

**Submission to the Health Select Committee  
on the Smoke-free Environments (Control and Enforcement) Amendment Bill  
from staff in the Department of Public Health, University of Otago, Wellington**

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**To Dr Paul Hutchison, Chairperson: Health Select Committee**

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Thank you and the Committee Members for the opportunity to submit on such an important public health topic (given the scale of the impact of the tobacco epidemic in New Zealand).

This submission is from members of the Department of Public Health, University of Otago, Wellington. We have extensive experience in tobacco use epidemiology and tobacco control research, with 100+ published outputs in the peer-reviewed scientific literature collectively. In particular, we have studied the policy interventions needed to reduce the impact of tobacco in New Zealand and on various aspects of tobacco marketing (including point-of-sale displays).

We strongly support the content of the Bill. However, we have a number of recommendations about the way that the Bill could be strengthened. We divide these recommendations into: (i) further retail restrictions; (ii) other additions to the Bill; (iii) areas where the Committee could make recommendations to Government for critical policy development work.

Much of our submission supports the Report from the Maori Affairs Select Committee (MASC) Inquiry,<sup>1</sup> and we feel that ideally, nearly all of their recommendations should be acted on as soon as possible (see Appendix 1).<sup>2</sup> Our recommendations indicate some of the priority areas we consider most feasible and effective.

We note that the MASC Report was *not* running against public opinion. Rather, its recommendations are legitimised by strong and increasing public support (including among smokers) for stronger actions on tobacco (including banning point-of-sale displays of tobacco – see Appendix 2).<sup>3-9</sup> We also support the detailed recommendations on tobacco retailing suggested by ASH NZ.

A general argument for going further with tobacco interventions is the importance of taking a precautionary approach in relation to highly toxic and addictive products like cigarettes. The precautionary principle involves acting to avoid serious potential harm, despite lack of absolute scientific certainty as to the likelihood, magnitude, or causation of that harm. The precaution principle is an established principle in areas of risk management in relation to occupational exposures, environmental pollution, safety of food and drink among others.<sup>10, 11</sup> In the case of tobacco products, the scale and severity of the harm means that the need for precautionary measures is extremely high.

For instance, where there is a significant and plausible risk to children and others from tobacco marketing and accessibility, it seems reasonable that the regulation of tobacco packs and other tobacco marketing and retail focused measures should follow a highly precautionary approach. In such an approach, the onus would be fully on *opponents of interventions* such as plain packaging of tobacco products, to prove that such actions would not protect the health and wellbeing of children, other vulnerable groups, and indeed all New Zealanders. In the absence of such proof, a precautionary approach would suggest that a government concerned with protecting children and other citizens should act immediately to require the removal of all other permitted forms of tobacco marketing (eg, positive imagery and wording on tobacco packaging) which might plausibly encourage children to start smoking.

We would very much appreciate the opportunity to appear before the Committee to provide more detailed evidence on these matters.

## **Recommendations on the current Bill**

We support the removal of tobacco displays, however, we do not think that there needs to be a provision for a two year exemption from compliance.

We support the removal of all aspects of tobacco marketing from the exteriors of tobacco retailers.

We support the better enforcement of prohibitions on distribution or supply of tobacco products free of charge or at a reduced charge.

We support the infringement notice scheme to better enforce the prohibition on the sale of tobacco products to people under 18 years.

## Recommendation on other aspects of tobacco retailing

### Recommendation One

That the Smoke-free Environments Act be amended to prevent the sale of tobacco where alcohol is sold for consumption (bars, cafés, clubs, festivals). There is a strong association between excessive alcohol consumption and smoking in New Zealand.<sup>12</sup> Alcohol reduces smokers ability to attempt quitting and to successfully stay quit.<sup>13</sup> It is also highly plausible that dis-inhibition due to alcohol impairs rational decision making and enhances the impact of peers smoking and so encourages non-smoking young adults to start smoking. The Canadian province of Quebec has prohibited tobacco sales in ‘establishments operating under a public house, tavern or bar permit’.<sup>14</sup>

## Recommendations on other additions to the Bill

The recommendations under this heading largely follow those of the recent Māori Affairs Select Committee Report on tobacco.

### Recommendation Two

That a section be added to the purpose of the Smoke-free Environments Act, to establish a target date for the ending of *commercial* tobacco sales in New Zealand. We suggest this date be 2020 (albeit with ongoing monitoring and review of progress annually). A clear target would provide incentives for government, businesses, the public and smokers to work towards a tobacco-free society, and success would save tens of thousands of premature deaths.

### Recommendation Three

That tobacco products be required to sold in plain packs (no logos, only specified type fonts, colours, shapes etc) and the format of products such as cigarettes be specified (colour, shape, printing, etc). This would reduce one of the other major marketing avenues, besides retail displays, the product design.<sup>15-18</sup> If necessary, the legislation could allow for harmonising with the planned Australian legislation on this matter. However, the opportunity to act on this now should not be lost, as Australian efforts may be delayed.

### Recommendation Four

That the purpose of section 5.3 of the Framework Convention on Tobacco Control (which New Zealand has ratified in 2004) be added to the Smoke-free Environments Act (in line with the World Health Organization guidelines on the section).<sup>19</sup> This section reads: ‘In setting and implementing their public health policies with respect to tobacco control, Parties shall act to protect these policies from commercial and other vested interests of the tobacco industry in accordance with national law’.<sup>20</sup> The guidelines require governments to ‘require the tobacco industry and those working to further its interests to operate and act in a manner that is accountable and transparent’.<sup>19</sup> In practice, this needs the type of restrictions on political funding that New South Wales has adopted,<sup>21</sup> and (amongst other things) would end tobacco investments by New Zealand government agencies,<sup>22, 23</sup> (a highly unethical situation in our view).

### **Recommendation Five**

That cars where there are children (of an age where they are under the authority of parents and guardians) be required to be smokefree. We note that a number of states and provinces in Australia, Canada and the USA have some form of smokefree car law.<sup>24</sup> A study of the effects of the 2007 smokefree car law in South Australia indicated an increase in smokefree cars with children, from 69% in 2005 to 82% in 2008.<sup>25</sup>

Studies of smoking in cars indicate that it is extremely dangerous to occupants even with windows open,<sup>26-30</sup> as mean fine particulate (PM<sub>2.5</sub>) levels are well in excess of the safe US National Ambient Air Quality standard of 35µg/m<sup>3</sup>.<sup>30</sup>

In New Zealand, social marketing has been used to date, instead of legislation as a means to protect children from smoking in cars. However, the effectiveness of such education campaigns has been incomplete. For instance, in Canada, research in 2006 indicated that 25% of people had been exposed to SHS in a car in the last month.<sup>31</sup> This was despite an education campaign about smokefree homes and cars that had been running since 2004–2005. In New Zealand (NZ) in 2008, 27% of Year 10 students reported exposure to SHS in a private vehicle in the last 7 days, unchanged from 2006, despite a smokefree cars media campaign since 2006.<sup>32, 33</sup>

Education campaigns may also be less effective in protecting those children who are most likely to be exposed, that is, those in poorer and most socioeconomically deprived households.<sup>34</sup> In NZ, the in-car exposure of students from the most socioeconomically deprived third of areas was almost three times that of those from the least socioeconomically deprived third of areas (40% compared to 14%).<sup>32</sup>

There is extremely strong New Zealand support even from smokers (96%) for requiring smokefree cars for pre-school children.<sup>7, 9</sup> A 2008 national survey of the New Zealand public found 91% (82% for smokers) agreeing with the statement ‘that smoking should not be allowed in cars with children under the age of 14 in them’.

### **Recommendations on areas where policy development work is needed**

We suggest that the Committee recommend to government the following:

#### **Recommendation Six**

That the recommendations of the MASC Report be furthered urgently by immediate and comprehensive policy work.

In particular, that work be done to progress the recommendations:

- ‘We recommend to the Government that it investigate further options for measures to reduce the supply of tobacco into New Zealand, taking into account trade and other implications, with a view to reducing the availability of tobacco in New Zealand over time.’ (p.23)

- ‘that it consider annually reducing (by a set percentage) the amount of imported tobacco, the number and quantity of tobacco products for sale at each outlet, and the number of retail outlets.’(p.23)
- ‘the provisions in the Smoke-free Environments Act for regulating additives and nicotine in tobacco be used to reduce the additives and nicotine in tobacco on an annual basis.’(p.26)

Along with the MASC, we suggest that as other jurisdictions (Singapore, Hong Kong)<sup>35, 36</sup> have already abolished or severely restricted duty free allowances for tobacco importation by travellers, New Zealand needs to immediately investigate the policies of other jurisdictions, with a view to abolishing duty free imports.

The work on these areas should be part of a comprehensive policy development together, as there are likely to be trade-offs and interactions between the mechanisms selected to ensure New Zealand is tobacco-free. We have detailed this elsewhere (Appendix 1). Recommendation 7 below, on licensing, should also be part of this more detailed policy development and planning.

### **Recommendation Seven**

In addition to the MASC recommendations, we recommend that policy work be immediately conducted on a licence system for retailers, and on measures to reduce the numbers of retailers allowed to sell tobacco products, and/or restrict hours of sales. For example, the number of retail outlets licensed to sell tobacco could be reduced by 10% per year, or a reduction could be achieved by periodic auctions for a limited number of licences.

Reduced availability of tobacco would be likely to help those trying to quit or to reduce their smoking. The MASC recommendation of empowering local councils to limit the numbers and location of retailers is a further complementary option, which fits well with other national trends to empower communities in terms of alcohol control and controlling the numbers of gambling outlets in their regions.<sup>37</sup> Such limits on tobacco retailers could include geographic restrictions (eg, no tobacco retailers within two kilometers of schools).

National survey data indicates that those *agreeing* with the statement ‘the number of places allowed to sell cigarettes and tobacco should be reduced to make them less easily available’ remained high at 65% and 67% during 2008–2010.<sup>6</sup> A majority of New Zealand *smokers* agree with the statement ‘tobacco products should only be sold in special places where children are not allowed to go’.<sup>5</sup>

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**Appendix One**

Blakely et al. The Maori Affairs Select Committee Inquiry and the road to a smokefree Aotearoa. *N Z Med J* 2010;123(1326):7-17.

(attached)

**Appendix Two**

Wilson N, Edwards R, Thomson G, Weerasekera D, Gifford H, Hoek J (2010). High and increased support by Maori and non-Maori smokers for a ban on point-of-sale tobacco displays: national survey data. *N Z Med J*, 123, 84-6.

(attached)