



Future Directions - Tobacco
Health Protection Service
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RE: ATODA Submission to the consultation on the *Options for Restricting Access to Tobacco Discussion Paper*

To whom it may concern,

Thank you for the opportunity to make a submission to the consultation on the *Options for Restricting Access to Tobacco Discussion Paper* as part of the *Future Directions for Tobacco Reduction in the ACT 2013 - 2016* strategies.

The Alcohol Tobacco and Other Drug Association ACT (ATODA) is the peak body representing the non-government and government alcohol, tobacco and other drugs sector in the ACT. ATODA seeks to promote health through preventing and reducing alcohol, tobacco and other drug related harms.

ATODA shares the ACT Government's goal to reduce the ACT's daily smoking rate to under 10 per cent by 2018. ATODA also continues to support the ACT Government when challenging, evidence-based tobacco policy decisions are required.

This submission responds and is structured directly to the questions posed within the *Discussion Paper*.

ATODA hopes that this submission is of value to the ACT Government and is prepared to provide further assistance upon request.

Yours sincerely,

A handwritten signature in black ink that reads "Carrie Fowlie". The signature is written in a cursive, flowing style.

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14 May 2014

ATODA Submission to the consultation on the *Options for Restricting Access to Tobacco Discussion Paper*

This submission provides a response to the ACT *Options for Restricting Access to Tobacco Discussion Paper* with a focus on the overarching policy objectives, the plausibility of the underlying assumptions and program theory, the use of evidence and assessments of policy options (including confronting the trade-offs). Following this, a response is provided directly to the questions posed in the discussion paper.

Overarching policy objectives

ATODA fully supports the national and ACT policy objective of reducing smoking prevalence to 10 per cent of the population by 2018. It is likely that this goal can be attained in the ACT before that date. It is important, however, that the differential impacts of tobacco control policies on different parts of the population are taken into account. The research evidence is clear that people living in low socio-economic status (SES) neighbourhoods have higher prevalence of smoking and less success in sustaining abstinence following cessation attempts compared with people living in higher SES neighbourhoods (Clare *et al.* 2014). This means that attaining the 10 per cent prevalence goal across the whole population will not be a particularly good achievement if it sees significant reductions in prevalence among high SES populations but with minimal change among people who are not so well off. Unfortunately, this pattern is already being observed in parts of Australia (Clare *et al.* 2014).

Furthermore, tobacco remains a legal product and adults are entitled to purchase and consume it. Most smokers are heavily dependent upon nicotine and many upon other behavioural aspects related to smoking. Their circumstances need to be taken into account in designing tobacco control policies.

Although the discussion paper does not provide data to inform responses about licensing, ATODA assumes that, in the ACT, we have a large number of tobacco licensees who are small business operators with relatively low levels of sales of tobacco products (e.g. corner stores and service stations), along with a relatively small number of large operators accounting for a significant proportion of the total sales (e.g. Woolworths and Coles). Policy work in this area needs to be sensitive to the differential impacts on different types of businesses as destroying the profitability of small retail outlets serving local communities constitutes a trade-off which is probably not acceptable to the ACT community, and probably not justifiable in terms of the population health gains, particularly when we apply policy analysis tools such as the Nuffield Council on Bioethics' Interventions Ladder (Nuffield Council on Bioethics 2007).

Another trade-off that needs to be taken into consideration in thinking through the policy objectives is the potential impact on the availability and consumption of illicit tobacco of further restricting access to licit tobacco through reducing the number of licensees. Although the recent report from the tobacco industry on the level of illicit sales in Australia (KPMG LLP 2014) is highly exaggerated, the fact remains that illicit tobacco consumption is not uncommon in the ACT (Australian Institute of Health and Welfare 2011) and has the potential to rise if dependent smokers are not able to readily access the licit product.

Putting these considerations together leads to the conclusion that further work is required to develop a clearer statement of the nature of the problem being addressed, and of the goals that we are seeking to achieve through the range of potential initiatives canvassed.

The plausibility of the underlying assumptions and program theory

A central consideration is plausibility of the assumptions and program theory that underpins the proposed initiatives. The program theory is stated as ‘Reducing the number of ACT tobacco licenses would minimise tobacco related harms by reducing consumer access to tobacco products, and therefore consumption’. A sound body of research evidence exists that significant increases in the price of tobacco products reduces consumption, and does so across all SES levels. The evidence underpinning the assumption that reducing the number of tobacco licences will significantly reduce consumption, and do so across all SES levels, is not as strong. A small number of individual studies have been published that support this, but it is not a particularly convincing body of evidence.

The use of evidence

Further information, beyond that provided in the discussion paper, is required regarding the extent and nature of tobacco licences held in the ACT, for example numbers, trends, geographical distribution, turnover of the retailers, etc. This would support an assessment of the extent to which the proposals are evidence-based. The lack of such information regarding the relationship between number of licences, smoking prevalence and levels of tobacco consumption may help explain why the National Preventative Health Taskforce did not include reducing the number of retail outlets among its key recommendations for tobacco control in Australia (National Preventative Health Taskforce 2009; National Preventative Health Taskforce, Tobacco Working Group 2009). It is, however, mentioned in passing on page 22 of the main report as one of the second and third phase interventions (‘Restricted number and type of outlets from which tobacco products may be sold’).

Assessments of policy options including confronting the trade-offs

Although the discussion paper goes some way towards listing a range of policy options, there is a lack of assessment of their relative strengths and weaknesses in terms of achieving their intended goals in a cost-effective manner and the nature and implications of the trade-offs involved in following a particular course. This creates some challenges in responding coherently to the 18 questions posed; however, ATODA’s submissions on these matters follow.

Question 1: Do you consider that a fee increase will lead to a reduction in licenses in the ACT?

It is not possible to answer this question at this stage as the impact on the number of licences would depend, to a substantial degree, on the levels and patterns of the increases in licence fees.

Question 2: Do you agree that this would be a good public health outcome?

If this question refers to a reduction in the number of licences it is certainly not self-evident that this would be a good public health outcome. In the absence of evidence that a marginal decrease in the number of licenses, or even a substantial decrease, would have a significant impact on consumption and would do so in an equitable way for the socially disadvantaged, it is not possible to draw conclusions in this area.

Question 3: What, if any, impacts do you consider would occur on businesses from any proposed fee increase and what effect would there be?

While fully supportive of evidence-based initiatives that aim to reduce tobacco consumption in the ACT, applying the Nuffield Council on Bioethics' Interventions Ladder leads ATODA to conclude that the potential trade-offs are worrying. An important part of community building and community cohesion for Canberra is having small community-based retail outlets scattered throughout the suburbs. Media reports quote the Australasian Association of Convenience Stores saying that some 36 per cent of convenience store sales (excluding petrol) are from tobacco, rising to 40 per cent for smaller operators (Lawson 2014). ATODA would be reluctant to support a policy initiative that removed 36-40 per cent of the income from small businesses without a high expectation of an accompanying public health benefit from reduced tobacco consumption.

Furthermore, in terms of effects, as noted above, closing locally-based tobacco retail outlets could well have the unintended adverse consequence of increasing the sales of illicit tobacco, and would certainly increase the profitability of the large players such as Woolworths and Coles.

Question 4: Do you consider there would be a disproportionate impact on a certain sector? Would a certain sector be favoured by a fee increase?

This question is covered in the above response.

Question 5: Do you agree with the suggested range of the increase? Do you have a figure to suggest? & Question 6: What do you think the maximum fee should be? Please provide comments on why you think that should be the maximum fee.

It is clear that tobacco licence fees need to rise. It has been a significant oversight that such increases have not occurred for a decade.

The National Preventative Health Taskforce report includes a recommendation about the level of licence fees: 'The cost of the licence should be sufficient to cover the costs of education, compliance testing and investigation of prosecutions at levels necessary to ensure universal compliance' (p. 184). Note that the Taskforce did not recommend that the level of licence fee should be determined on the basis of what was necessary to reduce the number of licences.

ATODA does not have access to the information on the finances of tobacco wholesalers and retailers that would be necessary to enable us to comment on what levels of fees would achieve what outcomes with respect to number of licences, sales and consumption.

Question 7: Is there an alternative fee increase approach or timeframe you would like to suggest?

No.

Question 8: The current licence fee applies equally to a retailer and a wholesaler. Do you think that the fee should be different between these two categories?

Ideally, the level of licence fee would be tied to the amount of tobacco products sold. Businesses that have only a small income from tobacco products should pay a much smaller fee than those that make substantial profits from selling a product. Such a principle should apply to both wholesalers and retailers, meaning that wholesalers should pay far more than retailers. Unfortunately, the 1997 High Court decision that determined that such an approach amounted to levying excise means that it cannot be used by the ACT Government.

Accordingly, ATODA favours setting the licence fees on the basis recommended by the National Preventative Health Taskforce and quoted above, i.e. a cost-recovery approach. A premium could be added to this to partly cover the costs to the ACT community of responding to tobacco-caused harms, such as costs to the sick care system for treating smoking-caused diseases.

Question 10: Do you support a cap on licenses? & Question 11: If yes, how should the cap be determined, for example suburbs? & Question 12: How should the cap be imposed, for example should licensees bid to retain their licence (an auction)? & Question 13: Should there be a review mechanism for the cap? How often should it be reviewed?

ATODA supports the establishment of a cap on licenses, and recommends that the cap be the number of licences currently on issue. In other words, we recommend for no more licences being issued. Furthermore, we recommend that, when licences are surrendered, the cap should be reduced by the number of licences surrendered.

The small amount of research available suggests that the density of tobacco retailers is higher in low SES localities than in high SES localities (Baker *et al.* 2006; Dalglish *et al.* 2013). This reflects patterns of demand for tobacco products, along with exploitation of the people in these communities. ATODA recommends that the licensing authorities carefully map outlet densities in the ACT and adopt and implement a policy that will progressively reduce high retail outlet density in the low SES suburbs of Canberra.

Question 14: Do you support a fit and proper person test being included in the Tobacco Act? & Question 15: Do you think that introducing a fit and proper person test would result in a reduction in tobacco licensees?

Regardless of the impact of a fit and proper person test on the number of tobacco licensees, ATODA supports the application of such a test. Having a licence to purvey a product that kills but not restricting such licences to retailers who are otherwise of good character is a significant anomaly.

A central part of the fit and proper person test should be that any retailer found selling tobacco products to a person under 18 years of age should be charged with this offence, should have the licence immediately cancelled and should be banned from ever holding a tobacco licence in the future. For this initiative to work, the ACT would need to have a significant increase in monitoring initiatives, the cost for which could be factored into the level of licence fees.

Question 16. Do you support restrictions or conditions being imposed on tobacco licenses?

ATODA is disappointed to hear that it is permissible, in the ACT, for children under the age of 18 years to sell tobacco products. This should be absolutely prohibited and any retailer found breaching this provision should be prosecuted, have their licence removed and be barred from ever holding a licence in the future as they have demonstrated that they are not fit and proper people to be involved in this trade.

Question 17. Do you have comments on the examples provided or suggestions for other restrictions/conditions?

ATODA does not support the discussion paper's suggestions about limiting tobacco sales to age-restricted premises such as retail liquor outlets, limiting the amount of tobacco that can be sold in a single retail transaction, and limiting hours of sale. This is because of the

absence of sound evidence that such initiatives can have beneficial outcomes. If the ACT wanted to explore the efficacy and cost-effectiveness of these types of initiatives, it would be in order to design and implement studies to provide policy-relevant information. In the absence of such studies these highly intrusive interventions do not seem warranted.

Question 18. Do you have any other suggestions related to access to tobacco products and licensing that you would like considered?

The ACT Government will be aware of calls, in a number of jurisdictions (e.g. Tasmania (ABC News 2012)), to adopt a medium- to long-term policy that will culminate in the phasing out of the legal sales of tobacco products. It has been suggested that such an approach should commence now by governments legislating to provide that tobacco products can be sold only to people aged 18 years and above and who were born prior to this century. ATODA does not currently support this as a preferred approach given that it may be premature prior to other approaches being in place (such as those identified throughout this submission). Additionally, there could be future opportunities to learn from such approaches as they are trialled elsewhere in Australia and internationally.

ATODA is also aware that the use and restrictions of e-cigarettes may be an important consideration for the ACT Government. E-cigarettes are not approved as therapeutic products but can be purchased legally without nicotine at retail outlets in the ACT and throughout Australia. However, e-cigarettes with nicotine can be ordered online and imported for personal use (despite being an offence in some States and Territories) (Australian Association of Smoking Cessation Professionals, 2014). ATODA will be pursuing further policy work in the coming months related to e-cigarettes in the ACT and would be keen to work with the ACT Government on considering the impact of this.

For further information

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References

ABC News 2012, *Tasmania considers phasing out cigarette sales*, Australian Broadcasting Corporation, <<http://www.abc.net.au/news/2012-08-21/upper-house-moves-motion-to-ban-the-sale-of-cigarettes/4214016>>.

Australian Association of Smoking Cessation Professionals 2014, *E-cigarette Information Sheet*, AASCP, Camperdown.

Australian Institute of Health and Welfare 2011, *2010 National Drug Strategy Household Survey report*, 2nd edn, Drug Statistics Series no. 25, cat. no. PHE 145, Australian Institute of Health and Welfare, Canberra.

Baker, A, Ivers, RG, Bowman, J, Butler, T, Kay-Lambkin, FJ, Wye, P, Walsh, RA, Pulver, LJ, Richmond, R, Belcher, J, Wilhelm, K & Wodak, A 2006, 'Where there's smoke, there's fire: high prevalence of smoking among some sub-populations and recommendations for intervention', *Drug Alcohol Rev*, vol. 25, no. 1, pp. 85-96.

Clare, P, Bradford, D, Courtney, RJ, Martire, K & Mattick, RP 2014, 'The relationship between socioeconomic status and "hardcore" smoking over time – greater accumulation of hardened smokers in low-SES than high-SES smokers', *Tobacco Control*, online ahead of print.

Dalglis, E, McLaughlin, D, Dobson, A & Gartner, C 2013, 'Cigarette availability and price in low and high socioeconomic areas', *Australian and New Zealand Journal of Public Health*, vol. 37, no. 4, pp. 371-6.

KPMG LLP 2014, *Illicit tobacco in Australia: 2013 full year report*, KPMG LLP, London.

Lawson, K 2014, 'ACT store owners slam proposals to limit the sale of tobacco', *Canberra Times*, 2 April.

National Preventative Health Taskforce 2009, *Australia: the healthiest country by 2020; National Preventative Health Strategy - the roadmap for action, 30 June 2009*, [Department of Health and Ageing], Canberra.

National Preventative Health Taskforce, Tobacco Working Group 2009, *Tobacco control in Australia: making smoking history*, Technical Report No 2, including addendum for October 2008 to June 2009, [Department of Health and Ageing], Canberra.

Nuffield Council on Bioethics 2007, *Public health: ethical issues*, Nuffield Council on Bioethics, London.