

Better Regulation Statement

Amendments to the Public Health Act to reduce the impact of tobacco on children.

1. Executive Summary

Tobacco use is the single greatest cause of illness and premature death in NSW and the most significant public health issue currently facing the NSW community. Tobacco use costs the NSW community some \$10 billion per annum and the NSW public health system approximately \$630,000 per day in bed costs (excluding all treatment and medications).

Robust government action is warranted to reduce the burden of tobacco use on the community and future generations.

The NSW Department of Health has conducted detailed consultation on community attitudes to tobacco control initiatives. That consultation, which includes the continuous NSW Health Survey and NSW School Student Health Behaviours Survey, is supported by research in other jurisdictions and indicates that the community as a whole supports the adoption of aggressive tobacco control strategies by government to reduce the impact of environmental tobacco smoke on non-smokers (particularly children) and to reduce the inducements to and opportunities for children to commence smoking.

2. Need for Government Action

Tobacco is estimated to kill approximately half of its long-term users and is the greatest single cause of premature death in New South Wales.

The most recent Report of the New South Wales Chief Health Officer shows that in 2004 there were an estimated 6,507 tobacco-related deaths in NSW (4,244 males and 2,263 females) representing 18% of all male and 10% of all female deaths. The Report also shows that in 2004-05 there were an estimated 55,591 hospitalisations attributable to smoking (36,129 among males and 19,462 among females). This represents 4% of all male and 2% of all female hospitalisations.

A recent NSW report (Collins DJ, Lapsley HM (2005) *Counting the costs of tobacco and the benefits of reducing smoking prevalence in NSW*, NSW Department of Health, Sydney) estimated that in 1998-1999, the social cost of tobacco use in NSW was \$6.6 billion. This figure includes the tangible costs of tobacco use such as net labour costs to the workforce and household, health care costs, road accidents, crime and resources used in tobacco consumption as well as intangible costs which arise as a result of the high level of premature mortality caused by tobacco use. It was estimated that about 45% of the total NSW costs (or almost \$3 billion in 1998/9) were avoidable, had appropriate public policies been implemented.

In April 2008 Collins and Lapsley updated their findings based on the latest available data (*The Costs of Tobacco, Alcohol and Illicit Drug Abuse to Australian Society in 2004/5*, Commonwealth of Australia 2008) and estimate that in 2004-5 the costs of tobacco consumption in Australia were \$31.5 billion. This figure includes the gross value of hospital bed occupancy attributable to smoking-related conditions (excluding the cost of all treatments provided) which was estimated to be \$669.6 million or approximately \$1.83 million per day. It is estimated, based on population, that some \$10 billion of the total cost of tobacco consumption and \$220 million of hospital bed occupancy is attributable to NSW.

Effective public policies that

- support people's attempts to quit smoking;
- discourage people from commencing smoking in the first place;
- protect children from exposure to incentives to smoke and to environmental tobacco smoke; and
- de-normalise the sale and consumption of tobacco products

will over time reduce the burden of tobacco related disease and death on the NSW health system and the community in general.

Failure by the Government to take action will continue to expose the community, in particular future generations, to the health consequences that are known to flow from tobacco consumption. These consequences will most directly be experienced by the public health system which treats the illnesses associated with tobacco consumption, but are also experienced in the wider economy.

Other Australian jurisdictions have recently moved ahead of NSW in tobacco control initiatives. Given recent Federal Government interest in preventative health measures, including tobacco control activity, there is a possibility that future health funding may in part be linked to effective health promotion and regulatory activity in these areas.

3. Objective of Government Action

Priority S3 of the State Plan provides that it is a Government priority to improve health through reduced obesity, smoking, illicit drug use and risk drinking. The Government target in terms of smoking is to reduce smoking rates by 1% per annum to 2010 and then by 0.5% per annum to 2016. In the 2007 NSW Population Health Survey, 18.6% of people aged 16 years and over reported that they were current smokers (daily or occasionally), compared to 24.0% in 1997.

The objective of government activity in this area is to reduce the financial and social burden of disease and premature death associated with tobacco consumption. The means that are employed to achieve this objective include strategies to:

- discourage people from commencing smoking;
- protect children from exposure to incentives to smoke and to environmental tobacco smoke;
- de-normalise the sale and consumption of tobacco products; and

- support people's attempts to quit smoking.

Population health research indicates that among that portion of the population that smokes 80% commenced smoking before the age of 20 years of age. A survey of NSW secondary school students in 2005 indicated that 8.4% of students aged between just 12 and 17 years had 'recently' smoked (smoked in the last seven days) and that 10.3% of students were 'current' (heavy, light or occasional) tobacco smokers.

Reducing the exposure of young people to tobacco products and inducements to smoke will have a profound impact on smoking rates in the general community and is expected to have a significant impact on the healthcare and social costs associated with smoking.

Restrictions on tobacco promotion, particularly at point of sale, are expected to complement existing government Quit programs and contribute to reduced tobacco consumption by those adults who continue to smoke.

4. Consideration of Options

A range of options have been considered to achieve the Government's objective of reducing the burden of illness and death associated with tobacco consumption. Relying on existing regulation and non-regulatory initiatives such as social marketing campaigns is likely to achieve a reduction in smoking rates and associated rates of death and illness. However this is likely to be at a much slower rate than would be experienced with the use of more aggressive regulatory approaches. The result is that the health and social costs associated with tobacco use will remain high, possibly continuing to grow, for many years and at a rate disproportional to other jurisdictions that have adopted more aggressive strategies.

The options that have been recommended have been selected in recognition that the costs of failing to act are much higher than the costs of acting.

5. Costs and Benefits of Options

It is the explicit aim of public health policy and legislation in this area, and of the State Plan, to reduce the consumption of tobacco products. The success of these policies will necessarily have an impact on business by reducing sales of tobacco products.

Of the proposals put forward all, with the exception of the proposed ban on smoking in cars while children are present, are expected to impact on retail businesses by reducing sales of tobacco products. Other costs associated with the proposals include:

- The proposal that tobacco products be removed from sight in retail premises is expected to impose shop fitting costs on some businesses. In some instances these costs can be minimised by retailers adapting their existing stock units while in other cases new units will have to be installed. The proposal includes a 12 month phase in period for smaller retailers and this is expected to help reduce compliance costs.

- The proposal that tobacco only be available from a single point of sale in retail premises may impose compliance costs on certain businesses where tobacco is currently available from multiple sales points. These outlets are likely to be larger supermarket type outlets as most small businesses have a single sales point for all items. In addition many supermarkets and larger retailers already centralise the sale of tobacco products and would not experience any costs associated with this proposal.
- The proposed ban on the sale of tobacco from vending machines will have a significant impact on the vending machine industry. However as noted above the explicit policy aim is to reduce the sale and consumption of tobacco products in NSW. Consumer surveys conducted for the Chief Health Officers Report indicate that in 2006 approximately 19% of smokers obtained cigarettes from vending machines at least some of the time and that 2.4% of smokers who had attempted to quit in the previous 12 months had relapsed by purchasing cigarettes from a vending machine.
- The proposed ban on inclusion of tobacco products in shopper loyalty programs will only have an impact on those larger businesses, generally supermarket chains, that utilise those programs. There is expected to be some cost associated with modifying systems and computer programs to exclude tobacco products from loyalty programs, however as this situation currently applies in South Australia and Queensland the cost is expected to be minimal. Submissions from the two major supermarket chains indicate that they would have little difficulty in complying with this requirement, although modifying their IT systems is expected to require up to three months.
- The proposed notification and negative licensing system for tobacco retailers is expected to involve some small compliance costs to business. However it is proposed that notification will be undertaken via the existing food authority notification and licensing system. As the vast majority of tobacco retailers are also food retailers there is expected to be a minimal administrative cost associated with this new notification. Notification is not expected to involve any additional fee or charge. The negative licensing system will not affect any business until such time as a court finds that multiple tobacco related offences have been committed.

As previously noted the annual costs to the NSW community from tobacco consumption have been estimated at \$10 billion. In addition to the unquantifiable costs associated pain and suffering of the victims of tobacco use. Robust and aggressive action by government to drive down smoking rates and tobacco consumption will deliver significant social and economic benefits to the community.

6. Consultation

In April 2008 the Government released a discussion paper entitled *Protecting Children from Tobacco: A NSW Government Discussion Paper on the Next Steps to Reduce Tobacco-Related Harm, 2008*. The paper discussed a number of potential initiatives to further restrict the exposure of young people to the harmful effects of tobacco consumption and to inducements to take-up smoking. The matters raised in the paper were:

- banning smoking in cars in which a child is present;
- putting tobacco products out of sight in retail outlets;
- introducing a licensing scheme for tobacco retailers;
- preventing employees under 18 years of age from selling tobacco products;
- limiting retail outlets to only one point of sale for tobacco products;
- banning tobacco sales from vending machines;
- requiring proof of age for people below the age of 25 when purchasing tobacco products; and
- removing tobacco products from shopper loyalty programs.

An extensive consultation program was undertaken on the issues raised in the discussion paper. The Minister Assisting the Minister for Health (Cancer) wrote to more than 100 stakeholders advising them of the consultation process. The discussion paper was published on the internet and noted widely in the press. Opportunities to comment on the discussion paper were provided by responding in writing, completing an online submission form, and participating in a half-day public forum at Parliament House on Friday 30 May 2008.

Almost 12,000 submissions were received and the public forum was attended by more than 60 people, many representing industry, consumer and health organisations. Young people were targeted for consultation through participation in the public forum by members of the Youth Advisory Council, and a separate consultation with the NSW Student Representative Council. Input was also sought from each of the Aboriginal Medical Services in NSW.

7. Preferred Option

Given that the explicit aim of public health policy in this field is to reduce, and ultimately eliminate, the consumption of tobacco products the preferred options are those options that will most effectively and quickly achieve that result. The proposed amendments are expected to assist in reducing the take-up of smoking amongst the young, the overall consumption of tobacco products in NSW and the health and social costs associated with tobacco consumption.

8. Evaluation and Review

The NSW Department of Health is continually engaged in a process of monitoring and evaluating the effectiveness and impact of tobacco control strategies. As a result these strategies and the legislative instruments that underpin them are constantly being reviewed and modified where necessary to ensure that tobacco consumption continues to decline.

In addition the proposed amendments to the Public Health Act will be subject to the usual 5 year statutory review following the passage of the proposed new Public Health Act which is currently being drafted and is expected to be considered by Parliament in 2009.