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Ms Leanne Linard MP  
Chair  
Health and Ambulance Services Committee  
Parliament House  
George Street  
BRISBANE QLD 4000

Dear Ms Linard

Thank you for your letter dated 12 November 2015 advising of the inquiry into tobacco licensing arrangements in Queensland and outlining the assistance and information required from the Department of Health. I refer to your request for an initial written briefing on matters identified in the terms of reference.

I trust that the following documents are useful to your Committee's inquiry:

- Attachment A: Initial briefing on terms of reference
- Attachment B: Public Health Research and Practice published article
- Attachment C: Final Report of the NSW Taskforce on Tobacco Retailing
- Attachment D: Commonwealth report on Licensing of Tobacco retailers and Wholesalers.

Should you require further information, the Department of Health's contact for the inquiry is Mr David Noon, Manager, Cabinet and Parliamentary Services, on telephone [REDACTED]

Yours sincerely



**Michael Walsh**  
**Director-General**  
**Queensland Health**

25 NOV 2015

## **Health and Ambulance Services Committee - Inquiry into tobacco licensing arrangements in Queensland**

### **Initial briefing by Department of Health**

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1. Australian jurisdictions with licensing schemes typically use them to:

- monitor compliance of retailers with legislative restrictions applied to the sale of tobacco and other smoking products (referred to hereafter as 'tobacco')
- maintain a list of tobacco suppliers (retailer/ wholesale) for the purpose of information dispersal and compliance activities
- undertake suitability checks of retailers to supply tobacco
- suspend the supply of tobacco where retail restrictions are breached (e.g. sale of tobacco to minors)

#### **What arrangements currently apply in Queensland with respect to licensing the wholesale and retail supply of tobacco products?**

2. Queensland does not operate a tobacco licensing scheme.

3. As a part of a comprehensive approach to tobacco control Queensland's *Tobacco and Other Smoking Products Act 1998* (Tobacco Act) imposes strict controls on the retail sale, display and promotion of tobacco products including:

- prohibition on the sale of tobacco products to children under 18 years of age
- complete display bans of tobacco products at retail outlets and on vending machines
- requirement for retail suppliers of tobacco products to train staff in understanding their legal obligations under the Tobacco Act.

4. There is strong evidence for the effectiveness of display restrictions and bans on the sale of tobacco to minors on reducing smoking rates (Smyth, Freeman and Magg, 2015)(Attachment B).

5. In Queensland the progressive introduction and strengthening of retail restrictions has contributed to a reduction in smoking rates. In the decade 2004 to 2014, when the majority of retail restrictions were introduced, smoking rates reduced by 26%. There has been particular success in reducing the uptake of smoking in young people with smoking rates for this group halving between 2001 and 2010.

6. To maintain retailer compliance with these restrictions Queensland Health enforcement officers undertake scheduled surveillance activities. State-wide of representative samples of retail outlets show a high level of adherence with tobacco retail restrictions.
7. It is estimated that there are around 40,000 tobacco retailers in Australia (British American Tobacco Australia, 2015). On a population basis, this means that there are around 8000 (pro-rata) tobacco retail outlets (inclusive of premises with vending machines) in Queensland. There are approximately 260 wholesalers of tobacco in Queensland.

Tobacco retailers include:

- Supermarkets & Grocery Stores
- Tobacconists
- Convenience Stores
- Mixed Businesses
- Hotels and Clubs (vending machines)
- Newsagents
- Liquor Stores
- Petrol Stations
- Other Retailers (online stores)

Tobacco wholesalers include:

- Tobacco companies (three tobacco companies operate in Australia)
- Tobacconists (some also function as wholesalers to smaller businesses not serviced by tobacco companies)
- Grocery wholesalers (e.g. Metcash)

8. Enforcement teams maintain localised lists of retailers based on history of alleged breaches of retail restrictions, public complaints, and in accordance with specific criteria such as proximity of retailer to a school. These lists are maintained and updated by enforcement teams to assist with planning of surveillance and enforcement operations.
9. Under section 13 of the Tobacco Act, retailers can lose the right to sell tobacco products under Court Order if they are convicted of supplying smoking products to children under 18 years of age. These processes are in addition to warnings, court penalties and on-the-spot fines which can be issued when retailers are found to be non-compliant with restrictions on sale and display of tobacco products.
10. Penalty amounts for retailers breaching restrictions are significant, court issued penalties of up to \$16,492 (140 penalty units) can be imposed for offences such as displaying or advertising tobacco products. Penalties for the sale of tobacco to minors can be between \$16, 452 and \$49, 476 depending on whether it is a first, second or subsequent offence.

## What licensing arrangements apply in other State and Territories for the wholesale and retail supply of tobacco products?

11. Victoria does not operate a tobacco licensing scheme.
12. Tasmania, Northern Territory and South Australia have tobacco licensing schemes for retailers.
13. Western Australia and Australian Capital Territory have tobacco licensing schemes for retailers and wholesalers.
14. New South Wales (NSW) operates a legislated retailer notification scheme. Under this scheme a retailer of tobacco must provide their details to the NSW Government (max penalty: \$250). An application fee may apply however there is no ongoing renewal cost associated. The NSW government's Taskforce on Tobacco Retailing (2014) undertook a review of tobacco retailing regulation in NSW. The taskforce report found the retailer notification scheme was sufficient to maintain retailer compliance with legislated retailer restrictions for tobacco sale. The report recommended measures be taken to improve the systems accuracy, completeness and ease of use. The NSW Report is at Attachment C.
15. Further details about these licensing schemes are in Table 1.

**Table 1: Jurisdictional summary of tobacco licence schemes including annual fees, type of licence, indexation of fees and date of commencement.**

Jurisdiction	Licence scheme and start	Term and Fee
<b>SA</b>	Commenced 1998	Retail \$266 fee 12 months – renewal annually Subject to indexation
<b>TAS</b>	Commenced 2000	Retail \$360.89 fee 12 months –renewal annually Subject to indexation
<b>ACT</b>	Commenced 2000	Retail and wholesale: \$306 annual fee with common expiry August <ul style="list-style-type: none"> <li>- increased from \$200 in July 2015</li> <li>- further increases of \$100 are scheduled for 2016 and 2017.</li> </ul> Subject to annual indexation
<b>NT</b>	Commenced 2003	Retail \$230 fee 12 months – renewal annually Subject to indexation
<b>WA</b>	Commenced 2007	Retail: \$240 fee application and first 12 months \$204 fee each 12 months thereafter wholesale: \$600 fee application and first 12 months \$510 fee each 12 months thereafter Subject to indexation

<b>NSW</b>	No scheme  Retailer Notification scheme commenced 2009	Retail – no fee for notification  Specialist tobacconists – once only fee of \$250
<b>VIC</b>	No scheme	
<b>QLD</b>	No scheme	

### **Capacity for tobacco licensing schemes to support broader public health objectives**

16. There is emerging public health research into tobacco licensing schemes being harnessed as a way to achieve broader tobacco control objectives and move beyond current functional use to collect lists of tobacco retail outlets to support the monitoring of compliance with retail restrictions.
17. There is the suggestion that tobacco licensing schemes could be used to strategically reduce the availability of tobacco products by introducing restrictions which:
  - limit the number of licenses available
  - specify the type of retailer that can sell tobacco
  - reduce the number of licenses available in areas known to have higher rates of smoking
  - prohibit retailing of tobacco near schools or other specific facilities.
  - place further restrictions on sale of tobacco (e.g. restrictions on hours of sale)
18. The strategic application of licensing systems to reduce supply of tobacco remains largely untested in the Australian and international contexts and therefore little evidence is available about whether such strategies might contribute to reducing smoking rates (NSW Taskforce on Tobacco Retailing, 2014, Attachment C).
19. There is anecdotal evidence that opportunistic reduction in numbers of retailers selling tobacco where significant increases in the costs of a tobacco retail license have occurred. This evidence suggests that small businesses are most likely to assess the costs of maintaining a tobacco retail license as unviable. However, differential or risk based licensing fees could address disproportionate impacts on small business.

### **Tobacco retail licensing fees and administrative considerations**

20. Based on the estimated figure of 8000 tobacco retailers in Queensland an annual licence fee similar to other jurisdictions (e.g. \$300) would generate \$2.4 million annually to cover the costs associated with the licensing scheme including:
  - developing and maintaining license data-base systems

- day-to-day administration of the licensing scheme (including dedicated staff and on-costs)
- the provision of information to applicants and licensees to ensure their continued and future compliance, and
- licence compliance checks (including related travel).

21. However, revenue could be higher if licensing was differential or risk based, where larger businesses pay higher fees.

22. In Western Australia, the retail and wholesale tobacco licensing scheme is maintained and operated by a team of three staff, located within the Department of Health, who undertake administrative and enforcement tasks associated with operation of the scheme. This is similar for the Tasmanian licensing scheme for tobacco retailers which is managed by a team of two fulltime and one part-time staff.

### **Wholesale licensing schemes**

23. A tobacco licence scheme can be designed to monitor number and location of wholesalers and ensure that wholesale supply of tobacco products only occurs to those retailers that have a valid retail licence.

24. It can be used as a stand-alone method (where retail licenses are not required) of monitoring tobacco sales by requiring wholesalers to provide a list of the retailers they supply with tobacco products (Attachment D).

25. Where a licensing system is established for businesses that wholesale tobacco, the legal obligations will only relate to businesses registered in the State. However, laws could prohibit sale of tobacco in Queensland by entities not possessing a Queensland license.

Sources:

British American Tobacco Australia. Number of retailers on British American Tobacco Australia's SAP Telesales database as at end of December 2009:

[http://www.bata.com.au/group/sites/BAT\\_7WYKG8.nsf/vwPagesWebLive/DO7WYLHP?opendocument](http://www.bata.com.au/group/sites/BAT_7WYKG8.nsf/vwPagesWebLive/DO7WYLHP?opendocument)

New South Wales Ministry of Health. NSW Taskforce on Tobacco Retailing: Final Report and Recommendations

Smyth c, Freeman B, and Magg A. Tobacco Regulation: the next frontier in tobacco control? Public Health Research and Practice. 2015; 25(3): e2531529.

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The Allen Consulting Group. Licensing of Tobacco Retailers and Wholesalers: Desirability and Best Practice Arrangements. Report to the Commonwealth Department of Health and Ageing. 2002.

# Tobacco retail regulation: the next frontier in tobacco control?

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## Article history

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## Key points

- The New South Wales Government uses a number of evidence based regulatory controls on retailing of tobacco
- Point-of-sale promotion restrictions and well-funded compliance programs to prevent sales to minors, combined with retailer licensing, education and enforcement, have the potential to further denormalise tobacco smoking and reduce its use
- There is a lack of context-relevant evidence to suggest that a positive licensing scheme and controls on tobacco retailer density and location would reduce tobacco-related harm

## Abstract

Australia has experienced significant reductions in smoking rates in recent decades, and public health scrutiny is turning to how further gains will be made. Regulatory controls, such as licensing to reduce retailer density or limit tobacco proximity to schools or licensed premises, have been suggested by some public health advocates as appropriate next steps.

This paper summarises best-practice evidence in relation to tobacco retailer regulation, noting measures undertaken in New South Wales (NSW).

Research on controlling the display of tobacco products and supply of tobacco to minors is well established. The evidence shows that a combination of licensing, enforcement, education, promotion restrictions at the point of sale and a well-funded compliance program to prevent sales to minors is a best-practice approach to tobacco retail regulation. The evidence for other measures – such as restricting the number of retail outlets, and restricting how and where tobacco is sold – is far less developed. There is insufficient evidence to determine if a positive licensing system and controls on the density and location of tobacco outlets would be effective in the Australian context.

More evidence is required from jurisdictions that have implemented a positive licensing scheme to evaluate the effect of such schemes on smoking rates, the potential cost benefits and any unintended consequences.

## Introduction

Preventing and reducing smoking in New South Wales (NSW), particularly among young people, is a key priority for the State Government. The *NSW 2021* plan sets targets to reduce smoking rates by:

- 3% by 2015 for non-Aboriginal people, and 4% by 2015 for Aboriginal people
- 0.5% per year for non-Aboriginal pregnant women, and 2% per year for pregnant Aboriginal women.

The Government's approach to tobacco control includes quit smoking campaigns, smoking cessation services, smoke-free environment laws, promotion controls and regulation of the tobacco retail environment. These



efforts are aimed at complementing federal tobacco control regulations in taxation, advertising and customs. NSW has made strong gains in reducing rates of current smoking among adults and young people, from 22.5% in 2002 to 15.6% in 2014 among adults, and from 13% in 2002 to 7.5% in 2011 among secondary school students.<sup>1,2</sup>

The public health community is now considering how to further reduce smoking rates in NSW. One area receiving attention is tobacco retail regulation. Questions raised include whether existing regulatory controls are sufficient, and whether measures to reduce retailer density or limit tobacco proximity to schools or licensed premises should be pursued.

## Tobacco retailing laws in NSW

The *Public Health (Tobacco) Act 2008* (NSW) (the Act) makes it illegal to sell tobacco products to people under the age of 18. It is also illegal to sell nontobacco (e.g. herbal) smoking products to people under the age of 18. A range of point-of-sale provisions cover restrictions on tobacco advertising, promotions, packaging, display and sale locations, and require health warnings to be displayed at the point of sale. The Act includes a notification-based licensing scheme for tobacco retailers that requires all retailers who sell tobacco to be registered with the Government Licensing Service. NSW Health coordinates a program of random and complaints-based inspections of retailers to monitor compliance and enforce the law.

## Tobacco product displays

Visible tobacco displays contribute to unplanned purchases<sup>3</sup> and make quitting more difficult.<sup>4</sup> A 2009 systematic review concluded that point-of-sale display bans are justifiable on the grounds that advertising has been clearly proven to influence children to initiate smoking, and that branding of packs is an important form of promotion.<sup>5</sup>

NSW bans the retail display of tobacco products. Retailers can provide plain text information on the price of products available, but there are limits on the colour and placement of such information. Plain text warnings are also required to be displayed at the point of sale about the health risks of smoking, the availability of cessation support and prohibitions on selling tobacco to minors.

Areas not addressed in the current mix of laws are the use of price boards to communicate brand reputation and popularity<sup>6</sup>, and display of graphic warnings at the point of sale. The extent to which the remaining point-of-sale marketing options and the presence of retail outlets themselves prompt tobacco purchases or sabotage quit attempts is unknown.

## Sales to minors

Research findings are clear in this area: selective and regular enforcement of youth access laws can help prevent underage young people from smoking. To maximise the effect of legislation relating to sales to minors, a comprehensive retailer enforcement and compliance program is needed, including monitoring, use of underage undercover shoppers and reporting of violations.<sup>7</sup> Training retailers to recognise fake identification may also help improve compliance.

It is illegal to sell cigarettes to minors in NSW, and fines of up to \$110 000 apply. Significant decreases in adolescent smoking rates in parts of NSW are thought to be at least partially attributed to the positive effect of strict law enforcement (using undercover shoppers), retailer education and publicity of legislation relating to sales to minors.<sup>8</sup>

## Licensing

Part IV of the World Health Organization (WHO) Framework Convention on Tobacco Control (FCTC) encourages parties to the treaty to “endeavour to adopt and implement further measures including licensing, where appropriate, to control or regulate the production and distribution of tobacco products in order to prevent illicit trade”.<sup>9</sup>

Although the best available evidence supports a tobacco licensing scheme, debate remains about how best to design and implement such a scheme. To be effective, licensing schemes should include annual reporting requirements, retailer education and strong enforcement. Removal from the market should be a genuine consequence for violations of tobacco retailing laws and licensing conditions.<sup>10,11</sup>

Generally, licensing schemes for tobacco retailers are described as negative or positive:

- A negative scheme requires tobacco retailers to notify the government if they are selling tobacco through a registration system. Retailers do not need to prove their suitability to sell tobacco. There may or may not be a fee involved
- A positive scheme requires tobacco retailers to apply for and receive a licence before selling tobacco products. In most cases, these schemes involve fees for application and annual renewal. Positive schemes may be used to vet potential retailers.

Both positive and negative schemes can provide accurate information about tobacco retailers to assist with implementing retail compliance monitoring and enforcement programs. Both types of schemes may involve penalties for retailers who breach retailing laws (e.g. do not register or obtain a licence). Both types of licensing systems can revoke the right to sell tobacco if ongoing breaches are observed.

Australia has a variety of tobacco licensing schemes. Victoria and Queensland do not require retailers to be licensed at all, while NSW, the Australian Capital Territory, Tasmania, the Northern Territory, Western Australia and South Australia have implemented different types of licensing schemes (Table 1).

Proponents of positive licensing maintain that the availability of tobacco reduces or compromises quit attempts by smokers, and a positive scheme may be used to restrict the number, type and location of tobacco retailers. As of January 2015, no Australian jurisdiction had attempted to include number, type or location restrictions in their tobacco licensing schemes. A small body of work addressing these supply-side issues has begun to emerge and is summarised below. Given that very few of these types of controls have been enacted, much of the research in this area is either descriptive, qualitative, or, if longitudinal, relatively short term.

### Type of retail outlet

Australian research suggests that supermarkets and tobacconists (which discount tobacco products more than other tobacco retailers) encourage larger purchases and are equally frequented by both light and heavy smokers.<sup>12</sup> Although it is largely unknown how limiting the types of outlets selling tobacco would affect smoking rates, it is well understood that consuming alcohol, especially in social settings like hotels and clubs, increases the amount of smoking and undermines quit attempts.<sup>13</sup> A 2010 study of retail premises that sell tobacco products found that having cigarettes sold on the premises affected reported tobacco consumption in locations such as licensed clubs, hotels and bars, with 22.4% of smokers indicating they smoked a lot more, 17.2% smoked a little more, 50.1% smoked the same amount, and only 4.2% reporting that they smoked less.<sup>14</sup>

### Tobacco retail density, distance to and location of outlet

Evidence in this area is largely from outside Australia, where advertising and retail point-of-sale display restrictions vary. The research consists of analysis of associations between tobacco retail outlet density, distance and type of outlet, and smoking rates and tobacco purchase patterns. Socioeconomic status, race and ethnicity have been found to be associated with tobacco retail outlet density, with studies showing that low socioeconomic neighbourhoods and areas with a higher number of residents from racial and ethnic minority groups have higher outlet density.<sup>15</sup> Outlet density is associated with smoking by both adolescents and adults.<sup>16–18</sup> Australian studies have replicated the link between low socioeconomic neighbourhoods and outlet density<sup>19</sup> and have found associations between school location and outlet density.<sup>20</sup> However, it is unclear whether retailers are establishing themselves in areas where schools are located, or whether schools are located in commercial areas with high general retail density. International studies suggest that tobacco outlet density and proximity to schools influence young people's smoking attitudes, behaviour and tobacco purchasing.<sup>18, 21</sup> It is unclear if these associations are a product of tobacco retailers responding to higher demand, or whether the increase in retail outlets also increases smoking rates in certain communities.

Very little has been published on the association between proximity and density of retail outlets and smoking cessation attempts, but there is some evidence to suggest that living close to a tobacco retailer negatively affects cessation efforts.<sup>22</sup> It remains unclear whether the availability of tobacco affects the likelihood of smoking cessation.

**Table 1.** Tobacco retail licensing schemes in Australia

Jurisdiction	Type of scheme	Cost of licence	Suitability assessment or requirements
ACT	Positive	\$200/year	No, but refusal is possible if the applicant does not understand their obligations or has been convicted for sale of tobacco to minors
NSW	Negative	NA	No
NT	Positive	\$222/year	Police criminal history check
QLD	No scheme	NA	NA
SA	Positive	\$253/year	No
TAS	Positive	\$306/year	No, but department should be satisfied that the applicant is over 18 years old and likely to comply with the legislation
VIC	No scheme	NA	NA
WA	Positive	\$204–\$510/year	No, but employees must be trained about not selling tobacco products and smoking implements to minors

NA = not applicable

In addition to the need for more generalisable evidence, a range of broader public health and social policy issues should be considered when weighing up the value of restricting location, proximity and density of tobacco retail outlets. Potential unintended consequences of concentrating tobacco sales in fewer, larger retailers include lower tobacco prices and smokers stockpiling large purchases. Finally, using geographically based laws as a real or perceived means to target the behaviour of particular socioeconomic or other vulnerable groups may be perceived as unfair or discriminatory.

### Age of retail staff

The WHO FCTC recommends that tobacco products should not be sold by people aged under 18.<sup>9</sup> This recommendation is aimed at both protecting children from handling tobacco products and thus being directly exposed to tobacco marketing, and reducing sales to minors. This approach has not been pursued in NSW because there is no local evidence of a correlation between sales to minors and tobacco retail employees aged under 18. There are also potential business and youth employment consequences relating to such measures.

## Compliance monitoring and enforcement

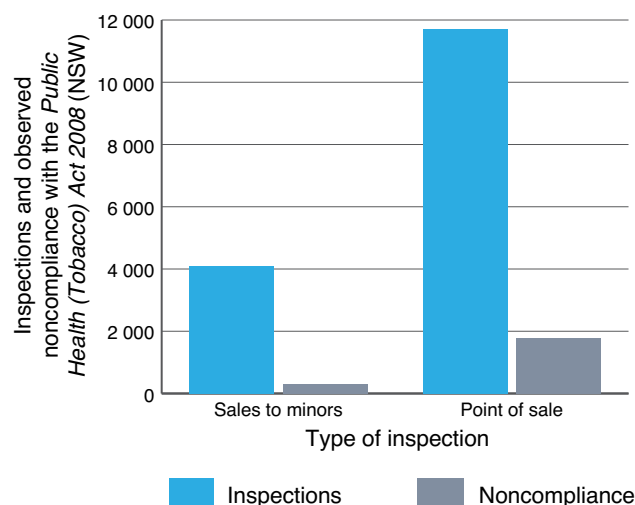
Tobacco regulation requires well-funded and regular monitoring and enforcement by the responsible authority. Penalty infringement notices (on-the-spot fines) are a useful enforcement tool for strict liability retail offences. In NSW, authorised inspectors within Local Health District public health units undertake ongoing compliance monitoring and enforcement activities in relation to the Act, including:

- Providing education to support tobacco retailers to comply with the law
- Conducting inspections of retail outlets to check for appropriate signage, product display and retailer registration
- Counselling noncompliant retailers to rectify breaches on the spot, where appropriate
- Coordinating undercover shopping by minors to check if tobacco products are sold
- Issuing warning letters
- Initiating prosecutions for noncompliance for serious or repeat offences.

Under the Act, monetary fines can be issued to offenders, and repeat offenders may be prohibited from trading for 3–12 months.

In NSW, more than 90% of retailers have been found to be compliant with sales to minors laws, and more than 80% are compliant with point-of-sale provisions (Figure 1). Authorised inspectors from NSW Health have advised that many breaches can be remedied on the spot.

**Figure 1.** Tobacco retailing inspections in NSW and noncompliance on first inspection, 2011–2014



Note: Sales to minors inspection refers to Part 4, Division 1 of the *Public Health (Tobacco) Act 2008* (NSW); a point-of-sale inspection refers to Parts 2, 3 and 5 of the Act.

## Conclusion

Point-of-sale promotion restrictions and well-funded compliance programs to prevent sales to minors, combined with retailer licensing, education and enforcement, have the potential to further denormalise tobacco smoking and reduce its use. Licensing ensures that an accurate database of retailers is maintained to assist with coordination of compliance and enforcement programs.

Current NSW tobacco retailer laws generally accord with the evidence, and there is high overall compliance with tobacco retailing provisions. Further evidence is required to assess whether the public would benefit from more controls on the use of pricing boards, graphic warnings at the point of display, and a positive licensing system to control retailer density and proximity.

In particular, there is a lack of context-relevant evidence to assess whether a positive licensing scheme, and controls on the density and proximity of tobacco outlets to certain communities, schools or licensed venues, would reduce tobacco-related harm.

## Competing interests

None declared

## Author contributions

All authors contributed to the concept and design of the paper and acquisition of data, as well as its analysis and interpretation, and drafting and redrafting.

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## **NSW Taskforce on Tobacco Retailing**

# **Final Report and Recommendations**

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## Executive summary

In late 2013 the Minister for Health and Minister for Medical Research, the Hon Jillian Skinner, announced that a NSW Taskforce on Tobacco Retailing (the Taskforce) would be convened to review and make recommendations on tobacco retailing and regulation in NSW to further minimise tobacco-related harms.

The Taskforce was established for a time-limited period (up to six months), culminating with a report outlining findings and recommendations.

The Taskforce included members with expertise in tobacco control, public health, the retail and small business sectors.

The Taskforce's Terms of Reference were:

*The NSW Taskforce on Tobacco Retailing will provide expert advice and recommendations to the Minister for Health and Minister for Medical Research on evidence-based, effective and feasible approaches in relation to tobacco retail availability in NSW.*

*The role of the NSW Taskforce on Tobacco Retailing will be to:*

- 1. Provide advice on whether the existing Tobacco Retailer Notification Scheme is appropriate to enable NSW Health to ensure retailer compliance with the Public Health (Tobacco) Act 2008;*
- 2. Consider outcomes of the investigations of potential retailer notification breaches undertaken by NSW Health Public Health Units;*
- 3. Consider whether the current strategies to regulate the display of tobacco products and non-tobacco smoking products are appropriate; and*
- 4. Explore options for strengthening retailer compliance with existing tobacco legislation in NSW.*

The Taskforce noted that an evidence-based, best practice approach to tobacco retail regulation includes licensing implemented together with strong enforcement and retailer education.

The Taskforce's overall findings in relation to the Terms of Reference were:

1. The existing Tobacco Retailer Notification Scheme is appropriate and enables NSW Health to ensure retailer compliance with the *Public Health (Tobacco) Act 2008*, however improvements are necessary to ensure its accuracy, completeness and ease of use by relevant parties.
2. There is high compliance by retailers with the retailing provisions in the *Public Health (Tobacco) Act 2008* and further improvements could be made through the collection of more comprehensive data about investigations, publicly reporting of the outcomes of investigations and strengthening investigation protocols to ensure comprehensive and consistent enforcement of legislation across the State.
3. The current strategies to regulate the display of tobacco products are appropriate, however there should be ongoing independent and peer reviewed research about methods that will further reduce smoking rates and prevent the uptake of smoking amongst the population.
4. Options for strengthening retailer compliance with existing tobacco legislation in NSW include improving the TRN Scheme, the issuing of on the spot fines to retailers for display breaches of the legislation and provision of education to retailers and their employees

regarding their obligations. Any changes to tobacco retailing regulations should be reviewed two years following implementation.

## **Final recommendations**

### **Licensing schemes for tobacco retailers**

*The Taskforce recommends:*

1. That the Tobacco Retailer Notification (TRN) scheme is updated to ensure entries are valid and retailers can update their details online through the Government Licensing Service.
2. That the *Public Health (Tobacco) Act 2008* is amended to require tobacco retailers to supply a valid TRN to tobacco wholesalers.

### **Tobacco retailing legislation, monitoring and enforcement**

*The Taskforce recommends:*

3. That the *Public Health (Tobacco) Regulation 2009* is amended to enable Authorised Inspectors to issue on the spot fines for minor (display) retailing offences.
4. That NSW Health's internal tobacco compliance monitoring and enforcement protocol is strengthened to support consistent application of the legislation, including the issuance of on the spot fines, offering positive reinforcement to tobacco retailers who comply with tobacco legislation and providing explicit feedback to tobacco retailers close to the time of inspection. Standard communication about the expectations of compliance monitoring and enforcement should be provided to retailers and inspectors.
5. That an improved reporting system is implemented to collect and collate information on tobacco compliance monitoring and enforcement.
6. That public reports detailing overall retailer compliance with tobacco legislation are periodically released.

### **Tobacco retailer compliance training and education**

*The Taskforce recommends:*

7. That the Tobacco Retailer Notification (TRN) scheme is strengthened by providing regular communication to tobacco retailers regarding their obligations, emerging issues and public health alerts.
8. That training for retail staff is developed to support compliance with the *Public Health (Tobacco) Act 2008*, particularly regarding sales to minors, tobacco display and signage requirements and notification under the TRN scheme. The training should also include topics to increase tobacco retailer education and awareness about the harms of smoking and approaches to smoking cessation.



## **Evaluating the impact of an improved TRN, enhanced enforcement and retailer education**

*The Taskforce recommends:*

9. That a review of changes to retail compliance, enforcement and education occurs two years after any changes are implemented.
10. That ongoing independent and peer reviewed research into tobacco retailing is facilitated, including data acquisition and sharing between Ministry of Health, the retail sector and researchers.

# 1. Introduction to the NSW Taskforce on Tobacco Retailing

The NSW Government is committed to reducing smoking rates in NSW and has in place strong and comprehensive tobacco control legislation which includes display and advertising bans; penalties for sales of tobacco products to minors; and Tobacco Retailer Notification (TRN) Scheme.

In late 2013 the Minister for Health and Minister for Medical Research, the Hon Jillian Skinner, announced that a NSW Taskforce on Tobacco Retailing (the Taskforce) would be convened to review and make recommendations on tobacco retailing and regulation in NSW to further minimise tobacco-related harms.

The Taskforce was formed in response to issues raised in the Cancer Council NSW report, *Selling Tobacco Anywhere Anytime: Harmful Not Helpful*, e.g.:

- concerns about the accuracy of the TRN Scheme database and the number of tobacco retailers in NSW;
- complaints about a lack of compliance with the TRN Scheme and retailing provisions in the *Public Health (Tobacco) Act 2008*; and
- few publicised successful prosecutions for offences under the *Public Health (Tobacco) Act 2008*.

## 1.1 Terms of Reference

The Taskforce had the following Terms of Reference:

*The NSW Taskforce on Tobacco Retailing will provide expert advice and recommendations to the Minister for Health and Minister for Medical Research on evidence-based, effective and feasible approaches in relation to tobacco retail availability in NSW.*

*The role of the NSW Taskforce on Tobacco Retailing will be to:*

1. *Provide advice on whether the existing Tobacco Retailer Notification Scheme is appropriate to enable NSW Health to ensure retailer compliance with the Public Health (Tobacco) Act 2008;*
2. *Consider outcomes of the investigations of potential retailer notification breaches undertaken by NSW Health Public Health Units;*
3. *Consider whether the current strategies to regulate the display of tobacco products and non-tobacco smoking products are appropriate; and*
4. *Explore options for strengthening retailer compliance with existing tobacco legislation in NSW.*

## 1.2 Membership

Dr Kerry Chant, Chief Health Officer and Deputy Director General, NSW Ministry of Health, chaired the Taskforce and representatives were as follows:

Organisation	Name	Position
NSW Ministry of Health	Dr Jo Mitchell	Director, Centre for Population Health
Cancer Institute NSW	Ms Claudine Lyons	A/Manager, Cancer Prevention
Cancer Council NSW	Dr Andrew Penman	Consultant

Heart Foundation	Ms Julie-Anne Mitchell	Director, Cardiovascular Health Programs
Master Grocers Australia	Mr Andrew Bray (for Mr Jos de Bruin, Chief Executive Officer)	Managing Director, Bray's IGA and Director, Master Grocers Australia
Office of the NSW Small Business Commissioner	Ms Julie Giuffre	Senior Advisor, Advocacy
Coles	Ms Joy Allen	NSW ACT Regulatory Support Manager
Hunter Medicare Local	Mr Tony Maher	Director, Health Improvement

### 1.3 Meetings

Three Taskforce meetings were held between January 2014 and June 2014.

### 1.5 Overview of this Report

This report summarises the key deliberations of the Taskforce. In addition, it provides background on the measures that have been undertaken in NSW in relation to tobacco control and provides a summary of national and international best-practice evidence regarding tobacco control.

A concurrent process is underway to review the *Public Health (Tobacco) Act 2008*. The recommendations put forth by the Taskforce will be considered in conjunction with this Statutory Review. In addition, the Statutory Review is the most appropriate means of documenting and responding to broader regulatory issues that were outside the scope of the Taskforce's Terms of Reference.

## 2. Background

### 2.1 Approach to tobacco control in NSW

Preventing and reducing smoking in NSW is a key priority for the NSW Government, particularly among young people. The *NSW 2021* plan sets robust targets about smoking in order to decrease chronic disease and combat rising health costs. The *NSW 2021* plan states that the NSW Government will:

- Reduce smoking rates by 3% by 2015 for non-Aboriginal people and by 4% for Aboriginal people by 2015; and
- Reduce the rate of smoking by 0.5% per year for non-Aboriginal pregnant women and by 2% per year for pregnant Aboriginal women.

To support the achievement of these targets, the NSW Government has in place two key pieces of tobacco control legislation, the *Public Health (Tobacco) Act 2008* and the *Smoke-free Environment Act 2000*. Provisions relating to tobacco retailing are covered by the *Public Health (Tobacco) Act 2008*.

Furthermore, the NSW Government has in place a comprehensive *NSW Tobacco Strategy 2012 – 2017* (the Strategy), which outlines the actions the NSW Government will take to reduce the harm which tobacco imposes on the community and to achieve the *NSW 2021* targets. The Strategy includes regulatory measures, as well as a range of education campaigns, policy, programs and services that are aimed at reducing exposure to second hand smoke, supporting smokers to quit and limiting smoking uptake, particularly among young people.

A number of measures in the Strategy aimed at restricting the advertising, promotion and availability of tobacco are relevant to tobacco retailing, for example the Strategy requires the:

- monitoring and enforcement of the *Public Health (Tobacco) Act 2008*;
- collection and reporting of data concerning compliance with the *Public Health (Tobacco) Act 2008*;
- implementation and review of the TRN Scheme; and
- implementation of retailer education to raise awareness about obligations under the law and increase compliance with legislation.

### 2.2 Evidence base in relation to tobacco control and tobacco retailing in NSW

Tobacco retailing laws primarily address three issues: prohibitions on selling tobacco products to minors, display of required health warnings at the point of sale and a complete ban on the retail display of tobacco products.

In forming its recommendations, the Taskforce considered a review of the evidence about tobacco retailing compiled by researchers at the University of Sydney's School of Public Health (Appendix).

While research on sales to minors has a long history, other supply-side factors – such as licensing, the role of the retailer in tobacco sales and promotion, the number of retail outlets where tobacco is sold, and how and where tobacco is sold – is far less developed.

In light of the available evidence, the Taskforce determined that a best practice approach to tobacco retail regulation includes licensing, implemented together with strong enforcement and retailer education. This approach appears to be particularly useful in decreasing sales to

minors and can serve as a means of permanently removing non-compliant retailers from the market.

The following summary provides information on the evidence for key tobacco control measures for the retail sector.

### **Licensing**

The greatest strength of a tobacco licensing system is that it provides a more effective way to ensure retailer compliance with existing tobacco control laws. There is a lack of research in this area and no consistent published evidence on the effect positive licensing has on smoking rates. Anecdotally, the introduction of positive licensing and other retailing regulation coincided with a decline in youth smoking rates in Tasmania.

### **Tobacco product displays**

NSW and all other Australian states and territories have now banned retail displays of tobacco products. Full display bans are easy to enforce and achieve high compliance whereas partial bans or complicated restrictions are not well enforced nor do they serve to protect youth from exposure.

### **Sales to minors**

The research findings are clear in this area. In order to maximise the effect of sales to minors legislation, there is a need for a comprehensive retailer enforcement and compliance program. This must include monitoring and reporting of violations and make use of underage undercover shoppers.

### **Type of outlet**

Australian research suggests that supermarkets and tobacconists (which discount tobacco products more than other tobacco retailers) encourage larger purchases, meaning they are likely to contribute to higher levels of consumption by the most price sensitive smokers. Venues such as bars, pubs and clubs and convenience stores are favoured much more by lighter smokers, suggesting these types of outlets may contribute to impulse purchasing and smoking and that social consumption of alcohol leads to increased tobacco purchases.

### **Retail density, distance and location of outlet**

Because there has been so little regulatory action globally to limit where tobacco is sold, there is not yet a convincing body of evidence that can be drawn on to show whether such legislation affects tobacco consumption. No jurisdiction has yet implemented and evaluated the effect of reducing the number and/or type of tobacco retail outlets.

The literature suggests that even after adjusting for higher smoking prevalence, there is a greater concentration of tobacco outlets in communities with a lower socio economic status (SES) than in more affluent areas. The evidence on whether tobacco retailers target these communities or respond to higher demand is inconclusive. It may be that the geography of lower SES areas encourages a higher number of smaller retailers to be established.

Studies from overseas suggest that both density of retailers and proximity of retailers to schools influence smoking behaviour and tobacco purchasing by youth. In NSW, although there are no limits on the proximity or number of tobacco retailers near schools, tobacco is required to be out of sight at all retailers. It is not known if tobacco outlets are concentrated near schools in lower SES communities.

### Distance to retailer and smoking cessation attempt

While very little has been published on the association between proximity and density of retail outlets and smoking cessation attempts, there is some evidence suggesting that living close to a tobacco retailer negatively affects cessation efforts.

## 3. Key areas of analysis and recommendations

### 3.1 Findings in relation to the Terms of Reference

The Taskforce's overall findings in relation to the Terms of Reference were:

1. The existing Tobacco Retailer Notification Scheme is appropriate in enabling NSW Health to ensure retailer compliance with the *Public Health (Tobacco) Act 2008*, however improvements are necessary to ensure its accuracy, completeness and ease of use by relevant parties.
2. There is high compliance by retailers with the retailing provisions in the *Public Health (Tobacco) Act 2008* and further improvements could be made through the collection of more comprehensive data about investigations, publicly reporting of the outcomes of investigations and strengthening investigation protocols to ensure comprehensive and consistent enforcement of legislation across the State.
3. The current strategies to regulate the display of tobacco products are appropriate, however there should be ongoing independent and peer reviewed research about methods that will further reduce smoking rates and prevent the uptake of smoking amongst the population.
4. Options for strengthening retailer compliance with existing tobacco legislation in NSW include improving the TRN Scheme, the issuing of on the spot fines to retailers for display breaches of the legislation and provision of education to retailers and their employees regarding their obligations. Any changes to tobacco retailing regulations should be reviewed two years following implementation.

### 3.2 Licensing schemes for tobacco retailers

Licensing schemes for tobacco retailers are described as negative or positive:

- A negative tobacco retail licensing scheme requires tobacco retailers to notify the government if they are selling tobacco through a registration system. They are required to register their details and the details of their retail outlets but do not need to prove their suitability to sell tobacco. Negative tobacco licensing schemes are sometimes called retailer notification schemes.
- A positive tobacco retail licensing scheme requires tobacco retailers to apply for and receive a licence prior to retailing tobacco products. In most cases these schemes involve an application fee and are valid for a certain period of time, after which they must be renewed.

In Australia, the main purpose of licensing schemes is to track the number of tobacco outlets in order to assist with implementing tobacco compliance monitoring and enforcement programs. Other purposes of existing retailer licensing schemes include:

- prosecuting tobacco retailers and revoking their tobacco licence for a period of time should retailers breach tobacco legislation, such as sales to minors (positive and negative);
- vetting potential tobacco retailers (positive);
- using revenue generated from the licence fee to fund tobacco enforcement activities (positive).

Both positive and negative schemes are capable of providing accurate information about tobacco retailers, provided they are properly implemented and maintained. Both types of schemes may involve penalties, such as on the spot fines, for retailers who do not register or obtain a licence and keep their details up to date.

### **NSW Tobacco Retailer Notification Scheme**

The TRN Scheme is used to ensure that NSW Health is aware of where tobacco retailers are located, and that in turn NSW Health Authorised Inspectors can monitor compliance with tobacco retailing legislation.

Section 39 of the *Public Health (Tobacco) Act 2008* introduced from 1 July 2009 a requirement for tobacco retailers to notify NSW Health of tobacco retailing activities. Under the *Public Health Tobacco Act 2008*, tobacco retailers are required to register their details and the details of their retail outlets. Retailers do not need to prove their suitability to sell tobacco.

Regulation 20 of the *Public Health (Tobacco) Regulation 2009* provides that the manner of giving notice of tobacco retailing activities is via the online NSW Government Licensing Service (GLS). Since 1 July 2009, more than 10,000 tobacco retailers have notified via the GLS.

The GLS manages licence processing across NSW through a single integrated system. The GLS covers approximately 1.7 million licences across 45 different licence types. The GLS provides online services to the public and assists NSW Government agencies in managing regulatory business processes. The GLS is managed by the NSW Department of Finance and Services.

The TRN Scheme contains the following information for each tobacco retailer:

- Business address of the person intending to engage in tobacco retailing;
- Address of the premises at which the person intends to engage in tobacco retailing;
- Registered Australian Business Number (ABN) of the relevant business and, if the business is incorporated, the Australian Company Number (ACN); and
- Names, addresses and email details of the owners and directors of the tobacco retailing business.

Retailers are not required to renew their notification on a regular basis. However, The *Public Health (Tobacco) Act 2008* requires tobacco retailers to notify the Ministry within 28 days of a change to:

- the retailer's business address;
- the address where tobacco retailing takes place;
- the name and address of any owner or director of the business; or
- ownership of the business.

Changes can be advised via email or over the phone via the Tobacco Information Line.

Under the TRN Scheme retailers can face penalties up to \$11,000 for failing to notify the NSW Ministry of Health of their tobacco retailing activities.

As of end of February 2014 there were close to 8,000 retailers registered on the TRN Scheme representing approximately 13,400 individual retail premises. However it is noted that this figure may in fact be lower due to current issues with the accuracy of the TRN Scheme, including the potential doubling up of retail premises or retailers which have ceased trading but have not yet notified the Ministry to amend the TRN Scheme.

### Retail tobacco licensing in other States and Territories

The Australian Capital Territory (ACT), Tasmania, Northern Territory, Western Australia and South Australia have positive licensing schemes. Queensland and Victoria have no licensing scheme.

The Northern Territory requires retailers to prove that they are 'fit and proper' persons to sell tobacco before they are issued with a licence, typically by requiring a criminal record check prior to issuing a licence. Other positive licensing schemes place no requirements on licensees other than payment of an annual fee.

In positive licensing schemes, fees and charges often apply to obtain and renew a tobacco retail licence. Across Australia, these fees range from \$200 (ACT) to \$302 (Tasmania). Some states and territories require tobacco wholesaling licences, which are generally more costly than retail licences.

The ACT Government has recently released a discussion paper, *Options for restricting access to tobacco*, which raises a range of measures to further restrict tobacco licences, such as fees, caps and suitability assessments for retailers. The public consultation closed on 12 May 2014.

Jurisdiction	Type of scheme	Cost of licence	Requirements prior to obtaining licence	Limits on number of licences
ACT	Positive	\$200	No suitability assessment, however refusal possible if applicant does not understand his or her obligations or has been convicted for the sale of tobacco to minors.	X
NSW	Negative	NA	No requirements prior to registering as a tobacco retailer.	X
NT	Positive	\$214	Police criminal history check.	X
Qld	No scheme	NA	NA	X
SA	Positive	\$253	No suitability assessment, but may fix conditions, vary, suspend or cancel a licence if the holder of the licence has contravened the legislation.	X
Tas	Positive	\$302	No mandatory suitability assessment, but legislation states the Director should be satisfied the applicant is over 18 years old and likely to comply with the legislation.	X
Vic	No scheme	NA	NA	X
WA	Positive	\$204 - \$510	No requirements prior to obtaining a licence. Once licensed, employees on the licensed premises must be trained about not selling tobacco products and smoking implements to minors.	X



## Findings

The strength of a tobacco licensing system is that it provides a way to monitor retailer compliance with tobacco control laws. There is no published evidence available that positive licensing per se contributes to reducing smoking rates. Therefore, the Taskforce was of the view that introducing a positive licensing scheme in NSW may be premature. It was suggested that the focus should be on improving the current TRN Scheme.

Some public health proponents argue that positive licensing schemes could be used to restrict the number, type and distribution of retail outlets for tobacco products, leading to reduced smoking rates. However, the Taskforce found no evidence of this having occurred in Australia and no evidence internationally to show whether this approach works to reduce smoking rates. There was also no evidence that any Australian tobacco retailer has ever had their tobacco licence suspended or revoked, under either positive or negative licensing schemes. The jurisdictions that require a proof of suitability from retailers prior to obtaining a tobacco licence were not able to show that this limits the number of tobacco retailer licence applications.

The evidence on whether tobacco retailers target communities with lower SES or respond to higher demand in areas of lower SES is inconclusive, therefore no clear findings were made in relation to using positive licensing to control the density of retailers. This should be an area of ongoing research.

The Taskforce noted deficiencies in the accuracy of the current TRN Scheme. In addition, a number of retailers have indicated that updating their details on the TRN Scheme over the phone or via email, rather than online, is time consuming and acts as a deterrent to keeping their details current.

In order to improve and maintain accuracy and currency of the present TRN Scheme, the Taskforce considered that the Ministry of Health should:

- seek the assistance of Public Health Units to ensure the details of tobacco retailers within their Local Health District are accurate;
- issue email updates using contact details from the TRN, and filtering out non-respondents as a means of maintaining accuracy of tobacco retail numbers; and
- enable retailers to access and update their TRN records online.

The Taskforce noted that should a positive licensing scheme be introduced in the future, the licence fee could be used primarily to, in part, fund additional tobacco enforcement or for public health behavioural campaigns.

## Recommendations

*The Taskforce recommends:*

1. That the Tobacco Retailer Notification (TRN) scheme is updated to ensure entries are valid and retailers can update their details online through the Government Licensing Service (GLS).  
*N.B. The Ministry of Health has progressed negotiations with the NSW Department of Finance and Services to allow retailers to update their details online through the GLS.*
2. That the *Public Health (Tobacco) Act 2008* is amended to require tobacco retailers to supply a valid TRN to tobacco wholesalers.

### 3.3 Tobacco retailing legislation, monitoring and enforcement

#### Tobacco retailing legislation, monitoring and enforcement

Under the *Public Health (Tobacco) Act 2008* it is illegal to sell tobacco products to people under the age of 18. It is also illegal to sell non-tobacco smoking products such as herbal cigarettes to people under the age of 18. There are no restrictions on the age of a person who can sell tobacco.

A range of 'point of sale' provisions also exist, which cover restrictions on tobacco advertising, promotions, packaging, display and sale locations.

NSW Health Authorised Inspectors within Local Health District Public Health Units across NSW undertake ongoing compliance monitoring and enforcement activities in relation to the *Public Health (Tobacco) Act 2008*. Authorised Inspectors:

- provide education to support retailers to comply with the law;
- conduct inspections of retail outlets to check for appropriate signage, product display, sales to minors and registration with the TRN Scheme;
- counsel non-compliant retailers to rectify breaches on the spot where appropriate;
- provide warning letters; and
- initiate prosecutions for non-compliance.

#### Point of sale and sales to minors inspections

Tobacco retailers are largely compliant with the sales to minors and point of sale provisions in the *Public Health (Tobacco) Act 2008*. Approximately 30% of all retailers undergo inspection in a year:<sup>1</sup>

- In the 2012/13 financial year, 1044 sales to minors inspections were conducted.
  - Of these, 977 retailers (93.5%) were compliant with sales to minors provisions.
  - Of the 67 retailers (6.5%) who were non-compliant with sales to minors provisions in the Act, 23 retailers (34.5%) received follow up visits and prosecution briefs were prepared for 40 retailers (60%).
- In the 2012/13 financial year, 3018 point of sale inspections were conducted.
  - Of these, 2691 retailers (89%) were compliant with point of sale provisions in the Act.
  - Of the 327 retailers (11%) who were non-compliant with point of sale provisions in the Act, 64 (19.5%) received follow up visits, 58 (18%) were issued with warning letters and prosecution briefs were prepared for four retailers (2%). Feedback from NSW Health Authorised Inspectors indicates that retailers mostly want to comply with the law and are able to rectify in-store point of sale or advertising breaches on the spot, once identified.<sup>2</sup>

#### Prosecution for breaches of tobacco legislation

The Ministry of Health has capacity to prosecute both the proprietor and individual retailer with respect to tobacco legislation breaches. The preference is to target the retail proprietor rather than the individual. In the case of small businesses, many retailers are also the

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<sup>1</sup> This assumes the number of retailers in NSW is 13,414 and noting that the total number of inspections (4062) may include repeat inspections at one retail outlet.

<sup>2</sup> This data was preliminary data presented to the Taskforce in March 2014. The compliance database has since been subject to a quality assurance exercise and the figures have been revised, but they are not significantly different.

owners of the premises and therefore it is difficult to separate the individual and entity in this setting compared with a larger retailer.

If a sales to minors breach occurs by an employee under the age of 18, the prosecution process is directed at the premises rather than the individual.

The Ministry has successfully prosecuted retailers for breaches of the sales to minors laws and selling cigarettes as individual items.

### Findings

The Taskforce found that the current level of public information in relation to tobacco compliance monitoring and enforcement was limited. More specific information is required regarding:

- compliance monitoring and enforcement of sales to minors and point of sale provisions in the *Public Health (Tobacco) Act 2008* per Local Health District;
- how the NSW data for tobacco retailer inspections compares to other jurisdictions;
- how the sample of retailers undergoing inspection is selected and the type of retailers this represents; and
- whether retailer inspection and enforcement activity is more prevalent for retailers who are non-compliant, and does this vary by regional/rural area, size of the retailer and type of breach and retail premises.

The Taskforce considered evidence which showed enforcement programs are most effective when they include regular compliance checks of retailers. To maximise NSW Health's investment in compliance monitoring efforts, the Taskforce suggested that the Government should investigate the possibility of implementing a three-year regulatory strategy in which every retailer undergoes inspection within that timeframe, and non-compliant premises are visited more often.

Enforcement programs that significantly disrupt the commercial distribution of tobacco to minors can be expected to reduce the number of youth who use tobacco. In relation to sales to minors legislation, the Taskforce agreed there is a need for a systematic and comprehensive retailer enforcement and compliance program. This must include monitoring and reporting and make use of underage undercover shoppers.

In order to ensure that youth are protected from all tobacco promotions and to minimise the probability that minors will be able to purchase tobacco products, the World Health Organization Framework Convention on Tobacco Control recommends that tobacco products should not be sold by people under age 18. Some Taskforce members were of the view that people under the age of 18 should not be selling cigarettes, as they may be subject to peer pressure to sell to other young people, while other members noted the lack of evidence correlating sales to minors breaches with retail employees under the age of 18. Other considerations included that young people may be better at identifying other minors and banning minors from selling tobacco may place additional pressure on small businesses and prevent youth from obtaining employment. The Taskforce agreed that there was insufficient evidence to justify a legislative change at the present time. However, this should be monitored.

The availability of penalty infringement notices (on the spot fines) are a useful enforcement tool, deterrent and alternative to costly prosecution for minor, strict liability offences. However, there is a need for consistency in decisions on the issuance of on the spot fines (and cautions) for minor tobacco offences. Use of NSW Health's internal tobacco compliance monitoring and enforcement protocol guidelines would assist with this.

The Taskforce was of the view that the Government should strengthen punitive measures for breaches of tobacco legislation to better reflect the seriousness of tobacco as a health issue. In particular the Taskforce considered that, for repeat offenders, the potential revocation of a tobacco licence may serve as an incentive for adherence to regulatory measures. The *Public Health (Tobacco) Act 2008* currently prohibits persons with repeat convictions from tobacco retailing for specified periods of time. A person convicted of the same offence twice within a three-year period may not retail for three months, while a person convicted on three occasions may not trade for 12 months. Members raised the potential for issuing a more significant penalty at the 'two strikes' mark and a complete prohibition upon 'three strikes'. Advice to the Taskforce was that replacing a time limited prohibition with a complete prohibition at the 'three strikes' mark is not likely to pass in Parliament, nor would it be consistent with other 'three strikes' laws e.g. in traffic or liquor licensing. In addition, there were insufficient grounds established to make the current repeat offence provisions more severe, given they are rarely enlivened, in part due to the difficulty in securing recorded convictions for first offences. Advice to the Taskforce indicated that the introduction of on the spot fines may alleviate this impediment to some extent; prior penalty infringement notices may be considered a 'relevant factor' by a court when determining whether or not to record convictions against retailers.

The Taskforce heard of the practical difficulties some retailers have applying s 10 of the *Public Health (Tobacco) Act 2008*, which requires tobacco to only be sold from one register at each retail outlet. This matter was referred for consideration as part of the Statutory Review of the *Public Health (Tobacco) Act 2008*.

Finally, the Taskforce considered that the Government should offer positive reinforcement to tobacco retailers who comply with tobacco legislation; provide more explicit feedback to tobacco retailers at the time the inspection is being conducted; and investigate all potential breaches at the time of inspection.

### Recommendations

*The Taskforce recommends:*

3. That the *Public Health (Tobacco) Regulation 2009* is amended to enable Authorised Inspectors to issue on the spot fines for minor (display) retailing offences.
4. That NSW Health's internal tobacco compliance monitoring and enforcement protocol is strengthened to support consistent application of the legislation, including the issuance of on the spot fines, offering positive reinforcement to tobacco retailers who comply with tobacco legislation and providing explicit feedback to tobacco retailers close to the time of inspection. Standard communication about the expectations of compliance monitoring and enforcement should be provided to retailers and inspectors.
5. That an improved reporting system is implemented to collect and collate information on tobacco compliance monitoring and enforcement.
6. That public reports detailing overall retailer compliance with tobacco legislation are periodically released.

### 3.4 Enhancing tobacco retailer compliance through training and education

#### Background

The NSW Ministry of Health utilises the TRN Scheme on an informal basis to communicate with tobacco retailers regarding emerging issues which are of interest and issue public health alerts.

There is currently no requirement in NSW for tobacco retailers to undergo any form of tobacco retail training prior to selling tobacco products.

It has been noted that Murrumbidgee Local Health District has developed a training module for tobacco retailers in NSW.

#### Findings

The Taskforce considers a best practice approach to tobacco retail regulation to include licensing together with enforcement and education.

Training of all retailers and staff on tobacco licensing laws may assist in improving compliance. However there is no evidence that retailer education alone is sufficient in reducing sales to minors.

In developing training for retailers, the Taskforce considered that:

- a training package should not be made compulsory until there is clear evidence that tobacco retail breaches are more likely to occur in premises whose retailers have not undergone tobacco training.
- many small businesses may be more receptive to one-on-one training versus online training, although group training may be more cost-effective. This would particularly be beneficial in areas with a low-level of compliance with tobacco legislation. However, NSW Health has successfully adopted online training for its workforce which may be a cost-effective approach.
- a generic training module may have limitations for those with a culturally and linguistically diverse background and consideration should be given to ensuring the reach of training packages to these groups.
- vignettes should be built into the modules to explain concepts. Literal translations into different languages may require supplemental information to ensure messages are conveyed accurately.
- there is a possibility that retailers who demonstrate due diligence by ensuring all staff complete tobacco retailer training could use this as a defence should the premises be in breach of tobacco legislation.

#### Recommendations

*The Taskforce recommends:*

7. That the Tobacco Retailer Notification (TRN) scheme is strengthened by providing regular communication to tobacco retailers regarding their obligations, emerging issues and public health alerts.
8. That training for retail staff is developed to support compliance with the *Public Health (Tobacco) Act 2008*, particularly regarding sales to minors, tobacco display and signage requirements and notification under the TRN scheme. The training should

also include topics to increase tobacco retailer education and awareness about the harms of smoking and approaches to smoking cessation.

### **3.5 Evaluating the impact of an improved TRN, enhanced enforcement and retailer education**

In order to evaluate the effectiveness of a strengthened licensing, regulatory and education framework for tobacco retailing in NSW, initiatives introduced as a result of the Taskforce's recommendations should be reviewed two years after they have been implemented.

In addition, there should be ongoing independent research of academic rigour into effective regulatory mechanisms to reduce tobacco consumption. Some proposed measures were considered by the Taskforce, but were either not within the scope of the Terms of Reference or were considered to be too far in advance of the evidence. For example:

- implementing a positive licensing scheme.
- actively reshaping the tobacco retail sector profile through density, location and type of retailer.

#### **Recommendations**

9. That a review of changes to retail compliance, enforcement and education occurs two years after any changes are implemented.
10. That ongoing independent and peer reviewed research into tobacco retailing is facilitated, including data acquisition and sharing between Ministry of Health, the retail sector and researchers.