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Foundation®

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## Heart Foundation submission on Tobacco Licensing arrangements in Queensland

The Heart Foundation welcomes the opportunity to provide comment on the arrangements for tobacco licensing in Queensland. Despite the devastating consequences of tobacco use in Queensland, thousands of retailers sell tobacco products and don't need a licence. Sales of tobacco and other smoking products are restricted to people over the age of 18, as per alcohol, which has a comprehensive liquor licensing scheme in place. The current arrangements are woefully inadequate for the supply and sale of a dangerous drug that kills people when used exactly as intended.

Tobacco products are easily accessible in supermarkets, local convenience stores and in petrol stations, and the lack of a licensing scheme means that Queensland authorities do not have reliable data on who is selling tobacco.

The NSW Taskforce on Tobacco Retailing<sup>1</sup> determined that an evidence-based, best practice approach to tobacco retail regulation includes licensing implemented together with a strong enforcement and compliance program, including monitoring and reporting and use of underage undercover shoppers, as well as retailer education.

The Heart Foundation therefore makes eight recommendations on tobacco licensing arrangements in Queensland to achieve the following objectives:

### Objectives of a tobacco licensing scheme in Queensland:

- To effectively monitor compliance of retailers with legislative restrictions on the sale of tobacco and other smoking products and in so doing reduce sales to minors and other breaches.
- Maintain an accurate register list of tobacco suppliers (retailers/wholesalers) for the purpose of education on their obligations and compliance activities.
- Undertake suitability checks of retailers and wholesalers to supply tobacco.
- Suspend licences where retail restrictions are breached and apply penalty fines; as a disincentive for retailers to breach laws.
- Reduce the supply of tobacco and other smoking products in Queensland.

### Recommendations:

1. Introduce a positive licensing scheme for tobacco retailers and wholesalers as a priority; using revenue raised from the licence fee to fund tobacco enforcement activities.
2. Require retailers and wholesalers to provide the State Government data e.g. type and location of tobacco outlets, at least annually, whether or not a licensing scheme is introduced.
3. Establish an up-to-date searchable public register of current licence holders.
4. Require the tobacco industry to report sales data to the Queensland Government, whether or not there is a licensing scheme, so that accurate aggregate sales data can easily be accessed and released. Currently it is difficult to access these data.

5. Require the Department of Health to publish results annually on all aspects of monitoring and enforcement of tobacco retail sales, sales to minors and smoke-free place compliance; including the results of audits on compliance with retail restrictions, breaches of smoking bans at liquor licensed premises; and include penalty infringement notices from the Police on smoking in cars where children under 16 years are present.
6. Amend tobacco legislation to ban the sale of tobacco and other smoking products via vending machines which provide easy access to tobacco products in licensed premises.
7. Amend tobacco legislation to not allow a person under 18 to sell tobacco, in the same way that it is illegal to purchase tobacco if you are under 18. This would also align with the liquor laws.
8. Consider innovative uses of a tobacco licensing scheme to reduce availability of tobacco and other smoking products to support broader public health objectives.

The National Tobacco Strategy 2012 - 2018<sup>2</sup> has identified the priority areas for action that remain in tackling smoking prevalence. Further regulation through controlling the supply of tobacco products is one of those priorities (6.7). In Queensland we can and should be licensing tobacco retailers and wholesalers.

Five states and territories in Australia have licensing schemes. Western Australia and the Australian Capital Territory have a licensing scheme for retailers and wholesalers. Tasmania, Northern Territory and South Australia have tobacco licensing schemes for retailers. Victoria, Queensland and New South Wales have no licensing scheme, although New South Wales have a legislated Retailer Notification scheme which commenced in 2009.

License fees are used to administer the schemes and support enforcement and education. As an example, Western Australia has an annual fee ranging from about \$200 to \$300, raising \$832,000 (2010-2011) from nearly 3,800 licensees and has a searchable public register of current licence holders at <http://www.tobaccocontrol.health.wa.gov.au/licensing/receiptregister.cfm><sup>3</sup>.

### **Smoking causes heart disease, lung cancer and respiratory conditions**

The reason we need a licensing scheme is to better control tobacco and other smoking products which cause serious illness and death in our community. Smoking is a major cause of heart attack, stroke and peripheral vascular disease and is the largest single preventable cause of death. It causes many other diseases as well as cardiovascular disease, including lung cancer, many other cancers, chronic bronchitis and emphysema.

Smoking causes one in seven deaths in Queensland with 3,700 Queenslanders dying every year from smoking<sup>4</sup>, equal to around 10 large aircraft crashes a year. 10% of these deaths are estimated to be the result of second hand smoke<sup>5</sup>.

Queensland's smoking prevalence remains higher than other states and territories. We have the second highest rate of smoking in Australia, next to the Northern Territory. We also have the most regionalised population in Australia, and smoking prevalence is greater in the regions compared to urban areas. In major cities 12.9% of people are daily smokers, while in regions it is 15%, increasing to nearly 21% in very remote areas<sup>4</sup>.

### **Recommendations 1 - 4: Require industry accountability through a licensing scheme**

We currently don't know who is selling tobacco in Queensland. The Department of Health has provided an estimate of 8,000 retailers selling tobacco based on British American Tobacco Australia 2015 data<sup>6</sup> of 40,000 tobacco retailers in Australia. On a population basis, the Department of Health has estimated pro-rata that this would mean 8,000 retail outlets in Queensland, including premises with vending machines. They also estimate there are 260 wholesalers in Queensland. However, there is currently no accurate list of who is supplying tobacco products or where they are being sold.

Without an accurate register of tobacco retailers and wholesalers in Queensland:

- How is it possible for adequate education to be provided to tobacco suppliers on their legal obligations around tobacco sales?

- How is it possible to adequately monitor and enforce tobacco supply restrictions?
- What is the disincentive to comply, if there is no licence to lose? Fines alone are not enough.

The lack of controls on where and how tobacco and other smoking products can be sold is in stark contrast to the regulation of other restricted and dangerous goods such as alcohol, pharmaceutical products, poisons, firearms, pesticides and dangerous chemicals which are subject to a wide variety of restrictions<sup>7</sup>. Given that tobacco is a product that kills one in two of its long term users when used exactly as intended, the lack of controls must change.

It is of deep concern that the tobacco industry has publically put its support behind the so-called negative licensing model<sup>8</sup> that Queensland has. A negative licensing model is not proactive nor prevention-oriented. It is a reactive system that responds to problems after they occur.

Instead we need a positive licensing scheme that requires retailers to pay a licensing fee to sell tobacco products, face fines and licence removal for breaches. Fees fund the licensing scheme and provide a revenue stream to support education, monitoring and enforcement programs.

The benefits of a tobacco retailer license scheme were confirmed in a report for the Commonwealth Government in 2002 revealing best practice approaches to tobacco licensing<sup>8</sup>. It found there is a strong case for introducing licensing based on economic and public health grounds.

We need a tobacco licensing scheme to require retailers, wholesalers and tobacco companies to be more accountable for the supply and sale of tobacco and other smoking products. Currently they are not required to advise who is supplying and selling and where. Nor are they required to provide sales data which provides more accurate information on sales and consumer behaviour to inform public health policy. We recommend that this reporting be made mandatory.

The tobacco licence scheme can also be used to monitor wholesaler numbers and location and to ensure that wholesalers only supply tobacco products to retailers who have a valid retail licence. If there is no licence scheme, wholesalers can still be monitored by requiring them to provide a current list of the retailers they supply to.

#### **Recommendation 5: Require transparency of reporting by the Queensland Government**

To date, there has been a reluctance by the Department of Health to make monitoring and compliance data publically available. It is unclear why, as we believe there is a need for transparency in reporting on this important public health data.

Only recently, we welcomed the Chief Health Officer's briefing to the Health and Ambulance Services Committee (HASC) Inquiry<sup>9</sup> on evidence and data that the Department of Health collects on tobacco retail compliance, sales to minors breaches, smoking ban breaches at liquor licensed clubs and hotels; and that the Police Department collects on smoking in cars where children under 16 years are present.

We are seeking a mandated requirement for these data to be published annually whether or not a tobacco licensing scheme is introduced in Queensland.

#### **Recommendation 6: Ban vending machines**

Vending machines and staff training in licensed premises remain a weak point in compliance around tobacco products. The Chief Health Officer reported that 33% of hotels and 22% of clubs that sell tobacco products are non-compliant with providing written acknowledgement of staff training for either over the counter sales or sales via tobacco vending machines<sup>9</sup>.

Vending machines provide a totally unnecessary access point to cigarette products in licensed premises. We know that when people drink in social settings, they are likely to smoke more and that quitting attempts are undermined<sup>10</sup>. A NSW study showed that having tobacco products sold

on the premises like licensed clubs, hotels and bars, meant that nearly 40% of smokers reported smoking a lot more or a little more<sup>11</sup>. We urge the HASC to support our recommendation 6 for a total ban on vending machines supplying tobacco products.

**Recommendation 7: Ban the sale of tobacco by people aged under 18**

The Heart Foundation recommends an amendment to our tobacco legislation to ensure that people under 18 years of age are not able to sell cigarettes in Queensland. This is an anomaly that needs to be removed. The intent of this proposal is to both protect children from handling tobacco products and being exposed to marketing, and reducing sales to minors. Queensland children are protected from selling alcohol, but not tobacco products.

This position is supported by the World Health Organization Framework Convention on Tobacco Control<sup>12</sup>. Research has also found that teenage employees are more likely than adults to sell tobacco products to minors and take tobacco products to supply to minors<sup>13</sup>.

**Recommendation 8: Innovative use of tobacco licensing to improve public health**

The Heart Foundation recommends that the HASC seriously considers the innovative use of a tobacco licensing scheme to strategically reduce the availability of tobacco products to support broader public health objectives.

A number of innovative ideas around tobacco retail regulation are not yet well tested, but similar to plain packaging federally, have the potential to significantly reduce sales<sup>14</sup>.

Reduced tobacco retail outlets could be achieved by limiting tobacco licenses, by specifying where tobacco can and can't be sold, in a similar way to alcohol, such as:

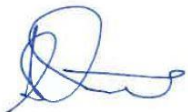
- prohibited in supermarket chains;
- restricted in areas known to have higher rates of smoking, like low socioeconomic neighbourhoods and areas with a high number of residents from racial and ethnic minority groups where outlet density is higher;
- prohibited near schools or licensed venues; and
- placing additional restrictions on the sale of tobacco such as the hours when it may be sold.

This method of reducing tobacco retail licences and hence outlets, is potentially an opportunity for Queensland to lead the way.

Another option would be to reform our protocols so that the cost of a licence could be increased so as to incentivise retailers to opt out of selling tobacco products.

Please contact us if you'd like further information. We are available to appear as a witness before the Committee and look forward to hearing the outcomes of this inquiry.

Yours sincerely



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## References

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