

Position Statement

Decreasing the availability of tobacco products in Victoria

July 2014

Recommendations

Quit Victoria, Cancer Council Victoria and the Heart Foundation (Victoria) recommend the State Government:

- (1) Introduce a positive licensing scheme for tobacco retailers as a priority. This should be undertaken in consultation with peak public health groups to determine suitable criteria for the scheme.
- (2) Require that wholesalers and retailers provide the government with a range of data (for example number, type and location of tobacco outlets) at least annually and that this information be publicly available.
- (3) Map the number, type, location and distribution/density of tobacco retail outlets in Victoria against a range of variables such as socio-economic status and proximity to schools.
- (4) Explore a range of measures to reduce tobacco availability, either as part of a positive licensing scheme or as alternative measures.
- (5) Amend the *Tobacco Act 1987 (Vic)* to ban the sale of tobacco products via vending machines.

1. Introduction – the case for reducing availability

Despite the devastating harm that tobacco causes the Victorian population, tobacco is sold in over 8,000 Victorian retail outlets, is more available than bread and milk and can be sold by anyone, almost anywhere. (1, 2) This widespread availability can contribute to the dangerous perception that tobacco is a normal part of everyday life and is relatively harmless.(1-3) Tobacco is not a normal grocery product; it is a product that kills one in two of its long term users when used as intended. The lack of controls on where and how tobacco can be sold stand in stark contrast to the regulation of other dangerous goods such as pharmaceutical products, poisons, firearms, pesticides and dangerous chemicals which are subject to a wide variety of restrictions.

Reducing availability of tobacco can further support quitting rates and cut smoking-related deaths including for reasons summarised below:

1.1 Reducing prevalence of smoking among young people

- **Young people's access to tobacco contributes to the initiation of smoking.** (4) Recent research among New York adolescents found that increased visits to tobacco retail outlets was associated with increased odds of smoking initiation. (5) Similarly, other New York research has demonstrated an association between high tobacco retail density and young people believing that smoking made them look cool and helped them fit in.(6)
- **Perceived ease of access to cigarettes influences the risk of smoking among young people.** There is evidence that young people who perceive that tobacco is easily available are more likely to experiment with smoking and to progress to heavier smoking.(7-9) Research has shown that there are a number of young people in Victoria that believe that purchasing cigarettes for themselves would be easy.(10)
- **Proximity of tobacco retailers to schools influences smoking behaviour among young people.** The evidence available suggests that both density of retailers and proximity of retailers to schools influences smoking behaviour and tobacco purchasing by youth.(11-14) A Californian study found the prevalence of current smoking to be three percentage points higher at schools in neighbourhoods with a high density of retail outlets (more than five tobacco outlets) compared with neighbourhoods without tobacco outlets.(12) Similarly, Canadian research examining tobacco outlet density around schools in Ontario found that the more tobacco retailers there were surrounding a school, the more likely teenage smokers were to buy their own cigarettes and the less likely they were to get someone else to buy their cigarettes.(15)

1.2 Enhancing the effectiveness of smoking cessation by supporting recent quitters and those who want to quit

Preliminary studies suggest that close proximity to retail outlets may make quitting less likely.(11) (16) Retail density and proximity can negatively affect quitters and contemplators - for some smokers, the mere sight of a retail outlet prompts thoughts about smoking or buying cigarettes, even though tobacco must now be out of sight in stores.(1) A recent audit of tobacco outlets in NSW found that convenience, route and impulse retailers made up almost 80% of tobacco outlets.(17) These outlets are known to prompt unplanned purchases of tobacco.

1.3 Reducing tobacco related health, social and economic disparities in vulnerable Victorians

Studies in Western Australia, New South Wales and Queensland have found greater densities of tobacco outlets in areas with lower socioeconomic status (SES) and in areas with lower household incomes. (18, 19) The literature suggests that even after adjusting for smoking levels, overall there is a greater concentration of tobacco outlets in lower SES communities (11) and this may be adding to the many social and environmental factors known to make it more difficult for disadvantaged people to quit smoking. It is important to collect and analyse data to ascertain if there is a higher concentration of tobacco outlets in low SES areas in Victoria.

2. Regulation of tobacco retailing in Victoria

In Victoria there is no requirement for general retailers or specialist tobacconists to hold a licence to sell tobacco products. Since 2000 Victoria has had a 'negative' licensing system for tobacco. A 'negative licence scheme' means that retailers may be prohibited from selling tobacco products for a specified period if found guilty of committing particular offences under the *Tobacco Act 1987* (Vic). Our understanding is that only a handful of tobacco retailers have been prohibited from selling tobacco following offences such as sales to minors and selling illicit tobacco.

The current tobacco retailing arrangements are problematic in several ways:

- Rather than being pro-active and prevention-oriented, the current arrangements are reactive and primarily a mechanism for responding to problems after they occur.
- There is no ability to determine whether a tobacco retailer is a "fit and proper person" to sell tobacco.
- Enforcement agencies must rely on tobacco manufacturers and wholesalers to provide details of retailers who sell tobacco. The accuracy and comprehensiveness of this data is difficult to verify.
- There is no capacity to provide a revenue stream to support education, monitoring and enforcement programs.
- The fact that tobacco can be sold without the need to first apply for a licence sends a weak message to retailers about the importance of obligations under tobacco control laws and contributes to the view that selling tobacco is a 'right' and can be undertaken lightly.

3. Tobacco Licensing in Australia: comparison of states and territories

Table 1: Overview of retail licencing in States and Territories (2013-2014)

Jurisdiction	Licence needed?	Term and Fee
ACT	YES	Common expiry of 31 August. \$200 for 12 months (or \$50 per quarter). Renewed annually.
QLD	NO	N/A
NSW	NO Retailers subject to <i>Retailer Notification Scheme</i> : All retailers must notify the Department of Health through the Government Licencing Service before commencing sales of tobacco (s 39; <i>Public Health (Tobacco) Regulation 2009</i> (NSW), r 20).	Retailer: No fee for notification Specialist Tobacconist: \$250 for specialist tobacconists (one off fee)
NT	YES	12 months for \$222. Renewed annually
SA	YES	12 months for \$253. Renewed annually.
TAS	YES	12 months for \$302.22. Renewed annually
VIC	NO	N/A
WA	YES	12 months for \$204 (application) and \$173 (renewal). Renewed annually.

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4. Recommendations for decreasing the availability of tobacco

4.1 Introduce a positive licencing scheme

Victoria is one of only two states in Australia that does not have a licensing system for retailers of tobacco products (see **Table 1** above). A wide range of public health organisations at the Victorian, national and international levels recommend licensing for tobacco retailers.(3, 20, 21) A report prepared for the Commonwealth Government in 2002 on best practice approaches to tobacco licensing (the Allen report) found that there is a strong case, based on economic and public health rationales, to introduce licensing of tobacco sellers. (21) Reasons for this conclusion included that tobacco retail licensing can help facilitate:

- Enhanced monitoring and enforcement of existing regulatory controls on the availability and advertising of tobacco.
- Further reductions in the illegal sale of tobacco to minors and reduced sales of illicit tobacco.
- A range of appropriate measures for dealing with breaches of tobacco laws by retailers, by allowing for a graduated system of penalties ranging from warnings and fines to an ultimate loss of licence.

Additionally, accurate knowledge about the number, type and location of tobacco outlets is essential to monitor tobacco industry activity and to enforce comprehensive marketing restrictions;(22) this knowledge is best obtained through retailer licensing.(22) Table 2 sets out some of the other advantages of positive licensing schemes for tobacco retailers.

Table 2: Advantages of a positive licensing scheme

A positive tobacco licensing scheme could:

- reinforce the message that selling tobacco — a dangerous product — is similar to other activities which carry a potential health risk in that it is a conditional privilege rather than an unfettered right;
- help ensure that only sellers with a demonstrated record of honesty and compliance with laws are able to sell tobacco (through criteria that identifies whether there are relevant reasons for rejection of an application for a licence);
- ensure that those who sell tobacco products are kept informed and are aware of their legal responsibilities, providing an opportunity for targeted education and information for retailers/wholesalers through the licence application process as well as on an ongoing basis for all retailers and wholesalers throughout the state;
- create a framework where non-compliance with local, state or federal tobacco control laws can result in licence prohibitions or restrictions in addition to financial penalties, which provides a further incentive to comply with tobacco control laws;
- provide funding for education, monitoring and enforcement programs;
- provide administrative enforcement options (e.g., licence conditions, licence withdrawal) which are less costly than legal action through the courts;
- encourage retailers to carefully consider whether they want to sell cigarettes and the value of selling tobacco, particularly those for whom tobacco sales is a marginal source of income; and
- effectively reduce the number of retailers selling tobacco.

A tobacco licensing scheme would provide an important policy tool for the government and provide the framework required to systematically reduce the availability of tobacco. Table 3 below sets out other measures that could be explored as part of this framework (or as stand-alone measures).

Recommendation *Quit Victoria, Cancer Council Victoria and the Heart Foundation (Victoria) recommend that the State Government introduce a positive licensing scheme for tobacco retailers as a priority. This should be undertaken in consultation with peak public health groups to determine relevant criteria for the scheme.*

4.2 Collect data and make it publicly available

Around Australia, the quality, public availability and reliability of data collected on tobacco retailers by state and territory governments differs significantly between jurisdictions; for example, Western Australia has the only searchable public register of all tobacco retail licenses.⁽¹¹⁾ In other jurisdictions, data has been accessible through the equivalent of freedom of information requests.^(17, 19)

Information on the number, type, location and density of Victoria tobacco retailers is not publicly available. In August 2009, the Victorian Parliament passed the *Tobacco Amendment (Protection of Children) Act 2009 (Vic)* to amend the *Tobacco Act 1987 (Vic)*. Amendments included the provision of power for the Secretary of the Department of Health to request the names and addresses of persons supplied with tobacco in an electronic format. These laws commenced on 1 January 2010. This information is not publicly available even under Freedom of Information or the equivalent.

Some information on the number of Victorian tobacco retailers is available through the Municipal Association of Victoria (MAV) which produces an annual report for the Victorian Department of Health on tobacco activity.⁽²³⁾ The report states in 2012/2013 there were 8,165 tobacco retailers in Victoria identified by local government.

Restrictions on the quantity, type and location of tobacco outlet have been recommended as a component of genuinely comprehensive tobacco marketing restrictions.⁽²²⁾ However, in order to examine the feasibility, practicality and means of achieving this, a clear picture of the tobacco retail environment is required, including accurate and up-to-date data regarding the number, type and location of tobacco outlets. Similarly, effective, systematic and comprehensive enforcement relies on an accurate and up-to-date data collection and registration system.

Recommendation

Quit Victoria, Cancer Council Victoria and the Heart Foundation (Victoria) recommend that the State Government require that wholesalers and retailers provide the government with a range of data (for example number, type and location of tobacco outlets) at least annually and that this information be publicly available.

4.3 Map tobacco retail outlets

As discussed in part 1 of this paper, it is important to map where tobacco retail outlets in Victoria are located as the location and density of outlets can influence smoking behaviours and smoking rates, including for young people, recent quitters and those who want to quit, and for people living in low SES areas.

Recommendation

Quit Victoria, Cancer Council Victoria and the Heart Foundation (Victoria) recommend that the State Government commission/conduct a mapping exercise to determine the number, type and location and distribution/density of tobacco retail outlets in Victoria against a range of variables such as socio-economic status and proximity to schools.

4.4 Explore other measures for reducing tobacco availability

There are a range of measures set out in Table 3 that could be explored either as part of a licensing scheme or if positive licensing is not adopted, as alternative measures to reduce the availability of tobacco.

The feasibility of these measures would be informed by data collection and mapping as discussed above at 4.2 and 4.3 as well as research on reducing availability.

Table 3: Possible approaches to reduce availability

<ul style="list-style-type: none">• restrictions on the number and location of tobacco retail outlets; (for example restricting or granting no new licences for retail outlets near schools or in areas with a high number of existing tobacco retailers);• limiting the proximity of tobacco outlets to other locations such as hospitals, universities and government buildings;• establishing a minimum distance between tobacco outlets;• prohibiting the sale of tobacco products in establishments where smoking is already prohibited, such as airports and hospitality venues;• restrictions on the opening hours of outlets permitted to sell tobacco such as during the hours of an ordinary business day of 8:30 to 17:00 or during school hours only;• reframing the process to place the onus on the retailer to prove a new licence is needed in a particular area, rather than providing an automatic 'right' to a licence;• restrictions on particular types of outlets and phasing out of particular types of outlets if this were deemed to be desirable at some stage;• limiting eligibility for a tobacco retail licence to shops permitting entry only to persons over the age of 18 years.

These measures would likely reduce illegal sale of tobacco to young people, reduce the availability of tobacco in the community, and limit the capacity of the tobacco industry to create or perpetuate environmental conditions that “normalise” smoking.

Recommendation

Quit Victoria, Cancer Council Victoria and the Heart Foundation (Victoria) recommend that the State Government explore a range of measures to reduce tobacco availability, either as part of a positive licensing scheme or as alternative measures.

4.5 Ban the sale of tobacco products via vending machines

Vending machines within licensed venues continue to promote the association between socialising, alcohol and smoking. The banning of vending machines from licensed premises, casinos and bottle shops will be vital to further denormalise smoking and eliminate a potential visual cue which may trigger relapse or make it more difficult for people trying to quit, particularly in an environment where willpower may already be depleted by alcohol consumption.



A ban on vending machines in Victoria would fulfill the recommendation in the World Health Organization's *Guidelines for implementation: Article 13* of the Framework Convention on Tobacco Control, that:

"[v]ending machines should be banned because they constitute, by their very presence, a means of advertising and promotion."(24)

Recommendation

Quit Victoria, Cancer Council Victoria and the Heart Foundation (Victoria) recommend that the State Government amend the Victorian Tobacco Act 1987 (Vic) to ban the sale of tobacco products via vending machines.

5. References

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