

Department of Health and Human Services

PUBLIC HEALTH SERVICES

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The Secretary
Legislative Council Government Administration Committee A
Parliament of Tasmania
Parliament House
HOBART TAS 7000

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Dear Committee

Thank you for the opportunity to comment on the practicality and workability of the *Tobacco Free Generation Bill 2014* (the Bill).

I provide this submission on behalf of the Tasmanian Department of Health and Human Services (DHHS). DHHS Public Health Services, and the Director of Public Health in particular, are responsible for the enforcement of tobacco control provisions under the *Public Health Act 1997* (the Act). Public Health Services also contributes to developing and implementing measures to reduce tobacco use in Tasmania.

DHHS supports measures to prevent smoking uptake and reduce tobacco use. As a measure aiming to achieve these ends, the implementation of this Bill has implications that DHHS would need to coordinate and manage. Some of these will consume resources, but these aspects have not yet been costed or accounted for in budgets.

The following comments relate to the Bill, the Act and implementation.

1. Tobacco Free Generation Bill

1.1 Section 67J – Sale of cigarettes to a member of the tobacco-free generation

Instead of only increasing the compliance burden on the retailer, the intent of section 67J may be strengthened if it applied to any person lending, giving or supplying tobacco. This would make it consistent with the current approach for supply to children (section 64 of the Act). Research evidence shows that family and friends, rather than retailers, are currently the main source of supply for children. It is likely that this will be the same for the Tobacco Free Generation.

A consequence of this section of the Bill may be increased purchase of tobacco through other avenues such as the internet, mail or telephone. The Bill would be strengthened if the use or expansion of supply through such sources could be controlled.

There is a risk that provisions under the *Commonwealth Age Discrimination Act 1994* could be used to overrule State laws if the Commonwealth was of the view that restrictions on the sale of tobacco to the Tobacco Free Generation are unjustifiably discriminatory.

Another risk is the cost and direct and indirect consequences of potential legal challenges. Given this Bill, if passed, will be a world first in terms of restricting tobacco sales, it is highly likely that other parties will bring considerable resources to bear to combat the restrictions.

From a drafting perspective there do not appear to be any inconsistencies with existing provisions. However, the *Public Health (Miscellaneous Amendments) Act 2015* will come into effect on 1 July 2015 and will insert a section 67I; the section 67I in this Bill will therefore need to be renumbered.

1.2 *Section 67L(1) – The Director is to conduct by 31 July 2021 a first review, and by 31 July 2025 a second review, as to whether this Division is operating effectively and efficiently...*

These reviews will require an evaluation plan including performance indicators to be developed and undertaken. These activities have not been costed.

2. **Public Health Act 1997**

2.1 *Section 67 – Warnings and information*

The Act currently allows an authorised officer to give warnings to a child or require a child to give information about who supplied tobacco to them. This is instead of applying a penalty to children for possession or use of a tobacco product. This power should be extended to apply to members of the Tobacco Free Generation in order to obtain information about where and when they have purchased tobacco, thereby facilitating compliance activities.

3. **Implementation**

3.1 *Retailer education*

With all significant new legislation retailers need to be visited and changes explained in person. This can take between 4 to 6 months to complete. The existing retailer education guide (a booklet) would also need to be updated, reprinted and distributed. Because Tasmania would be the first in the world to enact such legislation, there would be no other jurisdiction or resource to model material on. Retailer education fees are included in the full cost recovery for a tobacco seller's licence, which obviates additional costs to Government.

3.2 *Public education*

Changes that new legislation brings must be communicated to the public. We foresee some risk of confusion because this Bill does not extend to the *act* of smoking. Indeed, the ongoing legal act of smoking by members of the Tobacco Free Generation may risk creating the perception of an ineffective strategy. A communication plan targeting people born from 2000 onwards, including interstate and international visitors, will need to be costed, developed and maintained.

3.3 *Signage*

The required signage for retailers about selling tobacco to a person under 18 years of age would need to be amended by changing the *Guidelines for the Sale of Tobacco*. New signage to specify the prohibition of sales to anyone born after 1 January 2000 would also need to be produced and distributed to retailers. Signage is included in the full cost recovery for a tobacco seller's licence.

3.4 *Section 67A – Monitoring compliance*

The Act allows the Director of Public Health to conduct approved activities to monitor compliance. Controlled purchase operations could be extended to include members of the Tobacco Free Generation. However, to test retailer compliance, control purchase operations would need to involve adults (aged 18 and over) and may necessitate employment or reimbursement costs. This has not been costed or budgeted.

3.5 Capacity for enforcement

To maintain capacity to deal with other tobacco control compliance issues, as well as the implications of the Bill, overall enforcement resources would need to be increased. Capacity to progress new and existing tobacco control priorities, such as electronic cigarettes and the extension of smoke free areas should not be compromised. Current projections have DHHS with 1.8 full time Tobacco Control Enforcement Officers and 0.4 part-time Tobacco Licencing Officer for the State when the proposed Bill is to commence. The fixed term Senior Advisor contract will expire on 18 October 2018, subject to review.

3.6 Tobacco sellers licence full cost recovery

Tobacco Sellers Licence fees will increase due to annual indexing, in addition to changes arising from reviews to ensure full cost recovery. Fee increases usually result in fewer licences. By 2018 we estimate there will be fewer than 800 licenced Tobacco Sellers. A resultant net reduction in revenue will limit funds available for effective enforcement of tobacco control.

In summary, it appears feasible that DHHS could implement this Bill, albeit not from existing resources. Additional resourcing would be required particularly for evaluation, public education and enforcement activities.

As the intention of this Bill is to prevent smoking uptake by changing social norms, the likelihood of achieving this would be greatly enhanced if it was implemented with strong linkages with existing education and prevention programs. An example of this is the *Smoke Free Generation: Be a part of it!* project which has been developed for young people by young Tasmanians.

Thank you for the opportunity to comment on the Bill.

Yours sincerely



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A/Director of Public Health

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