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**Report on the National Competition
Policy Review of Tobacco Legislation**

For the ACT Health Protection Service
Department of Health and Community Care

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GLOSSARY

AHA	Australian Hotels Association
AMA	Australian Medical Association
ASH	Action on Smoking on Health
BATA	British American Tobacco Australia
CIE	Centre of International Economics
CPA	Competition Principles Agreement
EHO	Environmental Health Officer
ETS	Environmental Tobacco Smoke
FCTC	Framework Convention on Tobacco Control
NCC	National Competition Council
ORR	Office of Regulation Review
NCP	National Competition Policy
<i>Smoke-Free Areas Act</i>	<i>the Smoke-Free Areas (Enclosed Public Places) Act 1994</i>
<i>The National Strategy Tobacco Act</i>	National Tobacco Strategy 1999 to 2002-03: a framework for action <i>the Tobacco Act 1927</i>
TPA	<i>the Trade Practices Act 1974</i>

Executive Summary

This is a third tier National Competition Policy (NCP) review, to assess whether ACT tobacco control legislation is anti-competitive. It is based on the guidelines issued by the National Competition Council (NCC). The report has followed the methodology recommended by the Centre for International Economics and endorsed by the NCC for reviews of this kind. The views of stakeholder groups about anti-competitive restrictions in the legislation were taken into account in this review, through a consultation process developed on advice from the ACT Health Protection Service.

Two Acts are involved - the *Tobacco Act 1927* and the *Smoke-free Areas (Enclosed Public Places) Act 1994*. The associated regulations have been addressed together.

National Tobacco Control Framework

The most contemporary information about tobacco use in Australia is provided by AIHW (2002)¹ and shows that 19.5% of people aged 14 years and over reported that they smoked daily in 2001 (down from 21.8% in 1998). According to a 1998 national survey² in the ACT 22.5% of respondents said they smoked regularly. Female smoking rates were the third highest in Australia and male smoking rates the second lowest.

Cigarettes deliver chemicals and tar which cause a range of diseases and conditions, including heart disease, lung cancer, and chronic obstructive lung disease.³ About half of all regular smokers will die because of their smoking, and a majority will have their quality of life impaired by smoking – related diseases.⁴

The *National Tobacco Strategy 1999 to 2002-03: a framework for action* (the *National Strategy*) is based on the premise that there is no simple cause and effect between the implementation of individual strategies and the outcomes achieved overall. Many strategies may have an indirect effect on tobacco consumption and prevalence, and some may depend on other strategies for their effectiveness. The *National Strategy* emphasises a national collaborative approach to tobacco control issues, nominating a range of government, non-government and community partnerships. It is supported by cross-jurisdictional reports on passive smoking and under age smoking. The

¹ Australian Institute of Health and Welfare May 2002, *2001 National Drug Strategy Household Survey - First Results*, Canberra.

² *1998 National Drug Household Survey*, State and Territory Results.

³ US Department of Health and Human Services 1989, *Reducing the health consequences of Smoking: 25 Years of progress. A report of the Surgeon General*. Rockville, Md., US Department of Health and Human Services.

⁴ National Institute of Health USA 1997, *Changes in Cigarette-related Disease Risks and the Implications for Prevention and Control*, Monograph 8, NIH Publication 97-4213; Doll R, Peto R et al, Mortality in relation to smoking: 40 years observations on male British doctors, *British Medical Journal* 309(6959) 901-911.

legislation in force in the ACT builds on the recommendations of these reports, and is part of a comprehensive and holistic approach to control of tobacco and passive smoking.

Objectives of the legislation

The review has adopted the following objective for the *Tobacco Act*:

- To promote public health in the ACT by adopting a harm minimisation strategy aimed at:
- a) minimising public exposure to tobacco and all forms of tobacco advertising
 - b) discouraging the uptake and usage of smoking products, particularly by young people.
 - c) avoided costs to industry (it has been estimated that smoking costs Australian industry \$1.5 billion per year in employee related costs, and smoking at work results in an estimated 150 deaths pa across Australia).

It has also adopted the following statement as embodying the key objectives of the *Smoke-Free Areas Act*:

To promote public health in the ACT by reducing public exposure to environmental tobacco smoke in enclosed public places.

The review concluded that these objectives have a high degree of contemporary relevance in achieving the public health goals of the ACT Government. The objectives of the legislation were strongly supported by all stakeholders during the consultation phase.

The *Tobacco Act*

The review concluded that there were two markets that may be affected by restrictions on competition imposed by the *Tobacco Act* - the markets for retailing and wholesaling of smoking products in the ACT. It also concluded that:

- the Act leads to a minor effect on the economy overall, as money no longer spent on tobacco will be spent on other products
- controls on advertising, sponsorship and promotion will contribute to discouraging under age smoking
- bans on tobacco for non-smoking purposes are insignificant in an economic sense, and will continue to significantly improve health outcomes
- bans on toys and food will have little or no economic impact, but play an important role in avoiding the normalisation of smoking in the minds of young children
- bans on sales in quantities less than 20 will act to reduce total tobacco consumption, particularly among under age smokers. There will be a disadvantage to those who are less well off, but this is more than offset by the benefits to the community of reducing under age smoking
- there are substantial health benefits from discouraging under age smoking. The central plank of this policy is a blanket prohibition that extends to those who might otherwise provide such cigarettes
- the licensing scheme is an essential element to control the supply of tobacco, particularly in relation to persons under the age of 18.

The review concluded that three matters were potentially anti-competitive, and should be subjected to cost-benefit analysis. These are barriers to entry presented by the licensing scheme; restriction on advertising, sponsorship limitations and in-store displays; and restriction on sales as a result of bans on sales to persons under 18 years, and related bans on supply to persons under 18 years of age.

Cost benefit analysis of the *Tobacco Act*

Total costs of the *Tobacco Act* are estimated at \$655,000 pa, of which \$300,000 is an estimate of the inconvenience to smokers. The tobacco industry will continue to be faced with reduced sales, in line with the overall objectives of the *National Strategy*. Impacts on the broader economy are expected to be minor in that money that would otherwise have been spent on tobacco products will be diverted to the consumption of other goods and services.

The benefits from the Act are improved health outcomes that result from discouraging smoking and, in particular, smoking by people under 18 year of age. The estimated benefits to the ACT of the *Tobacco Act* total just under \$2m pa.

The review also concluded that the major impacts on the economy of the removal of the *Tobacco Act* would be increased sales and profits to retailers, wholesalers and manufacturers mainly from increased sales to those under 18 years of age. The other major impact would be on the effectiveness of *the National Strategy*, and a reduction in national commitments to a suite of integrated measures to reduce tobacco usage.

The cost benefit analysis has been able to quantify a range of costs. However the benefits, which are mainly health related, are more difficult to quantify because of the difficulty in estimating the reduction in tobacco consumption. It is necessary for judgements to be made to compensate for the shortcomings of the objective evidence, and to take into account the risks of making a wrong decision. The consequences of tobacco consumption are considered serious and affect a large part of the population, therefore a precautionary approach has been adopted. On balance, the review concludes that the benefits from the provisions in the *Tobacco Act*, taken as a whole, exceed the costs and that the legislation passes the public benefit test.

The *Smoke-Free Areas Act*

The review concluded that there are a large number of markets where the impact of the *Smoke-Free Areas Act* may be felt, including the markets for taxi services, educational services and various retail markets. With the exception of restaurants and licensed premises, the ban on smoking applies equally to all participants in the relevant markets. Accordingly, for the majority of markets in the ACT, the review has not categorised the restriction on smoking in enclosed public places as a restriction on competition in a market. In general, those consulted agreed that bans on smoking in

public places were not anti-competitive, and in fact the bans were viewed positively by many businesses.

The exemption provisions of the *Smoke-Free areas Act*

There are about four hundred restaurants in Canberra, of which 4% initially applied for exemptions. This has now decreased to 2.75% (including all applications pending) and few if any of these restaurants advertise that they allow smoking. There are an estimated one hundred and ninety licensed premises in the ACT, of which 55% had originally applied for an exemption. That has now decreased to 40% (including all applications pending). This suggests there are stronger commercial drivers in the licensed premises sector than in restaurants to allow smoking, but also that some licensed premises have found that an exemption to allow smoking has, after experience, either not been commercially attractive or has been substituted for outdoor smoking.

The review found that the exemption scheme may impose input costs on those who wish to participate, as it requires the installation and maintenance of air quality equipment of a legislated standard. In general the buildings under discussion would not be required to install equipment of this standard to comply with the Building Code. However the consultation process did not reveal any hard evidence that venue operators could not afford these costs.

Cost benefit analysis of the *Smoke-Free Areas Act*

Overall feedback indicates widespread acceptance of the legislation since its introduction a few years ago. It seems that there are few economic disadvantages from non-smoking venues, based on available studies, consultation comments and the number of exemptions in force or under application. We are of the view that voluntary prohibitions on smoking would continue in nearly all venues, driven by what has become the expected social norm for many people.

In the case of restaurants, it seems that the majority of diners would prefer a smoke free atmosphere and there seems little change in business following mandated bans on smoking in restaurants. For licensed premises there are a range of studies that indicate a correlation between smoking and drinking, and that non-smoking bans can lead to a fall in business. The provision for outdoor areas, and the existence of the exemption system, means that licensed premises in the ACT can accommodate smokers. Whether they choose to do so is a commercial decision about the likely increase in revenue.

It seems on balance that removal of the exemption system would not have a significant economic effect overall. It might have some minor cross-border implications for particular venues, but revenue would not be lost to the economic base overall.

Removal of the Act, allowing smoking in enclosed public places, would save the regulator about \$100,000, and would generate costs of the order of \$1-2m pa. To this has to be added the

individual, family and community costs of continuing exposure to environmental tobacco smoke and the capacity of the ACT to implement the *National Strategy*, where the ACT has been a leader with many of these measures.

As with the cost benefit analysis of the *Tobacco Act*, it has proved impossible to quantify all costs and benefits of the *Smoke-Free Areas Act*, so as to arrive at an estimate for the benefit cost ratio. Once again there is an element of judgement needed to reach a conclusion as to whether the legislation makes the community 'better off', and judgement has to be applied in the context of elevated risks to members of the public. It is concluded that on balance the benefits from the *Smoke-free Areas Act* exceed the costs and that the legislation passes the public benefit test.

Public benefits

This section identifies public benefits along the lines adopted in the *National Strategy*, that is, as a result of the entirety of the tobacco control initiatives. While it does not purport to be a comprehensive summary the scale of the costs of tobacco consumption, the potential benefits to be derived from measures to discourage smoking are persuasive. In summary the potential for benefits from actions to discourage smoking include:

- (a) tangible economic costs that, in the case of the ACT, are estimated at \$71m pa that could be avoided through effective policy intervention and compliance
- (b) improved quality of life that accrues to people who are discouraged from smoking, valued at \$196 pa for the 15-34 age group; \$8,026 pa for the 35-64 age group; and \$118,315 pa for the 65+ age group
- (c) better health for the children of women who, during pregnancy, would otherwise have smoked or have been exposed to environmental tobacco smoke
- (d) avoided deaths attributable to environmental tobacco smoke in the home (an estimated 48 deaths in 1998 in Australia), in addition to avoided various injuries and diseases associated with smoking.

Alternative regulatory arrangements

The CPA states that restrictions on competition should only be maintained where the benefits to the community outweigh the costs, and where the objectives of the legislation can only be met by restricting competition. The ORR⁵ states that self-regulation should be considered where there is no strong public interest concern, and in particular no major public health and safety concern. In contrast, legislation should be considered where the problem is a high-risk public health and safety issue.

⁵ Office of Regulation Review 1998, *A guide to regulation*, pp. D4 - D5, Commonwealth of Australia.

The review concluded that educational campaigns and formal court proceedings have a place in any integrated approach to smoking controls, but that they have been less than fully effective in the past. They should be regarded as complementary to, rather than substitutes for, a licensing scheme.

The review concluded that the only alternative to legislation is industry code self-regulation, through mechanisms such as a voluntary or co-regulatory code. However it was felt they would not be appropriate in this instance, because:

- (a) affected outlets are very diverse, and while there are industry associations, the review feels that, these industry associations are not structured to achieve agreement amongst their members to introduce and enforce a uniform voluntary code of conduct. Evidence for the difficulty in implementing effective industry based voluntary controls is the absence of such arrangements in other jurisdictions, notwithstanding a number of proposals
- (b) there are financial incentives for retailers who fail to comply with conditions on sale of tobacco products or non-smoking
- (c) the effect of self-regulation required to achieve the objectives of Government would be to impose similar constraints on the markets that exist under the legislation.

The consequences of tobacco consumption pose major risks to individuals and affect a large proportion of the population. In view of these high public health risks, the conclusion from the above discussion is that self-regulation and related arrangements would require the same level of market constraint, but are not expected to deliver the same level of compliance. On balance, there are no compelling reasons to change the present system.

1 Purpose of the Report

The ACT has two main pieces of legislation that control or regulate use of tobacco and smoking products including non-tobacco herbal products: the *Tobacco Act 1927* (the *Tobacco Act*) and Regulations, and the *Smoke-free Areas (Enclosed Public Places) Act 1994* (the *Smoke-Free Areas Act*) and regulations.

The ACT Government, through the Department of Health and Community Care, ACT Health Protection Service, engaged Minter Ellison Consulting to conduct a review of this legislation under National Competition Policy (NCP) principles. Terms of Reference for the review are at Appendix A.

The review covers both the *Tobacco Act* and the *Smoke-Free Areas Act* and their regulations. As the regulations support the objectives and initiatives of the primary legislation through provisions of a largely machinery nature, the review does not separately address the regulations in its analysis.

2 National competition policy - the framework for the review

The Competition Principles Agreement (CPA) is an inter-Governmental agreement between the Commonwealth and all State and Territory Governments that forms part of the NCP. Part of the agreement is a requirement that all legislation that has the potential to restrict competition should be subject to periodic review. In the ACT, both the *Tobacco Act* and the *Smoke-Free Areas Act* are listed for review.

Clause 5(1) of the CPA provides that the guiding principle for legislative review is that legislation (including Acts, enactments, Ordinances or regulations) should not restrict competition unless it can be demonstrated that:

- (a) the benefits of the restriction to the community as a whole outweigh the costs
- (b) the objectives of the legislation can only be achieved by restricting competition.

Clause 1(3) of the CPA clarifies that the concept of 'public benefit' is very broad. It states that any competition review analysis of 'public benefit' must take into account (where relevant):

- (a) government legislation and policies relating to ecologically sustainable development
- (b) social welfare and equity considerations, including community service obligations

- (c) government legislation and policies relating to matters such as occupational health and safety, industrial relations and access and equity
- (d) economic growth and regional development, including employment and investment growth
- (e) the interests of consumers generally or a class of consumers
- (f) the competitiveness of Australian business
- (g) the efficient allocation of resources.

The CPA requires all legislation that has the potential to restrict competition to undergo an NCP review process. As the priority and importance of such legislation varies the NCP process provides for three 'tiers' of review. This takes into account the significance of the legislation to competition policy, and the likely benefits to Australia from any reform. Where legislation is less likely to impact on competition, the costs of undertaking a first or second tier review are not warranted and a 'third-tier' review is appropriate.

The ACT designated this review as a 'third-tier' review.

A Steering Committee consisting of representatives from the ACT Treasury and the ACT Health Protection Service met fortnightly with the consultants in the development of this report. Members of the Committee have commented extensively on the report as it has evolved.

The review has adopted a three-step process for its analysis, based on the NCC methodology and as set out in the CIE Guidelines⁶:

- define the markets affected by each piece of legislation
- identify any restrictions on competition in the legislation
- if restrictions are identified, proceed to a cost-benefit analysis and public benefit test. This includes wider public benefit concerns such as public health, including concerns of non-smokers.

Considerable consultation with the community and with stakeholders has taken place since self-government about various proposed amendments to tobacco control in the ACT. Key stakeholders were consulted widely regarding the *Smoke-Free Areas Act* in 1993, 1994, 1997 and 2000-01. Stakeholders have also been consulted about changes to the *Tobacco Act* in 1994 and 1997-98. The consultation process for this review was developed on advice from the ACT Health Protection Service and reviewed against the lists of people and organisations that had previously expressed an interest. Organisations were also asked to nominate any others who had an interest in the topic.

⁶ Centre for International Economics February 1999, *Guidelines for NCP legislation reviews*, Canberra.

Participants are listed at Appendix B. They fell into three main groups - firms involved in the manufacture, wholesale and retail of tobacco products; operators of enclosed public places; and community representatives and other stakeholders.

An issues paper was provided to participants (see Appendix C) and this outlined potentially anti-competitive restrictions. Participants were asked if they had experienced any impacts from these restrictions and, if so, if they could provide quantitative and/or qualitative information. Examples of questions were:

- what impacts have resulted for you/your business from restrictions on how tobacco products can be displayed at the point of sale?
- what have been the impacts on you/your business resulting from controls on advertising, promotions and sponsorship? And what are the costs or benefits you have experienced?
- how has the exemption scheme offered under the *Smoke-Free Areas Act* affected you/your business?
- have you faced any constraints to applying for an exemption?

British American Tobacco, Philip Morris, Smoke Zone & Gifts, Coles Myer Ltd, the Australian Hotels Association, Canberra Raiders Leagues Club and Healthpact provided written submissions as well as participating in interviews and follow up phone calls. The remainder participated because in meetings or through telephone interview. One market group, wholesalers, did not participate. Wholesale retailers asked to participate declined because they did not have the time. Written and verbal summaries of interviews were cleared with participants and their agreement was obtained to have their views included in this report.

The information provided by participants is presented throughout the body of this report in the appropriate sections. Other issues raised are outlined at Appendix D.

3 National tobacco control framework

3.1 Incidence of Smoking

The most contemporary information about tobacco use in Australia is provided by AIHW (2002)⁷ and shows that 19.5% of people aged 14 years and over reported that they smoked daily in 2001 (down from 21.8% in 1998). According to a national survey⁸ in 1998, 23% of respondents indicated they were regular smokers of tobacco. In the ACT, 22.5% of respondents said they

⁷ Australian Institute of Health and Welfare May 2001, *2001 National Drug Strategy Household Survey - First Results*, Canberra.

⁸ *1998 National Drug Household Survey*, State and Territory Results.

smoked regularly (22.3% male, 22.7% female), 42.5% said they were ex-smokers and 31% said they had never smoked.

The distribution among ages is as follows:

Table 1 Smoking Prevalence for the ACT 1998

<i>Age group</i>	<i>Smoking prevalence for the ACT</i>
14 – 19	16.7%
20 – 29	31.9%
30 – 39	27.0%
40 +	17.5%

ACT female smoking rates were the third highest in Australia after the Northern Territory and Queensland. ACT male smoking rates were the second lowest after South Australia.

Cigarettes deliver chemicals and tar which cause a range of diseases and conditions, including heart disease, lung cancer, and chronic obstructive lung disease.⁹ About half of all regular smokers will die because of their smoking, and a majority will have their quality of life impaired by smoking-related diseases.¹⁰

The vast majority of Australians who smoke commence the habit before they are out of their teens.¹¹ Early uptake of smoking is associated with a lesser likelihood of quitting and a higher probability of succumbing to smoking related diseases. In the ACT the most common age to start smoking is 15 to 16 years of age.

3.2 International initiatives

The World Health Organisation’s Framework Convention on Tobacco Control (FCTC) is the international legal instrument to address the global tobacco epidemic, and forms the cornerstone of the World Health Organisation’s Tobacco Free Initiative. The 53rd session of the World Health Assembly held in May 2000 considered a report by the FCTC Working Group and considered that the report provided a sound basis on which to commence work on developing the FCTC. Formal negotiations began in October 2000 and are continuing.

⁹ US Department of Health and Human Services 1989, *Reducing the health consequences of Smoking: 25 Years of progress. A report of the Surgeon General*. Rockville, Md., US Department of Health and Human Services.

¹⁰ National Institute of Health USA 1997, *Changes in Cigarette-related Disease Risks and the Implications for Prevention and Control*, Monograph 8, NIH Publication 97-4213; , Doll R, Peto R et al, *Mortality in relation to smoking: 40 years observations on male British doctors*, British Medical Journal 309(6959) 901-911.

¹¹ David Hill, Victoria White & Y Effendi 2002, 'Changes in the use of tobacco among Australian secondary students: results of the 1999 prevalence study and comparisons with earlier years', Aus and N Z J of Pub Health, vol 26, no. 2, p. 60-67.

3.3 Nicotine as a gateway drug

USA research suggests a correlation between tobacco, alcohol and other drugs. The 1985 USA National Household Survey on Drug Abuse showed that, among 12-17 year olds, those who smoked were three times more likely to have consumed alcohol, eight times more likely to smoke marijuana and thirty times more likely to have used cocaine. It also showed a strong correlation between daily smoking and heavier drug use, strongest amongst 12-17 year olds. A report by the US Surgeon General¹² indicates that smokeless tobacco users showed the same pattern in the use of alcohol and other drugs. A 1993 state wide survey in Indiana¹³ of students in grades 5-12 revealed a strong, dose-dependent relationship between smoking behaviour and binge drinking, as well as alcohol and illicit drugs.

An Australian study¹⁴ supports US evidence that cigarettes and alcohol complement each other. It says that any sort of drug taking can introduce young people to social environments where drugs play certain social roles. Tobacco and cannabis both have smoking as the delivery mechanism, and familiarity with the former may reduce barriers to experimentation with the latter.

3.4 The National Tobacco Strategy

In Australia, the *National Tobacco Strategy 1999 to 2002-03: a framework for action* (the *National Strategy*) was endorsed by the Ministerial Council on Drug Strategy in June 1999. The *National Strategy* is based on the premise that there is no simple cause and effect between the implementation of individual strategies and the outcomes achieved overall. Many strategies may have an indirect effect on tobacco consumption and prevalence, and others may depend on other strategies for their effectiveness. For example it has been argued that without a ban on tobacco advertising, health education programs may not attain maximum impact. There are six key strategy areas:

- (a) strengthening community action for tobacco control
- (b) promoting cessation of tobacco use
- (c) reducing availability and supply of tobacco
- (d) reducing tobacco promotion
- (e) regulating tobacco
- (f) reducing exposure to environmental tobacco smoke.

¹² US Department of Health and Human Services 1994, Preventing Tobacco Use Among Young People; A report of the Surgeon General: Atlanta, Georgia.

¹³ Torabi MR, Bailey WJ, Majd-Jabbari M J 1993, 'Cigarette smoking as a predictor of alcohol and other drug use by children and adolescents: evidence of the 'gateway drug effect'. *Sch Health* Sep 63(7):302-306.

¹⁴ Cameron L and J Williams March 2001, 'Cannabis, alcohol and cigarettes: substitutes or complements?', *Economic Record*, 77, March, 19-34.

The *National Strategy* emphasises a national collaborative approach to tobacco control issues, nominating a range of government, non-government and community partnerships. It has four strategic objectives:

- (a) preventing the uptake of tobacco use in non-smokers, especially children and young people
- (b) reducing the number of users of tobacco products
- (c) reducing the exposure of users to the harmful health consequences of tobacco products
- (d) reducing exposure to tobacco smoke.

3.5 National Response to passive smoking

In 1997 the National Health and Medical Research Council released an information paper on passive smoking. In response *A National Response to Passive Smoking in Enclosed Public Places and Workplaces* was prepared by the National Public Health Partnership in close consultation with tobacco policy officers of all jurisdictions. This has been endorsed by the Australian Health Ministers Advisory Council. The National Response includes a background paper and guidelines for best practice legislation.

The ACT has drawn on these best practice guidelines in developing its policy responses to the dangers of passive smoking.

3.6 Tobacco sales to minors

The Intergovernmental Committee on Drugs endorsed the report, *'A National Approach for Reducing Access to Tobacco in Australia by Young People under 18 Years of Age'* in August 2000. The report's primary purpose is to outline a national best practice model to address young people's access to tobacco. The model is drawn from initiatives and programs undertaken in Australia, and an examination of research undertaken nationally and internationally. This report was completed before the Commonwealth initiated its study into tobacco licensing, and so refers only to prosecution for offences rather than the imposition of administrative sanctions against licensees. It is expected that a current study of tobacco licensing will be available soon.

The legislation in force in the ACT builds on the recommendations of this report, and is part of a comprehensive and holistic approach to the sale and supply of tobacco to young people in the ACT.

3.7 Tobacco control frameworks

There are many similarities between legislation in force in the various Australian jurisdictions.

These include:

- (a) prohibitions or restrictions on advertising and promotion of tobacco products,
- (b) limitations on point-of-sale advertising and displays
- (c) restrictions on smoking in public areas¹⁵
- (d) restrictions on supply of tobacco products to persons under 18 years of age, and penalties for selling tobacco products to minors
- (e) monitoring and enforcement activities.

There are some areas where the ACT legislation differs from legislation in other States and Territories, for example:

- (a) point-of-sale advertising - the ACT allows limited product display and price information to be available at the point-of-sale. Some States and Territories prohibit point-of-sale displays completely, or limit permitted display to price information only. Other jurisdictions impose no restrictions, or permit advertising directly adjacent to the point of sale.
- (b) sponsorship by tobacco companies - the ACT prohibits the promotion or advertising of smoking products and companies in conjunction with the sponsorship of community events and organisations by tobacco companies, although the Minister may grant an exemption. Other States and Territories do not prohibit sponsorship.
- (c) vending machines - tobacco vending machines are only allowed in designated bar-rooms, or places licensed to hold gaming machines. Some jurisdictions also permit vending machines in staff amenity rooms, or do not restrict the location of vending machines¹⁶.
- (d) licence fees - the ACT has a positive licensing system, which imposes licence fees on retailers and wholesalers for the sale of tobacco products. Many jurisdictions do not impose separate licence fees.

¹⁵ Except for the Northern Territory, where legislation regarding smoking in enclosed public places is foreshadowed.

¹⁶ Tasmania does not impose restrictions on the location of vending machines, but requires operation of the machine to be assisted by the owner/lessee or someone acting on their behalf.

The following table sets out the legislation governing tobacco and exposure to environmental tobacco smoke in Australian jurisdictions:

Table 2 Tobacco Legislation

<i>Jurisdiction</i>	<i>Legislation</i>
Commonwealth	<i>Tobacco Advertising Prohibition Act 1992</i> Tobacco Advertising Prohibition Regulations 1993 <i>Tobacco Charge Act (No.1) 1955</i> <i>Tobacco Charge Act (No.2) 1955</i> <i>Tobacco Charge Act (No.3) 1955</i> <i>Tobacco Charges Assessment Act 1955</i> Tobacco Charges Regulations 1958 <i>Trade Practices Act 1974</i> Trade Practices (Consumer Product Information Standards) (Tobacco) Regulations 1994
New South Wales	<i>Public Health Act 1991</i> Public Health (Tobacco) Regulation 1999 <i>Smoke-Free Environment Act 2000</i> Smoke-Free Environment Regulation 2000
Victoria	<i>Tobacco Act 1987</i> Tobacco Regulations 1997 Tobacco (Labelling) Regulations 1999 Tobacco (Victorian Health Promotion Foundation) Regulations 2000
Queensland	<i>Tobacco and Other Smoking Products (Prevention of Supply to Children) Amendment Act 2001</i> <i>Tobacco and Other Smoking Products (Prevention of Supply to Children) Act 1998</i> Tobacco Products (Prevention of Supply to Children) Regulation 1998 <i>Tobacco Products (Licensing) Act 1988</i> Tobacco Products (Licensing) Regulations 1993
South Australia	<i>Tobacco Products Regulation Act 1997</i> Tobacco Products Regulations 1997
Tasmania	<i>Public Health Act 1997</i> Public Health (Tobacco Seller's Licence) Regulations 2000
Northern Territory	<i>Tobacco Act 1992</i> Tobacco Regulations 1992

The Commonwealth has also introduced a number of individual national strategies as part of the Strategy. These include funding for the continuation of the National Tobacco Campaign. Policy initiatives by the Commonwealth and identified in the *National Strategy* include taxation, education, cigarette emission and ingredient disclosure, passive smoking, research into smoking cessation, research into tobacco retail licensing, health warnings on tobacco packaging, and restrictions on tobacco advertising. The Commonwealth *Tobacco Advertising Prohibition Act 1992* restricts tobacco advertising in broadcasting and the print media, as well as sponsorship associated

with sporting and cultural events. The Act was designed to reduce the exposure of the public to messages and images that may persuade them to start or continue smoking or use tobacco products.

4 Objectives of the legislation

4.1 General

Part of the CPA test is that legislative restrictions to competition should only be maintained if there are no other alternatives that would achieve the same objectives. Accordingly the first step is to identify the objectives of the ACT Assembly in enacting the *Tobacco Act* and Smoke-Free Areas Act¹⁷.

The ACT has committed to implementing the *National Strategy*, which has as its objective “to improve the health of all Australians by eliminating or reducing their exposure to tobacco in all its forms.”

The objectives of the legislation have been derived from the available parliamentary material and the intentions and objectives of the *National Strategy*.

4.2 Objectives of the *Tobacco Act*

The *Tobacco Act* is described as being “an Act about tobacco and smoking products” and is based on a 1927 Ordinance. As such it does not contain any formal statement of objectives nor is there any explanatory material extant. It is fair to assume that at least one of the intended purposes at that time was the creation of revenue through a licence fee on the sale of tobacco products.

There have been a number of amendments to the *Tobacco Act* since the commencement of self-government.¹⁸ Most of the current policy intentions are clear from explanatory material and statements made by successive governments to the Assembly. Several amendments specifically implement measures contained in the *National Strategy*.

In the presentation speech for the *Tobacco (Amendment) Bill 1990*, which introduced amendments to the *Tobacco Act* to further restrict the sale, advertising, distribution and promotion of tobacco products in the ACT, it was stated that:

The Government is particularly concerned about the impact of cigarette advertising and promotion on young people and will take action to protect children in Canberra from exposure to the advertising and the promotion of these products that can only cause them harm.

¹⁷ This review does not attempt to separately define objectives for the regulations made under ACT tobacco legislation. Rather, the regulations should be seen as supporting and enhancing the objectives of the primary legislation and provide for matters of a largely machinery nature.

¹⁸ Explanatory Memoranda and Presentation Speeches are available for the amendments made since self-government.

The *Tobacco Act* was further amended by the *Tobacco (Amendment) Bill 1999 [No. 1]*. This was intended to further cement the ACT as Australia's leading proponent of public health protection against tobacco-related illness and disease. The Presentation Speech said:

...consistent with our overall approach to drugs, both in the ACT and nationally. That approach emphasises the principles of harm minimisation, which we should aim to minimise the harms caused to individuals and societies due to the use of drugs, both licit and illicit. ... Our aim... is to minimise harm through a comprehensive approach to both demand and supply, with a particular emphasis on supporting our young people.

The *Tobacco (Amendment) Bill 1999 [No. 2]* transferred regulation of the licensing scheme for tobacco retailing in the ACT to the *Tobacco Act*. The Presentation Speech addressed the policy intentions behind the amendments, including a move away from the revenue function to the relationship between the demand for, and availability of, tobacco products. The amendments were also designed to strengthen the existing licensing system.

The Presentation Speech identified ten advantages in retaining a tobacco licensing system and linking it to public health:

- (a) a licence scheme provides the opportunity for providing targeted education and information
- (b) a licence scheme provides the opportunity for providing targeted education and information for retailers and wholesalers through the licence application process
- (c) requiring licences formalises the message that selling tobacco - a dangerous product - is a conditional privilege rather than an unfettered right
- (d) a licence scheme provides a range of enforcement options
- (e) increased compliance with the tobacco legislation is achieved through licensing mechanisms than through reliance on the courts
- (f) licence requirements ensure people who sell tobacco products are aware of their legal responsibilities
- (g) a licensing scheme contributes to the elimination of the illegal trade in loose tobacco
- (h) retailers and wholesalers are familiar with and supportive of the licensing system
- (i) appeals from licence decisions are through the Administrative Appeals Tribunal rather than the courts
- (j) licence fees provide funding for an education, monitoring and enforcement program and efficiencies are gained from licensing responsibilities being vested in the same body that has responsibility for other tobacco related issues.

This review therefore adopts the following statement as the objectives of the *Tobacco Act* :

“To promote public health in the ACT by adopting a harm minimisation strategy aimed at:

- (a) minimising public exposure to tobacco and all forms of tobacco advertising
- (b) discouraging the uptake and usage of smoking products, particularly by young people”.

4.3 Objectives of the Smoke-Free Areas Act

Section 3 of the *Smoke-Free Areas Act* provides that the object of the legislation is:

to promote public health by reducing exposure to environmental smoke caused by the smoking of tobacco and other substances prepared for human consumption.

The Explanatory Memorandum to the *Smoke-free Areas (Enclosed Public Places) Bill 1993* says that the object described above “provides a rationale for the Bill’s provisions and provides guidance for subordinate legislation”. The introductory paragraphs to the Explanatory Memorandum state that:

- (a) environmental tobacco smoke is now a recognised cause of ill health in non-smokers
- (b) prior to the introduction of the *Smoke-Free Areas Act*, there was no legislation in place restricting smoking for the express purpose of limiting the exposure of non-smokers to other people’s smoke
- (c) the *Smoke-Free Areas Act* gives explicit protection to customers, patrons and other members of the public who may otherwise be involuntarily exposed to environmental tobacco smoke in enclosed public places.

The *Smoke-Free Areas Act* does not state as an objective the prevention or regulation of the act of smoking itself.

From a strict legal perspective, the objective of the *Smoke-Free Areas Act* is that set out in section 3 of the legislation. However, in the context of an NCP review, the objectives of the legislation under review should not be defined only on a legal definition, but should also take into account the wider political objectives of the Government in introducing the legislation. In this case there is alignment between the *National Strategy*, the Assembly’s stated intentions in introducing the *Smoke-Free Areas Act* and the statement of objectives in Section 3 of the Act.

For the purposes of this review, the following statement is adopted as embodying the key objectives of the *Smoke-Free Areas Act*: "To promote public health in the ACT by reducing public exposure to environmental tobacco smoke in enclosed public places".¹⁹

4.4 Contemporary relevance

The restrictions imposed by the *Tobacco Act* and *Smoke-Free Areas Act* are in line with the continued commitment of the ACT Government to promote the public health of the ACT community. These objectives have a high degree of contemporary relevance in achieving the public health goals of the ACT Government and are consistent with the *National Strategy*.

¹⁹ The reference to 'tobacco smoke' in this statement of objectives should be read as including smoke from other substances prepared for human consumption.

The objectives were strongly supported during the consultation phase of the review by all stakeholders including those most directly affected by the legislation.

5 Defining markets and competition

5.1 Defining market

The TPA defines the term ‘market’ to mean ‘a market in Australia’, and when used in the context of goods and services, a market for those goods and services and any other goods or services that are “substitutable for, or otherwise competitive with, the first-mentioned goods and services”²⁰.

The High Court has approved the following definitional statement for the concept of a ‘market’:

A market is the area of close competition between firms or ... the field of rivalry between them. Within the bounds of a market there is substitution - substitution between one product and another, and between one source of supply and another, in response to changing prices. So a market is the field of actual and potential transactions between buyers and sellers amongst whom there can be strong substitution, at least in the long run, if given sufficient price incentive. ...

... in determining the outer boundaries of the market we ask a quite simple but fundamental question: If the firm were to ‘give less and charge more’ would there be ... much of a reaction? In the language of economics the question is this: From which products and which activities could we expect a relatively high demand or supply response to price change, ie., a relatively high cross-elasticity of supply.²¹

This review adopts the High Court definition of market as the basis for reviewing the impact of the legislation.

5.2 Defining competition

The leading legal definition on the nature of competition is in a ruling of the Australian Trade Practices Tribunal (now the Australian Competition Tribunal) in *Re Queensland Co-operative Milling Association Ltd; Re Defence Holdings Ltd* (1976) 25 FLR 169. The definition is as follows:

Competition expresses itself as rivalrous market behaviour. In our view effective competition requires both that prices should be flexible, reflecting the forces of demand and supply, and that there should be independent rivalry in all dimensions of the price - product service packages offered to consumers and customers.

²⁰ Section 4E TPA

²¹ *Queensland Wire Industries Pty Ltd v Broken Hill Proprietary Co Ltd* (1989) 167 CLR 111

Competition is a process rather than a situation. The elements of market structure, which would need to be scanned in any case, are:

- (a) The number and size distribution of independent sellers, especially the degree of market concentration.
- (b) The height of barriers to entry, that is the ease, with which new firms may enter and secure a viable market.
- (c) The extent to which the products of the industry are characterised by extreme 'product differentiation and sales promotion.
- (d) The character of vertical relationships with customers and with suppliers and the extent of 'vertical integration'.
- (e) The nature of any formal stable and fundamental arrangements between firms which restrict their ability to function as independent entities.

Of all these elements of market structure the most important is (b). For it is the ease with which firms may enter which established the possibilities of market concentration over time; and it is the threat of the entry of a new plant into a market which operates as the ultimate regulator of competitive conduct.

This review adopts the Australian Competition Tribunal definition of competition as a basis for identifying any provisions in the legislation that may impose restrictions on competition in a market.

6 Tobacco Act - market analysis and identification of restrictions on competition

6.1 Markets affected by the *Tobacco Act*

The *Tobacco Act* imposes a licensing scheme to regulate all sales of tobacco and smoking products in the ACT. In order to sell or display tobacco and smoking products, it is necessary to obtain either a wholesale or retail tobacco licence. Other provisions in the Act relate to advertising and sponsorship etc and are generally a matter for retailers or wholesalers.

The review therefore identifies two relevant markets that may be affected by restrictions on competition imposed by the *Tobacco Act*:

- the market for the wholesale of smoking products in the ACT
- the market for the retail of smoking products in the ACT

Manufacturers are also affected by some of the provisions of the Tobacco Act. These companies do not operate in the ACT but have been involved in consultations, and their views included where relevant.

6.2 Restrictions in the *Tobacco Act*

6.2.1 *Entry and exit from the markets*

Entry to the markets is controlled by a licensing scheme. It has two basic purposes:

- to disclose where and by whom tobacco products are sold, thus allowing the authorities to monitor compliance with the legislation
- to provide an effective enforcement framework based on administrative sanctions as an alternative to court prosecutions.

Before being able to sell tobacco and smoking products in the ACT, a person must apply to the Registrar to obtain a wholesale tobacco merchant's licence or a retail tobacco merchant's licence. A licence is specific to the premises where the person will carry out the business. Licence fees are \$200 pa. The Registrar may impose conditions on tobacco licences, such as limits on the location or position of points of sale, or requiring a licence holder to undertake an approved training program on the *Tobacco Act* regime before operating under the licence.

The main grounds for refusal to grant or renew a licence are:

- if the issue of a licence would lead to a contravention of provisions elsewhere in the Act, or
- the applicant does not sufficiently understand the obligations under this Act of a licensee, or
- the applicant has been found guilty of two offences about the sale of tobacco products to a person under the age of 18 in the previous two years.

There is a range of restrictions on entry through the licensing scheme. There are no restrictions on exit.

6.2.2 *Constraints on production and prices*

There are product restrictions on tobacco for non-smoking (chewing tobacco) purposes, on the sale and import of smoking replicas, and on sale of tobacco products in quantities fewer than 20 cigarettes per packet.

Chewing tobacco

The provisions in the Act have to be considered in the context of a ban on smokeless tobacco products declared under the TPA in 1989, other than for personal use. This ban was prompted by a World Health Organisation recommendation of a global and pre-emptive ban on all smokeless tobacco products, because studies show that these products cause oral cancer and can lead to the development of oral leukoplakia and other severe oral conditions. Another health issue is that the action of spitting, associated with chewing tobacco, is a means of spreading tuberculosis.

The Presentation Speech to the *Tobacco (Amendment) Bill 1990* reflected the national position. It says that smokeless tobacco products such as sucking tobacco, chewing tobacco and oral snuff have been shown to be “serious health hazards, leading to cancer of the mouth, gum and mouth disease and nicotine addiction”. The Government stated its determination to ban the manufacture and sale of smokeless tobacco products for these reasons.

In November 1999, the *Customs (Prohibited Imports) Regulations (Cth)* were amended to enforce the ban. An exemption allows individuals over 18 years of age to import up to 1.5kg of smokeless tobacco for personal use (a permit is needed for amounts above 1.5 kg).

Studies in Scandinavia and the USA indicate that many users of oral tobacco are unlikely to move their preferences to smoking tobacco. As the bans were applied in Australia before the product established a significant market, it appears the ban is unlikely to have a significant economic impact.

Smoking replicas

There is anecdotal information that the manufacturers of some confectionery products have changed the appearance of their product after the legislation was introduced, apparently without noticeable impact to their sales. Consumers would generally buy other toys within that market rather than transfer their money to other markets.

The ban on the sale and import of smoking replicas (mainly toys and confectionery) would have a minor impact on importers and retailers.

Small quantities

The Presentation Speeches and Explanatory Memoranda are silent on the intention of the Assembly in relation to this ban. It is understood that the purpose was to make tobacco products, particularly packs of 10 and single cigarettes, less affordable and thus less accessible to those under 18 years of age²².

The ban may cause a transfer of funds by adults on limited incomes between tobacco products and necessities. This is likely to be a timing issue rather than an absolute transfer, as a consumer will only defer buying food or paying bills for a limited time. Manufacturers stated that they support this restriction, as they have a policy to support initiatives to discourage young people from smoking. Community health groups support these restrictions and believe it is another deterrent to purchasing by those under 18 years of age.

²² Advice from ACT Health Protection Service

While the restrictions reduce choices for consumers, they do not provide a competitive advantage or disadvantage within the retail or wholesale markets.

6.2.3 Restrictions on quality

The legislation does not impose any restrictions on the quality of products that may be sold in either the retail or the wholesale market.

6.2.4 Advertising

There is a range of restrictions at point-of-sale with effects on wholesalers and retailers, and the tobacco industry is treated differently from all other industries in this regard. The ACT Health Protection Service advises that these restrictions are intended to influence consumer behaviour in exposure and access to tobacco products. This is consistent with the *National Strategy*, which aims to deglamourise such products and reduce the exposure of young people to tobacco and tobacco products.

The bans on advertising in theatres would have impacted on overall theatre revenue if other advertising was not available to take up the time slots. It is understood that this has not been the case.

The restrictions on sponsorship remove access to money/resources for individuals, sporting, cultural and community groups. When the Health Promotion Fund (now Healthpact) was established in 1989, one of its main aims was the replacement of tobacco company sponsorship of sporting and other community activities in the ACT. Another aim was to introduce targeted health programs, particularly in areas where tobacco sponsorship had been prevalent.

The main intention of these restrictions is to remove the influences on people, particularly children, to smoke. To that extent, it has the effect of reducing sales and therefore revenue. However money otherwise spent on tobacco is re-directed into other areas of the economy, so it is not 'lost' to the economy.

6.2.5 Restrictions on Inputs

The legislation does not impose any restrictions on the types of inputs that can be used.

6.2.6 Significant costs

The legislation imposes costs on wholesalers and retailers in complying with advertising restrictions, although it is understood that many of these costs are borne by the tobacco manufacturers. The legislation also saves resource costs (as measured by the money that would otherwise have been spent on advertising).

In the case of sponsorship, there is a direct benefit from the activities that not-for-profit organisations can achieve with support given by the tobacco industry. These benefits have largely been picked up by measures such as Healthpact or other sponsors.

6.2.7 Discriminating advantages

The ban on sales on the provision of tobacco products to people under 18 years of age, is a matter of Government policy and has been in effect in the ACT since 1991. It could be seen to restrict competition, in reducing the ability of participants in the retail and wholesale markets to trade with a class of consumers, and restrictions on a group of consumers. However the Government does have particular powers in relation to those under age, and its decisions in this area are consistent with other social issues and with the *National Strategy*. There is similar legislation in other States and Territories.

Those consulted did not view the restrictions as anti-competitive. Retailers said they were keen to comply with the health authorities and to support community values. Manufacturers took the view that smoking is a choice for adults. As such, they support the restriction of the sale of tobacco products to those under 18 years of age.

The legislation has a discriminating effect in that it bans the sale of tobacco products to those under 18 years of age.

6.3 Categorisation and relative priority of restrictions

There are a range of restrictions in the *Tobacco Act*, all aimed at supporting the *National Strategy* and the objectives of the Government to control and minimise the use of smoking products. The restrictions are intended to de-normalise and de-glamorise smoking in all its forms, to remind consumers of the detrimental health consequences of smoking, and to minimise the exposure of young people to smoking products.

There are three types of restrictions that warrant further examination in the context of their potential impacts on competition:

- barriers to entry presented by the licensing scheme
- restrictions on advertising, sponsorship limitations and in-store displays
- restriction on sales from bans on sales to persons under 18 years, and associated bans on people buying tobacco products for use of persons under 18 years of age.

7 Cost benefit analysis of the Tobacco Act

7.1 Point of sale displays

7.1.1 Industry

Prior to the introduction of the legislation, the retail industry made use of displays of tobacco products at point-of-sale that were, in some instances, quite extensive. Some shop-front displays in the ACT were almost completely reserved for the display of smoking advertisements. The legislation has been effective in the sense that it has eliminated these displays, resulting in consumers now being exposed to much lower levels of tobacco promotion at point-of-sale.

It is reported that there is an adequate level of compliance in the case of point-of-sale provisions. The introduction of the controls on point-of-sale were introduced with substantial lead-in time and the ACT Health Protection Service actively provided assistance to retail outlets in meeting the requirements.

Some retailers claim they are unable to provide customers with information about promotions/specials on different brands. They say customers question staff when tobacco prices vary. A tobacconist franchise said that the restrictions prevent them from using selling strategies such as multiple representation of a strong product line.

Many of the selling strategies are not prohibited by the legislation, but a reduced capacity to market tobacco products is an explicit objective of the legislation. If there are any foregone (net) revenues, they do not represent resource costs for the purpose of this assessment, as similar considerations apply to any foregone sales. At most, lower sales would represent transfers within the economy overall, as money that would otherwise be spent on smoking is used to purchase other goods and services.

Manufacturers reported that, when the restrictions were first introduced, they spent significant time and resources installing new shop fittings. As the Act has been in place for some years it can be assumed that changes to points of sale have already been completed. Accordingly, the associated costs are 'sunk' and can be ignored for this assessment²³.

²³ *Sunk costs* are expenditures that have been made in the past and that cannot be recovered if, say, the legislation were repealed. They are generally one-off costs (such as capital investments).

A number of retailers advised that the main impact arising from restrictions on point-of-sale displays was the additional staff time taken in restocking product lines. Changes to restocking arrangements are not required by the Act (other than in relation to visibility) but are a result of retailers' decisions about stock location. However an allowance has been made for this cost to accommodate any instances where other options may not be available to retailers, for example, because of space constraints.

The additional staff time is estimated to be 15 to 30 minutes a day (source: consultation comm.), equivalent to around two hours a week. The additional cost (using an assumed wage rate of \$15 an hour including on-costs) is \$1,500 pa for licensed retail premises. This figure is based on all retail outlets incurring these costs, and that restocking could not occur when staff have free time when the opportunity cost of their time is below the salary rate. This cost has been allowed for 10% of such premises.

Restrictions on vending machines have not had a marked effect on the number of machines and their location. While one vending machine operator estimated that the number of their machines in the ACT had dropped from one hundred and twenty to ninety since the introduction of the restrictions, overall there are still close to 400 vending machines in the ACT, largely unchanged since the introduction of the legislation²⁴. It appears there is minimal resource costs associated with these restrictions. The costs associated with the requirements on location of vending machines (introduced in two stages) have already been paid and can be ignored for this assessment.

7.1.2 Regulator

Monitoring for compliance with items that are in public display is generally relatively straightforward. In any case, the overall costs to the regulator are quite low. There are also enforcement costs when instances of non-compliance are detected.

7.1.3 Smokers

The restrictions may result in some inconvenience for adult smokers because points of sale are less visible and there are fewer points of sale for each outlet²⁵. Reduced availability of vending machines may affect the more nicotine dependent smokers at isolated times. In summary, we feel the average smoker would not be prepared to pay hundreds of dollars annually to avoid any

²⁴ACT Health Protection Service.

²⁵ The reduction in the number of points of sale may cause inconvenience in that a supermarket customer is only able to purchase cigarettes from a single point of sale which may be different from where other purchases are made, necessitating extra queuing and an extra transaction

inconvenience as a result of the Act in gaining access to tobacco products. Relevant considerations for adult smokers include:

- (a) in our view, the current total number of licensed retail outlets provides ample choice for consumers to purchase tobacco products
- (b) the display restrictions do not add significantly to the difficulty of finding outlets.
- (c) the main loss of allocative efficiency arises from restrictions on vending machines. Cigarettes could otherwise be available in the same way as snack foods and soft drinks, at train stations, educational institutions and workplaces. However, the situation is rather different in that cigarettes are not 'impulse' purchases as are many other items available in vending machines, so that the impact of the restrictions is substantially reduced.
- (d) habitual smokers quickly develop routines that ensure supply. At worst, smokers would occasionally be more seriously stressed because of an inability to obtain supplies, say, because they are short of cash or are unfamiliar with the neighbourhood

On this thinking, a \$5 annual allowance has been made for the inconvenience, on average, to smokers. The cost will vary across smokers but for the majority of smokers it is likely to be effectively zero. The total cost in that case is \$300,000 a year, based on an estimated 60 000 smokers in the ACT.

7.1.4 Impact on tobacco consumption

The review by Lantz et al of available studies on the effectiveness of programs to discourage young people from smoking indicates little consistency in findings about the effects of the sort of controls imposed by the Act. In part, the effectiveness of such measures appears to depend on other programs that are also in place. In the absence of studies specific to the ACT, it would seem dangerous to attempt to transfer the results from other jurisdictions and apply them for the purpose of this assessment. We would agree, however, with the observation that has been made by a number of commentators that bans on advertising and promotion tend to be less effective if the bans are not comprehensive.

Some retailers expressed the view that obscuring the visibility of tobacco products has not really impacted on sales and that the decision to buy cigarettes is made by the purchaser before they walk in the retailer's door. On the other hand, there are anecdotal reports that some smaller tobacco retailers, such as cafes and takeaways, are not intending to renew their annual tobacco licence next year because of a decline in demand. Increases in insurance premiums for premises that stock

tobacco products may also have played a part in this decision. Overall adult smoking rates have decreased quite markedly from 1964²⁶ and the rise in under age smoking seems to have stopped.²⁷

One vending machine company reported that sales of tobacco products from vending machines had declined as a result of the controls, but there is no information available to attribute such declines to particular factors; retailers attributed some of the decline to price increases generally and the effects of anti-smoking campaigns. Also a packet of cigarettes from a vending machine costs some \$1.50 more than from a retail outlet, so vending machine sales would represent largely ‘emergency’ purchases at times when purchase from a retail outlet is not possible.

Overall, there was no indication that vending machine operators viewed the restrictions on locations of vending machines as anti-competitive, but rather they accepted these as part of how they need to conduct their business. The ACT Health Protection Service advises that national survey results indicate that only 1% of adult tobacco purchases are made from vending machines.

Lower consumption would have an impact on sale volumes for firms who retail or wholesale tobacco products, and will vary according to the dependence by individual firms on the revenue from tobacco sales. The submission by BATA refers to the importance of tobacco products for smaller retailers. A study²⁸ conducted in 1999 by PriceWaterhouseCoopers said that approximately 50% of tobacco sales in 1997 were made by small business. The report argues that many small mixed businesses derive up to 40% of their total sales from cigarettes and tobacco products, and convenience stores and petrol stations rely on sales of cigarettes and tobacco products for around 20% of their gross margin. Scollo has provided a critique of the survey results and the implications for impacts on small business. In the absence of more detail on the methodology used in the survey, it is not possible to make a judgement on the level of confidence that can be placed on the survey findings.

In any case, from an economy-wide perspective, there should be comparatively small effects. Money no longer spent on tobacco (as a result of the Act) would be spent on other goods and services. It is possible that the marginal resources used to manufacture tobacco products may be slightly different from those used for the replacement goods, but the differences across the replacement consumption in the absence of evidence to the contrary are expected to cancel each other out.

²⁶ Winstanley M, Woodward S, Walker N 1995, *Tobacco in Australia Facts and Issues*, 2nd Edition, Australia.

²⁷ Hill, David J 2002, 'Changes in the use of tobacco among Australian secondary students: Results of the 1999 prevalence study and comparisons with earlier years Australian and New Zealand', *Journal of Public Health*, v26 no 2.

²⁸ PriceWaterhouseCoopers March 1999, “The significance of cigarettes and tobacco products to retailers: Analysis of retail sales”.

7.2 Advertising, promotion and sponsorship

7.2.1 Industry

Manufacturers said the restrictions on advertising were anti-competitive as they restricted their ability to freely communicate with adult consumers about their range of products. They also felt the legislation restricted their ability to display their trademarks, and is inconsistent with advertising rights of other manufacturers, such as manufacturers that produce alcohol. In terms of market share, there are three cigarette manufacturers in Australia. To the extent there is brand-switching (about 10% pa²⁹) it is more between brands than companies. It is also understood there is little movement between tobacco and other products. A tobacconist franchise said that they had experienced reduced profit margins because manufacturers no longer provided support to boost sales and to launch new product lines.

The capacity of the tobacco industry to market their goods and branding is not prohibited but constrained. The legislation has attempted to balance this access against community wishes about smoking more generally.

The tobacco industry prior to the introduction of Part 4 of the Act in 1989 undertook a number of promotional and sponsorship activities. The Health Promotion Fund (now Healthpact) was established in 1989 at about the same time as the restrictions on sponsorships from tobacco companies came into effect. As the Fund targeted community groups, some grant money would have replaced loss of sponsorship from tobacco manufacturers for some community sporting groups.

Direct costs to the tobacco industry itself may be reduced by the avoided costs of advertising, promotions and sponsorship. Where the prohibited activities would have been associated with providing money or other resources to a community group or some other 'good cause', then the overall impact is the foregone community benefits less the costs incurred by industry. If the assistance was subsequently replaced by sponsorship from another source, then these costs and benefits should be netted out. From an ACT perspective, sponsorship funds sourced from the manufacturers would be imported into the ACT economy, whereas Healthpact funds are sourced from within the ACT.

Community health groups supported the implementation of all these restrictions at the local, national and international levels. They felt that controls on advertising were successful in the de-glamorisation of tobacco products and the association of cigarettes with young, risky and fun pursuits.

²⁹ Pollay R et al April 1996, 'The Last Straw? Cigarette Advertising and realised market shares among youths and adults 1979-1993' *Journal of Marketing*, American Marketing Association.

7.2.2 Regulator

Enforcement costs are expected to be minimal. As with point-of-sale controls, advertising and promotion are very public, and compliance with the Act would not seem to be as large an issue as with other prohibitions such as illegal sales to minors. There are also enforcement costs.

7.2.3 Impact on tobacco consumption

The literature suggests that there are important differences between advertising a specific product and broad-based or generic promotion of a company. The latter is less targeted, and is based on brand awareness, establishing attractive associations between smoking and desirable activities, and good citizen status for the firm.

Some commentators have remarked that, comparatively, juveniles may be influenced more by broad-based promotional and sponsorship programs than adults. This effect may be greater where the promotion or sponsorship is related to activities that younger people engage in themselves (or aspire to engage in), or in more highly publicised events or competitions that have a high level of appeal to younger people.

Qualitatively these restrictions will have similar consequences as those outlined in the previous section in regard to impacts on industry and improved health. Controls on sponsorship and promotion associated with activities such as sporting events with appeal to younger people can be expected to contribute significantly to discouraging smoking by people under 18 years of age, although any decline in prevalence is difficult to attribute to a specific intervention.

Direct costs will be incurred by the regulator in checking compliance through on-site visits and in the costs of taking action when instances of non-compliance are found. It is considered that there are no direct costs to industry if they comply with the legislation, though individual firms may face lost revenues due to lost opportunities for marketing and promotion (net of the direct costs of these promotional activities).

7.3 Controls on tobacco for non-smoking purposes

7.3.1 Industry

The ACT legislation supports the Commonwealth bans on non-smoking tobacco. There is no manufacture of tobacco products in the ACT. Consequently, this is unlikely to have industry impacts or imposed direct costs on industry.

7.3.2 *Impact on tobacco consumption*

The only evidence available in regard to the demand for non-smoking tobacco products is the experience with the permit system. Commonwealth Treasury issued some 2800 permits to 1100 people over approximately a two-year period when all imports required permits. Assuming that each permit was for 1.5 kg, the aggregate quantity of tobacco imported into Australia is estimated at two tonnes a year. This is a minimal figure for these purposes.

7.4 *Foods and toys resembling or promoting smoking products*

7.4.1 *Industry*

The impact would be expected to be relatively minimal, as toys and food are sold in very competitive markets with little to differentiate products in terms of consumer attractiveness. There would be ready substitution to other products within the same group (that is, food or toys as appropriate). It is hard to see, for example, that banning cigarette lollies would make any significant impact on confectionery sales. In other words, there would be little loss of consumer surplus and individual retailers would suffer minimal effect on business.

Enforcement and related costs may be higher since the monitoring for non-compliance needs to cover retail outlets other than those that are licensed to sell tobacco products, or that may be suspected of selling such products.

Manufacturers who specialise in a small number of products may be affected by any restrictions. However, we are not aware of any ACT based manufacturers of the products provided for in section 18 of the Act.

7.4.2 *Impact on tobacco consumption*

Prohibitions on toys and food (mainly confection items) are a vital part of the armoury in attacking the incidence of under age smoking. Items that children use in their imaginative play during their formative years 'normalise' smoking in their minds and may increase perceptions that smoking is positive or 'cool'.

7.5 *Sale of cigarettes in a quantity fewer than 20*

7.5.1 *Industry*

It is suspected that there is substantial demand for the purchase of cigarettes in small quantities and that, in the absence of section 19, sale of cigarettes in small quantities would be quite common.

7.5.2 Impact on tobacco consumption

There are many reports of the prohibitions of supply of cigarettes to under age smokers being circumvented. Given the widespread belief (see for example Lantz et al) that children obtain a large proportion of cigarettes from non-retail sources, the effect of section 19 may only be to raise the price of cigarettes for juveniles. This in itself would tend to reduce consumption of cigarettes by juveniles.

Low-income smokers will also be affected. At times they will not be able to smoke because they do not have the threshold price of a 20-pack of cigarettes. Therefore it can be said that section 19 disadvantages low-income smokers.

The effect on people who are trying to stop smoking is less clear. One argument is that this becomes more difficult because they cannot buy small quantities of cigarettes. The other proposition is that adults can easily obtain small quantities of cigarettes from smoking acquaintances.

It would seem that the prohibition on sales of small quantities of cigarettes would act to reduce total tobacco consumption. This reduction is likely to be greatest among the less well off, and in particular in smokers under the age of 18.

7.6 Supply of tobacco to people under 18 years of age

7.6.1 Industry

All those consulted supported bans on the supply of tobacco and tobacco products to those under 18 years of age and felt that these restrictions reflected community values. Some commented that it was easier to do this within a legislative framework because there were no choices about complying.

A number of surveys have been conducted into the incidence of illegal supply of smoking products to under-18 year olds by retail outlets under a range of regulatory controls. These surveys have covered the situation where such sales were prohibited by law and those where there was no such statutory prohibition. In most cases, some form of government program (such as awareness programs) was in place to discourage such sales. There is ample evidence that education and other programs without non-statutory force are ineffective in preventing the sale of tobacco products to persons under the age of 18. Even where there are sanctions, compliance levels reported in some studies have been very low.

Comments made during the consultation program suggest that not all retailers comply with the legislation, but there is no hard information on which to make quantitative estimates of the number of retailers who sell tobacco products to people under the age of 18.

It is instructive to review the source of cigarettes for smokers under the age of 18.

Table 3 Recent source of supply for smokers under the age of 18 , Australia, 1998

<i>% of recent smokers</i>	<i>Males</i>	<i>Females</i>	<i>Persons</i>
Friend or acquaintance	49.6	36.0	41.8
Sibling	9.3	0.7	4.4
Parent	4.4	5.0	4.7
Spouse or partner	-	4.0	2.3
Stole it	-	0.2	0.1
Purchased it – shop	35.1	49.8	43.6
Can't recall	1.7	4.2	3.1

Source: Australian Institute of Health and Welfare 1998, *Statistics on Drug Use in Australia 1998*, [online] www.aihw.gov.au/publications/health/sdua98/index.html.

Recent unpublished research cited by Scollo estimates that almost 6400 teenagers in the ACT currently smoke more than 10.6m cigarettes each year, worth more than \$2.7 m per annum. On the basis of the above table about \$470,000 pa would be paid to ACT tobacco retailers³⁰.

7.6.2 Costs

The direct costs incurred by industry are reported to arise mainly from the need to ask for proof of age in cases where there is reasonable doubt that the purchaser is 18 years of age or over. This consumes retailer staff time, and some staff may find this task confronting. Some simple calculations can be made of the additional time based on certain assumptions:

- (a) all consumers in a five year age spread (18 to 22 years old) need to be asked for proof of age
- (b) asking for proof of age on average takes 20 seconds of staff time for each transaction
- (c) each smoker smokes on average 4,088 cigarettes (bought in packets of 25 cigarettes) per year (78.4 cigarettes per week³¹ and buys one pack at a time (164 purchase transactions per year).

The 6,500 smokers in this age group make in aggregate approximately 1.07m purchase transactions. Therefore, the legislation results in an increase in staff time of 5,940 hours in a year and an increased annual cost of \$89,100 at a rate of \$15 an hour.

³⁰ Centre for Behavioural Research in Cancer – unpublished.

³¹ Australian Institute of Health and Welfare May 2002, *2001 National Drug Strategy Household Survey - First Results*, Canberra.[Table 3.4 averaging the estimates for the 14-19 and 20-29 age groups].

7.6.3 *Impact on tobacco consumption*

A recent article³² examined the trends in smoking related behaviour since 1984. The study concluded that the rise in prevalence in smoking among younger secondary students seen in the 1990's seems to have stopped and smoking prevalence has declined. In 1999, prevalence of smoking was 6% in boys and girls aged 12, and rose to peak prevalence among 17-year-olds of 35% for boys and 30% for girls. Comparisons across the survey years shown that fewer 12 to 15 year olds were smoking, although the proportion of current smokers was similar. Students were less likely to buy their cigarettes in 1999 than in previous years, obtaining cigarettes from friends. If purchased, cigarettes were most likely to be bought from convenience stores, petrol stations and delicatessens.

The 1999 ASSAD results indicated the following proportions of ACT smoking students bought their own cigarettes (22%); had friends buy for them (20%); and had bought their last pack from a vending machine (11%). In addition, 36% of smoking students had bought single cigarettes either from shops or from friends.

An important consideration is that the effect of the prohibition on supply of tobacco products to non-adults may be to raise the price of cigarettes for juveniles rather than to act as an outright bar. This in itself would tend to reduce consumption of cigarettes by juveniles. Nevertheless, a statutory ban on supply to under-18 year olds is necessary to send a strong message that such behaviour is unacceptable to the community.

The expected benefits of discouraging one juvenile from smoking are substantial. The benefits of discouraging under-age smoking are the avoided costs of smoking specifically in this age group including:

- (a) immediate health impacts during the teen years
- (b) increased exposure to tobacco over a life time if smoking is started early
- (c) a multiplicative effect if under age smokers are more likely to encourage peers to take up smoking.

The thrust of tobacco control legislation in general is a two-pronged attack of demand reduction and supply control. The ban on supply of tobacco to persons under the age of 18 complements the provisions in other parts of the legislation. The ban on sales to minors sends a strong message of the government's resolve to discourage smoking by people under the age of 18 and the absence of such a ban would serve to undermine the other initiatives.

³² Hill, David J 2002, 'Changes in the use of tobacco among Australian secondary students: Results of the 1999 prevalence study and comparisons with earlier years Australian and New Zealand' *Journal of Public Health*, v26 no 2.

7.7 Licensing scheme

7.7.1 Industry

The cost of an annual licence is \$200 a year and there are 375 retail licences (490 businesses) and 11 wholesale licences (16 businesses)³³. The requirements for a licence, other than the provisions regarding illegal actions, appear to call for no more than general competency and understanding of the retailer's responsibilities under the *Tobacco Act*. The licence fee is low in comparison to the profit to be made from selling tobacco products. An annual fee of \$200 equates to \$4 a week, which for a retail outlet would be recouped by selling one carton of cigarettes. It is suspected that this is a long way below the minimum sales that an outlet would need to make tobacco retailing commercially attractive, let alone the minimum that a wholesaler might consider in a contract. It is implausible that the licence fee would be considered a barrier to entry.

The ACT Health Protection Service advise that no applications for a licence have been refused in the past two years since the program was transferred from the ACT Treasury. The low licence fee and the large number of licences on issue (approximately one retail licence for every 600 head of population or 120 smokers) suggests that the retail licence requirements have had no significant impact on competition in the ACT. It is difficult to see that there is any advantage conferred as a result of the licence scheme on businesses by virtue of their size or location.

In terms of enforcement, ACT Health advises that:

- (a) verbal warnings have been issued by EHOs on a wide range of non-compliance matters
- (b) four written warnings have been issued (all for minor non-compliance matters)
- (c) one warning was issued to a premise operating without a tobacco licence.

Direct costs of the licensing scheme are incurred by business in preparing and submitting applications. These costs are 'sunk' for the licences that are currently on issue and can be ignored for the purposes of this assessment. As a result of turnover in the industry and new entrants, there are 10% new licence applications annually (thirty eight retail licences and one wholesale licence a year). It is estimated that the cost of preparing an application for a new licence is \$500 (8 hours of the owner's time)³⁴, and the cost of renewing a licence is estimated to be \$130³⁵ (2 hours of the owner's time). To this must be added the cost to the regulator of processing applications (1 hour) and renewals (30 minutes). These costs are included in the estimates in Table 4.

³³ ACT Health Protection Service (2002).

³⁴ Advice from the licence processing staff in the ACT Health Protection Service.

³⁵ All licences expire annually on 31 August and new licences must be issued. Licences are not transferable and no pro-rata payments are available.

Retailers consulted felt that a retailer's licence was available to anyone and that the price would not preclude any business applying for a licence. However, manufacturers said that smaller retailers could be disadvantaged by the costs of licensing schemes because the increases in costs associated with the administration of the licence fee may force smaller businesses out of the tobacco retailing business. We feel this argument is difficult to sustain in light of the cost of licences and the number on issue.

7.7.2 Regulator

The Registrar will incur costs in administering the scheme, for such activities as processing applications for grant or renewal of licenses, maintaining the database and taking any disciplinary action. These costs are included in the figures outlined in the second below.

Table 4 Costs of Tobacco Control Legislation in the ACT 1999- 2000

<i>Expenditure</i>	<i>Tobacco Act</i> <i>(\$)</i>	<i>Smoke-Free</i> <i>Areas Act</i> <i>(\$)</i>	<i>Total</i> <i>(\$)</i>
Administration	16,959	13,492	30,451
Operational	9,953	5,358	15,311
Supervisory	4,490	4,490	8,980
Policy/legislation	37,256	40,113	77,369
Operating	38,371	38,371	76,742
Total	107,029	101,824	208,853
Revenues			
Tobacco licences			
Retail	101,000		101,000
Wholesale	3,200		3,200
Total	104,200		104,200
Smoke-free area exemption fees			
Restaurants		6,300	6,300
Application fees		900	900
Annual fees		5,400	5,400
Licensed premises		95,800	95,800
Application fees		8,500	8,500
Annual fees		74,500	74,500
Grant (Fee paid for exemption)		12,800	12,800
Total	104,200	102,100	206,300
NET EXPENSES	2,829	-276	2,553

Source: Estimates provided by ACT Department of Health

Approximately half of the costs are represented by salaries.

These costs are presented in this report in the section on licensing for convenience. The costs of monitoring and enforcement are, in practice, incurred towards achieving compliance with the other parts of the legislation and should ideally be offset against the outcomes from the individual provisions. However it is not possible to unambiguously attribute some proportion of field staff time to specific provisions.

7.7.3 Impact on tobacco consumption

The role of the licensing scheme is to provide a cost-effective way to encourage compliance with the other provisions of the Act and to convey a message concerning the conditional nature of selling tobacco. Tobacco consumption is reduced to the extent that the licensing scheme increases the compliance with the other provisions of the Act.

Some provisions have a lower probability of detection and the financial rewards are attractive, for example in the case of supply to under-18 year olds.

It is probable that many of the benefits from a licensing scheme relate to reductions in consumption of tobacco to persons under the age of 18, since this is where the scheme may be most effective. The community benefits from a unit reduction in smoking from the licensing scheme may well be higher than for some other controls in the Act.

7.8 Summary – Public Benefits Test - the Tobacco Act

The review of the *Tobacco Act* has identified a number of provisions that have competition impacts. Our assessment is that these impacts are not of a type or magnitude that has seriously eroded the overall choices of consumers in regard to tobacco products. In particular, the barriers to entry that are created by the licensing scheme (approximately \$130 time plus a fee of \$200) a year per outlet, plus a one-off cost of \$500 for preparing a new application) are not significant and we would not expect significantly more outlets in the absence of the restrictions.

Some retailers felt that the restrictions on point-of-sale displays necessitated additional staff time to restock product lines. The Act, however, does not impose any restrictions on the manner in which stock may be stored, only on how it can be displayed. This is therefore not considered to be a restriction.

Retailers also said that they were constrained in their ability to publicise promotions/specials on different brands. However, the *Tobacco Act* does not prohibit the display of pricing information. As long as retailers comply with the display requirements imposed by the legislation then promotions and specials can be publicised. Also the legislation does not prohibit the use of generic, non-brand notices such as ‘Discount Tobacco Sold Here’.

Table 5 below summarises the costs associated with the Act that have been able to be quantified.

Table 5 Quantified costs of the *Tobacco Act*

<i>Provisions in Tobacco Act</i>	<i>Who incurs costs</i>	<i>Activity</i>	<i>Total annual cost</i>
Provisions in regard to the sale of tobacco	retail outlets	changes at point-of-sale	sunk cost
	retail outlets	extra staff costs for restocking	\$74,000
	smokers	inconvenience	\$300,000
Advertising, promotion and sponsorship	industry	sponsorship	some transferred to Healthpact
	industry	advertising etc	
Controls on smoking and related products			
Licensing scheme	retail outlets	applications	\$20,000
	retail outlets	licence renewals	\$65,000
	<i>retailers wholesalers</i>	<i>licence fees**</i>	<i>\$104,000*</i>
Total industry resource costs			\$548,000
Regulator costs for <i>Tobacco Act</i>			\$107,000
All Resource costs plus inconvenience			\$655,000

Note: * licence fees are transfers and are not treated as resource costs

Total costs of the Tobacco Act are estimated at \$655,000 pa, of which \$300,000 is an estimate of the inconvenience to smokers. The inconvenience to smokers is considered to be very small in light of the large financial costs of maintaining a smoking habit. The tobacco industry will continue to be faced with reduced sales, in line with the overall objectives of the *National Strategy*. Impacts on the broader economy are expected to be minor in that money that would otherwise have been spent on tobacco products will be diverted to the consumption of other goods and services.

The benefits from the Act are improved health outcomes that result from discouraging smoking and, in particular, smoking by people under 18 year of age. While it has not been possible to make any estimates of the effectiveness of specific individual provisions in the Act, the implementation of tobacco policy and anti-smoking campaigns should be viewed as an integrated process.

At the national level, a recent review included an economic assessment of the expected savings in health care costs that could be attributed to the effects of the campaign in reducing tobacco

consumption³⁶. The assessment found that the campaign had resulted in a sustained reduction of 1.4% in the smoking rate. The present value of the resulting health care savings for Australia was estimated at \$24.2m. Estimates for the tangible costs of smoking in 1992 to the Australian community were made by Collins and Lapsley (1996) and, in summary, are estimated to be \$143m a year to the ACT. Of this \$71m is considered avoidable (potentially able to be reduced by policy interventions). Inclusion of the intangible costs results in total annual avoidable costs of \$142m.

Adjusting the estimated total annual avoidable costs by 1.4% would indicate that the estimated benefits to the ACT of the *Tobacco Act* total just under \$2m pa.

In analysing the effectiveness of the restrictions in the *Tobacco Act*, the review considered a framework of what the commercial environment may look like without the restrictions in the Act.

The main impact of removing advertising and sales restrictions under the Act would be the substantial undermining of the *National Strategy*, which is based on a multi-faceted approach to tobacco control, including both legislative and non-legislative initiatives addressing demand reduction and supply control. The removal of specific restrictions would neutralise or undermine other tobacco control initiatives both in the ACT and nationally.

The major impacts on the economy would be increased sales and profits to retailers, wholesalers and manufacturers. This would initially result from increased sales to persons under the age of 18, as most tobacco use commences while people are in their teens or younger. There would possibly be an increase in smoking by adults (or fewer adult smokers quitting) due to the socialisation aspects of smoking.

The cost benefit analysis has been able to quantify certain mainly financial costs associated with the provisions in the *Tobacco Act*. There is considerably more uncertainty regarding the benefits (principally public health related) due largely to the difficulties in estimating the resulting reduction in tobacco consumption. Ultimately it is necessary for judgements to be made to compensate for the shortcomings of the objective evidence. In making judgements it is necessary to take into account the risks of making a wrong decision. The consequences of tobacco consumption are considered so serious and affect such a large part of the population that a precautionary approach appears to be called for in the face of the uncertainties in the analysis. This is particularly so given that it is the benefits side that inherently is more difficult to quantify.

It is concluded that on balance the benefits from the provisions in the *Tobacco Act*, taken as a whole, exceed the costs and that the legislation passes the public benefit test.

³⁶ Carter R and Scollo M (1999), 'Economic Evaluation of the Tobacco Campaign', published in: Commonwealth Department of Health and Aged Care 2000, Australia's National Tobacco Campaign Evaluation Report No. 2: Every Cigarette is Doing You Damage (Chapter 7), Commonwealth of Australia.

8 Smoke-Free Areas Act - market analysis and identification of restrictions on competition

8.1 Markets affected by the *Smoke-Free Areas Act*

The *Smoke-Free Areas Act* lists examples of places where smoking is prohibited in public places:

- (a) shopping centres, malls and plazas
- (b) restaurants, cafes and other eating places
- (c) clubs
- (d) schools, colleges and universities
- (e) professions, trade, commercial and other business premises
- (f) community centres or halls and places of worship
- (g) theatres, cinemas, libraries and galleries
- (h) omnibuses, taxis and boats
- (i) hostels, nursing homes and other multi-unit residential premises
- (j) hotels and motels
- (k) sporting and recreational facilities.

There are a large number of markets affected by the *Smoke-Free Areas Act*. For example, the ban affects the market for providing taxi services, the market for educational services; and various retail markets in the ACT which occur in an enclosed public place. With the exception of restaurants and licensed premises, the ban on smoking applies equally to all participants in the relevant markets. Accordingly, for the majority of markets in the ACT, the restriction on smoking in enclosed public places has not been categorised as a restriction on competition in a market, even though it could be regarded as a restriction on consumer choice.

It is therefore not necessary to undertake a detailed process of market definition for these areas of economic activity.

The ban on smoking does not operate in a uniform way for restaurants and licensed premises, as the owners of these premises may obtain exemptions from the ban on smoking imposed by the Act. Therefore, it is possible that for these categories of premises, the exemption system in the *Smoke-Free Areas Act* may distort the action within a market. We have drawn a distinction between the pub market and the club market because of the potentially different impacts on a ban on smoking in venues with and without designated areas for gaming machines. This is based on the consultation outcomes, where club owners said there was a strong link between smoking and gambling, and that revenue from gaming was reduced where poker machines operated in a non smoking area.

For the purposes of our analysis of the *Smoke-Free Areas Act*, we define the following markets for identifying whether the Act imposes any restrictions on competition:

- (a) the market for the supply of food and beverages in restaurants in the ACT
- (b) the market for the supply of alcoholic beverages, gaming machines and other entertainment in clubs in the ACT
- (c) the market for the supply of alcoholic beverages and other entertainment in pubs and taverns in the ACT

8.2 Restrictions in the Smoke-Free Areas Act

The central restriction in the *Smoke-Free Areas Act* is a general restriction on smoking in enclosed public places. It may restrict consumer choice but is not considered a restriction on competition.

In general, those consulted agreed that bans on smoking in public places were not anti-competitive. The bans were viewed positively by many businesses. Retailers, shopping centre managers and taxi drivers said that the legislative restrictions made it easier for them to enforce non-smoking in shops, centres and cars.

8.3 Markets affected by the exemption provisions of the *Smoke-Free Areas Act*

The *Smoke-Free Areas Act* permits certain public premises to obtain an exemption from the general provision in the Act against smoking in an enclosed public place. A restaurant may apply for a Certificate of Exemption to permit smoking in part (up to 25%) of the dining area. Licensed premises may apply for an exemption to permit smoking in part of the public area (up to 50%) of the premises³⁷. A Certificate of Exemption will only be granted:

- (a) to a restaurant:
 - (i) if the restaurant is fitted with equipment capable of maintaining air quality in accordance with a specified standard
 - (ii) if the occupier agrees to allow inspectors to regularly inspect equipment and monitor air quality within the premises
 - (iii) if smoking is prohibited in not less than 75% of the restaurant.
- (b) to a licensed premises:
 - (i) if the part of the premises to be exempted is a clearly defined area not more than 50% of the public area of the premises

³⁷ See ss.5(3) and 7

- (ii) if the premises are fitted with equipment capable of maintaining air quality in accordance with a specified standard
- (iii) if the occupier agrees to allow inspectors to regularly inspect equipment and monitor air quality within the premises.

The standard for the air quality equipment is AS 1668.2, a general standard that applies to mechanical air conditioning in larger buildings. Under the ACT Building Code³⁸, the requirement for mechanical air conditioning is related to the size of the building. A building does not need to provide mechanical air conditioning if there is natural ventilation in each room of at least 5% of the floor area. Once buildings get beyond a certain size, or certain number of rooms, generally they require mechanical ventilation. If a building is not required to have mechanical air conditioning, but owners choose to install it, it is not required to comply with AS 1668.2.

8.4 Restrictions under the exemptions provisions of the *Smoke-free Areas Act*

8.4.1 Discriminating Advantages

The exemption scheme allows operators to offer a service to patrons who wish to frequent a smoking environment and it has the potential to advantage one venue over another, in their ability to attract smoking patrons. While the inter-relationships are very complex, it does appear that there is a strong link between smoking, drinking and gaming. Some representatives in the consultations from pubs and clubs commented that:

- smoking patrons generate a high level of gaming income for the clubs
- in some cases if there is a mix of smokers and non smokers in a group of friends going out for the night the group will choose to frequent premises that will accommodate the smokers: 'a group of mates are going to go where their smoking mates can smoke'.³⁹

Records have been maintained⁴⁰ of exemptions sought since the introduction of the *Smoke-Free Areas Act*. The situation with past, present and requested applications for exemptions follows:

³⁸ Advice from ACT Planning and Land Management

³⁹ Consultations

⁴⁰ ACT Health Protection Service

Table 6 Exemptions obtained under the *Smoke-Free Areas Act*

<i>Current Exemptions</i>		<i>Exemptions issued since 1994 and not renewed</i>					<i>Estimated Total Establishments⁴¹</i>
		<i>Moved to non-smoking</i>	<i>Closed</i>	<i>Application in process</i>	<i>Other</i>	<i>Total</i>	
Clubs	45	-	3	4	9	16	
Hotels	7	1	-	1	-	2	
Night Clubs	6	-	2	2	-	4	
Taverns	16	-	3	5	10	18	
Licensed Premises	74	1	8	12	20	41	190
Restaurants	7	4	1	4	0	9	400
Total	81	5	9	16	20	50	590

Source: ACT Health Protection Service – exemptions in place and applications pending at March 2002. This information will change over time

There are about 400 restaurants in Canberra. An analysis of restaurants that have applied for exemptions indicates that at the start of the scheme sixteen restaurants had applied for exemptions. This has now decreased to seven (plus four applications in progress). Three decided to go smoke-free, and one decided that it was not necessary to maintain smoking areas because Canberra people did not expect to smoke in restaurants. Few of the restaurants that allow smoking advertise this to be case.

It does not appear that the ability to smoke provides a strong commercial advantage over other comparable restaurants.

There are an estimated one hundred and ninety licensed premises in the ACT, of which one hundred and four (55%) had originally applied for an exemption. That number has now declined to seventy-four venues (adding applications in progress, a total of 45%) of which forty-five are clubs.

This would suggest that there is a relationship between smoking, drinking and gambling perceived by many clubs and pubs. On the other hand, some licensed premises have decided not to continue with their exemption.

8.4.2 Entry and exit

There are no restrictions on entry or exit from the markets affected by the *Smoke-Free Areas Act*.

8.4.3 Restrictions on production and prices; quality; advertising

The legislation does not impose any restrictions in these areas.

⁴¹ ACT Health Protection Service

8.4.4 Restrictions on inputs

The exemption scheme may impose input costs on participants in the restaurant, pub and club markets that wish to obtain a Certificate of Exemption, as it requires the installation of air quality equipment of a legislated standard. In general the buildings under discussion would not be required to install equipment of this standard to comply with the Building Code⁴².

8.4.5 Significant costs

The exemption scheme will impose costs in providing, operating and maintaining the air quality equipment, and the associated energy costs (from heating and cooling) for market participants who wish to obtain an exemption.

Industry views were mixed. The representative bodies from the club sector did not feel the costs were prohibitive, and that it was a commercial judgement whether to install the equipment. The AHA felt the costs are more affordable for the licensed clubs industry than it is for the hotels. We selected two smaller taverns⁴³ to expand on the views of industry representatives and both felt the costs were high.

9 Cost benefit analysis - Smoke-Free Areas Act

9.1 General ban on smoking in enclosed public places

9.1.1 Industry response

There is limited information that can be used to deduce how industry would respond to the absence of the Act. The consultation program strongly suggests that operators in the various markets support a ban on smoking as a desirable community norm. However they prefer to have this reflected in legislation because it is easier to enforce.

Organisations such as Restaurant and Catering ACT and the Liquor, Hospitality and Miscellaneous Workers Union support the bans as an occupational health and safety issue, and had little to say about the exemption scheme. They support the bans as part of their overall support of measures that promote safety and wellbeing of staff.

⁴² Advice from ACT Planning and Land Management. It should be noted however, that ACT Planning and Land Management commented that due to factors such as the Canberra weather and for convenience and comfort, typically this equipment is installed anyway.

⁴³ Advice from ACT Health Protection Service

The analysis by Shiell⁴⁴ suggests that the marginal non-smoker derives as much satisfaction from a smoke-free atmosphere as the marginal smoker loses in no longer being able to smoke in a restaurant. The terms *marginal non-smoker* and *marginal smoker* refer to people who will change their decisions to visit a restaurant in light of whether smoking is, respectively, permitted or not permitted. There are of course a large number of diners who do not change their decisions but whose enjoyment will be affected (either positively or negatively) by a ban on smoking.

A large number of studies have examined the effect of smoking bans on the hospitality industry. According to Scollo et al⁴⁵ no negative economic impacts from bans on smoking in restaurants and bars is indicated by the studies where findings were based on an objective measure such as taxable sales receipts, and where data points several years before and after the ban were examined. The authors say that the only studies concluding a negative economic impact have been funded by the tobacco industry, and Scollo considers these studies to be flawed. We have not been able to review all these studies, but the authors list over fifty reports, and it would seem there is a persuasive weight of evidence that in the restaurant industry at least there are few negative effects on the economy from a ban on smoking.

BATA acknowledged that environmental tobacco smoke is unpleasant for many people. However it also made the point that about a quarter of the population still smoke and that these restrictions have forced smokers outside. They say this leads to a greater incidence of litter, and to lost productivity in cigarette breaks. Shopping centre managers did not consider litter costs to be substantial, but suggested that the *Smoke-Free Areas Act* be extended to include the entrances to malls and shopping centres. Issues of productivity are a matter for employers and outside the scope of this review.

Overall feedback from consultations indicates there has been widespread acceptance of the legislation since its introduction a few years ago. It seems that there are few economic disadvantages from non-smoking venues, based on available studies, consultation comments and the number of exemptions in force or under application. We are of the view that voluntary prohibitions on smoking would continue in nearly all venues, driven by what has become the expected social norm for many people. However there will always be people who insist on smoking, and the issue of compliance is extremely important when regulatory options are reviewed.

⁴⁴ Shiell A 1997, 'Indicative Valuation of the Costs and Effects of Proposals to Reduce the Harm Associated with Environmental Tobacco Smoke in the Hospitality Industry', (Report included in the NSW Passive Smoking Taskforce, February 1997).

⁴⁵ M Scollo and A Lal September 2001, *Summary of Studies Assessing the Impact of Smoking restrictions on the Hospitality Industry*, VicHealth Centre for Tobacco Control, Melbourne.

9.1.2 Costs

Industry possibly incurs additional costs arising from signage and saves some cleaning costs. Both of these are estimated to be negligible and would tend to cancel out in any event.

9.1.3 Smokers

There are costs to the convenience and enjoyment of smokers. They must reduce or eliminate their use of smoke-free venues, eliminate tobacco consumption at such places, interrupt those activities to go outside for a smoke, some combination of these, or stop smoking. Some of the costs associated with going outside for a smoke during work hours may be borne by the employer and by the economy more broadly.

On the other hand there may be some negative costs (that is, benefits) for those smokers who are attempting to quit smoking. There is evidence that many ex-smokers credit the restrictions on smoking in public places, and more particularly workplaces, with helping them stop smoking.

On balance for this review, the costs and benefits to smokers are considered not to affect the economy.

9.2 Exemptions from the ban on smoking in enclosed public places

9.2.1 Restaurant Industry

Restaurant and Catering ACT consider the differences in the allowed proportion of the smoking area between restaurants and clubs under the exemption scheme to be anti-competitive. The Association feels that restaurants are disadvantaged because they are allowed 25% of their space for smoking whereas a club is allowed up to 50%. The Australian Hotels Association does not believe this difference is anti-competitive. In our view the extent of competition, if any, between the restaurant and pub/club markets is so small that it is difficult to see how a competitive difference could operate between the two markets.

The bigger clubs felt that expectations of club patrons to be able to smoke in a restaurant have changed over time. They note that most club restaurants are now non-smoking and in club restaurants where there is a smoking section, the non-smoking section fills first.

In the case of restaurants, on the basis of applications for exemptions, it seems that the majority of diners would prefer a smoke free atmosphere. This supports the weight of evidence that, notwithstanding earlier arguments put forward by industry, there seems little change in business (patronage or dollars) following mandated bans on smoking in restaurants. Feedback from consultation indicates there has been widespread acceptance of the legislation since its introduction a few years ago. Restaurant and Catering ACT stated that they received numerous complaints about the bans when the legislation was first introduced but more recently have only received one or two complaints.

9.2.2 Licensed Premises Industry

The general view of industry was that smoking had to be allowed in licensed premises. Consultation comments focused on the operation of the exemption system, and on the general disadvantage smaller pubs and clubs felt relative to the bigger club industry.

The bigger clubs in the ACT do not regard the exemption system as anti-competitive. They feel the exemptions system is an option available to all businesses, and that it is a commercial decision made by each business as to whether the expected revenue gains outweigh the costs associated with obtaining and maintaining an exemption certificate.

At the suggestion of Clubs ACT and the bigger clubs interviewed, some small club and pub owners who did not have an exemption were selected for telephone interviews. Their general view was that the exemption scheme is anti-competitive because of the costs to meet air ventilation requirements. Some of these businesses said they had lost revenue since they became non-smoking, but were unable to provide details of the loss. They saw themselves at a disadvantage to the bigger clubs because of their size and, in the case of pubs and taverns, because poker machines are confined to clubs.

The bigger clubs view smoking as part of their club's 'product' and have invested significantly in installing and maintaining equipment to allow for smoking on their premises. These clubs believe it is expensive to maintain their smoking clientele but the decision to invest in an exemption is a commercial one and a response to market demand. These clubs are satisfied with the way the exemption scheme operates. Bigger clubs were also concerned that if the exemption scheme were unavailable, their customers would go across to clubs in Queanbeyan where the restrictions do not apply.

The larger clubs consider that the cost of meeting the exemption requirements is high in absolute terms, but that the costs are justified in view of the expected loss of patronage if the club became

non-smoking. They make a decision on commercial grounds weighing up the cost of the investment against the expected revenue stream.

Club representatives who participated in the consultation program generally opposed a total ban on smoking. They said that the returns on gaming machines in smoking and non-smoking areas are in the ratio 3:1 and that approximately 90% of customers who play the poker machines at clubs smoke. One club is alleged to have got into financial difficulties after it became non-smoking.

The Australian Hotels Association says their industry needs to be able to respond to the demands of smoking and non-smoking patrons. They prefer an industry code which allows for ventilation systems that push smoke away from staff service areas, rotating staff through smoking and non-smoking areas and the establishment of a non-smoking area in front of the bar service areas.

Pubs and taverns also view smoking as part of their product. Operators of smaller pubs and taverns estimated that about 80% of their patrons smoke and that they need to exemption system to maintain their custom. Smaller pubs and taverns said that the exemption scheme disadvantages them. They feel they have proportionally higher costs of installing air-extraction equipment.

In terms of economic impact, there are a range of studies that indicate a correlation between smoking and drinking, and that non-smoking bans can lead to a fall in business. The provision for outdoor areas, and the existence of the exemption system, means that licensed premises in the ACT can accommodate smokers. Whether they choose to do so is a commercial decision about the likely increase in revenue.

9.2.3 Direct costs of air ventilation

The capital cost of equipment needed to maintain a level of air quality which minimises the risk of adverse health effects was estimated in 1996 to be between \$5,700 and \$7,500 a seat in a medium restaurant (Broadbent and Wesley, 1996). The costs of meeting the Australian Standard on air conditioning (AS 1668.2) are estimated to range from \$125 to \$500 a seat. From the consultation program, the capital cost for small pubs and taverns is \$20,000 or more, up to \$70,000 for larger hotels and in excess of \$1m for some of the larger clubs. In general none of these facilities would be required to install air management equipment of this quality were it not for the purposes of the exemption. As stated earlier, it appears that many premises have this equipment installed anyway for convenience and comfort factors, such as being better equipped to manage Canberra weather.⁴⁶

The annual recurrent costs for operation and maintenance depend on local conditions, but Broadbent and Wesley suggest the costs each year may amount to half of the capital cost. An engineer's certificate must be obtained indicating that the equipment complies with the Standard;

⁴⁶ ACT Planning and Land Management

the size and complexity of the ventilation system largely determine the cost for an engineer's certificate but a typical figure is \$1,500. There is also an annual fee (not a resource cost) for the exemption.

If the overall prohibition on smoking in public places is taken as given, then it can be assumed expenditure to obtain an exemption will only be undertaken if the owner of the premises believes that the costs can be recouped through higher earnings. That is, that the benefit to cost ratios of decisions to obtain exemptions will be greater than 1 for the business, and will be greater than 1 for the broader community if non-market effects are ignored, in particular the externalities from passive smoking.

None of those consulted were able to provide hard information that they were unable to seek an exemption. Some premises may opt for other ways to provide smoking-permitted areas, such as by means of outdoor seating. Accordingly we would conclude that decisions to incur these expenditures are made on a commercial assessment of the likely revenue increase compared to the costs.

9.2.4 Regulator

The regulator also incurs costs. The initial application for an exemption certificate would need to be assessed. If approved, ongoing monitoring by the regulator would be necessary to ensure that the equipment was being maintained and operated so as to meet its design performance specifications. Table 4 shows the current estimates of these costs.

9.2.5 Exposure to Environmental Tobacco Smoke

Exposure to environmental tobacco smoke in exempted premises would be less than in the situation with no controls at all. However, in comparison to the no-exemption case, exposure would be higher due to factors such as:

- (a) it is not possible for even very expensive ventilation equipment to remove all air pollutants from the smoking areas
- (b) it is not possible in a practical sense to prevent leakage of smoke to the non-smoking areas
- (c) comments made during the consultation program suggest that there is a level of non-compliance with the conditions of exemptions granted to certain venues.

Subsequent sections provide a general overview of the available evidence on the health impacts of passive smoking.

9.3 Summary - Public Benefits Test - *Smoke-Free Areas Act*

9.3.1 Removal of the exemption system

One option is to remove the exemption system, thereby making all enclosed places smoke-free. The impact of this change would fall on the hospitality industry, although we do not believe it would have a major impact. There are very few restaurants that currently operate in a smoking environment, and studies show that there are no apparent marked economic gains from providing a smoking environment for the restaurant market. Pubs and clubs would be affected much more, as the number of exemptions tends to support the literature that there is a link between smoking and drinking and gaming. In terms of economic impact, removal of the exemption option would treat all such venues equally apart from any possible cross-border losses.

Bigger clubs were also concerned that if the exemption scheme was unavailable their customers would go across to clubs in Queanbeyan where the same restrictions do not apply. Leaving aside sovereignty issues, such concerns about cross-border impacts have been raised in various contexts. As a general observation, the impact has generally been considerably less than that predicted, in part because of other variables such as travel time and access.

It seems on balance that removal of the exemption system would not have a significant economic effect overall. It might have some minor cross-border implications for particular venues, but revenue would not be lost to the economic base overall.

9.3.2 Continuation of the present system

The direct quantified resource costs associated with the ban on smoking identified in this analysis are represented mainly by the costs to the regulator of approximately \$100,000 a year, some of which will also relate to the exemption system.

It is unlikely there will be a loss of business in aggregate as a result of the current system. As with the discussion under the *Tobacco Act*, foregone revenues are not 'lost' to the economy but spending would be transferred to other goods and services.

Smokers who can no longer smoke in enclosed public places incur costs due to inconvenience.

Owners of exempt premises will also incur costs. While it is not possible to give an aggregate figure for the cost of meeting the requirements for exemptions, the decision to obtain an exemption is commercially based and it is assumed that these costs would be compensated by increased revenues.

Smaller clubs and taverns raised the issue of anti-competitiveness relative to bigger clubs, because the bigger clubs could more easily afford the necessary air ventilation systems because of their

larger revenue base. The bigger clubs and industry representatives felt this was an issue of market forces. In this instance, we would support that view. Some smaller clubs and taverns have chosen to install the equipment, presumably because the revenue generated would warrant the expense. Others appear to have chosen to utilise outdoor areas to maintain the custom of smoking patrons.

The benefits from the *Smoke-Free Areas Act* arise in the main from the avoided health impacts from environmental tobacco smoke. Assuming that costs associated with passive smoking are 10% of the costs of active smoking, total avoidable costs from environmental tobacco smoke in the ACT are \$7m a year. Some of these costs will be incurred in homes, in non-enclosed public spaces or in exempt premises and the avoidance of these costs cannot be attributed to the Act. For the purpose of placing an indicative estimate on the avoided costs as a result of the *Smoke-Free Areas Act*, a figure of the order of magnitude of \$1 – 2 m a year appears reasonable .

In addition to the benefits from avoided consequences of passive smoking, restrictions on smoking particularly in the workplace have been shown to encourage smokers to quit and, conversely, where smoking is allowed this generates an environment conducive to people to take up the habit.

Removal of the Act, allowing smoking in enclosed public places, would save the regulator about \$100,000, and would generate costs of the order of \$1-2m pa. To this has to be added the individual, family and community costs of continuing exposure to environmental tobacco smoke (set out in later sections). Another major impact would be on the effectiveness of the *National Strategy*, where the ACT has been a leader with many of these measures.

As with the cost benefit analysis of the *Tobacco Act*, it has proved impossible to quantify all costs and benefits of the *Smoke-Free Areas Act*, so as to arrive at an estimate for the benefit cost ratio. Once again there is an element of judgement needed to reach a conclusion as to whether the legislation makes the community ‘better off’, and the judgement has to be applied in the context of elevated risks to members of the public. There is little information on which to estimate the benefits from the Smoke-Free Areas Act as the percentage of the total costs that would be avoided.

It is concluded that on balance the benefits from the *Smoke-free Areas Act* exceed the costs and that the legislation passes the public benefit test.

10 Public benefits overall

10.1 General

It has not been possible to specifically identify benefits that accrue from individual legislative provisions that contribute to the sum of the ACT Government measures to control tobacco consumption and exposure to tobacco smoke. This reflects the approach in the *National Strategy*, and the initiatives of the ACT Government, to provide a suite of measures that interact with each

other to make an effective whole. Accordingly this section on public benefits takes the same approach, that is, impacts are described in aggregate as a result of the entirety of the tobacco control initiatives. It does not purport to be a comprehensive summary of the many reports and studies that relate to the public, social and personal costs of smoking, but rather an overview of the benefits that accrue from a reduction in smoking.

The estimates for the tangible economic costs from tobacco consumption in 1992 total \$8,631m across Australia, and are set out in detail in Table 7⁴⁷, inflated to portray the costs in 2002 dollar terms.

Table 7 Tangible economic costs of tobacco use in Australia in 1992 (2002 prices)

<i>Paid production costs</i>	<i>\$ millions</i>
Male morbidity	148.6
Female morbidity	118.0
Male mortality	1161.6
Female mortality	381.0
Total paid production costs	1905.0
Unpaid production costs:	
Male morbidity	202.1
Female morbidity	398.1
Male mortality	4019.0
Female mortality	2568.6
Total unpaid production costs	7188.0
Total paid and unpaid production costs	8997.3

⁴⁷ The discussion in this chapter is based on the analysis conducted by Collins and Lapsley (1966) into the costs of drug abuse in 1992. The authors of that report point out that they adopt what is labelled the ‘demographic’ approach, rather than the human capital approach used in many other approaches (page 4). Each approach attempts to measure the loss of production arising from the abuse related deaths of otherwise productive members of society. The difference between the two approaches is summarised as ‘The human capital approach calculates the *present and future* production costs of abuse-induced deaths which occur in the *present* year. The demographic approach calculates the *present* production costs of abuse-induced deaths which have occurred in *past and present* years.’ (Collins and Lapsley, 1996, emphasis in the original text)

The demographic approach generates estimates that are ‘more comprehensible and useful’ for the purpose of estimating costs of drug abuse (tobacco use) that are borne in a given year. The human capital approach is necessarily always used in CBA. The estimates presented in this chapter cannot be used directly to assess the benefits of policy interventions to discourage smoking, though the authors of the cited work observe that ‘it would be perfectly feasible to extend [their analysis] to produce human capital-based estimates’ to be used in CBA.

Table 7 (cont.)

<i>Paid production costs</i>	<i>\$ millions</i>
Less consumption benefits:	
Male	2922.6
Female	1203.6
Total consumption benefits	4126.2
Plus Health care:	
Net medical services	220.2
Net hospital bed days	441.8
Net nursing home bed days	437.1
Total health care	1099.1
Plus Resources used in addictive consumption	2661.1
Total tangible costs	8631.3

Not quantifiable: welfare, absenteeism, property costs of accidental fires, ambulance services, passive smoking Source: Table 4(b) 2 in Collins and Lapsley (1996) inflated to 2002 prices. Items may not add up due to rounding.

It should be noted that because of the non-availability in 1996 of soundly based estimates of mortality and morbidity associated with passive smoking, the related costs are not included in the table. Accordingly, the total tangible costs are understated by some degree of significance.

The potential returns to tobacco reduction programs should be restricted to *avoidable* costs that is, the costs that are addressed by policy interventions (as opposed to the total costs shown above). *Unavoidable* costs consist of costs that are borne in the current year but which are the result of tobacco consumption in previous years and are, in a sense, irreversible. Unavoidable costs need to be subtracted from the total when conducting a public benefit test. Collins and Lapsley estimated that approximately 50% (or \$4,320m) of total costs were avoidable. The study found that intangible costs were approximately the same as the estimates of tangible costs.

The ACT contains 1.65% of the Australian population. Applying this proportion to the Australian tobacco cost estimates yields total tangible economic costs of \$143m for the ACT, of which \$71m is considered to be a cost that can be avoided by policy interventions (avoidable costs).

10.2 Individual smoker

Table 8 shows estimates of total deaths due directly to smoking (excluding deaths attributed to environmental tobacco smoke) and the years of potential life lost in 1998, assuming that smokers would otherwise have enjoyed normal life expectancies. The implied reduction in the average life expectancy of a person who dies from smoking-related disease is also presented.

Table 8 Measures of smoking-attributable mortality Australia, 1998

<i>Age at death (years)</i>	<i>0–14</i>	<i>15–34</i>	<i>35–64</i>	<i>65+</i>	<i>Total</i>
Males					
Smoking attributable mortality (deaths)	43	54	3,045	9,755	12,896
Years of potential life lost	1,312	1,409	51,210	76,441	130,372
Average reduction in life expectancy* (years)	30.5	26.1	16.8	7.8	10.1
Females					
Smoking attributable mortality (deaths)	33	26	987	4,949	5995
Years of potential life lost	995	683	16,706	34,310	52,693
Average reduction in life expectancy* (years)	30.2	26.3	16.9	6.9	8.8

Notes: Because smokers are more likely to engage in other risky behaviour such as excessive alcohol consumption, their life expectancy in the absence of smoking is somewhat less than for the population as a whole. To that extent, these are overestimates of the reduction in life expectancy.

Source: *Ridolfo B and C Stevenson (2001), The quantification of drug-caused mortality and morbidity in Australia, 1998, Australian Institute of Health and Welfare.*

While the majority of smoking-related deaths occur in middle age and after the age of 65, smoking is an ever-present danger to at least some smokers. The deaths of children in the 0-14 year range are due to SIDS and the consequences of low birth weight (attributable to maternal smoking), as well as a small incidence of smoking related fire deaths. Even for relatively long-lived smokers who are killed by smoking-related disease after the age of 65, the loss of life is significant.

It is complex to derive the dollar value of the benefits from reducing the number of premature deaths. Most quantitative knowledge about how people value risks to their lives is drawn from the analysis of the wage premiums earned in risky jobs or risky industries. The most recent Australian study⁴⁸ of this type put the value of a statistical life in the range \$11-19m at 1991 prices. At current prices the corresponding values are \$16-28m.

Table 9 Additional mortality risks and corresponding risk valuations

<i>Age group</i>	<i>15–34</i>	<i>35–64</i>	<i>65+</i>
<i>Additional mortality risk (deaths per 10,000 ever-smokers, per year)</i>			
Males	0.38	16.7	195.3
Females	0.20	6.6	154.3
Persons	0.30	12.2	179.3
<i>Additional risk premium that would be payable to accept these risks (\$/year)</i>			
Males	847	36,756	429,562
Females	443	14,541	339,569
Persons	653	26,752	394,383

Source: Estimates by consultancy team, based on information and estimates from Miller *et al* and Ridolfo and Stevenson

⁴⁸ Miller P, C Mulvey and K Norris 1997, 'Compensating Differential for Risk of Death in Australia', *Economic Record*, pp. 363-372.

The first panel of Table 9 provides a further breakdown of the additional risks faced by smokers by age and sex (note the sharp increase in mortality risk with age). It is only in the youngest age group that the mortality risks are of the same order of magnitude as industry risks. The second panel of Table 9 reports estimates of the additional risk premium that would be payable to workers who accept these risks in the course of earning their living. At current prices the wage premium that would be earned for the risks equivalent to the higher fatality rates (probability of death) for smokers in the 15-34 age group is in the range \$600-\$1,100 a year, with a mid-range value of \$850 a year. The smoking habits of women aged 15-34 are such that they take smaller risks, the value of which may be of the order of \$440 a year. The higher fatality rates faced by smokers in middle and old age translate into higher equivalent risk premiums, as shown.

The estimates assume a strictly proportional relationship between the probability of death and the risk premium. However, the relationship is probably not proportional. Other things given, shorter odds can only be compensated by a disproportionate increase in the risk premium. From that point of view, the risk premiums payable in middle and old age are underestimated. On the other hand, it is possible that older people are more willing to take risks because they have less to lose in terms of foregone years of healthy life.

In summary, the above discussion highlights the rising risk of premature death with increasing age (presumably the higher risks are a function of both the length of time people have been smoking and the declining general health of people as they age). The equivalent wage risk premiums rise in line with the higher probabilities of premature death, though a large part of the increase in probability is due to cumulative damage from past smoking and not related to current smoking activity

The first adverse effects of smoking on fitness and health appear early in a smoker's life. According to Chapman⁴⁹, the key outcomes for young smokers are:

- (a) reduced performance in both endurance and short term exercise
- (b) increased coughs and respiratory infections
- (c) more asthma and allergic symptoms.

The poisons in tobacco may also cause dizziness, nausea and vomiting in the period before tolerance is established. There are also impairments of taste and smell senses resulting in lower enjoyment of certain activities. Throughout life, smoking interacts adversely with a range of conditions and/or impedes recovery from those conditions, including diabetes, hypertension, lung infection, and recovery from surgery and wounds. Smoking also causes peptic ulcers, Crohn's

⁴⁹ Chapman S [web address] www.health.usyd.edu.au/tobacco

disease, cataracts, back pain and snoring. For women, smoking is associated with reduced fertility, osteoporosis, cancers of the cervix and vulva, and increased risks resulting from the use of oral contraceptives. Spontaneous abortions and complications of pregnancy and labour also occur more frequently in smokers.

Finally, most smokers who ultimately die from a smoking-related disease will have suffered lung cancer, ischaemic heart disease, or chronic bronchitis/emphysema. The progress of these diseases prior to death is often painful and debilitating, resulting in substantial loss of quality of life.

A partial indicator of the reduction in the quality of smokers' lives is the increased probability that smokers and ex-smokers will be hospitalised. Recent morbidity data⁵⁰ indicate that the average smoking-related stay in hospital increases steadily with age, as does the probability of such an event – see Table 10.

Table 10 Hospitalisation of smokers, 1998

<i>Age group (years)</i>	<i>15–34</i>	<i>35–64</i>	<i>65+</i>
Length of stay (days)			
males	4.0	4.8	7.3
females	3.2	5.0	8.4
Annual hospitalisations per 100 smokers			
males	0.2	1.0	4.0
females	0.5	0.7	3.0

Mather et al provide further information about the full costs from a recent study of the burden of disease and injury in Australia⁵¹. This work uses the concept of a disability-adjusted life year (DALY)⁵² to measure the total impact of mortality and non-fatal health outcomes in a consistent way across a comprehensive range of diseases and illnesses. It is based on the idea that people would be indifferent between, on the one hand, a given number of years of life lived with the burden of a particular disease, and, on the other hand, fewer years of healthy life. The difference measures the burden of the disease in years of healthy life.

Overall, Mather *et al* estimate the burden of disease and injury in 1996 at 2.5m DALYs comprising the loss of 1.4m years of healthy life through excess mortality and the equivalent of 1.1m years of healthy life lost through disease and injury. These estimates and the ones below are for Australia in

⁵⁰ Ridolfo B and C Stevenson 2001, *The quantification of drug-caused mortality and morbidity in Australia, 1998*, Australian Institute of Health and Welfare.

⁵¹ Mather C, T Voss and C Stevenson 1999, *The burden of disease and injury in Australia*, Australian Institute of Health and Welfare..

⁵² Mortality, disability, impairment, illness and injury arising from 176 diseases, injuries and risk factors are measured using a common metric, the Disability-Adjusted Life Year or DALY. One DALY is a lost year of 'healthy' life and is calculated as a combination of years of life (YLL) lost due to premature mortality and equivalent 'healthy' years of life lost due to disability (YLD).

total. Mather *et al* apportion these losses to a range of causes, the major risk factor being the consumption of tobacco.

Their analysis attributes the following to tobacco in 1996:

- (a) 16,803 deaths
- (b) 182,395 years of healthy life lost due to premature death
- (c) 54,459 years of healthy life lost due to disease and injury before death
- (d) 236,852 years of healthy life lost.

On this figuring, the losses that accrue before death add about 30% to the losses occasioned by death itself. This suggests a rough means of estimating the value of these losses, which is to put them at 30% of the risk premiums that are reported in Table 8. The improved quality of life that accrues to people who would otherwise have smoked would therefore be valued as follows:

- (a) 15-34 age group - \$196 a year
- (b) 35-64 age group - \$8,026 a year
- (c) 65+ age group - \$118,315 a year.

Non-smokers also avoid the anguish associated with attempts to quit smoking, whether successful or unsuccessful, and regrets associated with the fact that much of the damage has been self-inflicted.

In addition to the loss of life and the direct physical damage to the quality of remaining life, smoking is expensive. Non-smokers avoid the following financial losses:

- (a) outlays on cigarette purchases
- (b) additional health care costs
- (c) increased cost of insurance, or inability to insure against smoking-related risks
- (d) interrupted and shortened working life, due to ill health.

Table 11 presents estimates of the lifetime value of cigarette purchases, which varies according to the average number of cigarettes a day and the length of the smoking career. Latest figures on the frequency of smoking (AIHW, 1998) indicate that about 38% of regular smokers consume 11-20 cigarettes a day; about 28% are light smokers (up to 10 a day); and the remaining third smoke more than 20 a day. The age profile of smokers suggests that, while a significant minority quits within 15 years, it is common for smokers to maintain the habit for over 30-40 years.

For present purposes, we assume an average smoker who consumes 20 a day over 25 years, the lifetime value of which is approximately \$40,000.

Table 11 Estimates of lifetime expenditure on cigarettes

	<i>Cigarettes a day</i>			
	5	15	25	35
Average annual cost* (\$)	657	1,971	3,285	4,599
<i>Years of smoking</i>	<i>Present value** of lifetime expenditure (\$)</i>			
5 years	2,844	8,533	14,222	19,911
15 years	6,819	20,458	34,097	47,736
25 years	9,260	27,779	46,299	64,818
35 years	10,758	32,274	53,789	75,305
45 years	11,678	35,033	58,388	81,743

Notes: *assumes cigarettes are purchased in packs of 25 at \$9/pack, which is the most popular size.
 ** Future outlays are discounted at 5% real (ignoring inflation) a year.

There is also substantial evidence that people who use tobacco are much more likely than non-users to also use and abuse alcohol and illicit drugs.

10.3 Family and acquaintances

It has not proven possible to value the benefits in dollar terms for the children of women who, during pregnancy, would otherwise have smoked or have been exposed to environmental tobacco.

These benefits have been documented by Chapman and can be summarised as follows:

- (a) higher birth-weight and more robust dimensions at birth
- (b) reduced risk of peri-natal death and cot death
- (c) reduced risk of child cancers
- (d) possible reduction in respiratory illness
- (e) slightly reduced risk of cleft lip/palate or cleft palate
- (f) improved behavioural, intellectual, and physical characteristics, including reduced risk of attention deficit/hyperactivity disorder.

At the present time, most smokers report that they usually or always go outside the house to smoke, which is a considerable turnaround over the last 5 years – see below. However a significant minority of smokers usually or always smoke inside.

Table 12 Prevalence of smoking in the home

<i>Location</i>	<i>1995</i>	<i>1996</i>	<i>1997</i>	<i>1998</i>	<i>1999</i>
Always inside	29%	17%	16%	16%	9%
Usually inside	10%	10%	8%	9%	9%
Sometimes in, sometimes out	30%	33%	34%	20%	26%
Usually outside	10%	14%	14%	16%	13%
Always outside	20%	22%	27%	37%	43%

The National Health and Medical Research Council reviewed the evidence on passive smoking in 1997⁵³. The assessment of health consequences was restricted to passive smoking in the home, due to the absence of data on the exposure of Australians to environmental tobacco smoke outside the home. The following outcomes were attributed to environmental tobacco smoke:

- (a) 8% of childhood asthma (46 500 children)
- (b) 13% of lower respiratory illness in children under 18 months of age (16 300 cases each year)
- (c) 11 deaths from lung cancer a year, the outcome of a 30% increase in the risk to never-smokers who live with a smoker compared with never-smokers living with a non-smoker
- (d) 77 deaths and 132 hospital admissions a year, the outcome of a 24% increase in the risk of heart attack or death from coronary heart disease in never-smokers who live with a smoker compared with unexposed never-smokers
- (e) irritation to the eyes and the upper respiratory tract.

The US EPA in their 1992 report estimated that 800 non-smokers die from lung cancer each year in the US as a result of environmental tobacco smoke in the home. On a population proportional basis, this is equivalent to approximately 50 deaths annually in Australia. Ridolfo and Stevenson have since published an estimate that 48 deaths in 1998 were attributable to environmental tobacco smoke in the home.

The US EPA in their 1992 review concluded that exposure to environmental tobacco smoke in the work environment was comparable to that in the home. More recent research reviewed in the Background Paper for the *National Response to Passive Smoking*⁵⁴ supports those findings.

⁵³ National Health and Medical Research Committee 1997, *The Health Effects of Passive Smoking*.

⁵⁴ National Public Health Partnership 2000, *National Response to Passive Smoking Report in enclosed Public Places and Workplaces*, available at www.nphp.gov.au/legtools/smoking/passive/index.htm

It should also be noted that the current understanding is that the important measure of exposure in relation to the extent of health damage is the cumulative dose of environmental tobacco smoke. Therefore the relatively short time intervals spent in smoking venues cannot be viewed in isolation from other sources of exposure. On the other hand, the relative exposure to environmental tobacco smoke for bar and restaurant employees has been found to be much higher than for other employees or for those individuals who live in a home with a smoker⁵⁵.

Presumably, the community of smokers effectively recruits new smokers, by creating the social circumstances in which people experiment with tobacco and take it up. For example, the 1998 national Drug Strategy Household Survey found that 45.6% of respondents were regular smokers, if at least half their friends were smoking, while the proportion of smokers was 10.7% in the group that had less than half their friends as smokers.

Some of the costs associated with going outside for a smoke during work hours (where the workplace is smoke-free) may in fact be borne by the employer and on the economy more broadly in loss of productivity. Australian and international studies have shown that workers who smoke suffer, on average, a greater amount of absenteeism due to ill health than do non-smokers. A press release by the NSW Cancer Council on 18 June 2001 noted that cigarette breaks cumulatively add up to one half day per week, and the Council indicates that smokers cost Australian businesses about \$5m pa. This represents the direct costs of smoking-related sickness, absenteeism and medical retirement. In Australia, data collected over an eighteen-month period between 1990 and 1992 showed that smokers recorded an average of 27% more absenteeism than non-smokers did.⁵⁶ A study examining absenteeism among Telecom Australia's workforce during the early 1990s estimated that illness attributable to smoking or alcohol accounted for 25% of sick leave. In the financial year 1991-1992 smoking related absenteeism cost this employer an estimated \$16.5 million.

Extrapolated to the Australian workforce, smoking costs Australian industry \$1.5 billion per year (Hocking et al, 1994). The authors of the study consider these estimates to be conservative.

The US EPA concluded that environmental tobacco smoke in the workplace was associated with 2,200 deaths each year in the US from lung cancer in non-smokers. On a population basis, this is equivalent to 150 deaths in Australia.

⁵⁵ Siegel M 1993, 'Involuntary Smoking in the Restaurant Workplace: A Review of Employee Exposure and Health Effects', *Journal of the American Medical Association*, 270: 490-493.

⁵⁶ Smith RL, Dawes L, Bush R 1992, 'Sickies and smoking: why human resource managers favour smokefree workplaces; in: Seminar Proceedings. Workplace smoking: Legal implications and workplace programs. Industrial Program Service and University of Western Sydney, Nepean, The Gazebo Hotel, Parramatta.

10.4 Summary

This section has reviewed a selection of research findings that shed light on the benefits from discouraging smoking. Normalised estimates (on a per person basis) for the incidence of health consequences have been applied (where possible) to derive aggregate impacts for the ACT population. While all research is subject to qualifications regarding the confidence that can be placed on the precision of the findings, the discussion has demonstrated the scale of the costs of tobacco consumption, and the potential benefits to be derived from measures to discourage smoking. In summary the benefits include:

- (a) tangible costs that, in the case of the ACT, are estimated at \$71m pa could be avoided through effective policy intervention and compliance
- (b) improved quality of life that accrues to people who are discouraged from smoking valued at \$196 pa for the 15-34 age group; \$8,026 pa for the 35-64 age group; and \$118,315 pa for the 65+ age group
- (c) better health for the children of women who, during pregnancy, would otherwise have smoked or have been exposed to environmental tobacco smoke
- (d) avoided impacts from passive smoking (48 deaths in 1998 in Australia were attributable to environmental tobacco smoke in the home, in addition to various injuries and diseases)
- (e) avoided costs to industry (it has been estimated that smoking costs Australian industry \$1.5 billion per year in employee related costs, and smoking at work results in an estimated 150 deaths pa across Australia).

These assessments of the benefits must be taken into account when considering the effects of the *Tobacco Act* and the *Smoke-Free Areas Act*. In total they far outweigh the costs of the individual portions of the Acts, and show why Governments have given so much priority to the control of tobacco use and exposure to environmental tobacco smoke.

11 Alternative regulatory arrangements

11.1 Objectives to be achieved

The Commonwealth Office of Regulation Review (ORR) provides guidance in assessing the suitability of alternative regulatory forms, and their suitability for achieving the public policy objectives to be met by the regulation⁵⁷. The ORR states that self-regulation should be considered where there is no strong public interest concern, and in particular no major public health and safety

⁵⁷ Office of Regulation Review 1998, *A Guide to Regulation*, 2nd edition. Commonwealth of Australia. .

concern. In contrast, legislation should be considered where the problem is a high-risk public health and safety issue.

Exposure to environmental tobacco smoke and the uptake of smoking are two of the most critical public health issues in the ACT community. The objective of both the *Tobacco Act*⁵⁸ and the *Smoke-Free Areas Act*⁵⁹ is to promote public health in the ACT by reducing the impact of smoking in the community. The *National Strategy* has as its objective “to improve the health of all Australians by eliminating or reducing their exposure to tobacco in all its forms.”

Any options to legislation would need to be comprehensive and to complement the other non-legislative measures that the ACT has in place to control tobacco and environmental tobacco smoke. The current arrangements are predicated on minor breaches (mainly by retailers) so that the public at large is not exposed to tobacco use or promotion in the designated areas. Even minor breaches, such as some smoking in shopping centres, would have a marked effect on the broader objectives of the program.

11.2 Alternatives to the existing licensing scheme

Reliance on education only

Although retailer education plays an important role in increasing the effectiveness of legislation, research has consistently shown that merely educating retailers about the law has little long-term impact on reducing tobacco sales to minors.

Reliance on prosecution only

Prosecutions are costly for both the regulator and the defendant. The effectiveness of reliance on criminal proceedings is low. Because of the uncertainty in regard to court rulings, many instances of non-compliance where there is an a priori case are not prosecuted in view of the time and expense and the uncertainty of securing a favourable outcome. As a broad observation, regulated industries are well aware of the reluctance of regulators to undertake legal action in these circumstances. To be successful in deterring non-compliance, prosecutions have to have some ‘bite’ in that the penalties must be sufficiently high to make up for the comparatively low chance of being caught. It is also necessary to ensure that successful prosecutions are well publicised to other retailers.

⁵⁸ "To promote public health in the ACT by adopting a harm minimisation strategy aimed at (a) minimising public exposure to tobacco and all forms of tobacco advertising and (b) discouraging the uptake and usage of smoking products, particularly by young people”.

⁵⁹ "To promote public health in the ACT by reducing public exposure to environmental tobacco smoke in enclosed public places”

Negative Licensing

Under a negative licensing system, initially anyone is allowed to sell tobacco products: there is no need to hold a licence. If found guilty of a serious offence, the ‘right’ to retail tobacco products is withdrawn for a period of time.

The advantage of a negative licensing scheme is that much of the administrative costs of a positive licensing scheme are avoided. No licence fees are paid by retailers, so that retailers who comply with the legislation face no specific costs in regard to licensing. At the same time the scheme provides administrative sanctions avoiding the costs and uncertainties of formal legal proceedings. The major drawback of negative licensing is that it is difficult to control sales of tobacco products that do not occur in premises (such as selling from car boots). These people would be difficult to control since the selling operation could easily be transferred to a colleague if one person was disqualified.

Negative licensing also misses out on some of the advantages of positive licensing. It will not provide a framework for contacting retailers with regard to educational material and training programs; it fails to emphasise to retailers their responsibilities in regard to selling tobacco products; and it will not provide funding for enforcement and other programs.

Summing up

Educational campaigns and formal court proceedings have a place in any integrated approach to smoking controls, but they have been less than fully effective in the past. They should be regarded as complementary to, rather than substitutes for, a licensing scheme.

11.3 Industry self regulation

Much of the literature on smoking in public areas deals with restaurants and liquor-licensed areas. Examples include a comparison between restaurants in Sydney and Melbourne⁶⁰, and observations of voluntary smoking bans prior to the introduction of the Act. This suggests that these venues have, prior to the introduction of legislative controls, had very low rates of voluntary bans on smoking. The public in the ACT have had the experience of the *Smoke-Free Areas Act* over a period of years and community norms have changed in that time. We would expect that there is now considerable acceptance, and in most cases an expectation, of smoke-free areas in restaurants and (perhaps to a lesser extent) in licensed premises. The implication is that there may be higher rates of voluntary bans on smoking if the Act were to be repealed now.

Realistically the only option to legislation is industry code self-regulation, through mechanisms such as a voluntary or co-regulatory code. Such arrangements, by harnessing more of the

⁶⁰ Chapman S, [website] www.health.usyd.edu.au/tobacco

commercial imperative rather than relying on relatively more inflexible black letter law, have the potential to achieve the objectives at lower net cost to the community, and with reduced impact on competition levels. The Australian Hotels Association would prefer an industry code rather than legislated bans. Their preferred model also includes measures to reduce exposure to environmental tobacco smoke.

In other areas of community concern, industry self-regulation has been successful in delivering social benefits in relation to matters such as public health and safety and the protection of the environment. The success of these arrangements includes factors such as :

- (a) the industry should be cohesive, so that all members can be expected to ‘sign up’ to the voluntary constraints
- (b) the socially desirable outcomes should be aligned to some extent with normal commercial incentives faced by members of the industry
- (c) members of the industry should be conversant with the broad social objectives and the measures needed to achieve them
- (d) it helps if the industry is reasonably compact with a relatively small number of members.

The industries affected by the tobacco control legislation do not meet the first criterion. Tobacco retail outlets for tobacco products span a number of different types from service stations and small convenience stores, to speciality tobacco shops, to large retail chains. Similarly, there is very considerable variation in the premises affected by the *Smoke-Free Areas Act*. While it is possible to consider in isolation a certain sector (say restaurants), even here there are major differences in the types of venues (size, clientele, constraints on open-air dining, etc). While there are industry associations for tobacco retailers and for restaurants (as well as clubs and hotels), we are of the view that, in the absence of legislation, these industry associations are not structured to achieve agreement amongst their members to introduce or enforce a uniform voluntary codes of conduct.

In the case of the second criterion, the *Tobacco Act* imposes some costs on retail outlets (both direct costs and foregone revenues), and there appear to be little compensating financial benefits to the owner of the business. Thus there are financial incentives for retailers who fail to comply with conditions on sale of tobacco products (whether statutory or voluntary). The situation may not be so clear in the case of restaurants and the *Smoke-Free Areas Act*, though the message from the consultation is that at least some pubs and clubs consider they would be better off without the smoking restrictions.

The third factor could be considered a matter largely of education. Industry sectors affected by the tobacco control legislation contain substantial numbers of small firms. Owners of small firms are

generally completely occupied by meeting the day-to-day exigencies of running a business without keeping informed of what many might consider matters outside their concern.

Evidence for the difficulty in implementing effective industry-based voluntary controls is the absence of such arrangements in other jurisdictions, notwithstanding a number of proposals. In the case of the *Smoke-Free Areas Act* there is also actual experience, for example in South Australia in the early 1990s, when a health-hospitality industry code of practice for non-smoking in restaurants resulted in an 8% statewide take-up rate. A similar lack of effect was found in the ACT in the 18 months of self-regulation prior to the introduction of the legislation.

In relation to cigarette sales to minors, there was an intensive 2-year retailer education campaign among retailers on the NSW Central Coast⁶¹. Compliance surveys revealed an illegal selling rate of 31%. Other Australian studies have examined the impact of information kits, local media campaigns and warning letters sent to retailers who had sold cigarettes to minors. One study⁶² found that 26-55% of retailers still sold cigarettes to children.

Assuming that voluntary codes were effective, the consultation program clearly indicates that the nature of self-regulation would be to impose similar constraints on the markets that exist under the legislation. In fact, to achieve the objectives of Government, the constraints on the markets would need to be of the same order as those currently in place.

However the track record of self-regulation indicates that there would not be the same degree of compliance as exists at present. This would undermine the objectives of the Government, as the overall program depends on presenting a consistent message to the community and particularly its younger members.

The consequences of tobacco consumption pose major risks to individuals and affect a large proportion of the population. In view of these high public health risks, the conclusion from the above discussion is that self-regulation and related arrangements would require the same level of market constraint, but are not expected to deliver the same level of compliance. On balance, there are no compelling reasons to change the present system.

⁶¹ Jason LA, Peter JY, Anes MD and Birkhead SH 1991, 'Active Enforcement of cigarette control laws in the prevention of cigarette sales to minors', *JAMA*, (266) 3159-61.

⁶² Staff M et al 1997, 'Can strategies aimed at reducing sales of cigarettes to minors change adolescent smoking patterns? A pilot study', *Health Promotion Journal of Australia*, 7(2):118-121.

Summary of Appendices

Appendix A: Terms of Reference

Appendix B: People and organisations consulted

Appendix C: Introductory letter and issues papers provided for consultation

Appendix D: Summary of other issues arising from consultation

References

Appendix A: Terms of Reference

“The review will include examination of the impact on free and open competition, including the net public benefit of the:

- (a) *Tobacco Act 1927*
- (b) *Tobacco Regulations 1991*
- (c) *Smoke-free Areas (Enclosed Public Places) Act 1994*
- (d) *Smoke-free Areas (Enclosed Public Places) Act Regulations 1994*

Provisions of the *Tobacco Act 1927* and associated Regulations place restrictions on how tobacco (and other smoking) products may be sold, supplied, advertised and promoted. It contains restrictions on the age of customers whom the products may be sold as well as the way the products may be displayed and advertised; it also incorporates a tobacco retail and wholesale licensing system under the auspices of a Registrar for Tobacco. It places obligations on retailers, wholesalers and individuals and includes offences and penalties for non-compliance.

The *Smoke Free Areas (Enclosed Public Places) Act 1994* contains a general prohibition on smoking in enclosed public places, with an exemption system applying to restaurants and licensed premises. It places obligations on proprietors and individuals and includes offences and penalties for non-compliance.

The review will examine the legislation to assess whether it restricts competition and, if so, whether it is in the community's overall interests to do so. In meeting this requirement, the review will:

- (a) Identify the objectives of the legislation
- (b) Identify the nature of any potential restriction on competition
- (c) Analyse the likely impact of the restriction on competition
- (d) Identify and assess the advantages and disadvantages, including costs and benefits of the restriction
- (e) Consider alternative means for achieving the same result, including non-legislative approaches
- (f) Give due regard to the public health issues relating to tobacco use and exposure to environmental tobacco smoke
- (g) Give due consideration to public benefits and costs which may or may not be quantifiable
- (h) Make recommendations for legislative change, if appropriate.

The CPA indicates that a range of matters should be taken into account when balancing the costs and benefits of any restrictions and, in particular, that a range of economic, non-economic (for example, social, environmental and health-related), quantifiable and non-quantifiable matters should be considered in assessing whether legislation which restricts competition is in the public interest.”

Appendix B: People and organisations consulted

Mr Tim Atkinson
Policy and Legislation Section, Land
Information and Building Services,
PALM

Ms Yvette Berry
Miscellaneous Workers Union

Ms Frances Bruce
Deputy Principal, Gold Creek School

Ms Lindy Butcher, Ms Patricia Jones and Ms
Katherine Moyle
ACT Cancer Council

Mr Michael Capizio and Mr Andrew Wilsmore
Australian Hotels Association ACT

Dr Simon Chapman
Professor of Public Health,
University of Sydney: Editor, *Tobacco Control*

Mr Deane Clarke
Smoke Zone & Gifts

Mr Mark Connell
British American Tobacco Australia

Ms Selena Dundas and Ms Ilene Lorenz
Coles Myer

Mr Gene Dunne
West Deakin Hellenic Bowling Club

Mr Dean Flemming
Wurlitzer Vending Machines, ACT

Mr Gerry Foster
Southern Cross Club

Mr Reg Hodgson
Philip Morris

Mr John Holt
Canberra Raiders Leagues Club

Mr Keith Jenkins
ACT Newsagents Association of NSW and ACT

Ms Eileen Jerga
National Heart Foundation ACT

Mr Dieter Jurgeneit
Manager Environmental Health
ACT Health Protection Service

Mr Kym Lovett
Tobacco Retailers Association ACT

Mr John McCallum and Mr Neil McCabe
Shopping Centre Council

Mr Doug McIvor
ASH ACT

Mr Greg Mitchell
Hellenic Club

Mr Stan Moore
Australian Retailers Association

Mr John Muir
Canberra Cabs

Mr Glen O'Neill and Mr Michael Paino
Woolworths

Mr Neil Palmer
Kippax Tavern

Mr Christopher Peters
Canberra Chamber of Commerce

Ms Jocelyn Plovitts
OHS Commissioner ACT

Ms Marion Reilly
ACT Asthma Association

Ms Meg Richens and Ms Trish Dinnerville
Healthpact ACT

Mr Keith Ritchie
Restaurant & Catering ACT

Mr Bob Samarcq
Clubs ACT

Mr Peter Webb
Tuggeranong Valley Rugby Union & Amateur
Sports Club Ltd

Dr Peter Wilkins
Australian Medical Association

Mr Chris Williams
Imperial Tobacco

Appendix C: Introductory letter and issues papers provided for consultation

The following introductory letter and issues papers were sent to participants involved in the consultation process.

Stakeholders consulted were divided into three groups:

1. Manufacturers, wholesalers and retailer industry groups
2. Operators of enclosed public places and exempt places and other stakeholders
3. Community representatives.

Issues papers were tailored for each group.

MinterEllison

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Date

Name

Title

Company

Address

City State Postcode

Dear

National Competition Policy review of ACT tobacco control legislation

The ACT Department of Health and Community Care have contracted Minter Ellison Consulting to undertake a National Competition Policy review of ACT tobacco control legislation.

Minter Ellison Consulting specialises in legislative and program review and business advice for the public sector. Additional information about us is attached.

We are contacting you to invite your participation in the consultation phase of this review. This letter explains our approach and what we are looking for.

What is a National Competition Policy legislative (NCP) review?

The Competition Principles Agreement (CPA) is an inter-governmental agreement that forms part of the National Competition Policy. The CPA seeks to promote efficiency by ensuring that legislative restrictions on competition are only maintained where any costs to the community can be justified by the resultant benefits.

Consultation process

During the review process we wish to include information from people affected by the legislation - both general views and any specific information.

We are consulting a range of stakeholders to ensure we obtain all the relevant information about the impacts of the legislation. We have approached a number of groups and businesses directly to obtain this feedback. If you know of another individual or business that might want to be involved in the consultation process, please provide us with their contact details.

What we want to find out

We want to find out if the restrictions identified in the attached issues paper are anti-competitive, and, if so, to what extent. Ultimately, we want to find out if the costs of any anti-competitive restrictions are outweighed by the benefits. To examine these issues, we need information about how different restrictions in the legislation impact on you/your business.

Broadly speaking, we are seeking information about the impacts that individuals and businesses may experience as a result of restrictions regarding:

- 1) the licensing scheme
- 2) controls on which tobacco products can be sold and how they can be sold, for example, bans on selling tobacco products for non-smoking use and restrictions on sales of quantities of fewer than 20 cigarettes

- 3) advertising, for example, advertising restrictions regarding point of sale displays or sponsorship
- 4) who can be sold tobacco products, for example, bans on sales to people under the age of 18 years and bans on people buying tobacco products for use by people under the age of 18
- 5) bans on smoking in enclosed public places and the associated exemption scheme.

We would be particularly interested in information about where restrictions have created costs for individuals and businesses and what these costs are. For example: compliance costs for enclosed public places with smoking prohibitions/restrictions; costs of complying with advertising and sales restrictions; costs of complying with requirements for the display of health warning notices and restrictions on product displays. We are also interested in finding out about any benefits which have resulted from these restrictions.

The attached issues paper/s outline the restrictions relevant to you/your organisation.

Consultations

We invite you to attend a meeting with other like groups to discuss the costs and benefits which have resulted from the legislative restrictions. Consultations will take place in mid-April and we will be in touch with you in the near future concerning your participation. If you have concerns about participating in a group discussion, please call us and we will make alternative arrangements.

You will appreciate we are working to a short time frame and if you would like to submit a written submission in addition to attending the consultation, we will be happy to receive this if it fits our timeframe.

How to contact us

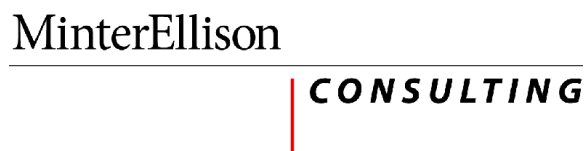
Should you wish to discuss your participation in the consultation process please call either myself on 02 6274 3766, or Linda Webb, Team Project Leader, 02 6274 3275. Should you wish to discuss any aspect of this review with the ACT Department of Health and Community Care, the contact officer is Margo Goodin 02 6205 1720.

Your assistance is very much appreciated.

Yours sincerely

Evie Cuthbertson
Consultant

Contact: Evie Cuthbertson (02) 6274 3766 evie.cuthbertson@minterellison.com



ACT Department of Health and Community Care

**National Competition Policy review
of ACT tobacco control legislation**

**ISSUES PAPER
Manufacturers, wholesalers and
retailer industry groups**

28 March 2002

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What is a National Competition Policy (NCP) legislative review?

National Competition Policy (NCP) is the name given to a package of reforms drawn together in 1995 and agreed on by all Australian Governments to enable and encourage competition. In addition to addressing reforms in areas that are critical to the long-term sustainability of the Australian economy, NCP also includes the review and reform of all laws that restrict competition.

The review phase includes seeking comment from relevant stakeholders and incorporating their views in any potential reforms.

The reform phase can involve repeal and replacement of legislation, modification of existing laws or the introduction of non-regulatory or self-regulatory schemes. The legislative review and reform process has been a fundamental goal of NCP to ensure that legislation (including Acts, enactments, Ordinances and regulations) do not restrict competition unless it can be demonstrated that:

- the benefits of the restriction to the community as a whole outweigh the costs, and
- the objectives of the legislation can only be achieved by restricting competition.

Since 1995, the Commonwealth and State and Territory Governments have been undertaking NCP legislative reviews of all existing and proposed legislation. In this instance, the ACT legislation and other instruments being reviewed are:

- the *Tobacco Act 1927 (Tobacco Act)*
- the Tobacco Regulations 1991
- the *Smoke-free Areas (Enclosed Public Places) Act 1994 (Smoke-free Areas Act)* and
- the Smoke-free Areas (Enclosed Public Places) Regulations 1994.

These can be found at www.legislation.act.gov.au

Who are we consulting?

We are talking to a cross section of stakeholders affected by the ACT tobacco legislation and regulations. These stakeholders include:

- wholesalers/manufacturers of smoking products
- retailers
- consumers
- Government
- the advertising industry
- the tobacco industry
- businesses affected by the *Smoke-Free Areas (Enclosed Public Places) Act 1994*
- businesses that are exempt from restrictions in the *Smoke-Free Areas (Enclosed Public Places) Act 1994*
- users of enclosed public places
- businesses in the tourism industry
- other groups affected by the restrictions including community stakeholders.

Information collection

The information collected will assist our understanding of where the legislation impedes competition and any costs and benefits that you have found to be associated with the legislation. The resulting report will be provided to the ACT Government for forwarding to the National Competition Council (NCC). The NCC require that all NCP reviews are publicly available. Stakeholders will be given a copy of the report.

What we want to consult you about

Listed below are provisions from the *Tobacco Act* and *Smoke Free Areas Act* that we think might place restrictions on you/your business. We are interested in obtaining information about specific costs and benefits impacting on you/your business which have resulted from these restrictions. For example, are there any administrative or compliance costs?

The attached list is only intended to guide our discussions and is not prescriptive. We are also interested in obtaining information about other costs and benefits which have resulted from any other potentially anti-competitive provisions/aspects of the *Tobacco Act* and *Smoke Free Areas Act*.

1. Restrictions under the *Tobacco Act 1927*

a) *Licensing scheme*

We seek information from you about the impacts (costs and benefits) on you/your business that have resulted from the licensing scheme. The specific restrictions we seek your feedback on refer to:

- bans on the sale of smoking products unless the seller holds a licence under the *Tobacco Act*
- bans on tobacco wholesaling without holding a wholesale tobacco merchant's licence
- the ban on tobacco retailing without holding a retail tobacco merchant's licence.

b) *Controls on products*

The *Tobacco Act* sets out controls on the advertising, promotion, display and sale of tobacco and other smoking products.

We are specifically interested in finding out about impacts (costs and benefits) for you/your business resulting from:

- bans on the manufacture of tobacco products other than for smoking (for example, chewing tobacco)
- bans on sales or imports of food or toys which resemble smoking products or a smoking product packaging
- bans on sales of cigarettes in quantities of fewer than 20
- the requirement that licensed retail tobacconists must obtain smoking products only from licensed wholesalers.

We would also like information about any impacts resulting from bans on vending machines in premises except bar rooms, casinos and places where gaming machines are operated on the premises (under the *Gaming Machine Act 1987*).

c) *Controls on point of sale*

What impacts, (costs and benefits) have resulted for you/your business from restrictions on how tobacco products can be displayed at the point of sale. The specific provisions from the *Tobacco Act* we referred to here include:

- point of sale displays only being allowed for products that are available for sale (or usually available for sale) at the point of sale
- single representation of a product line

- restrictions limiting the display of cartons to no more than one in a wholesale outlet and none in a retail outlet
- restrictions on the location of displays of smoking products and cigars
- restrictions on displays of smoking products within or adjacent to retail outlets
- restrictions on the number of points of sale at retail outlets
- mandatory display of health warnings at points of sale.

d) *Controls on advertising, promotion and sponsorship*

The specific provisions in the *Tobacco Act* which refer to controls on advertising and promotions of tobacco products are:

- the requirement that smoking advertisements be limited to a point of sale, and then to only permitted forms of ‘advertising’
- bans on smoking ads in theatres, films or videos for sale, or unsolicited paper
- bans on smoking ads visible from a public place
- bans on selling or distributing objects or entitlements that promote smoking products, the trademark of a smoking product or the name and interests of a manufacturer or distributor of a smoking product
- bans on smoking product give-aways
- restriction on competitions that promote smoking products
- restrictions on promotion of smoking products in exchange for sponsorship.

We are interested in finding out if these restrictions impact on you/your business and if so where? how? and what are the costs or benefits you have observed/experienced?

e) *Sales restrictions to persons under 18 years*

The *Tobacco Act* restricts consumer access to tobacco products via

- bans on sales of tobacco products to people under 18 years and
- bans on people buying tobacco products for use by people under 18 years of age.

What have been the costs and benefits to you/your business which have resulted from these restrictions?

2. *Restrictions under the Smoke -Free Areas (Enclosed Public Places) Act 1994*

a) *Prohibition on smoking in public places*

The *Smoke-free Areas Act* includes a general prohibition on smoking in enclosed public places. The Act has been implemented in stages, with most enclosed public places required to prohibit smoking from December 1994. Licensed premises were required to go smoke-free or to obtain an exemption in November 1998. The following is a list of examples of places where smoking is prohibited in public areas:

- shopping centres, malls and plazas
- restaurants, cafes and other eating places
- clubs
- schools, colleges and universities
- professions, trade, commercial and other business premises

- community centres or halls and places of worship
- theatres, cinemas, libraries and galleries
- buses, taxis and boats
- hostels, nursing homes and other multi-unit residential premises
- hotels and motels
- sporting and recreational facilities.

We are interested in information that you can provide about any impact (positive or negative) of this legislation.

b) Exemptions to the Smoke-Free Areas Act

Under the Act, exemptions are available to restaurants and licensed premises that meet specified criteria. An exemption reduces the required smoking-prohibited area to a minimum of 75% for a dining area and 50% for licensed premises. To qualify for an exemption, the venue must pay the required fees and install and operate air handling equipment which results in the premises meeting the current Australian Standard for mechanical air conditioning and ventilation (AS1668.2). Compliance with the required outdoor airflow rates are taken to indicate compliance with the Standard. There are other requirements, including that the occupier must take reasonable steps to prevent smoke from penetrating non-smoking areas of their premises and from neighbouring premises.

How has the exemption scheme affected you/your business?

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CONSULTING

ACT Department of Health and Community Care

**National Competition Policy review
of ACT tobacco control legislation**

ISSUES PAPER

**Operators of enclosed public places
and exempt places and other stakeholders**

28 March 2002

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National Competition Policy (NCP) is the name given to a package of reforms drawn together in 1995 and agreed upon by all Australian Governments to enable and encourage competition. In addition to addressing reforms in areas that are critical to the long-term sustainability of the Australian economy, NCP also includes the review and reform of all laws that restrict competition.

The review phase includes seeking comment from relevant stakeholders and incorporating their views in any potential reforms.

The reform phase can involve repeal and replacement of legislation, modification of existing laws or the introduction of non-regulatory or self-regulatory schemes. The legislative review and reform process has been a fundamental goal of NCP to ensure that legislation (including Acts, enactments, Ordinances and regulations) do not restrict competition unless it can be demonstrated that:

- the benefits of the restriction to the community as a whole outweigh the costs, and
- the objectives of the legislation can only be achieved by restricting competition.

Since 1995, the Commonwealth and State and Territory Governments have been undertaking NCP legislative reviews of all existing and proposed legislation. In this instance, the ACT legislation and other instruments being reviewed are:

- the Tobacco Act 1927 (*Tobacco Act*)
- the Tobacco Regulations 1991
- the Smoke-free Areas (Enclosed Public Places) Act 1994 (*Smoke-free Areas Act*) and
- the Smoke-free Areas (Enclosed Public Places) Regulations 1994.

This legislation can be found at www.legislation.gov.au

Who are we consulting?

We are talking to a cross-section of stakeholders affected by the ACT tobacco legislation and regulations. These stakeholders include:

- wholesalers/manufacturers of smoking products
- retailers
- consumers
- Government
- the advertising industry
- the tobacco industry
- businesses affected by the *Smoke-Free Areas (Enclosed Public Places) Act 1994*
- businesses which operate under exemptions issued under the *Smoke-Free Areas (Enclosed Public Places) Act 1994*
- users of enclosed public places
- businesses in the tourism industry
- other groups affected by the restrictions including community stakeholders.

Information collection

The information collected will assist our understanding of where the legislation impedes competition and any costs and benefits that you have found to be associated with the legislation. The resulting report will be provided to the ACT Government for forwarding to the National Competition Council (NCC). The NCC require that all NCP reviews are publicly available. Stakeholders will be given a copy of the report.

What we want to consult you about

Listed below are provisions from the *Smoke Free Areas Act* that we think may place restrictions on you/your business. The attached list is only intended to guide our discussions and is not prescriptive. We are also interested in information that you can provide about other costs and benefits which have resulted from any other provisions/aspects of the *Smoke Free Areas Act*

1. Restrictions under the *Smoke-Free (Enclosed Public Place) Act 1994*

The *Smoke-free Areas Act* has been implemented in stages, with most enclosed public places required to prohibit smoking from December 1994. Licensed premises were required to go smoke-free or to obtain an exemption in November 1998.

b) Prohibition of smoking in public places

The following is a list of examples of places where smoking is prohibited in public areas:

- shopping centres, malls and plazas
- restaurants, cafes and other eating places
- clubs
- schools, colleges and universities
- professions, trade, commercial and other business premises
- community centres or halls and places of worship
- theatres, cinemas, libraries and galleries
- buses, taxis and boats
- hostels, nursing homes and other multi-unit residential premises
- hotels and motels
- sporting and recreational facilities

We are interested in information that you can provide about any impact (positive or negative) of this legislation. For example, have cleaning costs changed?

c) Exemptions to the *Smoke-Free Areas Act*

Under the Act, exemptions are available to restaurants and licensed premises that meet specified criteria. An exemption reduces the required smoking-prohibited area to a minimum of 75% for a dining area and 50% for licensed premises. To qualify for an exemption, the venue must pay the required fees and install and operate air handling equipment which results in the premises meeting the current Australian Standard for mechanical air conditioning and ventilation (AS1668.2). Compliance with the required outdoor airflow rates are taken to indicate compliance with the Standard. There are other requirements, including that the occupier must take reasonable steps to prevent smoke from penetrating non-smoking areas of their premises and from neighbouring premises..

While we are interested in information about the exemption scheme as a whole, we are particularly interested in the following:

First, in respect of eligible establishments, we would like to know whether you have faced any constraints to applying for an exemption. For example, have the costs of the equipment, the layout of your premises, or the need for approval by the landlord/owner been an issue for you?

Secondly, we are aware that some restaurants that had exemptions at one time have chosen not to re-apply. We would be interested in finding out the reasons for this.

Finally, we are aware that some licensed premises have applied for an exemption and some have not. We would be interested in discussing the factors that influence these decisions.

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CONSULTING

ACT Department of Health and Community Care

**National Competition Policy review
of ACT tobacco control legislation**

**ISSUES PAPER
Community representatives**

28 March 2002

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What is a National Competition Policy (NCP) legislative review?

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The review phase includes seeking comment from relevant stakeholders and incorporating their views on any potential reforms.

The reform phase can involve repeal and replacement of legislation, modification of existing laws or the introduction of non-regulatory or self-regulatory schemes. The legislative review and reform process has been a fundamental goal of NCP to ensure that legislation (including Acts, enactments, Ordinances and regulations) do not restrict competition unless it can be demonstrated that:

- the benefits of the restriction to the community as a whole outweigh the costs, and
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Information collection

The information collected will assist our understanding of where the legislation impedes competition and any costs and benefits that you have found to be associated with the legislation. The resulting report will be provided to the ACT Government for forwarding to the National Competition Council (NCC). The NCC require that all NCP reviews are publicly available. Stakeholders will be given a copy of the report.

What we want to consult you about

Listed below are provisions from the *Tobacco Act* and *Smoke Free Areas Act*, that may place restrictions on you or those you represent. The attached list is only intended to guide our discussions and is not prescriptive. We are also interested in information about any other restrictions in the *Tobacco Act* and *Smoke Free Areas Act* you believe are anti-competitive.

1. Restrictions under the *Tobacco Act 1927*

f) Controls on products

The *Tobacco Act* sets out controls on the advertising, promotion, display and sale of tobacco and other smoking products.

We are specifically interested in finding out about impacts (costs and benefits) you have experienced/observed which have resulted from:

- bans on the manufacture of tobacco products other than for smoking (for example, chewing tobacco)
- bans on sales or imports of food or toys which resemble smoking products or a smoking product packaging
- bans on sales of cigarettes in quantities of fewer than 20
- the requirement that licensed retail tobacconists must obtain smoking products only from licensed wholesalers.

We would also like information about any impacts resulting from bans on vending machines in premises except bar rooms, casinos and places where gaming machines are operated on the premises (under the *Gaming Machine Act 1987*).

g) Controls on point of sale

What impacts, (costs and benefits) have you observed/experienced which have resulted from restrictions on how tobacco products can be displayed at the point of sale. The specific provisions from the *Tobacco Act* we refer to here include:

- point of sale displays only being allowed for products that are available for sale (or usually available) at the point of sale
- single representation of a product line
- restrictions limiting the display of cartons to no more than one in a wholesale outlet and none in a retail outlet
- restrictions on the location of displays of smoking products and cigars
- restrictions on displays of smoking products within or adjacent to retail outlets
- restrictions on the number of points of sale at retail outlets
- mandatory display of health warnings at points of sale.

h) Controls on advertising, promotion and sponsorship

The specific provisions in the *Tobacco Act* which refer to controls on advertising and promotions of tobacco products are:

- the requirement that smoking advertisements be limited to a point of sale, and

then to only permitted forms of ‘advertising’

- bans on smoking ads in theatres, films or videos for sale, or unsolicited paper
- bans on smoking ads visible from a public place
- bans on selling or distributing objects or entitlements that promote smoking products, the trademark of a smoking product or the name and interests of a manufacturer or distributor of a smoking product
- bans on smoking product give-aways
- restriction on competitions that promote smoking products
- restrictions on promotion of smoking products in exchange for sponsorship.

We are interested in finding out if these restrictions impact on you and those you represent, and if so, where? and how? and what are the costs or benefits you have observed/experienced?

i) Sales restrictions to persons under 18 years

The *Tobacco Act* restricts consumer access to tobacco products via:

- bans on sales of tobacco products to people under 18 years and
- bans on people buying tobacco products for use by people under 18 years of age.

What have been the costs and benefits to you/those you represent which have resulted from these restrictions?

2. Restrictions under the *Smoke -Free Areas (Enclosed Public Places) Act 1994*

c) Prohibition on smoking in public places

The *Smoke-free Areas Act* includes a general prohibition on smoking in enclosed public places. The Act has been implemented in stages, with most enclosed public places required to prohibit smoking from December 1994. Licensed premises were required to go smoke-free or to obtain an exemption in November 1998. The following is a list of examples of places where smoking is prohibited in public areas:

- shopping centres, malls and plazas
- restaurants, cafes and other eating places
- clubs
- schools, colleges and universities
- professions, trade, commercial and other business premises
- community centres or halls and places of worship
- theatres, cinemas, libraries and galleries
- buses, taxis and boats
- hostels, nursing homes and other multi-unit residential premises
- hotels and motels
- sporting and recreational facilities

We are interested in information that you can provide about any impact (positive or negative) of this legislation.

d) Exemptions to the Smoke-Free Areas Act

Under the Act, exemptions are available to restaurants and licensed premises that meet specified criteria. An exemption reduces the required smoking-prohibited area to a minimum of 75% for a dining area and 50% for licensed premises. To qualify for an exemption, the venue must pay the required fees and install and operate air handling equipment which results in the premises meeting the current Australian Standard for mechanical air conditioning and ventilation (AS1668.2). Compliance with the required outdoor airflow rates are taken to indicate compliance with the Standard. There are other requirements, including that the occupier must take reasonable steps to prevent smoke from penetrating non-smoking areas of their premises and from neighbouring premises.

How has the exemption scheme affected you/those you represent?

Appendix D: Summary of other issues arising from public consultation

The different restrictions applicable in each state were viewed as potential areas of anti-competitiveness. The cross-border differences in the display of tobacco products between Canberra and Queanbeyan were said to be potentially anti-competitive because ACT retailers have to comply with restrictions that their NSW competitors do not. National retailers operating in different states said they had to retrain staff about different requirements when they move from store to store.

A number of participants queried the level of compliance and enforcement of the restrictions regarding the licensing scheme, selling to under eighteens and the exemptions scheme.

Licensed retailers felt at a disadvantage when competing against retailers who operated illegally.

BATA said that it is not possible to enforce the requirement for wholesalers to hold a licence, because a licensed retail outlet cannot know if a customer is intending to sell the products in another retail environment, and may without their knowledge be engaging in wholesaling without the appropriate licence.

Community health groups question whether the restrictions on selling to under eighteens are being enforced, as they continue to meet and work with under 18's that smoke.

Representatives from restaurant, club industries and health groups also questioned whether the standards set out under the exemptions scheme were being enforced throughout the industry. Many observed that some premises have inadequate equipment, or do not utilise this equipment once it had been installed.

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