Portions of this submission, which were about the Health and Hospitals Network Bill 2011, have been deleted from the published version.

That Bill has not been referred to the committee.

COMMENT ON

HEALTH LEGISLATION AMENDMENT BILL

2011, QUEENSLAND

Sub# 4

September 2011

To:
The Research Director
Health and Disabilities Committee
Parliament House
George Street
Brisbane Qld 4000

by email to hdc@parliament.qld.gov.au

From:
ACTION ON SMOKING AND HEALTH (ASH) AUSTRALIA
Anne Jones OAM, Chief Executive

and in part from:
Protecting Children from Tobacco coalition of NGOs
and **SmokeFree Australia coalition of NGOs**
Stafford Sanders, co-ordinator

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Action on Smoking and Health

...the solution to many of today's medical problems will not be found in the research laboratories of our hospitals, but in our parliaments. For the prospective patient, the answer may not be cure by incision at the operating table, but prevention by decision at the Cabinet table.

Sir George Young,
UK Parliamentary Undersecretary of Health,
World Conference on Smoking and Health, Stockholm 1979

ASH Australia

Action on Smoking and Health (ASH) Australia is a national health organisation committed to reducing deaths, disease and disabilities caused by tobacco products and the misleading and deceptive conduct of the tobacco industry. Founded in 1994, ASH is funded by the Cancer Council Australia and the Heart Foundation.

The ASH Board is chaired by Associate Professor Matthew Peters, a Thoracic Physician at Concord Hospital, and includes experts from the Cancer Council Australia, Heart Foundation, Sydney University and the Royal Australasian College of Physicians. Anne Jones, Chief Executive Officer since 1994, is a policy adviser on tobacco control in Australia, and in the Asia-Pacific region for the International Union on Tuberculosis and Lung Disease on behalf of the Bloomberg Initiative to reduce the tobacco epidemic worldwide.

ASH is a member of, and its Communications Officer Stafford Sanders is co-ordinator of, the coalitions below. These coalitions support some parts of our submission as indicated under specific proposals below.

SmokeFree Australia

11 organisations at www.ashaust.org.au/SF'03/partners.htm aiming to ensure no Australian employee works in a working area contaminated by tobacco smoke.

Action on Smoking and Health Australia; Australian Council of Trade Unions; Australian Council on Smoking and Health; Australian Medical Association; Cancer Council Australia; Heart Foundation; Lung Institute of WA; Media, Entertainment and Arts Alliance; Musicians' Union of Australia; Non-Smokers' Movement of Australia; United Voice (formerly LHMU)

Protecting Children from Tobacco

42 organisations at www.ashaust.org.au/lv4/ProtectChildrenEndorsements.htm aiming to ensure all children in Australia are protected from tobacco smoke and tobacco promotion.

Action on Smoking and Health Australia; Alcohol and other Drugs Council of Australia; Association for the Wellbeing of Children in Healthcare; Association of Children's Welfare Agencies; Australian and New Zealand Head and Neck Cancer Society; Australian and New Zealand Society of Respiratory Science; Australian Childhood Foundation; Australian Council of Social Service; Australian Council of State School Organisations; Australian Council on Smoking and Health; Australian Education Union; Australian Foster Care Association; Australian General Practice Network; Australian Lions Drug Awareness Foundation; Australian Lung Foundation; Australian Medical Association (NSW); Australian National Council on Drugs; Australian Parents' Council; Australian Youth Affairs Coalition; Baptist Union of NSW; Cancer Council NSW; Catholic Health Australia; Centre for Excellence in Indigenous Tobacco Control; Children's Cancer Institute Australia for Medical Research; Cystic Fibrosis Australia; Early Childhood Australia; Families Australia; Heart Foundation; Murdoch Children's Research Institute; National Association for Prevention of Child Abuse and Neglect; National Asthma Council Australia; NSW Council of Churches; Public Affairs Commission of the Anglican Church of Australia; Public Health Association of Australia; Royal Australasian College of Physicians*; Royal Australian College of General Practitioners; Rural Doctors Association of Australia; Save the Children Australia; SIDS and Kids; Smarter than Smoking; Telethon Institute for Child Health Research; Thoracic Society of Australia and New Zealand

Note: The Royal Australasian College of Physicians did not specifically endorse this submission because the bringing forward of the submission deadline did not allow the College sufficient time to consult with its membership.

Introduction

ASH welcomes the opportunity to contribute to this review. We congratulate the Queensland Government for its past achievements, particularly in establishing Australian best-practice legislation on smoke-free workplaces. We commend the current review as an indication of willingness to continue moving forwards and to consult widely on how best to reorientate our overburdened health care system towards preventing chronic diseases now and in the future.

While Queensland has shown leadership in some areas of tobacco control, current smoking rates remain unaffordable - given our ageing population, rising health care costs and the economic difficulties facing us all. Although governments have known since the 1950s that tobacco diseases can be prevented, tobacco smoking is still the single largest preventable cause of death and disease in Australia and a major cause of devastating and costly health inequalities.

Much more can and should be done over the next decade to ensure achievement of the nationally-agreed target of reducing the smoking rate to 10% or less by 2018 – and to enable future generations to live productive lives free from the burden of tobacco.

Research has clearly established what works in tobacco control and that we can achieve a largely tobacco-free future through evidence-based policies - as opposed to softer options and counter-strategies preferred by tobacco interest groups. Although Queensland has made gains in the past, sustained action is necessary to drive smoking rates down and protect people from second-hand smoke exposure.

Public opinion surveys confirm that well-funded tobacco control measures including stronger legislation are popular.[1]

Queensland along with all levels of government in Australia is committed under the WHO Framework Convention on Tobacco Control[2] to implement effective, evidence-based tobacco control strategies. The FCTC is intended to be "a floor, not a ceiling" – to establish minimum legislative and policy commitments. Queensland should ensure full compliance with key articles, including:

- Protecting all people from exposure to tobacco smoke (Article 8)
- Ending advertising, promotion and sponsorship (Article 13)
- Preventing tobacco sales to minors (Article 16)

With the average age of smoking uptake in Australia still just under 16 years, the tobacco industry continues to target young smokers by using advertising loopholes and new media to associate its product with music, fashion, sport and a "cool" image. Children are especially vulnerable to health harm from smoking and from exposure to second-hand tobacco smoke. For this reason our proposals relating to children are also supported by all 42 organisations in the **Protecting Children from Tobacco** coalition (above).

Repeated exposure of employees and volunteer workers to second-hand smoke in workplaces also remains a significant Occupational Health and Safety concern, and for this reason our proposals relating to workplaces are supported by all 11 organisations in the **SmokeFree Australia** coalition (above).

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[1] AIHW *2010 National Drug Strategy Household Survey* at www.aihw.gov.au/publication-detail/?id=32212254712&libID=32212254712 *Table 13.1, p.171*

[2] FCTC and guidelines at www.who.int/fctc/en/index.html

Specific proposals relating to the current review

ASH supports the proposed legislation but wishes to suggest the following amendments/additions:

1. Include menthol in prohibited tobacco flavours

This is supported by 41 non-government organisations in the Protecting Children from Tobacco coalition (see list above).

Menthol is a flavouring additive likely to make this deadly, addictive product more appealing to children; and it is no mere additive, independent research showing it enhances delivery of addictive nicotine and carcinogens through the mouth.[3]

The US Food and Drug Administration report into menthol that stopped short of a ban was criticised in a shadow report by a nine-member expert panel in the Journal of the American Medical Association that concluded[4]: "The big mystery and disappointment is why the committee did not recommend the removal of menthol cigarettes from the marketplace."

The National Preventative Health Taskforce in 2009 recommended (5.4.4) that the Australian Government "Consider banning all additives that enhance palatability or addictiveness". The government undertook to "engage the states and territories" in discussions on this issue.[5]

ASH recommends that the Queensland Government help facilitate a nationally co-ordinated all-governments' response towards banning menthol in tobacco products.

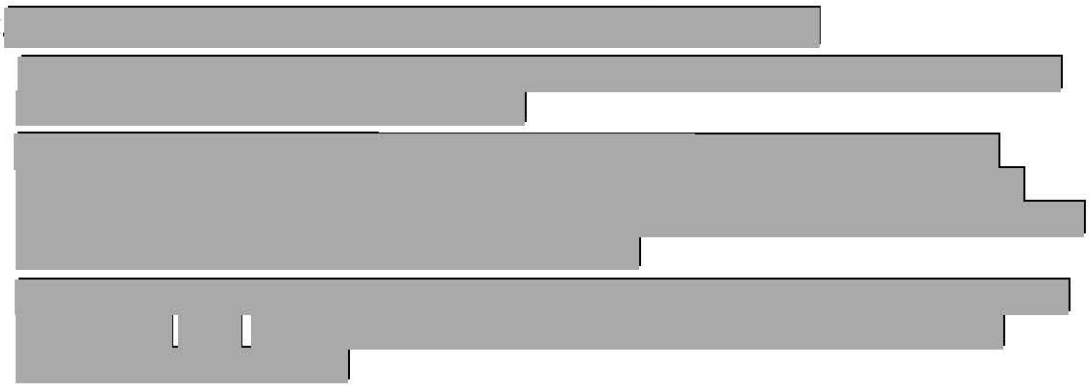
Bursting with cancer

Promo to retailers, 2011 for these "best value menthol packs on the market".
Appeal to young people enhanced by laser lights and buzzword "cool"

[3] ASH media release with links to 2010 US research and misleading tobacco company statements at www.ashaust.org.au/mediareleases/100602.htm

[4] *JAMA* news at http://newsatjama.jama.com/2011/03/23/fda-panel%E2%80%99s-stance-on-menthol-cigarettes-perplexes-tobacco-critics/

[5] NPHT recommendation and Australian Government response at p. 70, www.preventativehealth.org.au/internet/preventativehealth/publishing.nsf/Content/6B7B17659424FBE5CA25772000095458/$File/tobacco.pdf

2 

3. Require all tobacco sellers to be licensed

This is supported by 41 non-government organisations in the Protecting Children from Tobacco coalition (see list above).

Mandatory licensing of tobacco sellers is in force in SA, WA, ACT and Tasmania – where it helps prevent illegal sale to children, and to cover the costs of regulation including retailer education and compliance monitoring.

Mandatory seller licensing was recommended in 2002 by the Intergovernmental Committee on Drugs, endorsing a report from Allens Consultancy Group.[7] It was recommended again in 2009 by the National Preventative Health Taskforce, the Australian Government noting that it is "primarily a state and territory responsibility".[8]

4. Prohibit persons under 18 years old from selling tobacco products

This is supported by 41 non-government organisations in the Protecting Children from Tobacco coalition (see list above).

The FCTC[9] includes article 16 (7) prohibiting the sale of tobacco products by anyone under the age of 18 years.

As children can lack maturity and are susceptible to peer pressure, research confirms that the age of the seller is associated with increased sales of tobacco products to children.[10] Stopping children from selling tobacco products is consistent with laws that prohibit children from being supplied these products.

Children cannot sell other drugs, such as alcohol; even adults who sell alcohol are required by law to complete accredited training courses in responsible selling.

Countries like Norway and Singapore have more socially responsible policies in place that prohibit tobacco sales by anyone under the age of 18 years. [11] In Australia, it is currently proposed and under review in WA.

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[6] *British American Tobacco marketing guide, p. 11 at* www.library.ucsf.edu/tobacco/batco/html/14100/14109

[7] Allens 2002 report at www.health.gov.au/internet/main/publishing.nsf/Content/B05D343195FDB181CA25776500063C84/$File/license.pdf

[8] NPHT recommendation and Australian Government response at p. 68, www.preventativehealth.org.au/internet/preventativehealth/publishing.nsf/Content/6B7B17659424FBE5CA25772000095458/$File/tobacco.pdf

[9] www.health.gov.au/internet/wcms/publishing.nsf/Content/phd-tobacco-fctc.htm

[10] DiFranza JR *et al*, "Measuring state wide merchant compliance with tobacco minimum age laws: The Massachusetts experience" in *American Journal of Public Health* 2001; 97(7), 1124-25

[11] http://has.gov.sg/html/business

5. Totally prohibit tobacco vending machines (TVMs)

This is supported by 41 non-government organisations in the Protecting Children from Tobacco coalition (see list above).

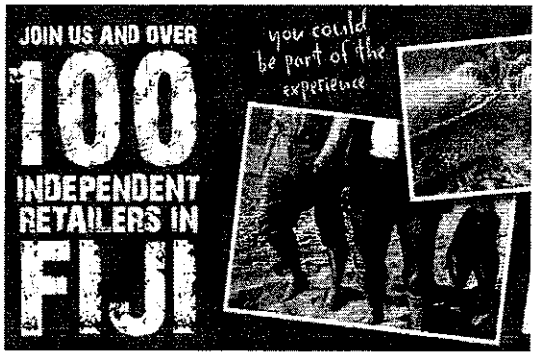
Under Article 16.1 of the FCTC[12] all Australian governments are committed to adopt and implement effective measures to prohibit sales of tobacco products to children. Such measures may include (d) ensuring that TVMs are not accessible to minors and do not promote the sale of tobacco products to minors.

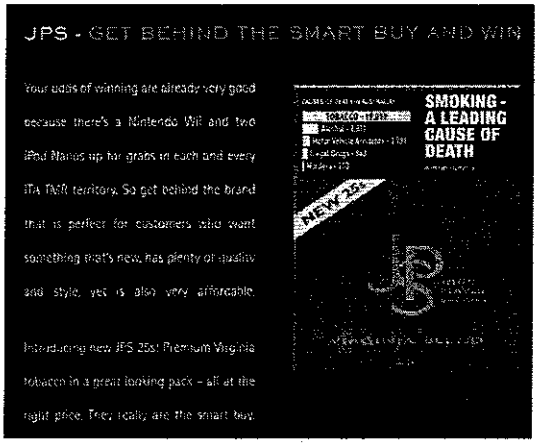
A treaty party may also make a commitment, if appropriate, to a total ban on TVMs. China has prohibited the introduction of TVMs; Estonia has committed to banning them.[13]

In Australia, ACT has banned TVMs and it is under consideration in WA.

6. Prohibit promotion of tobacco to retailers

We recommend closing the loophole that permits tobacco companies to offer incentives to retailers to promote tobacco - including overseas trips and other prizes for selling more tobacco and attracting new smokers (mostly young people). Reward schemes whereby individuals are directly targeted with promotional materials through direct mail, telemarketing and consumer surveys should also be banned with no exemptions. FCTC Article 13[14] requires a comprehensive ban of all forms of advertising, promotion and sponsorship, as partial bans are proven to be ineffective.





Tobacco companies "pushing to the pushers" 2009-11

[12] FCTC, op. cit., Art. 16.1

[13] *Tobacco in Australia: Facts and Issues* at www.tobaccoinaustralia.org.au/chapter-18-ftct/18-5-measures-relating-to-the-reduction-of-the-sup

[14] FCTC, op. cit.

7. Close loopholes to fully protect staff and patrons from second-hand smoke in Designated Outdoor Smoking Areas

This is supported by all 11 non-government organisations in the SmokeFree Australia coalition (see list above).

Queensland since 2006 has been the Australian pace-setter in smoke-free workplace legislation. However, some venues have undermined the intent of the legislation by enhancing the appeal of Designated Outdoor Smoking Areas (DOSAs) by placing video screens and live entertainment within sight of these areas and by sending in staff frequently to clear away glasses in order to encourage smoking and non-smoking patrons to enter and remain in DOSAs. This strategy risks the health of both staff and patrons within and adjacent to DOSAs.

Our organisations propose prohibition of video screens or live entertainment within view of DOSAs; and a requirement that no staff enter a DOSA (other than to assist in a genuine emergency) until the area has first been cleared of patrons and any smoke allowed to dissipate.

8. End gaming room exemptions to smoke-free laws

This is supported by all 11 non-government organisations in the SmokeFree Australia coalition (see list above).

Enclosed gaming rooms expose workers and patrons to high levels of second-hand smoke, contrary to legal obligations under Occupational Health and Safety and Disability Discrimination law and to Article 8 of the FCTC.

Other jurisdictions (ACT, Tasmania and SA) no longer have these exemptions. Queensland has previously flagged its willingness to co-operate with NSW and Victoria on an agreed date to end these exemptions. No agreement has yet been reached and we urge the Queensland Government to renew its efforts through the Australian Health Ministers' Conference and any other relevant avenue to reach an agreement on an end-date.

9. Make transport (bus/taxi) shelters smoke-free

Bus and taxi shelters are often crowded, partly enclosed, and can expose people including children to high levels of second-hand smoke for prolonged periods. This would be best addressed at state level, since leaving it to local government can lead to inconsistency between councils and public confusion and will not comprehensively protect from this exposure.

10. Prohibit smoking while driving

Research shows smoking while driving is a danger - and may be more serious than other distractions like mobile phones or eating, since smoking involves the risk of dropping burning matter onto drivers' hands or lap.

Several studies on smoking and car safety were reviewed by Monash University Accident Research Centre in 2003.[15] The review included studies pointing to smokers having an increased risk of being involved in motor accidents, with actual distraction caused by the act of smoking a likely factor. The review concluded that "it is clear that smoking while driving is a hazard." One study cited connects smoking while driving with over 2,000 accidents a year. Another published in *Tobacco Control* found that smoking while driving almost doubles car death risk.[16]

If governments including Queensland can ban using mobile phones while driving, and more recently prohibit smoking in cars carrying children, then this is also feasible in the case of smoking while driving, with enforcement undertaken opportunistically by police in the same way.

11. Protect health policies from tobacco industry interference

Australian governments are committed to protecting health policies from tobacco industry (TI) interference under FCTC Article 5.3.[17]

Recommended policy improvements would include limiting interaction with the TI, making any necessary interaction transparent and in public through hearings, notices of interactions and disclosure of records; banning political donations and contributions from the TI and related third parties; ending any incentives, privileges, benefits or exemptions for the TI; imposing mandatory penalties on TI for providing false or misleading information; banning contributions from tobacco companies to any entities for socially responsible business practices; and requiring the TI to publicly report activities and practices.

Summary

Smoking remains Queensland's single largest risk factor for chronic disease.

While Queensland has led the way in smoke-free workplace legislation, there is a continuing need to develop complementary strategies in all relevant areas if the intent of legislation, and resulting gains, are not to be undermined.

The benefits of such strategies will be most keenly felt by those targeted by tobacco promotion (children) and those most vulnerable to second-hand smoke exposure and promotion (again children, and staff and patrons facing repeated exposure in workplaces).

The Queensland government has a strong mandate for tobacco control and will enjoy continuing community support for saving lives, health and money.

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[15] See p.18 at www.monash.edu.au/muarc/reports/muarc206.pdf

[16] Wen C *et al* (2005) at http://tobaccocontrol.bmj.com/content/14/suppl_1/i28.full - also cited other relevant studies.

[17] FCTC Article 5.3 Guidelines at www.who.int/fctc/guidelines/article_5_3/en/index.html