultation and further business/regulatory impact assessments would be required if the Government were to undertake a review of these issues in the future.

DHS also carefully considered their query in relation to the labelling of tobacco products under the current *Tobacco (Labelling) Regulations 1999* and agreed that that Regulation 8 need updating to reflect a cross reference to the current *Trade Practices (Consumer Product Information Standards) (Tobacco) Regulations 2004 (Cth)*.

DHS Response: 9 October 2007 – DHS wrote to the Quit Victoria confirming its consideration of their submissions on 1 March 2007 and 24 August 2007 and confirming that the Minister for Health decided that the Regulations should be made as published in the RIS, and they are now in effect as of 2 October 2007.

### **The Cancer Council Victoria/Quit/VicHealth/Heart Foundation**

DHS carefully considered their submission in reviewing the Regulations as part of the RIS process. DHS considered that the issues raised in their submission are worthy of further examination. However, it has been identified that reform options for tobacco point of sale displays/advertising and tobacco product promotion should be considered within a broader policy context. Community consultation and further business/regulatory impact assessments would be required if the Government were to undertake a review of these issues in the future.

DHS Response: 9 October 2007 – DHS wrote to The Cancer Council, Vic Health and the Heart Foundation confirming its consideration of their submissions on 1 March 2007 and 24 August 2007 and confirming that the Minister for Health decided that the Regulations should be made as published in the RIS, and they are now in effect as of 2 October 2007.

## **4. Remaking the Regulations**

Following the consultation process, DHS sought endorsement of the Regulations from Parliamentary Counsel Victoria, who issued a Section 13 Certificate under the Subordinate Legislation Act 1994 on 18 September 2007.

The Minister for Health issued a Notice of Decision to make the Regulations on 19 September 2007, which was advertised for publicly in the public notices of the Herald Sun and The Age Newspapers on Saturday 22 September 2007 and in the Victoria Government Gazette dated Monday 24 September 2007.

On 2 October 2007, the Governor-in-Council made the Regulations, which were published in the Victorian Government Gazette on this day.

## Further information

**Further information and links pertaining to tobacco legislation in Victoria are available from the following web site at:**

<http://www.health.vic.gov.au/tobaccoreforms>

The *Tobacco Act 1987* and the *Tobacco Regulations 2007* can be downloaded from the Victorian Government Parliamentary web site at:

<http://www.dms.dpc.vic.gov.au/>

Printed copies of the Act are also available for purchase from Information Victoria.

Information about the process of developing regulations in Victoria can be found on the web site of the Victorian Competition and Efficiency Commission at:

<http://www.vcec.vic.gov.au/>

Copies of the *Interpretation of Legislation Act 1984* and the *Subordinate Legislation Act 1994* are available from the Parliamentary web site (<http://www.dms.dpc.vic.gov.au/>).