

# Preventing the sale of tobacco products to children

Information for tobacco retailers and their employees

## What does the law say?

Section 38A of the *Tobacco Products Regulation Act 1997* states that it is an offence to sell or supply tobacco products to a child (any person under the age of 18 years). This includes sales through vending machines.

## What is a tobacco product?

A **tobacco product** is any product that contains tobacco or any other product designed for the purpose of smoking, eg herbal cigarettes, pipes, filters and cigarette papers. Matches and cigarette lighters are not tobacco products.

## Who is responsible?

The **responsible person** in relation to the sale or supply of tobacco products to a child, is the proprietor of the business or a person who sells or supplies the product on behalf of the proprietor. This makes employers and employees equally responsible for tobacco products sold to children.

## If in doubt, ask to see ID!

By law a tobacco retailer or their employee can require a person to produce evidence of their age. You must always ask to see photographic proof of age identification (ID) if you suspect the person to be under 18 years. Good business practice is to ask to see ID of anyone you believe to be under 25 years of age, as a significant difference can exist between the perceived age of a young person and their actual age. Identification should be in the form of a current photographic:

- > **Driver's licence** issued under the *Motor Vehicles Act 1959* or under a corresponding law of another State or a Territory.
- > **Proof of Age card** issued by the Registrar of Motor Vehicles or by a corresponding public authority of the Commonwealth or another State or a Territory
- > **Passport** issued by the Commonwealth or under the law of another country.
- > **Keypass identification card** issued by the Commonwealth Key and Property Register.

## What are the penalties?

Expiation fees (on-the-spot fines) apply for the sale or supply of tobacco products to children. The expiation fee is \$315.

Inspectors are also able to proceed with prosecutions in court if deemed appropriate. The maximum penalty is \$5000.

The Minister for Mental Health and Substance Abuse can also suspend or cancel a Retail Tobacco Merchant's licence if the holder has contravened the Act or is no longer considered, for any reason, a fit and proper person to hold a licence.

## Retailer's training obligations

All people selling tobacco products need to be given adequate training on how to avoid selling tobacco products to children. This includes training any relatives or friends who might occasionally work in the business as well as paid employees.

Proprietors should ensure that all staff know:

- > What procedures they should follow if a customer becomes difficult when asked to produce ID. Role-playing some of the situations that might arise can assist staff in this area.
- > The consequences if they are found to have sold cigarettes to a child.

Staff should be **regularly** reminded about these procedures. Some employers find it helpful to develop a store policy and procedure.

An example store policy and procedure are provided overleaf.

## Monitoring compliance with the law

### Controlled purchase operations

Controlled purchase operations are undertaken using young people employed by the Department for Health and Ageing. They are regularly conducted throughout South Australia to monitor and enforce the *Tobacco Products Regulation Act 1997*.

### Complaints

Any witnesses to the sale of tobacco products to a child are encouraged to report the incident to the Department for Health and Ageing, ph 1300 363 703.

## Legally required sign

All tobacco retailers are legally required to display the A4 sized **Sale of Tobacco Products** sign. This sign is a reminder to customers and retailers that it is an offence to sell or supply tobacco products to people under 18 years of age and that proof of age may be sought before a purchase is made. It is required that the sign be displayed in a manner and position that is likely to attract the attention of the customer, near the point of sale (including a vending machine). Not displaying this sign can incur a maximum penalty of \$750 or an expiation fee of \$105.

The **Sale of Tobacco Products** sign is supplied free of charge to all tobacco retailers by the Department for Health and Ageing, ph 1300 363 703.

## Example of a store policy

Our store strictly supports the minimum age laws governing the sale of tobacco products.

We do not intentionally sell or supply tobacco products to anyone under the age of 18 years.

If we suspect a person to be under 18 years of age we always ask to see photographic identification.

To help this store uphold the law, you, as an employee, must follow this procedure:

1. Visually check for the legal age.
2. Ask to see ID of anyone appearing to be under 25 years of age.
3. If unsatisfactory, do not make the sale.
4. Be firm but polite.
5. State the store's policy.
6. Remind them of the law.

I have read and understood our store policy on selling tobacco products. I am aware that as an employee I am also liable and can be fined for breaches of the law. I have been informed that it is an offence to sell tobacco products to people under 18 years of age and I will not knowingly sell tobacco products to anyone under this age. I will check the identification of anyone who looks like they might be under the age of 25 years.

Signature: ..... Date:.....

## Suggested employee procedure

### Do a visual check

Visually check to make sure the customer appears to be 18 years or over. It is good business practice to ask to see ID if you think the person looks under 25 years.

### Ask to see identification

If there is any doubt about the person's age, it is mandatory to ask for proper identification. If the person is the legal age, they probably won't mind showing suitable photographic identification. Suitable identification must carry a name and date of birth, and a photograph. A driver's licence, Proof of Age card or a passport are all acceptable forms of identification.

### Check identification carefully

Check the birth date. Make sure it has not been altered in any way, eg erased, typed over, smudged or cut out and replaced. Compare the photograph to the person. Be sure the physical characteristics match those of the customer.

### If in doubt, don't make the sale

If the person can't produce a valid identification, regardless of the reason, DO NOT make the sale.

### Be informative

The person will understand your position better if you explain it. Show them the store policy and signage. Explain the law and the penalty that applies.

### Seek manager support

If the person still does not accept your refusal to sell, suggest they talk to the manager. Often this will discourage an underage person from persisting.

## Retail Tobacco Merchant's Licence

All tobacco retailers in South Australia must hold a **Retail Tobacco Merchant's Licence**. A copy of the licence must be displayed in a prominent place in close proximity to the point of sale where tobacco is sold (including a vending machine).

To apply for, or get a copy of your licence, please contact the Department for Health and Ageing on 1300 363 703 (SA only) or (08) 8226 7100 . Applications can also be downloaded or made online at [www.tobaccolaws.sa.gov.au](http://www.tobaccolaws.sa.gov.au).

## Frequently asked questions

### Can I sell tobacco products to people under 18 years of age if they have permission from a parent or guardian?

No, it is still illegal for you to sell the products to anyone under 18 years of age regardless of parental views.

### Can someone under 18 years of age sell tobacco products?

Yes, but it is not recommended as they may be less confident about asking to see ID or refusing a sale.

### Can adults buy tobacco products for underage people?

No, it is illegal for anyone to supply tobacco products to someone under the legal age. Retailers should refuse to sell tobacco products to an adult if they have reason to believe that person is purchasing them to supply to someone under 18 years of age.

### What happens if an Authorised Officer alleges that my employee or I have sold to an underage person?

Authorised Officers are legally empowered to investigate alleged breaches of the *Tobacco Products Regulation Act 1997*. These investigations will include conducting interviews with those involved and could result in the issuing of expiation notices, suspension or removal of the Retail Tobacco Merchant's Licence or lead to prosecution.

## For more information

### Health Protection Operations Department for Health and Ageing

**Post:** PO Box 6 Rundle Mall, Adelaide SA 5000

**Ph:** 1300 363 703 (SA only) or (08) 8226 7100

**Fax:** (08) 8226 7102

**Email:** [HealthProtectionOperations@health.sa.gov.au](mailto:HealthProtectionOperations@health.sa.gov.au)

**Web:** [www.tobaccolaws.sa.gov.au](http://www.tobaccolaws.sa.gov.au)

### Disclaimer

This information is provided for guidance only and is not to be taken as an expression of the law. It should be read in conjunction with the *Tobacco Products Regulation Act 1997*. The State of South Australia, its agents, instrumentalities, officers and employees will not be responsible for any loss, however arising, from the use of, or reliance on this information.



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