Discussion Paper

Strengthening Measures to Protect Children from Tobacco

Public Health Act 1997

May 2006
Foreword

I am pleased to release this Discussion Paper to consider a number of proposals to further protect children in Tasmania from tobacco and from taking up smoking.

More than 19,000 Australians die every year from illnesses caused by smoking and many more will continue to die unless preventative action is taken.

It is generally accepted that the way in which tobacco is sold and where it can be smoked need to be regulated because of its addictiveness and demonstrated impact on people’s health.

Other activities such as gambling and drinking alcohol can be undertaken relatively safely in moderation but there is no safe level of tobacco consumption.

Tasmania has extensive tobacco control legislation in place under the Public Health Act 1997 including prohibitions on tobacco advertising, the sale of cigarettes to children and the elimination of smoking in all enclosed public areas, including bars.

Youth smoking rates however are still significant. 17% of students aged between 12 and 17 years in Tasmania are current smokers. This warrants consideration of how youth smoking rates could be further reduced particularly if the Tasmania Together target of decreasing the number of smokers to 10% by 2020 is to be achieved.

More stringent measures need to be implemented now to prevent the children of today from becoming the next generation of adult smokers.

I encourage all members of the community to take this opportunity to consider and comment on these matters.

Dr Roscoe Taylor
Director of Public Health
Public Consultation Details

Copies of this Discussion Paper are available electronically from [http://www.dhhs.tas.gov.au](http://www.dhhs.tas.gov.au)

Printed copies may be requested from the Department by telephoning (03) 6222 7724 or by emailing [public.health@dhhs.tas.gov.au](mailto:public.health@dhhs.tas.gov.au)

**Submissions must be received by 5.00pm on Friday 14 July 2006.**

Written submissions may be forwarded to:

Tobacco Control  
Public and Environmental Health Services  
Department of Health and Human Services  
GPO Box 125  
HOBART TAS 7001

Or by email to: [public.health@dhhs.tas.gov.au](mailto:public.health@dhhs.tas.gov.au)

Or by hand to: The reception desk, Ground Floor, 34 Davey Street, Hobart.

Persons who wish their submissions to be treated confidentially should mark their submissions private and confidential. However all persons should note that any submission may still be subject to release under the provisions of the *Freedom of Information Act 1992*.

Each submission should be in writing and clearly state which proposal is being addressed.

It should also include the name, address and telephone number of the person or organisation making the submission.

Anonymous submissions will not be considered.
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Executive Summary

This discussion paper proposes changes to Divisions 1, 1A and 2 of the Public Health Act 1997 (the Act) relating to underage smoking, smoke free areas and the display, advertising and packaging of tobacco products.

The objective is to strengthen measures under the Act to reduce underage smoking rates and protect children from the dangerous health effects of tobacco use. Reductions in the number of children that take up smoking would lead to a decrease in future adult smokers and the human and economic costs associated with tobacco use.

The Act defines a child to mean “a person who has not attained the age of 18 years”.

There are four proposals for legislative amendments:

1. **Prohibit the public display of tobacco products**

   Tobacco retailers would be required to move tobacco products out of public sight or cover existing displays. This could be achieved by placing tobacco sales dispensers under or above the counter to face the sales person rather than the customer; by storing tobacco in closeable drawers/cabinets; or by installing moveable doors, shutters or curtains over existing display units which are closed except when removing a product to give to a customer. Retailers would still be able to communicate the availability of individual tobacco products by the currently allowed product availability notice and price board. Bar coded price tickets adjacent to each separate product line would continue to be permitted. There would be the additional option of a price catalogue on the counter that can be viewed by customers. The requirement to display the warning notice about selling tobacco products to children would remain, but the graphic health warning would no longer be required.

   This proposal is RECOMMENDED.

2. **Prohibit smoking in vehicles where children are present**

   Smoking would not be permitted in any private vehicle when a child is present.

   This proposal is RECOMMENDED.

3. **Prohibit children from selling tobacco products**

   Retail staff under the age of 18 years would not be permitted to sell tobacco products to customers. They would be permitted to handle stock for other purposes including the re-stocking of warehouses, shelves or drawers.

   This proposal is RECOMMENDED.

4. **Prohibit the possession of tobacco products by children**

   Children would not be permitted to possess a tobacco product. Current provisions prohibit a child from smoking or using a tobacco product but do not allow for fines or confiscation.

   This proposal is NOT RECOMMENDED.

Brief summaries on arguments for and against each proposal are provided as suggested areas for feedback.

The proposals in this paper do not represent a formal position of the Tasmanian Government.
Background

It has been stated that smoking is a children’s disease because most smokers start smoking as children, become addicted to nicotine and are not able to give up their addiction as adults. Very few adults make an adult choice to start smoking. This is supported by research that indicates approximately 90 percent of adult smokers begin using tobacco by the age of 20 years.¹

Each year in Australia around 45,000 teenagers become regular smokers.² Children who smoke go on in their adult lives to develop heart disease, cancers including lung, mouth, stomach, cervical, bladder and renal cancers, and chronic lung diseases such as emphysema and bronchitis. Females are more likely to suffer miscarriages and still born babies, and their children are at a higher risk of dying from Sudden Infant Death Syndrome (SIDS).

Tobacco smoking is the largest single preventable cause of death and disease in Australia and shortens the lives of half those who use it. Unlike consumption of alcohol or fatty food, there is no safe level of smoking. Smoking-caused deaths account for 15% of all deaths in Tasmania, exceeding the number caused by alcohol, suicides, road vehicle accidents, homicides, other types of injuries, poisoning and fires combined.³

If tobacco were a new product, it would not be allowed onto the market today given our knowledge of its unique combined properties of addictiveness and potential for harmful health effects. Its anomalous status as a legal “product”, which is not covered by existing poison, toxic chemical, drug or food regulation, has resulted in tobacco specific legislation having to be continually developed and strengthened as the evidence for its harmful effects grows ever stronger.

How many people smoke in Tasmania?

In 2004, Australian Bureau of Statistics (ABS) National Health Survey data records the Tasmanian smoking rate at 25.4% or approximately 86,400 Tasmanians aged 18 years and over.⁴ This includes both daily or regular smokers (24.1%) and occasional smokers (1.3%). In comparison, the smoking rate in 2001 was 24.4% (made up of 22% daily or regular smokers and 2.4% occasional smokers) meaning smoking prevalence has increased by 1% since 2001. The 2004 survey found never smoked and occasional smoking prevalence to have declined suggesting an uptake of daily or regular smoking by young people. The national rate of current smokers was found to be 23%. In comparison to other states and territories, Tasmania has the highest rate of smoking prevalence.

In 2002, research conducted by the Cancer Council of Tasmania found 17% of students aged between 12 and 17 years had smoked cigarettes in the week prior to the survey and were classified as a current smoker.⁵ Although comparisons with previous surveys indicated a general decline in youth smoking rates, the 2002 survey report calculated that 6,300 students aged between 12 and 17 years were smoking approximately 213,500 cigarettes every week in Tasmania. Notably, there was a dramatic increase in the average number of cigarettes smoked from 29 to 42 per week and an increase in smoking by females in the 16 to 17 age groups.

What are Tasmania’s obligations?

Tasmania is committed to reducing smoking prevalence through Tasmania Together benchmarks, the National Tobacco Strategy and the Tasmanian Tobacco Action Plan.⁶

Tasmania Together

Tasmania Together is a 20 year social, environment and economic plan with 24 goals and multiple benchmarks that have been developed to measure the State’s progress towards
achieving the goals. The Plan is used by the Tasmanian Government as a framework for setting policy priorities, including the allocation of resources to those priorities. The benchmarks relevant to smoking aim to reduce the number of smokers aged 15 years and over to 16% by 2010, 12% by 2015 and 10% by 2020.

National Tobacco Strategy 2004-2009

The National Tobacco Strategy is one of a series of strategies that together form the National Drug Strategy 2004-2009. It is a statement of each level of governments’ resolve to work collaboratively with non-government agencies on a long-term, evidence based national plan to reduce the impact of tobacco smoking in Australia.

Tasmanian Tobacco Action Plan 2005-2010

The Tasmanian Tobacco Action Plan sets out the Tasmanian Government’s commitment to the prevention and reduction of tobacco related harm in Tasmania. It incorporates the benchmarks for smoking in Tasmania Together and the strategic and policy directions contained in the National Tobacco Strategy. The objectives of the Plan are to prevent uptake of smoking; encourage and assist as many smokers as possible to quit as soon as possible; eliminate harmful exposure to tobacco smoke among non-smokers and reduce harm associated with continuing use and dependence on tobacco and nicotine.

Recommended actions relevant to this Paper include the introduction of legislation to further reduce or remove the visibility of tobacco products at the point of sale to ensure tobacco products are available to adults who use them but not highly visible to children, and the extension of smoke free environments to areas such as vehicles in order to eliminate remaining forms of exposure to environmental tobacco smoke.

Tobacco Retailing in Tasmania

In Tasmania there are 1753 retailers licensed under the Act to sell tobacco products. This number is made up of 941 individual licenses, 480 multi-premised licenses (held by 45 retailers) and 332 vending machines. The breakdown by retailer type is as follows:

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<tr>
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<tr>
<td>Newsagent/Tobacconist</td>
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<td>Restaurant/Café</td>
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<td>Stall Show Venue</td>
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*This figure includes some service stations owned by large supermarket chains

Retailer types are self reported by tobacco retailers when they complete their tobacco seller’s licence application form.
Proposal One

Prohibit the public display of tobacco products

Strengthening Measures to Protect Children from Tobacco
1.0  Prohibit the public display of tobacco products

1.1  How it could work

1.1.1  Tobacco retailers could be required to move tobacco products out of public sight or cover existing displays. Pictorial examples from retail outlets in Tasmania who have voluntarily removed their tobacco product displays are provided:

Overhead storage: customer view  Overhead storage: retailer view

Drawer under the counter closed  Drawer under the counter open
1.1.2 Current provisions allow retailers to display tobacco products in an area not exceeding four square metres. Specialists tobacconists are exempt from this requirement and do not have any restriction on their display area.

1.1.3 It is proposed that the current provisions allowing limited point of sale availability information would be retained. These permit the display of a price board, a product availability notice and bar coded price ticket information. The requirements for these are contained in the *Guidelines for Price Tickets and Other Matters (Tobacco Products) 2004* provided at Appendix A.

1.1.4 It is noted that very few tobacco retailers currently use tobacco availability notices because tobacco is usually prominently displayed.

1.1.5 Under the new proposal, price catalogues could be used as an additional mechanism to alert customers to the availability and price of tobacco products. Price catalogues could be placed on the counter or provided to customers upon request. Requirements relating to issues such as size, colours and text size would need to be defined.

1.1.6 Retailers would no longer be required to display a graphic health warning but would have to retain the warning notice about selling tobacco products to people under the age of 18 years as a reminder to staff and customers.
1.1.7 Retailers could continue to use vending machines however vending chips depicting colour images of tobacco products would be phased-out in favour of black and white price tickets of which a maximum of 40 are permitted.

1.1.8 Display of tobacco products would only be permitted to enable shelves or cabinets to be re-stocked or audited and during a transaction when an individual tobacco product is removed to be given to a customer on request.

1.1.9 The exemption from display restrictions currently granted for specialist tobacconists would be removed. Associated tobacco products such as lighters, ashtrays, papers could continue to be displayed. There are currently five specialist tobacconists operating in Tasmania.

1.1.10 A suitable phase in period of three to six months would be appropriate so that the Department and retailers have time to implement the changes.

1.1.11 It is noted that approximately 73 retailers including Coles Supermarkets and K Mart have voluntarily removed their tobacco displays from public view. There is further discussion on this later in this paper.

1.2 Arguments For

Summary:

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1.2.1 Act as a disincentive to children seeking to buy cigarettes

A leading Australian public health expert, Professor David Hill, who was formerly Chairman of the National Expert Advisory Committee on Tobacco, has called for tobacco to be removed from public display in shops and sold “under the counter” as an important measure to prevent children from starting smoking. Youth smoking is affected by belief about how common smoking is. The widespread availability of tobacco products for sale, and the size and prominence of tobacco displays contributes to the belief common among young people that smoking is more prevalent than it really is.

Research shows that the degree to which young people overestimate smoking rates is a predictor of starting smoking. For example, in a recent Australian study, children were shown simulated shop displays of various types, including those without tobacco on display and asked for impressions of how easily tobacco could be bought. Conclusions included that placing cigarettes out of sight and eliminating tobacco advertising may help to reduce attempts to purchase cigarettes by children and the perception of high smoking prevalence and acceptability of smoking. The removal of tobacco product displays would also send a message to children that tobacco is less accessible and that the legal prohibitions on its sale to children is more strongly adhered to by retailers.

1.2.2 Redress factors that undermine the health message about tobacco

Children are taught repeatedly that tobacco is a harmful product that is very addictive, should never be used and that it is illegal to sell tobacco to children. However, children see tobacco almost invariably occupying the most prominent display space behind the counter of retail supermarkets, convenience stores, newsagents and petrol stations. It is placed among a whole range of familiar products in these shops creating the impression that tobacco is much more socially acceptable and commonly used than is really the case. How could tobacco be so dangerous if it is everywhere and in such familiar company? Adults sometimes resolve these mixed messages by compromising the health message with a statement such as "if tobacco really is that dangerous the government would have banned it". It is generally recognised for a variety of reasons that banning the sale of tobacco would not work. Requiring tobacco products to be out of public sight, but still available for sale as a "legal product" would be a regulatory action that partly deals with this anomaly.

1.2.3 Eliminate incidental exposure to tobacco product marketing

Australian tobacco companies have regarded point of sale as the last remaining legal marketing technique available to them and as a result invest significant funds into display units, pack design and brand imagery. This includes developing attractive display units which highlight and draw attention to products. For example, the Act restricts the number of product lines that can be displayed to one. In response to this restriction, brand stretching is commonly used to maintain the visual impact of displays. This refers to the practice of increasing the number of brand variants such as Ultimate, Ultra Mild, Extra Mild and Super Mild and the arrangement of different pack sizes and brands in clusters to draw attention to specific brands. An example is provided below which includes soft packets of tobacco, a feature that draws attention to the display.
1.2.4 Prevent display of new tobacco packaging which may be more attractive to children

A recent development is the importation on a small scale from Hong Kong into Australia of fruit flavoured cigarettes, with names such as Lemon Twist, Orange Feel, Strawberry, and Iced Green Apple in bright fluorescent color packs. These have not yet been known to be sold in Tasmania. The pictures below are examples from packets sold overseas in countries without a requirement for a health warning. They were produced by a minor Asian tobacco manufacturer. However, similar products are produced by at least one major tobacco manufacturer in the United States. Because of their brightly coloured packaging and promotion of fruit flavours, they have been widely criticised for their possible appeal to children. The removal of tobacco product displays would reduce the marketing potential of such products to children in Tasmania.

1.2.5 Minimal impact on access to tobacco by adult smokers

The proposal would not have any significant impact on the ability of adults to legally buy tobacco products or restrict the range of products available. There would be no limitations introduced on the number of retailers able to sell tobacco. Price tickets, price boards and product availability notices would continue to alert both new and regular adult customers to the availability of tobacco products. Product catalogues would provide further information about availability. Adult smokers know what brand they smoke and do not need visual clues to remind them of this. This is supported by research conducted in Victoria which found that 84% of smokers never decide on the brand of cigarettes to buy at the point-of-sale.
1.2.6 **Marginally increase adult quitting rates**

In addition to having an influence on young people, the removal of displays may assist some adult smokers trying to quit as they would be less likely to give into temptation whilst spending time waiting to be served behind a counter looking at a tobacco product display. The numbers who actually quit and do not relapse as a result of this measure is expected to be marginal and not have a detectable impact on short term sales. However it would be very important to some individuals and contribute in the long term to a reduction in smoking rates. An example of a letter to the Editor of The Mercury on 24 October 1997 is provided below:

**LETTERS TO THE EDITOR**

Cigarettes

Two years ago I went through the agony of giving up a 30-year addiction to cigarettes.

The hardest part was standing at the checkout of the supermarket, the local store, the local take-away, newsagency, looking at the display of cigarettes urging me to buy them.

While I waited, I was fighting my addiction, and drooling over the displays as the till and resisting the temptation to give in and buy the damned things.

A ban on “point of sale display” would have helped me. I gave up too late. I got lung cancer.

I now ignore the displays at checkouts. I’m too busy trying to live with one lung and becoming one of the 10% who survive lung cancer.

No excuses for advertising death at checkouts for me, no excuses.

INA McBRIDE
Dedges Ferry

1.2.7 **Experience with voluntary removal of displays by some retailers**

In 2004, approximately 20 retailers had voluntarily removed tobacco product displays for various reasons. Some felt that reduced visibility would deter theft of tobacco and thereby reduce insurance premiums. Others believed that tobacco displays did not fit in with the image of their store or wanted to display other products more prominently. Following the introduction of a graphic health warning notice in November 2004 depicting a mouth cancer, some retailers chose to avoid having to display the graphic health warning by removing their tobacco product displays. Currently approximately 73 retailers of various types, including convenience stores have voluntarily removed tobacco products from display. Significantly, one of Australia’s leading retailers, Coles Myer elected to remove tobacco product displays in all of their Tasmanian Coles Supermarket and K-Mart stores. An example is provided below:
Some retailers have commented that there has been a negligible impact on overall tobacco sales and no reported occupational health and safety claims arising from the issue. However some have also stated it is more difficult to locate tobacco products which can have a negative impact on customer service. Some customers have also advised that they do not approve of the removal of the tobacco displays because they cannot see the various brand options available.

The fact that some retailers across the spectrum of the industry in Tasmania have voluntarily chosen to move tobacco out of sight indicates that it has not caused these retailers undue hardship. It may also indicate that a regulatory requirement for all retailers to do the same would also not cause undue hardship.

1.2.8 Minimal short term impact on sales revenue

No significant change to revenue sales would be expected in the short term as adult customers are addicted to tobacco, know their usual brand and would continue to purchase tobacco products. This was demonstrated by Saskatchewan, a Canadian province whose experience with the removal of displays is discussed in section 1.4.1. Changes would only be expected in the long-term as the number of children who take up smoking into their adult lives declines.

1.2.9 Provide a level playing field for all tobacco retailers

The implementation of a complete ban on tobacco displays across all retailers would ensure a level playing field as no retailer would have any advantage over competitors in relation to the size of displays or who can enter the premises.

Currently specialist tobacco retailers in Tasmania are unrestricted in the size of their tobacco display. One option put forward by this paper is to restrict tobacco displays to areas where only people over 18 years can access, as is the case in Saskatchewan, Canada. If this were to occur however, an uneven playing field would result as larger retailers and unlicensed premises would have an advantage over smaller retailers who are unable to reconfigure their premises to provide a separate room.

Some retailers have expressed a desire to remove tobacco displays, but are concerned about losing business to competitors who have displays. The proposed measure would provide a level playing field in relation to the absence of displays. A similar level playing field principle was one of the justifications for smoke free bars in Tasmania.

1.2.10 Simplify compliance with tobacco control legislation

Compliance with tobacco control legislation would be simplified if tobacco product displays were prohibited as it would be easy for retailers to understand and implement and any ambiguity or confusion over requirements would be minimal. Breaches would also be easily detected reducing the complexity of enforcement and simplifying the regulatory regime. Enforcement is currently conducted by Tobacco Control Officers from the Department with assistance from volunteer nominated officers.
1.2.11 **Public health and economic benefits**

Smoking is a major driver of health systems costs and contributes to the burden of disease and disability more than any other identifiable risk factor. The long term benefits of this proposal are significant for public health as if the number of future smokers decreases, the burden on the health care system will be reduced. It will also reduce the burden on the community as smokers who become incapacitated due to tobacco-related disease can no longer contribute to the unpaid economy increasing the costs and time spent by other individuals on tasks such as housework, the elderly and disabled.\(^{14}\)

Furthermore, the long term benefits of reducing tobacco use for business are significant. A falling demand for tobacco products would result in money once spent on cigarettes being spent on other goods and services and more productive areas of the Australian economy. Smoking also reduces the productivity of the paid workforce through absenteeism (estimated to a total of $1.07b in 1998/99) and the premature loss of highly experienced employees.\(^{15}\)

1.2.12 **Meet Tasmania’s obligations under the National Tobacco Strategy, Tasmanian Tobacco Action Plan and Tasmania Together**

The removal of tobacco product displays would support initiatives outlined in the *National Tobacco Strategy* and *Tasmanian Tobacco Action Plan* which highlights as a priority the regulation of supply so that tobacco products are available to adults who use them, but are not highly visible to children.\(^{16}\) The likelihood of Tasmania *Together* benchmarks relating to smoking being achieved would also increase.

1.2.13 **The tobacco industry is expecting the change**

The following graphic is taken from a presentation made at the 1998 Corporate Affairs Conference of Philip Morris Australia which examined and estimated the chances of success of various anti smoking initiatives.\(^{17}\) Speakers notes for the graphic include the following "the prospects of both elimination of both POS (point of sale) and reduced visibility of tobacco products are very good in the medium term". Medium term is specified earlier in the presentation as between 2000 and 2010.

![ANT smuggling agenda](https://example.com/antismokingagenda.png)
1.3 Arguments Against

**Summary:**

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1.3.1 Disproportionate impact on sales by smaller retailers

Concerns have been expressed about the effect a ban on tobacco product displays would have on convenience stores, principally by the National Alliance of Tobacco Retailers (NATR). NATR was established in 2004 as a specific organisation to lobby against further restrictions on retail display of tobacco products. It is made up of a number of retailer organisations, including Tasmanian Independent Retailers and with seven “supporters” which include British American Tobacco and Imperial Tobacco. NATR has strongly lobbied for national consistency of 4 square metre tobacco displays in an attempt to prevent individual states and territories progressively introducing smaller display areas. NATR has published a brochure which lists the principal arguments against further restrictions and has made submissions during consultation periods for the review of the National Tobacco Strategy and Queensland Government tobacco legislation.

Tobacco is the highest selling category for some small retailers. Any reduction in tobacco sales revenue would thus have a major adverse impact on the income and viability of smaller retailers particularly tobacconists, convenience stores and mixed businesses. Service Stations Australia has stated that point of sale display restrictions will not decrease the total amount of tobacco being sold but will force sales away from smaller establishments such as service stations to larger businesses such as supermarkets. NATR strongly supports this view.

In its submission to the National Tobacco Strategy consultation in November 2004, NATR stated “Any restriction on the display of tobacco products at a retail level would be likely to depress gross sales in small retail outlets, not only tobacco sales but sales of all related products to people who visit the store with the primary intention of buying tobacco products. It is also probable that such a restriction would drive sales to major supermarket chains which have the space, staff and resources to direct exclusively to tobacco sales..... As with all forms of regulation, the proposed prohibition on point of sale display of tobacco products would impact disproportionately on small business, most of them family owned and operated”.

**Counter argument:** There appears to be general agreement in the retail industry that there would be no significant overall short term reduction in tobacco sales if displays are removed. Established adults smokers know their brand, and would continue to smoke. To date there is also no evidence to support the prediction that the removal of displays would lead to significant reductions in revenue for smaller retailers. The experience of Saskatchewan in Canada which has had display bans for two years, is that no such adverse effects have been evident. More details on Saskatchewan’s experience are provided in section 1.5.1.
1.3.2 Loss of tobacco industry display incentive payments and possibly supply of display units

Tobacco companies currently enter into various arrangements to reward some retailers for preferentially displaying their products. Details of these arrangements in Australia are commercially confidential, particularly the amounts paid. These direct financial payments to display would presumably cease if displays are prohibited.

As part of these arrangements, tobacco companies have also installed and maintained the actual display units for the retailers. It is possible that tobacco companies would cease this support as well, requiring retailers to bear the costs of covering tobacco displays or supplying or building new units.

**Counter argument:** Small retailers could alternatively choose to use very inexpensive means to cover display units such as a curtain, cardboard or plastic in front of packets. However it is not certain tobacco companies would withdraw all support for retailers if tobacco displays were prohibited. It is known that at least one small retailer in Tasmania has been successful in requesting a tobacco company remodel its display so that it is out of sight. Perhaps this is an indication that faced with tobacco being legislated out of public sight, tobacco companies will still seek to maximise the number of retail outlets that sell their products by continuing to assist with costs to ensure stores stock their products.

This is supported by the experience of Saskatchewan, which is discussed in more detail in section 1.5.1. Saskatchewan’s small retailers successfully adapted to the change and remained in business. The retail industry worldwide is continually adapting to change with competition between convenience stores, mini-marts, petrol stations and supermarket chains. Other commercial products could successfully compete for the display space vacated by tobacco in convenience stores. Many examples of such marketing innovation are provided in some of the entries to the Australian Association of Convenience Stores Global Scholarship Plan competition.

Another example of this innovation is convenience stores in Australia seeking to sell nicotine replacement therapy products. A convenience store chain has filed a complaint with the Australian Competition and Consumer Commission against a pharmaceutical company because it would only supply nicotine replacement therapy products to pharmacies, even though changes in drug regulation allow the products to be legally sold over the counter at supermarkets and convenience stores as reported below:

"as well as the 'public good' argument for supply of nicotine replacement products through convenience stores, there is also a commercial imperative. These products are big sellers with a sale value of around $30 at margins in excess of twenty-five per cent. With space allocation for tobacco displays under increased government scrutiny and smokers themselves under pressure to quit, tobacco replacement products would seem to be a logical choice for route and convenience outlets. Several store chains have jumped the gun and secured indirect supply. These chains include 7-Eleven, Reliance, Caltex, APCO and Nightowl."

1.3.3 Display bans are anti-competitive

Current display restrictions and the proposed display bans restrict competition. As quoted by British American Tobacco Australia in its submission to the Australian Government’s review of the Tobacco Advertising and Prohibition Act 1992, “in our view, any proposal to ‘shroud’ the display of tobacco products would not only be impractical, but would also impede competition amongst tobacco companies and tobacco retailers”.

As is mentioned previously in this paper, tobacco companies in Australia pay retailers for preferential retail display space to compete for market share with other tobacco
companies. Retailers of various types also compete amongst each other for overall tobacco market share, using display as one of the mechanisms of competition.

**Counter argument:** It is not disputed that tobacco display bans will eliminate display as a vehicle for commercial competition. This paper argues that the health benefits of display bans justify such action with the imposition of a level playing field for all retailers. Other avenues for competition such as price and service are not restricted. As stated by the Public Affairs Director of JTI McDonald, a Canadian tobacco company, “we do not believe that banning the display of cigarettes will have a negative impact. It simply makes it more difficult for manufacturers to compete for market share amongst current adult smokers”.

The Marketing Director of the Old Port Cigar company agrees, but is wary of the future, “the new laws for us are a threat, but they are a condition of doing business. So long as there is a legal right for people to smoke cigars, and there is a level playing field for everyone, we will adapt”.

1.3.4 **Occupational health and safety and security concerns**

Some retailers may have concerns relating to employee safety, such as if having to leave cash registers unattended while they move to another room or turn away from the counter to obtain tobacco products. This is said to increase the risk of attacks on staff and of shoplifting. Ergonomics and occupational injuries may also be an issue for some retailers particularly if tobacco products are stored under the counter as staff would need to bend down more often.

**Counter argument:** It is noted that many retailers already have to reach below the counter to obtain cigarettes or reach upwards and turn their back on customers. The evidence from Saskatchewan is that there has been no increase in attacks on staff or theft. Some retailers are of the view that reduced visibility of tobacco will discourage tobacco theft.

1.3.5 **Reduced visibility of cigarette pack graphic health warnings**

In March 2006 the Australian Government introduced a new series of graphic health warnings on cigarette packets. The images cover 30% of the front of the packet and will be clearly seen within display units. It has been argued that the warning images would have no impact on smokers or young people thinking about taking up smoking if they are hidden.

1.3.6 **Negative impact on customer service**

The efficiency of customer service may be affected if retail staff need to spend time locating products. This may be an issue for those retailers who stock a large number of product lines or who have a busy turnover.

**Counter argument:** The effect will be reduced in the medium term as staff become familiar with where individual products are located.

1.3.7 **Excessive regulation**

Tobacco is a legal “product” and it could be argued that the removal of displays is an excessive level of regulation.
1.4 Developments in Other Jurisdictions

A very detailed analysis of point of sale legislation in various jurisdictions worldwide as at August 2004 is provided in a report for Smoke Free Nova Scotia, Canada.24

1.4.1 Iceland

Iceland banned all retail displays of tobacco in 2001. The tobacco industry lost a legal appeal against the legislation. The display ban is currently in place however no further information about implementation was received at the time of writing.

1.4.2 Saskatchewan (Canada)

In March 2002 the Canadian province of Saskatchewan introduced legislation prohibiting advertising, promotion or display of tobacco products in any place where children are permitted. The legislation was challenged by the tobacco industry on the grounds that it contravened its right to free expression and was in conflict with federal legislation which permitted displays. The challenge was ultimately lost, and the law has been in effect for about two years. It is noted that 30% to 40% of retailers continued to keep tobacco out of public view during the 18 months the law was disallowed.

The legislation has been highly successful. A report on its implementation has been published by the Saskatchewan Coalition for Tobacco Reduction and is attached at Appendix B. Overall there was 98% compliance within six months to a year after proclamation. There have been no reports of any negative impact or stores closed and staff laid off, increased theft or security issues. The reported shoplifting rates in Saskatchewan compared to Canada did not increase.

The Saskatchewan tobacco display bans, and foreshadowed bans in other Canadian provinces have been discussed in YCM: Your Convenience Manager, a Canadian convenience store industry publication.25 Concerns about the possible negative effect are expressed, such as by the President of the Ontario Convenience Stores Association, whose members will be required to remove tobacco displays by Ontario legislation in May 2008, “we estimate 30-40% of c-stores will shut their doors”. He is also concerned that stores located in no-display provinces are being denied money that tobacco companies pay them for preferred shelf space. This can amount to between $3,000 and $6,000 per store.

The experience of Saskatchewan, as reported in the same article does not support his concern. Dave Cowley, executive director of the Western Convenience Stores Association (WCSA) states that the Saskatchewan law to date has not impaired sales. “Current carton shipments from wholesalers to retail are flat, so I would say the display ban has had little or no negative effect”. He also added that dollar sales have been negative, but that it is due to a shift from premium brands to value brands or sales of generic cigarettes.

Jeff Butler, a retailer who sells 700 packages of cigarettes on a busy day, states that the transactions take longer at the till because people have to ask questions of staff. “There has been no backlash on sales, but slower transactions are not good for business”.

In another article in the same issue of Your Convenience Manager, editorial staff ask Derek Guile, Vice President of Sales at Rothmans, Benson & Hedges Inc about whether display bans put C- retailers out of business. Guile replies “the answer is a resounding no. There are many things that retailers can do to maintain tobacco, which is a vital part of their offering, making up to 60%+ of overall volume. However, you must become less reliant on display payments. Managing inventories, proper and efficient pricing and educating staff on what are the proper offerings for consumers who are migrating are critically important to the category”.26
Geoff Wilcox, Vice President of Quickie Convenience Stores disagrees, “there are many retailers on the edge, especially small independents, who rely on merchandising funds, and they will be gone”.

Rahul Prakash, head of trade marketing and distribution for Imperial Tobacco Canada states “the money will not be shut off altogether. Before, they earned money to maintain space in their outlet in the tobacco selling area. Yes, the display money is gone, but there will be other programs developed between manufacturers and retailers. The amount from these programs could range from a few hundred dollars to a few thousand dollars, depending on the size of the store and its traffic”.27

The article states that the good news on the c-retail front is that despite the turbulent and changing market, most smokers of tailor made cigarettes continue to buy in the convenience channel. The article concludes “I often hear of businesses that plan to stop carrying cigarettes because of all the hassles they are up against. We can’t do that because it is a huge part of our business, and it always will be”, says Jeff Butler, who concedes, however, that he is planning to broaden his line of products and services to make up for the lost incentives revenue from tobacco companies. “I won’t have any problem recouping the $10,000 I have lost”.

In Australia, there is greater commercial sensitivity about tobacco industry incentives to retailers and comparatively little available information about the current levels of these incentives. The fact that 73 stores in Tasmania have voluntarily removed tobacco displays may indicate that the incentives are not as great in Tasmania as in Canada. If this is the case then legislatively mandated removal of displays should be even easier for retailers to adjust to in Tasmania than in Saskatchewan.

It is noted that in Saskatchewan, tobacco price boards and catalogues are regarded as advertising and prohibited. This may in part explain the comments about customers having to ask questions to staff and increased transaction times. Under the new regulatory proposal, Tasmania will continue to permit price boards and price tickets and may legislate to permit price catalogues. This will reduce any adverse effect on transaction times as reported in Saskatchewan.

1.4.3 Manitoba (Canada)

The province of Manitoba has legislated to prohibit displays of tobacco products in locations where children under 18 years have access. Displays are only permitted in establishments provided persons under age cannot enter the premises and that tobacco products cannot be seen from outside the retail outlet. The legislation commenced in August 2005 and at the time of writing had not been assessed.

1.4.4 Ontario (Canada)

Legislation has been passed in Ontario which will phase out retail tobacco promotional material by 31 May 2006 and all forms of retail display by 31 May 2008.28

1.4.5 Thailand

In September 2005 tobacco product displays were prohibited in Thailand as a means of addressing youth smoking prevalence rates. A number of retailers have challenged the legislation by continuing to display a reduced number of cigarette packets on the basis of there being another law in existence requiring all products legal for sale be displayed for the benefit of consumers. The legislation at the time of writing has not been assessed.
1.4.6 **Ireland**

From 2006, tobacco retailers in Ireland will be required to keep tobacco products "in a closed container or dispenser that is not visible or accessible to any person" other than the retailer and will also have to remove any notice or sign which would indicate that individual tobacco products may be purchased at the premises.

1.4.7 **Australia**

Point of sale advertising is a state responsibility and each state and territory has its own legislation. No other Australian jurisdiction has legislation to prohibit the display of tobacco products although it is an issue under consideration. The most recent regulatory changes have seen Queensland and Western Australia reduce their allowable display areas to one square meter. Currently Tasmanian tobacco retailers are permitted four square meters of display. Details of the requirements for each jurisdiction are provided at Appendix C.

1.5 **Options**

Option 1: Continue to display tobacco products  
Option 2: Encourage retailers to voluntarily remove tobacco product displays  
Option 3: Prohibit tobacco product displays in areas where children have access  
Option 4: Prohibit tobacco product displays but allow price and product information  
Option 5: Prohibit tobacco product displays and price and product information

### 1.5.1 **OPTION 1: Continue to display tobacco products**

Main advantage:  
- No change required by retailers.

Main disadvantage:  
- Children would continue to be exposed to prominent displays of tobacco products in the majority of retail outlets they enter.

This option is NOT RECOMMENDED.

### 1.5.2 **OPTION 2: Encourage retailers to voluntarily remove displays**

Approximately 73 retail outlets are known to have covered up or removed tobacco product displays, the majority due to the requirement to display a graphic health warning. There are approximately 1400 tobacco retailers in Tasmania (not including vending machines).

Main advantage:  
- No amendments to the Public Health Act would be required.

Main disadvantage:  
- Children would continue to be exposed to prominent displays of tobacco products in the majority of retail outlets they enter.

This option is NOT RECOMMENDED.

### 1.5.3 **OPTION 3: Prohibit tobacco product displays in areas where children have access**

Main advantages:  
- Refer to option 4.

Main disadvantages:  
- This option would create an uneven playing field as some retailers, particularly those with smaller premises, would not be able to configure their premises easily to create a room for adults only. It would also advantage licensed premises.

This option is NOT RECOMMENDED.
**1.5.4 OPTION 4: Prohibit tobacco product displays but allow price boards and product availability information including catalogues.**

Main advantages:
- Lead to a reduction in the uptake of smoking by children and benefit the community in the long term through reduced health burden and use of the health care system.
- A consistent public health message would be promoted to children and the community.
- Easier compliance for retailers and enforcement by Tobacco Control Officers.
- The conversion could be undertaken quickly and relatively cheaply by licensees.
- Imposing the ban across the board will not give any competitive advantage.
- The area behind the counter could easily be taken over by other high profit yielding products.

Main disadvantages:
- Loss of display incentive payments to some retailers.
- Some licensees may incur costs to redesign, move or cover-up displays, and acquire a price board, particularly if tobacco industry support does not continue.
- Some reduction in efficiency of customer service.

This option is **RECOMMENDED**. It provides the greatest net benefit to the community and public health. A suitable phase in period would be negotiated with retailers, although it is anticipated that three to six months would be an appropriate period.

**1.5.5 OPTION 5: Prohibit tobacco product displays including price boards and product availability information including catalogues.**

Main advantages:
- Refer to advantages listed for option 4.

Main disadvantages:
- Loss of display incentive payments to some retailers.
- Some licensees may incur costs to redesign, move or cover-up displays, and acquire a price board, particularly if tobacco industry support does not continue.
- More significant reductions in customer service.
- Consumer access to product and price information is restricted.

This option is **RECOMMENDED IF OPTION 4 IS NOT ACCEPTED** and a stricter option is desired.
Proposal Two

Prohibit smoking in vehicles where children are present

Strengthening Measures to Protect Children from Tobacco
2.0 Prohibit smoking in vehicles where children are present

2.1 How it could work

2.1.1 Section 67H of the Act prohibits smoking in a work vehicle if another person is present. Under this proposal, an amendment to the Act would extend this to prohibit smoking in a vehicle when a child is present.

2.1.2 The ban would apply to all motor vehicles used for private purposes whenever a child is present.

2.1.3 As with the existing smoke free areas legislation, the emphasis would be on education to change community attitudes and encourage a cultural shift to ensure compliance rather than direct enforcement. If required however, Nominated Officers, Tobacco Control Officers and Tasmania Police would have the authority to issue warnings and infringement notices.

2.2 Arguments For

2.2.1 High exposure to environmental tobacco smoke (ETS)

A child who is a passenger in a vehicle where an adult is smoking is involuntarily exposed to often high concentrations of ETS.

The California Air Resources Board which is part of the Californian Environment Protection Agency, has conducted the most recent comprehensive review of ETS and as a result deemed ETS to be a ‘toxic air contaminant’ in California. This is likely to lead to tightening of ETS regulations, not only in California but worldwide. The section of the review headed ‘ETS Concentrations in Vehicles’ states that "vehicles provide small enclosed environments that can result in extremely high exposures to ETS when smokers are present".

An important factor is the great variability in effective ventilation rates. The ventilation rates in cars can vary by over a hundred fold, depending on whether the car is stationary or moving, and if the windows are closed, cracked open, fully open and if the vents are on.

Among the items of scientific research quoted by the California Air Resources Board were computer simulations of ETS inside cars. One of these simulation tools has been used to generate charts to compare ETS levels in cars and houses under varying conditions. These are provided at Appendix D and show that exposure inside vehicles can be very much higher than inside the home.

2.2.2 Reduce rates of childhood Asthma

The 2004 National Health Survey found the most commonly reported condition among children to be respiratory conditions with asthma being the most prevalent among children under 15 years (12%). Exposure to ETS is a recognised risk factor for the development of asthma symptoms and the worsening of pre-existing asthma. Health care and hospital admissions have also been found to increase in children exposed to ETS. The 2001 National Health Survey found among children with asthma, 41.9% of boys and 38.9% of girls reported living with one or more regular smokers.
2.2.3 Other effects on health

In addition to asthma, exposure to ETS also increases the risk of illnesses in children such as pneumonia, bronchitis, coughing and wheezing, middle ear infections and meningococcal. Increasing evidence also indicates that for some children it can be a contributing factor in learning, language difficulties and behavioural problems. A child may be able to avoid cigarette smoke in the home but cannot do so when a passenger in a car.

2.2.4 Existing support for change

The proposal has been supported publicly by organisations such as Smoke Free Tasmania, the Chronic Disease Prevention Alliance, the Australian Medical Association and the Royal Australasian College of Physicians and the Royal Australian and New Zealand College of Psychiatrists. There also appears to be strong community support for such a ban. For example, a survey of over 1000 Australian households by the drug company Pfizer included questions on smoking and 90% of respondents supported banning smoking in cars where children are passengers. The same report also showed that 73% of smokers supported such a ban.

2.2.5 Support from the Commissioner for Children

The Tasmanian Commissioner for Children, in a letter to the Editor of The Mercury newspaper on 1 February 2006 stated “the case for banning smoking in cars when carrying children is overwhelming (Mercury, Jan 30). It is clearly dangerous for the health of children for them to be subject to fumes from smoking in confined spaces. Enforcement of this ban, as well as the appropriate age group to which it would apply are relevant matters to be addressed”.

2.2.6 Enforcement precedent

Precedents in terms of intervention in the private conduct of adults in cars are the compulsory use of car seat belts and infant restraints and prohibition on open containers of alcohol. This is enforced through opportunistic police checks and penalties and as a result compliance with the law is consistently high. A ban on smoking in cars when children are present could be enforced in a similarly opportunistic manner by Tasmania Police. Similarly, as the successful introduction of smoke-free public areas as shown, society and peer pressure can lead to a cultural shift that ensures high levels of compliance. A strong enforcement presence would therefore be unnecessary however a public education campaign would be beneficial.

2.2.7 Denormalise smoking

A prohibition on smoking in vehicles may encourage greater public support for smoke free environments in general. Education of the public has previously occurred through a mass media campaign conducted by Quit Tasmania in 2001. The campaign titled “If you smoke around your kids, they smoke too - make your home and car smoke-free” aimed to reduce the harm to children's health through exposure of environmental tobacco smoke in the family home and car by creating community awareness.
2.2.8 Decrease risk of injury

Smoking whilst driving a car increases the likelihood of accidents.\textsuperscript{37} It can distract drivers as they remove their hands from the wheel to light a cigarette, hold it for an extended period of time and put it out. It can also cause blurred vision from smoke.\textsuperscript{38} A prohibition on smoking in vehicles when children are present would decrease the likelihood of such injuries and accidents occurring.

2.3 Arguments Against

2.3.1 Excessive Regulation

The ban is an excessive level of regulation on the private behaviour of adults in their cars.

2.3.2 Enforcement

The support of Tasmania Police would be required to enforce such a prohibition and they may not be able to allocate resources or time.

2.3.3 Older Children

It may be difficult to identify older children particularly in the 15 to 17 age group. Consideration may be given to redefining the age of a child for the purposes of this section and restricting it to smaller children in child restraints who are easy to identify and the main age-group being targeted by this proposal.

2.4 Developments in Other Jurisdictions

2.4.1 A similar proposal to ban smoking in vehicles carrying children is being made to the State Government in Western Australia by the local branch of the Australian Medical Association with the support of a local motoring organisation.

2.4.2 No other Australian jurisdiction has introduced the legislation.

2.5 Options

Option 1: Retain the status quo
Option 2: Public education
Option 3: Prohibition

2.5.1 OPTION 1: Retain the status quo

Advantages:  
- No change for adults or additional enforcement for DHHS or Tasmania Police.

Disadvantages:  
- Children would continue to be exposed to ETS.

This option is NOT RECOMMENDED.
2.5.2 **OPTION 2: Public education**

Encourage parents/adults to voluntarily not smoke in a vehicle when a child is present. This could be in the form of a campaign similar to that conducted by Quit Tasmania in 2001 to reinforce the message.

Advantages:  
▪ Raise awareness but still rely on voluntary action.

Disadvantages:  
▪ Some children would continue to be exposed to ETS.
▪ An ongoing campaign is likely to be required, and would become costly.

This option is PREFERRED IF OPTION 3 NOT ACCEPTED.

2.5.3 **OPTION 3: Prohibit smoking in vehicles where children are present**

Advantages:  
▪ Without some form of compulsion some adults will continue to expose children to ETS whilst in a vehicle.
▪ High level of public support indicated.
▪ Denormalise smoking.

Disadvantages:  
▪ Excessive regulation of behaviour in a private vehicle.

This option is RECOMMENDED.
Proposal Three

Prohibit persons under the age of 18 years from selling tobacco products

Strengthening Measures to Protect Children from Tobacco
3.0 Prohibit persons under the age of 18 years from selling tobacco products

3.1 How it could work

There are no current restrictions on the age of staff selling or handling tobacco products in a retail outlet. Under this proposal retail staff under the age of 18 years would not be permitted to sell tobacco products to customers. Staff would however be permitted to handle tobacco for other purposes including the re-stocking of warehouses, shelves or drawers.

3.2 Arguments For

3.2.1 Implement International Framework Convention on Tobacco Control (FCTC)

The proposal implements provisions contained in the FCTC, the first ever international treaty on public health covering a range of measures to reduce the harm caused by tobacco. This includes resolutions on issues such as packaging and labeling, advertising, promotion and sponsorship. Article 16 of the treaty refers to support to prohibit the sale of tobacco products by persons under the age set by domestic law or 18 years of age. Australia has ratified the FCTC including article 16(7) prohibiting the sale of tobacco products by persons under the age of 18 years.

3.2.2 Decrease accessibility by children

Availability and access to tobacco products by children could decrease if staff under the age of 18 years were prohibited from selling. Research has shown that the age of the seller is associated with increased sales of tobacco products to children. One study for example found that teenage retail staff are six times more likely to sell tobacco to other children and to be a major source of supply. This suggests that despite being aware of the law children do not always possess sufficient maturity to comply. They may for example feel intimidated or want to impress their friends by selling them cigarettes.

3.2.3 Enforceability of section 64 of the Public Health Act

Section 64 prohibits the sale of cigarettes to children. Prosecution action has not been taken in instances where the seller is a child. These cases have been deemed by the Director of Public Prosecutions to not be in the public interest. In these cases, conditions were put on the tobacco sellers licenses prohibiting the child from selling tobacco products for a period of time, usually up until they turned 18 years of age. There are currently six licenses with this provision on their tobacco seller license.

3.2.4 Consistency

A prohibition on children selling tobacco products would reflect a consistent approach under the Act to children being prohibited from both purchasing and selling tobacco products.
3.3 Arguments Against

3.3.1 Employability of young people

Children may not be suitable for employment if they cannot sell tobacco products. Small family businesses, particularly in rural areas may be disadvantaged. Similarly employment opportunities for children seeking to obtain work and experience in the retail industry may be adversely affected.

3.3.2 Impact on small and family operated businesses

The impact on some small and family operated businesses may be significant if children including family members cannot sell tobacco products, particularly if staff are in the shop on their own. Small business provides the majority of employment opportunities in Australia and generates a significant proportion of gross domestic product.

3.4 Developments in Other Jurisdictions

3.4.1 Singapore and Norway prohibit the sale of tobacco products by persons under the age of 18 years. In Norway, the prohibition does not apply if a person over the age of 18 supervises such selling on a daily basis.

3.4.2 In Australia, no other jurisdictions have yet implemented the FCTC provision.

3.5 Options

Option 1: Retain the status quo.
Option 2: Encourage voluntary prohibition by retailers.
Option 3: Supervision by an adult on a daily basis.
Option 4: Legislate to prohibit.

3.5.1 OPTION 1: Retain the status quo

Advantages:
- Retailers will continue to be permitted to allow children to sell tobacco products.

Disadvantages:
- An easy source of accessibility to tobacco products by children will remain.
- Enforceability of section 64 will continue to be compromised.

This option is NOT RECOMMENDED.
3.5.2 **OPTION 2: Encourage voluntarily prohibition on children selling tobacco**

Anecdotal evidence suggests a small number of retailers do not permit staff under the age of 18 years from selling or handling tobacco products.

**Advantages:**
- Enforcement by tobacco control officers would not be required.

**Disadvantages:**
- Enforceability of section 64 would continue to be compromised.
- FCTC provision would not be implemented.

This option is NOT RECOMMENDED.

3.5.3 **OPTION 3: Legislate to require supervision by an adult on a daily basis**

The meaning of supervision would need to be defined by legislation. It could involve ensuring an adult is present by the counter or in the room.

**Advantages:**
- Ensures young people are still employable, particularly in family owned businesses.

**Disadvantages:**
- Enforceability of section 64 would continue to be compromised, although amendments could make the adult supervisor liable.
- Retailers need to ensure an adult is present at all times.
- Compliance would be more difficult to define and enforce.

This option is PREFERRED if option 4 is not accepted.

3.5.4 **OPTION 4: Legislate to prohibit the sale of tobacco products by children**

**Advantages:**
- Legislation would reflect a consistent approach to ensuring that persons under the age of 18 years are prohibited from both purchasing and selling tobacco products.
- Implement obligations under the FCTC.
- If the licensee allows children to sell tobacco products, the tobacco sellers license can be revoked.

**Disadvantages:**
- Young people may not be employable if they are unable to handle tobacco products.

This option is RECOMMENDED
Proposal Four

Prohibit the possession of tobacco products by children

Strengthening Measures to Protect Children from Tobacco
4.0 Prohibit the possession of tobacco products by children

4.1 How it could work

4.1.1 Section 63 of the Act prohibits a child from smoking or using any tobacco product (however there is no penalty attached to the offence).

4.1.2 Possession of tobacco products by a child is not a form of ‘using’ and is currently not an offence under the Act.

4.1.3 Section 66 enables a nominated officer (such as a Tobacco Control Officer or Tasmania Police) to seize tobacco products being smoked or used by a child. However this power currently does not extend to seizing tobacco being held in a child’s possession.

4.1.4 Section 67 enables nominated officers to issue warnings, cautions and provide information to a child who the nominated officer reasonably believes has contravened an under-age smoking provision. A nominated officer may also require the child to attend a specified place at a specified time to provide such information and/or notify a parent or guardian that a breach has occurred.

4.1.5 Under this proposal, sections 63 and 66 could be extended to include possession of tobacco products by a child, enabling tobacco products to be seized. If possession is made an offence, section 67 (warnings and information) could be utilised by nominated officers.

4.1.6 In addition, a penalty could be introduced for the offence of smoking, using or possessing tobacco. This could be enforced through infringement notices (fines) or prosecution in court.

4.1.7 An exemption may be required to enable children to possess tobacco products when taking part in controlled purchase operations (to monitor retailer compliance with the sale of tobacco to children).

4.1.8 An exemption may also be required for employees under the age of 18 to allow for the handling of tobacco stock and selling (subject to the proposal to prohibit children from selling tobacco products).

4.1.9 Nominated officers could be appointed within schools to assist with enforcement.

4.2 Arguments For

4.2.1 If a child cannot legally purchase or smoke tobacco products, they should not be able to possess them.

4.2.2 Seizure is an immediate and direct option to deal with children possessing tobacco products.

4.2.3 Making possession an offence provides symbolic value and adds credibility to the message from schools, parents and public health authorities that smoking is a dangerous and unhealthy habit.
4.3 Arguments Against

4.3.1 One of Australia’s leading tobacco control authorities, Dr Melanie Wakefield, Director of the Centre for Behavioural Research in Cancer has reviewed this issue recently. She concludes, "strategically, PUP (purchase, use, possession) laws may divert policy attention from effective tobacco strategies, relieve the tobacco industry of responsibility for its marketing practices, and reinforce the tobacco industry’s espoused position that smoking is for adults only." 43

4.3.2 During the time the Act was being drafted, prior to its commencement in February 1998, it was determined that a penalty would not be prescribed for a breach of section 63. This was because it was considered that prosecution of children would not act as an effective deterrent. It was also seen as an unproductive use of limited police and other resources nor considered to be in the public interest to prosecute children for these types of offences.

4.3.3 Preference was given to prosecuting persons selling tobacco products to children as a more effective means of controlling child tobacco use. Since that time, best practice models for tobacco control have continued to highlight that there is little public health benefit in targeting children for possessing or using tobacco products and that the focus should be on preventing illegal supply. 44

4.3.4 Most other Australian jurisdictions conduct controlled purchase operations and surveillance activities using teenage volunteers to monitor retailer compliance. In Tasmania, surveys are undertaken on a regular basis and a number of retailers have been prosecuted as a result. Significant improvements in compliance have been found following successful prosecutions indicating their effectiveness. 45

4.3.5 The experience of other jurisdictions suggests that child possession laws are rarely enforced to a level to exert a general deterrent effect on youth smoking. 46

4.3.6 Prosecuting children or confiscating their tobacco may lead to less likelihood of children cooperating with parents, teachers and public officials in identifying their sources of supply, particularly retailers who sell on a regular basis. It may also lead to undesirable confrontations between children and authority figures.

4.3.7 Enforcement of possession laws may impact on resources available for the enforcement of other tobacco control legislation, particularly the sale and supply of tobacco products to children.

4.3.8 If prosecuted in court, children could receive a criminal record for a trivial offence. There is also a delay between the time of the offence and when a case is heard.

4.3.9 It may also lead to unintended consequences such as increasing the desirability of youth smoking without addressing the root causes.

4.3.10 Neither the Framework Convention on Tobacco Control or the National Tobacco Strategy recommend prohibition of possession by children.
4.4 Developments in Other Jurisdictions

4.4.1 32 states in the United States have introduced prohibitions on possession, the majority authorising other penalties in addition to a fine. These include appearances in court, suspension from school, denial of drivers licence or a combination. In some courts specially convened for child tobacco offences, children must appear before the judge with their parent or guardian, view an anti-smoking video and experience a lecture such as from a throat cancer survivor.47

4.4.2 No Australian State or Territory penalises children for possessing tobacco. This measure is not part of the National Tobacco Strategy.

4.5 Options

4.5.1 OPTION 1: Retain the status quo

Advantages: ▪ Continue to focus resources on the illegal supply of tobacco instead of the child.

Disadvantages: ▪ Apparent anomaly continues in legislation as children can possess tobacco but cannot smoke or use it.

This option is RECOMMENDED.

4.5.2 OPTION 2: Prohibit possession under section 63 with no penalty and extend section 66 to include possession

Section 66 already enables a nominated officer to seize any tobacco product being smoked or used by a child, and would be extended to include seizure or confiscation of any tobacco product being held by a child.

Advantages: ▪ Consistency under the Act in respect to children smoking, using or possessing tobacco.

▪ Causes financial inconvenience for the child indirectly through forfeiture of the tobacco product.

▪ Section 67 (warnings and information) could be utilised.

Disadvantages: ▪ May redirect enforcement resources.

▪ May divert attention away from suppliers of tobacco.

▪ May reinforce covert behaviour by children.

▪ May lead to undesirable confrontations between children and authority figures.

This option is NOT RECOMMENDED but preferred if option 1 is not accepted.
4.5.3 **OPTION 3: Prohibit possession with penalty**

For consistency, a penalty would also be prescribed for a child smoking or using a tobacco product.

**Advantages:**
- Consistency under the Act in respect to children smoking, using or possessing tobacco.

**Disadvantages:**
- Not in the public interest to fine or prosecute children.
- Fining or prosecuting children may make smoking more desirable to some children.
- Redirect enforcement resources.
- Divert attention away from suppliers of tobacco.

This option is NOT RECOMMENDED
Discussion Paper

Appendix A
Guidelines for Price Tickets and Other Matters (Tobacco Products) 2004

Strengthening Measures to Protect Children from Tobacco
Public Health Act 1997

GUIDELINES

FOR

PRICE TICKETS AND

OTHER MATTERS

(TOBACCO PRODUCTS) 2004

Department of Health and Human Services

Issued by: Dr Roscoe Taylor
Director of Public Health
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1 INTRODUCTION

1.1 This document contains information and the Guidelines. The Guidelines appear in Part 2 in bold text. It is a legal requirement to comply with the Guidelines. Failure to do so may result in significant fines. The maximum fine that may be imposed under the Act for non-compliance with Guidelines is $5000.

1.2 The Guidelines apply to any person selling tobacco products over the counter or via a tobacco product vending machine. They set out the requirements for notices that must be displayed wherever tobacco products are sold, for price ticketing about tobacco products, and the requirements which apply to a price board.

2 DEFINITIONS

2.1 In these Guidelines-

“Act” means the Public Health Act 1997.

“price board” means a sign that states the names and prices of tobacco product lines.

“price ticket” means a small ticket that states the name and price of a tobacco product line.

2.2 The following terms are defined in the Act:
• “carton”;
• “Director”;
• “product line”;
• “sales unit”;
• “service area”;
• “tobacco advertisement”;
• “tobacco product”; and
• “tobacco product vending machine”.

2.3 Any terms defined in these Guidelines or in the Act appear in italics.
3 INFORMATION

Price information

3.1 Price information about tobacco products which are not displayed, such as cartons, can be displayed on a sales unit through price tickets or a price board, or, for example, in a folder listing details of the tobacco products available at the premises. If you want to display a notice indicating that cartons are sold on the premises, see paragraph 3.8 below.

3.2 The writing on a price ticket is still subject to the prohibition in s. 72(7)(a) on colour coding of premises in colours that form part of the usual packaging of the tobacco product within 5 metres of the display.

Images of tobacco products on tobacco product vending machines

3.3 Tobacco product vending machines are dealt with in Part 2 (paragraph 5 - price tickets and paragraph 7 - images of tobacco products and wording that can be displayed on a tobacco product vending machine).

3.4 The Act provides that tobacco products can only be displayed in one sales unit in any premises. The definition of sales unit covers tobacco product vending machines. A person selling tobacco products can choose whether to display tobacco products in one sales unit within a service area or one tobacco product vending machine that may be situated outside the service area.

3.5 However, many tobacco product vending machines are not designed to display tobacco products. Instead, many tobacco product vending machines use small images of packets of tobacco products (vending chips) to identify the product lines available from the machine.

3.6 The Director of Public Health has issued an exemption order which is contained in Appendix A, which exempts vending chips on tobacco product vending machines from the prohibition on advertising of tobacco products, subject to compliance with certain requirements, including that (a) each image of a tobacco product does not exceed 6 cm x 3 cm in area, (b) that there is only one image of each product line of a tobacco product, (c) that the number of vending chips on a tobacco product vending machine does not exceed 40, (d) that the machine complies with certain restrictions on the display of vending chips and (e) that the tobacco product vending machine displaying the images is located in premises where no tobacco products are displayed. Please refer to Appendix A for the complete list of requirements.

3.7 In the past, many tobacco product vending machines have displayed more than one image of some tobacco product lines. Tobacco product vending machine owners will have to decide how to prevent additional images of tobacco product lines from being visible. For example, it should be quite simple to replace the excess images with price ticket stating the name and price of the tobacco product line which complies with these Guidelines. Of course, if a tobacco product vending machine is not visible
to the public, there are no restrictions on the display of *tobacco products* or images of *tobacco products*.

**Product availability notices**

3.8 It is permissible to display a notice that indicates that *tobacco products* are sold on the premises as long as it complies with the restrictions set out in the Director’s exemption order. Although such a notice is technically a *tobacco advertisement* which is prohibited from display by section 70 of the Act, the Director of Public Health has made an order exempting certain notices from the prohibition on advertising in section 70.

3.9 A copy of the Director’s exemption order is at Appendix A. The exemption order exempts signs with certain characteristics which are set out in the exemption order.

**Approved health warning notices**

3.10 The approved health warning notices warn people about the health effects of smoking tobacco and notify people about the ban on selling *tobacco products* to people under 18. The notices in the approved form are set out in Appendix C. These notices supersede all previous notices and must be displayed wherever *tobacco products* are sold. Contact a Tobacco Control Officer to get copies of the notices (contact details at Appendix B).

3.11 The approved notices displayed on a *tobacco product vending machine* must be able to be easily seen and read. If the notices are placed on an illuminated surface, it may be necessary to put opaque material such as card behind the notices so that the wording is clearly legible.

**Monitoring the operation of the Guidelines**

3.12 One of the purposes of the tobacco control provisions of the Act and these Guidelines is to reduce the display and advertising of *tobacco products*. The impact of these Guidelines on advertising and display of *tobacco products* will continue to be monitored to ensure that display and advertising are effectively controlled. The Guidelines will be reviewed if unforeseen consequences arise which mean that aspects of display or advertising are not effectively controlled.
PART 2 GUIDELINES

4 NOTICES WHICH MUST BE DISPLAYED

4.1 After 24 November 2004, a person who sells any tobacco product must display the two notices in Appendix C with no changes to the size, colouring or format of the notices -
(a) in a prominent position visible to the public on or immediately adjacent to any sales unit (other than a tobacco product vending machine) where tobacco products are displayed; and
(b) in a prominent position visible to the public on the front surface of any tobacco product vending machine so that the wording on the notice can be easily seen and read.

5 PRICE TICKETS

5.1 A price ticket that is displayed on a sales unit must comply with the following requirements:

(a) writing on a price ticket must be –
   (i) black writing on a white background; or
   (ii) if all price ticketing in the premises is in a dual colour scheme, a single colour on another single-coloured background consistent with that dual colour scheme;
(b) a price ticket must not contain any writing or numbers with a height greater than 2 cm;
(c) a price ticket must not contain any wording or images other than -
   i. the name of the tobacco product line available for sale; and
   ii. a bar code or other identifying numeric or alphanumeric code; and
   iii. the price of a packet or carton of the product line; and
   iv. a symbol identifying the country of origin of the product line.

6 PRICE BOARDS

6.1 A person must not display a price board unless it complies with the following requirements:
GUIDELINES FOR PRICE TICKETS AND OTHER MATTERS (TOBACCO PRODUCTS) 2004

(a) the price board must have an unbroken surface area which does not exceed 100 cm by 75 cm;
(b) the price board must not display any colours;
(c) the writing on the price board must be black on a white background and must not exceed 2 centimetres in height;
(d) a price board must not contain any wording or images other than the names of tobacco product lines available for sale and the price and the titles “Packet prices” and “Carton prices”;
(e) a price board must only contain wording on one side;
(f) the name of a product line of a tobacco product must not appear more than once on the price board;
(g) the price board must be attached to or situated adjacent to a sales unit.

6.3 A person must not display more than one price board in any premises where tobacco products are sold.

7 TYPES OF WORDING THAT MAY BE DISPLAYED ON TOBACCO PRODUCT VENDING MACHINES

7.1 In addition to the approved health warning notices, price tickets as provided for in clause 5 of these Guidelines may be displayed on tobacco product vending machines.

8 INFORMATION ABOUT SELLING OR SUPPLYING TOBACCO PRODUCTS TO CHILDREN

8.1 The information that persons in charge of any premises which sell or supply any tobacco product must provide to employees about selling or supplying tobacco products to children pursuant to subsection 64(6) of the Act must be provided in accordance with the following requirements:
(a) the information must be provided as soon as possible after an employee commences employment in the premises which sell or supply any tobacco product;
(b) the information must consist of a clear explanation of section 64 of the Act including responses to any questions asked by the employee.
TEXT OF THE ORDER

Short title

1. This order may be cited as the Public Health (Exemption) Order (No. 2) 2000.

Commencement

2. This order takes effect on the day on which its making is notified in the Gazette.

Interpretation

3 (1) In this order –

“Act” means the Public Health Act 1997;

“tobacco image” means an image of a product line of a tobacco product with an area no larger than 6 cm by 3 cm that is a tobacco advertisement;

“tobacco notice” means a notice containing only, in black text no larger than 4 cm high on a white background, the words –
(a) tobacco products sold here; or
(b) cigarette cartons sold here; or
(c) cigarettes sold here; or
(d) tobacco products that are not displayed sold here.

(2) Any word or phrase defined in the Act and referred to in this order has the same meaning as defined in the Act.

Exemptions from sections 70, 71 and 72A(3)(g)

4 (1) A person is exempt from sections 70 and 71 of the Act in relation to one tobacco notice that is displayed on or near a sales unit.

(2) A person is exempt from sections 70 and 71 of the Act in relation to one tobacco product vending machine in each premises.

(3) Subclause (2) does not apply to a tobacco product vending machine that –
(a) is located in premises that display any tobacco product; or

(b) displays –
   (i) more than one tobacco image of any product line of a tobacco product; or
   (ii) a price ticket or price board except in accordance with the guidelines; or
   (iii) more than 40 tobacco images; or

(c) contains –
   (i) a device that causes movement, visible to the public, on any part of the tobacco product vending machine or tobacco product; or
   (ii) a mirror or other reflective device, interior lighting or exterior lighting attached to the tobacco product vending machine; or
   (iii) external spotlighting; or

(d) is positioned so that the display of tobacco images faces towards a window or a public entrance unless –
   (i) the direction faced is perpendicular to the plane of the window or the public entrance; or
   (ii) the window or public entrance is at least 2 metres from the display; or

(e) uses any of the following to enhance the display of tobacco images:
   (i) colour coding of the premises in colours that form part of the usual packaging of the tobacco product within 5 metres of the tobacco product;
   (ii) lines, borders and other visual design effects that make the display stand out;
   (iii) partial imaging or wording of the packaging of the tobacco product;
   (iv) empty packets, cartons, cigarette shippers and boxes of tobacco product;
   (v) any cabinet or display case that contains any trademark, colour or wording usually used in packaging of the tobacco product, except for a device that does not contain any design, colour, fabric or wording usually associated with the packaging of the tobacco product that is used to allow a tobacco product to be extracted.

(4) A person is exempt from section 72A(3)(g) of the Act in relation to a sales unit situated in a kiosk –

(a) that is a specialist tobacconist premises; and
(b) that is located in an enclosed shopping area; and
(c) into which the public is not able to enter; and
(d) that is in existence as at 31 October 2000; and
(e) that is approved by the Director of Public Health.
GUIDELINES FOR PRICE TICKETS AND OTHER MATTERS (TOBACCO PRODUCTS) 2004

APPENDIX B

CONTACT DETAILS – TOBACCO CONTROL OFFICERS

SOUTH

Tobacco Control Officer South
phone: (03) 6222 7716
post: Department of Health and Human Services
      GPO Box 125 HOBART 7001

NORTH

Tobacco Control Officer North/North West
phone: (03) 6336 2279
post: Department of Health and Human Services
      Henty House
      1 Civic Square LAUNCESTON 7250

GENERAL CONTACTS

Public and Environmental Health free call: 1800 671 738
Public and Environmental Health email: public.health@dhhs.tas.gov.au
GUIDELINES FOR PRICE TICKETS AND OTHER MATTERS (TOBACCO PRODUCTS) 2004

APPENDIX C

APPROVED NOTICES

The approved notices for the purposes of section 64(4) of the Act are attached following this page.
YOU are breaking the law - if you GIVE or SELL cigarettes to anyone under 18.

You could be fined up to $5,000

Director of Public Health
APPENDIX D

WHERE TO OBTAIN COPIES OF THE GUIDELINES AND THE ACT

Copies of the Guidelines and the Act are available online at www.dhhs.tas.gov.au. Hard copies are available from Printing Authority of Tasmania at

2 Salamanca Place
HOBART 7001
phone:    (03) 6233 3168
fax:       (03) 6223 7638
free call: 1800 030 940
online:   www.pat.tas.gov.au

The Public Health Act 1997 is also available online at www.thelaw.tas.gov.au
Discussion Paper

Appendix B
Saskatchewan Coalition for Tobacco Reduction

Strengthening Measures to Protect Children from Tobacco
April 27, 2005

Mr. Pat Hoy and Committee Members
Standing Committee on Finance and Economic Affairs
Room 1405, Whitney Block
Queen's Park
Toronto, Ontario
M7A 1A2

Dear Mr. Hoy and Committee Members:

The Saskatchewan Coalition for Tobacco Reduction congratulates you and your Committee on your work in consulting with the public concerning Bill 164, *The Tobacco Control Statute Law Amendment Act, 2004*. The measures in the Bill will be effective in protecting children, youth and all Ontario residents from the devastation caused by tobacco addiction, illness and death.

It is our understanding that the proposed legislation contains a ban on point-of-sale displays. Since Saskatchewan was the first jurisdiction to pass this legislation in North America, we would very much appreciate the opportunity to provide your Committee with some of the “lessons learned” in our province as well as the opportunity to counter some of the misinformation that may have been provided to you.

Our provincial display ban was first recommended by our *All Party Committee on Tobacco Control*, a Committee of the Saskatchewan Legislative Assembly which was set up to identify ways to protect children and youth from tobacco. Legislation which includes the ban was passed unanimously by Members of the Legislative Assembly in 2001 and proclaimed in 2002.

Saskatchewan’s point-of-sale ban legislation has been a success story. The opportunity to ban one of the tobacco industry’s last avenues to promote their products to children and youth was precedent-setting and although legally challenged by a tobacco company, it was upheld by the Supreme Court of Canada. We are pleased to say that Saskatchewan no longer promotes tobacco products to children!
Ease of Implementation
The display ban was well accepted by the public. Health Canada’s tobacco enforcement officers\(^1\) report the law achieved a high level of compliance, 98%, within six months to a year after its proclamation.

All Regional Health Authorities, health organizations and the Saskatchewan Urban Municipalities Association support the display ban. Public support is high and includes one group whose support was unexpectedly enthusiastic. Ex-smokers tell us it is much easier not to start smoking when they are not faced with tobacco displays in stores.

Lack of Negative Economic Impact
Tobacco enforcement officers also report compliance appears to have been achieved at minimal cost to retailers. No stores have closed and no staff have been laid off.

Mr. Ray Joubert, spokesperson of the Saskatchewan Pharmaceutical Association (now the Saskatchewan College of Pharmacists), reported that although there may have been a few transitional issues, implementation of the ban on tobacco product advertising to children had gone “smoothly”. He said “Compliance is high. There have been no significant problems or failures, economically or otherwise.” He has not heard of any negative outcomes such as businesses closing or staff being let go.

There have also not been any media reports of negative economic impact due to the point-of-sale ban.

Increase of ‘point-of-sale’ research
With the passage of point-of-sale bans in Saskatchewan, Iceland, Ireland, Manitoba, Nunavut and other jurisdictions, there has been increase in research around this area. (A summary is attached.) In reviewing the literature, we are pleased to see it confirms what Saskatchewan’s All Party Committee perceived: The primary purpose of point-of-sale displays is to advertise to children and youth. Through their decision to ban displays, Saskatchewan legislators effectively created an environment where children and youth are protected.

We should mention that the research says partial bans are not effective given the tobacco industry’s propensity to make much the most out of such situations. You may be being pressured not to have a complete ban. We encourage you to provide children and youth in your province with complete protection from tobacco industry promotion.

Detractors
We would be remiss if we didn’t mention there were detractors to this legislation. The Saskatchewan Committee for Responsible Tobacco Retailing was formed just prior to the legislation being passed. Although claiming to be ‘poor’ retailers the Committee had extensive funding to run its campaign.

The Committee mounted a $10,000 fax campaign to retailers urging them to oppose the legislation by calling their Member of the Legislative Assembly. Retailers were provided with misinformation. Some of it may be similar to what is being said in

\(^1\) Tobacco enforcement officers with Health Canada administer the display ban legislation under contract with Saskatchewan Health.
Ontario. Suspicions of links between the retail committee and the tobacco industry were confirmed when a Committee spokesperson admitted on one occasion it was a sub-committee of the Canadian Coalition for Responsible Tobacco Retailing, a tobacco industry coalition with a similar name. The Coalition is described on the industry’s Operation ID website - www.operationid.com/

**Misinformation**

Some of the following misinformation may be being provided to Members of the Provincial Parliament in Ontario. Some of this was also heard in Saskatchewan and we would like to share the information we have to refute it.

- **“Banning tobacco product displays won’t affect youth smoking.”**
  As mentioned, there is a considerable research evidence that proves tobacco advertising and promotion increase tobacco use. If such advertising did not work, it is unlikely the tobacco industry would spend 88 million dollars on it every year in Canada.

- **“The legislation will cause undue economic hardship”**
  There has been no media or other reports of economic losses because of the display ban in Saskatchewan. There may be losses of payments from the tobacco industry to retailers. However, the Canadian Cancer Society has reported that retailers can offset these by increasing the cost of each package by a few pennies. The only business that will suffer is the tobacco industry.

- **Saskatchewan retailers have extensively used shower curtains to cover displays of tobacco products.**
  We think it is important for you to know that no one we know across the province has ever seen a shower curtain used in this way. The term was coined by the tobacco industry to trivialize the law. The phrase was used by Rothmans Benson & Hedges lawyers in all of their court appearances including the last one at the Supreme Court of Canada.

- **Thefts in stores increased because clerks have to spend more time with their backs turned.**
  Such a suggestion is outside the experience of Saskatchewan retailers. In fact, 30% to 40% of retailers continued to keep their display bans in place during the 18 months the law was struck down by the industry’s legal challenge. These retailers reported that they did this for a number of reasons, one being they believed that having tobacco products visible increases theft.

There is further evidence that theft does not increase with point-of-sale bans:

- There have been no media reports of thefts increasing in Saskatchewan.
- Tobacco enforcement officers have not heard of increased thefts.
- According to the Saskatchewan College of Pharmacists, many pharmacists in Saskatchewan quit selling tobacco because they believe having it in stores increases thefts. Currently, 60% of pharmacists in Saskatchewan do not sell tobacco.
- Testimony was provided to the Standing Committee on Social Development, Prince Edward Island, on March 11, 2004, by Constable Gary Clow who stated that power walls of tobacco products encourage ‘break and enters’.
It is also possible to investigate theft in Saskatchewan as it compares to Canada. This can be done through a review of property crime, specifically shoplifting. Shoplifting and other theft statistics are kept by the Canadian Centre for Justice Statistics in Ottawa which has provided the following statistics. (Table 1)

Table 1. Reported shoplifting incidents per 100,000 population in Saskatchewan and Canada, 1998 - 2003

<table>
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<th>Year</th>
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<th>Canada</th>
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</tr>
<tr>
<td>2004</td>
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</table>

These numbers show Saskatchewan rates follow a similar trend as Canadian rates. Rates for both initially decrease from 1998 to 2000 and then increase until 2003. Since there were no display bans anywhere else in Canada, one may conclude that the Saskatchewan display ban had no effect on shoplifting theft in that province.

- Clerks were at personal risk because their backs were turned to their customers for longer periods of time.

Again, we have not heard anything about this and nothing has been reported in the media in Saskatchewan.

In closing, we encourage your Committee to recognize that the tobacco industry and its allies will fight to keep the promotion of its product in front of the next generation of smokers – the children and youth of Ontario.

We would be pleased to provide any further information or answer any questions. Please feel free to contact the Saskatchewan Coalition for Tobacco Reduction at (306) 766-7903.

Yours sincerely,

June Blau                       Lynn Greaves
President                      Chair, Advocacy Committee

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2 The Saskatchewan display ban was in place from March, 2002 until October, 2003 when the tobacco industry’s appeal was allowed. The Supreme Court of Canada upheld the law on January 19, 2005, Weedless Wednesday.
3 Saskatchewan has the third highest rate of shoplifting in Canada, behind British Columbia and Alberta which have the highest and second highest respectively.
RESEARCH STUDIES ASSOCIATED WITH POINT-OF-SALE BANS


  Tobacco product display bans are one of the world’s ‘best practices’ in tobacco control. Displays are recognized as tobacco advertising long recognized to increase sales. To be effective, bans must be comprehensive.

- **Canada: demolishing the power walls**  Lynn Greaves. Tobacco Control 2003;12:7-8.

  Saskatchewan’s precedent-setting tobacco product display ban reflects the deadly nature of tobacco. The law prevents tobacco companies from displaying tobacco products that encourage people, especially youth, to smoke. The banning of tobacco product displays is a new wave in tobacco control.

- **Community mobilization to reduce point of purchase advertising of tobacco products**  T Rogers et al. Health Education Quarterly 1995;22: 427-442.

  This study found that tobacco impulse purchases increase by as much as 28% when displays are present.

- **Tobacco point of sale advertising increases positive brand user imagery**  R J Donovan, J Jancey, S Jones. Tobacco Control 2002;11:191-194.

  This study reports that point of sale advertising has the potential to significantly increase positive brand use imagery adding to the likelihood of impulse buying.


  This study reviewed tobacco industry documents to determine the industry’s role in retail promotion of its products. It describes how, as other avenues for advertising tobacco were banned, the tobacco industry increasingly focused on point-of-sale displays. The study concludes that effective tobacco control measures should include banning tobacco product displays and other retail advertising.

- **Support from retailers for tightening the Western Australian Tobacco Control Act 1990**  Crystal L Laurvick, Konrad Jamorzik. Tobacco Control 2001;10:295.

  A survey of retailers in Australia determined there was considerable support for removing all indoor (point-of-sale) advertising.

- **Phasing out of point-of-sale tobacco advertising in New Zealand**  Trish Fraser. Tobacco Control 1998;7:82-84.

  This report describes how, over 34 years, New Zealand progressively moved to restrict tobacco advertising. As a result, point-of-sale advertising proliferated. Attempts to ban this advertising in the 1990’s failed. The report concludes the tobacco industry realizes it is an extremely effective method of encouraging experimentation by young people.
• How tobacco companies ensure prime placement of their advertising and products in stores: interviews with retailers about tobacco company incentive programmes
  Interviews with retailers revealed the tobacco industry exerted substantial control over stores by requiring placements of their products in the most visible locations. Tobacco companies also offered volume based discounts and specials. The paper concludes because the industry is concentrating its marketing dollars at point-of-sale, all shoppers regardless of age or smoking status are exposed to pro-smoking messages.

• Cigarette advertising and promotional strategies in retail outlets: results of a statewide survey in California
  Analysis of a random sample of 586 stores that sold cigarettes revealed 94% featured advertising. Twenty-three percent had cigarette product displays next to candy. Point-of-sale displays have been shown to increase average tobacco sales by 12% to 28%. The study concludes tobacco companies are aggressively using stores to market cigarettes.

• Role of slotting fees and trade promotions in shaping how tobacco is marketed in retail stores
  A study of retail stores revealed tobacco companies had been dramatically increasing the volume of slotting fees and trade promotions they paid to retailers, creating a more tobacco friendly retail environment containing self service displays and ample point-of-sale advertising.

• Store tobacco policies: a survey of store managers, California, 1996-1997
  Interviews with store managers revealed 34% received discounts or incentives from the tobacco industry to display tobacco promotional materials. Illegal tobacco sales were less likely to occur in stores where tobacco displays were changed to make tobacco less accessible.

• Tobacco Industry Promotion of Cigarettes and Adolescent Smoking
  The study provides evidence tobacco promotional activities can influence non-susceptible never-smokers to start the process of becoming addicted to cigarettes. An estimated 34% of all experimentation in California between 1993 and 1996 has been attributed to tobacco company promotional activities.

• Restrictions on the Retail Display of Tobacco Products: Policy Analysis
  The report provides a comprehensive look at point-of-sale displays including evidence from consumer product, tobacco control research and tobacco industry documents. It concludes that since point-of-sale advertising is critical to marketing, governments have a responsibility to ensure retail displays do not normalize tobacco products for youth, promote increased use by current smokers or cue smokers trying to quit.
<table>
<thead>
<tr>
<th>Jurisdiction</th>
<th>Restrictions: Product Lines</th>
<th>Restrictions: Display</th>
<th>Requirements: Signage</th>
<th>Requirements: Price boards and tickets</th>
</tr>
</thead>
<tbody>
<tr>
<td>Victoria</td>
<td>Single packet</td>
<td>Cartons</td>
<td>Cigars</td>
<td>Location</td>
</tr>
<tr>
<td>Western Australia</td>
<td>1</td>
<td>Prohibited</td>
<td>13</td>
<td>Point of Sale</td>
</tr>
<tr>
<td>New South Wales</td>
<td>2</td>
<td>1</td>
<td>None</td>
<td>Behind counter</td>
</tr>
<tr>
<td>Australian Capital Territory</td>
<td>1</td>
<td>Prohibited. Only single packet to represent carton can be displayed.</td>
<td>Up to 13 individual cigars and 1 closed box of each product line.</td>
<td>Behind counter</td>
</tr>
<tr>
<td>Queensland</td>
<td>1</td>
<td>Prohibited</td>
<td>13</td>
<td>Behind counter.</td>
</tr>
<tr>
<td>Northern Territory</td>
<td>1</td>
<td>1</td>
<td>2</td>
<td>Behind counter</td>
</tr>
<tr>
<td>South Australia</td>
<td>None</td>
<td>None</td>
<td>None</td>
<td>None</td>
</tr>
<tr>
<td>Tasmania</td>
<td>1 up to 150 product lines</td>
<td>1 only if packets not displayed</td>
<td>1</td>
<td>Behind counter</td>
</tr>
</tbody>
</table>
Discussion Paper

Appendix D
Environmental Tobacco Smoke in Cars Simulation Charts

Strengthening Measures to Protect Children from Tobacco
Comparison of Secondhand Smoke Levels in Cars and in Houses

The graphics below show predicted* second hand smoke (SHS) particle levels, for the sixty minutes after a single cigarette is smoked inside either a car or house, under varying conditions of ventilation.

**Secondhand Smoke Levels After a Cigarette is Smoked Inside a Car**

If the windows of a stationary car are kept closed, the peak and average SHS levels from a single cigarette are very high. This is because the internal volume of the car is so small. The predicted SHS levels are progressively reduced if the car is moving, the ventilation is turned on, a window is cracked or when a window is open. These factors cause relatively great variations in the effective ventilation rate. The results assume well mixed air inside a medium size car and ventilation rates based on experiments in several types of cars.

**Secondhand Smoke Levels After a Cigarette is Smoked Inside a Room of a House**

The volume of a room in a house is large compared to that of a car. This volume for smoke dilution results in peak SHS levels that are typically much lower in a house than in a car. However, the effective ventilation rates (or air leakage) in houses are comparatively low, and do not vary nearly as much as in a car. Hence the initially lower levels of smoke in a house tend to disperse more slowly than in a car. Opening the window of a house does not reduce SHS levels as much as opening the window of a car, because the relative size of a house window is small, and because cars are able to move.

These results assume a cigarette is smoked in a medium sized room, such as a bedroom, that is isolated from other rooms of a house and that the air is well mixed. Some older Australian houses have ventilator grilles in rooms and most have small natural gaps where building materials join. These factors increase air leakage. Recently built houses tend to be more tightly sealed to conserve energy.

*Note:* The graphics shown here were produced using simulation software developed by Dr Neil E Klepeis. The simulation results are based on well-established scientific research and are meant to be illustrative of typical real-life levels. However, they may not precisely match actual levels in any one specific car or house. Further background information on SHS and more detailed interactive computer simulations of SHS in varying situations are available at [http://www.simsmoke.org/](http://www.simsmoke.org/)
References


