



Consumers Health  
Forum OF Australia

**SUBMISSION**

# **Review of Tobacco Control Legislation Consultation**

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Consumers Health Forum of Australia 2019  
***Review of Tobacco Control Legislation***

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# Introduction

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The Consumers Health Forum of Australia (CHF) is the national peak body representing the interests of Australian healthcare consumers and those with an interest in health consumer affairs. CHF works to achieve safe, quality, timely healthcare for all Australians, supported by accessible health information and systems. We are pleased to provide a submission supporting the continuation and strengthening of the Tobacco Control Regulations in Australia.

Tobacco is linked to a range of conditions including various cancers, cardiovascular diseases, type 2 diabetes, hip fractures and reproductive problems in women. Inhaling environmental tobacco smoke or second-hand smoke is also associated with harmful effects and there is no known safe level of exposure.

Since the introduction of the Tobacco Control Regulations in the early 1990s, Australia has taken significant steps to reduce smoking and minimise the long-term health risks associated with tobacco. Prevention and cessation of smoking has been a remarkable public health achievement in Australia, which CHF believes is attributed to the regulatory and population-based approach of the Tobacco Control Regulations. Despite the progress that has been made, 1 in 8 Australians still smoke daily, over 15,000 Australians die from tobacco-related causes each year, and an estimated 20% of the nation's cancer deaths each year is caused by smoking.

There is a duty of care to regulate tobacco products from being sold and advertised alongside everyday items as the addictive and dangerous nature of the products mean that consumers should be making an informed choice. We believe that the Tobacco Control Regulations will continue to have relevance for as long as tobacco can be purchased in Australia and that relaxing the restrictions would risk undoing decades of progress in public health. At a minimum, we recommend maintaining current regulations such as mandatory health warnings and would strongly encourage renewed efforts to stop and reduce tobacco smoking and for this review to ensure regulations and compliance processes are future-proofed.

## Consultation Questions

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### Tobacco Advertising

**1. *What is working well in relation to the Tobacco Advertising Prohibition Act 1992 and the Tobacco Advertising Prohibition Regulation 1993?***

Please refer to CHF's answer to Question 10. Banning the advertising of tobacco has been a key part of Australia's successful approach to tobacco control, making it important to continue and strengthen current efforts.

In 2016, there was an evaluation of tobacco plain packaging and we would recommend a similar review of the TAP Act and Regulations to determine the

effectiveness of the current approach prior to removing or relaxing any legislation or regulation.

**2. Do you consider the Tobacco Advertising Prohibition Regulation 1993 simple, clear and easy to read? If not, which elements of the regulation pose particular challenges, and what changes would you suggest?**

The TAP Regulation is clear and fit-for-purpose as legal guidelines for the tobacco industry or business owners, however we would not consider it written in plain, easy to read language that is consumer-friendly.

We note that the point of sale posters and health warning images on products are clear for consumers purchasing products. We also note that the Department of Health has an 'Easy Guide' to the regulation and the States and Territories have training and retail guides that include local regulations, translations of the documents, and are written in clearer terms for consumers using examples. We encourage any changes that are made to the TAP Act or Regulation to be reflected in updated versions of these documents to ensure the information remains accessible to consumers.

CHF also found that the more consumer-friendly documents are not easy to find in the 'For Consumers' section of the Department of Health's website. This makes it difficult for people seeking information that is not included in the TAP Act or Regulations. For example, information about the complaints process is difficult to find. The form is located under 'Tobacco Resources' in the 'Education and Prevention' section alongside a wide variety of information. CHF recommends making the consumer-friendly documents and information more prominent on the website.

**3. What, if any, improvements could be made to the Tobacco Advertising Prohibition Act 1992 and the Tobacco Advertising Prohibition Regulation 1993?**

As part of a broader campaign that has successfully lowered tobacco use, the Act has been instrumental in reducing exposure to tobacco advertising e.g. banning sponsorship of sporting events. We do not think that improvements are required, however as outlined in answer to Question 5, this review should include emerging digital channels and online shopping trends to ensure these are reflected in the updated regulation and legislation.

It would be useful for the basic definition of a tobacco advertisement that is in the TAP Act (p.8) to be included in the TAP Regulation document as the list of what is included is quite extensive.

**4. Are there any studies that would support the measures that you are suggesting?**

No, the recommendations in answer to Question 5 refers to emerging and future trends where there is little or no existing research.

**5. Do you consider the Tobacco Advertising Prohibition Regulation 1993 (or provisions within) redundant, unnecessary or otherwise not fit-for-purpose?**

Due to the health risks associated with smoking, CHF believes that the TAP Regulations are relevant and will continue to be necessary while tobacco is sold as a legal product in Australia.

While the TAP Act was updated in 2016 and the TAP Regulation in 2012, CHF believes that these should be updated to reflect emerging digital channels and be future-proofed to consider things like online shopping trends, streaming services, online video content, social media, and digital applications, including delivery and gambling services.

Although not yet common in Australia, services such as online convenience stores make it easy for people to have cigarettes delivered to their homes and duty-free shops at airports now offer a 'click and collect' service. We believe that allowing tobacco to be sold with common groceries and making bulk tobacco sales more convenient removes barriers that have been put in place intentionally, reframing tobacco as a luxury rather than a health risk.

The review should pay close attention to delivery services becoming popular through the gig economy and emerging models of online shopping that have the potential to indirectly advertise tobacco through the promotion of their services. Please see examples below, particularly the encouraging wording from an online Sydney convenience store. These give consumers a distinctly different experience from going into a physical store where tobacco it is hidden behind shutters and is often sold at a separate counter.

## Cigarette Delivery Sydney

Product prices include all taxes

Ciggy delivery in Sydney has never been easier. If you have got that craving for a smoke but are unable to get out then you have come to the right place.

Since 1997 Buddy's has been catering to the Sydney area for anyone who needs their groceries delivered to them, without leaving your home and waiting in line! Choose from below your favourite cigarette and we'll ensure they're delivered directly to you.

Please note that we do not deliver to minors.

So what are you waiting for? Order now from the most reliable **grocery delivery service** in Sydney! Check out our location map below to see where we deliver.

For more information on food home delivery in Sydney, please contact us on [buddy@buddys.com.au](mailto:buddy@buddys.com.au) or fill in our enquiry form.

Source: *Buddy's Online Convenience Store*<sup>1</sup>

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<sup>1</sup> Buddy's Online Convenience Store, 2019, *Cigarette and Tobacco*, <http://www.buddys.com.au/catalog/category/view/id/12>, date accessed: 20/01/19.

## Shop easier

### Click & Collect

Using our click & collect service, you can get information on the products you want before your journey and secure them online ready for you to collect at the airport – **at your convenience**.

The products you want can be **purchased online from 30 days prior up to 15 hours before your flight** and then can simply be picked up at one of our collection points.

Start your journey well, knowing that your purchases will be **ready at the shop in time for your departure** and can be picked up when you pass by on your way to the gate. You can shop online in peace and quiet and depart for your journey in an even **more relaxed** way without waiting times.

Source: *Heinemann Duty Free*<sup>2</sup>

The screenshot shows the Airtasker website interface. At the top, there's a navigation bar with the Airtasker logo, a 'Post a task' button, and links for 'Categories', 'Browse tasks', and 'How it works'. On the right, there are 'Sign up', 'Log in', and 'Become a tasker' buttons. Below the navigation, there are filters for '50km Queanbeyan & remotely', 'Any price', and 'Task type'. A search bar contains the word 'cigarette'. The main content area is divided into two columns. The left column shows a list of tasks: 'Buy cigarettes with tip' for \$40, 'Buy cigarettes (18+ will show ID)' for \$80, and 'Photoshop A picture of me with anime characters' for \$20. The right column shows a detailed view of the 'Buy cigarettes (18+ will show ID)' task. It includes a 'TASK BUDGET' of \$80, a 'Completed' status, and a 'Post a similar task' button. The task was posted by James M. 3 months ago. The location is Ainslie ACT, Australia, and the due date is Saturday, 8th Dec 2018. The task details state: 'Drop a 40pk of Rothman Golds to my address. Am stuck at home. Payment includes cost of cigarettes. Will provide ID upon arrival if concerned.'

Source: *Airtasker*<sup>3</sup>

## Tobacco Plain Packaging

### 6. What is working well in relation to the Tobacco Plain Packaging Act 2011 and the Tobacco Plain Packaging Regulations 2011?

Please refer to CHF's answer to Question 10. Plain packaging has been a key part of Australia's successful approach to tobacco control, making it important to continue and strengthen as part of current strategies. The success of the TPP Act and Regulation are discussed in depth in the 2016 *Post-Implementation Review: Tobacco Plain Packaging* that was commissioned by the Department of Health and confirm that this aspect of the campaign is achieving the intended aims.

<sup>2</sup> Heinemann, 2019, *Pre-order*, [http://www.heinemanndutyfree.com.au/sydney\\_en/pre\\_order/](http://www.heinemanndutyfree.com.au/sydney_en/pre_order/).

<sup>3</sup> Airtasker, 2019, *Buy cigarettes (18+ will show ID)*, <https://www.airtasker.com/tasks/buy-cigarettes-18-will-show-id-12944455/>.

**7. Do you consider the Tobacco Plain Packaging Regulations 2011 simple, clear and easy to read? If not, which elements of the legislation pose particular challenges, and what changes would you suggest?**

The TPP Act and Regulation are clear and fit-for-purpose as legal guidelines for the tobacco industry or business owners, however we would not consider them written in plain language that would be consumer-friendly.

The simplified outlines provided at the beginning of each Chapter of the Act is useful, however the wording would still be challenging for many consumers and we would not consider it consumer-friendly.

Please see answer to Question 2 for our suggestions about how to make consumer-friendly information more accessible.

**8. What, if any, improvements could be made to the Tobacco Plain Packaging Act 2011 and the Tobacco Plain Packaging Regulations 2011?**

As highlighted in Question 3, plain packaging has been instrumental as part of the overall campaign to reduce smoking in Australia. We do not have any recommendations to improve the legislation around packaging but do feel both documents should be future-proofed, for example ensuring health warnings are still visible on digital apps and mobile websites that simplify content for easy navigation.

The TPP Act and Regulation detail the investigation and penalties of offences and the rights of those selling tobacco, however there is no reference to individual rights, how a complaint will be handled or how offenders may be monitored for compliance. We suggest that the review includes a review of these processes and inclusion in the documents if appropriate.

**9. Are there any studies that would support the measures that you are suggesting?**

Yes, the *Post-Implementation Review Tobacco Plain Packaging 2016* that was commissioned by the Australian Government shows the effectiveness of continuing with this approach alongside the other measures currently in place.

## General

**10. What are the benefits to you associated with the current regulatory arrangements?**

Australia has been a world leader in reducing smoking prevalence over the last 50 years. In 1971, 45% of men and 39% of women smoked daily in Australia while in 2016 this number had reduced to 14.6% of men and 11.2% of women smoking daily. According to the latest AIHW survey, 60% of Australians have never smoked and in the age group of 14 to 19 year old Australians, 94% have never smoked (this was up from 75% in 2001).

The significant reduction in regular smokers and the number of people trying smoking show that current efforts have been successful. It is difficult to determine what has been the most effective element of the overall campaign and so CHF recommends maintaining and strengthening the current multi-pronged approach, including updating and renewing the Tobacco Control Regulations.

**11. What are the costs or disadvantages to you associated with the current regulatory arrangements?**

There are costs associated with administering and enforcing the TPP Regulations, however we believe the significant health benefits far outweigh these costs. The Australian Burden of Disease Study conducted by the Australian Institute of Health and Welfare measures the cost of our fatal burden by calculating the years lost when a person dies earlier than the current best life expectancy in the world. In 2011, 4.5 million years were lost in Australia and most of these were due to cancer and cardiovascular diseases. Smoking is a known cause of both of these conditions and is also linked to other factors that were identified such as being overweight or obese and having high blood pressure.

The significant long-term health benefits of reduced smoking in Australia means that CHF does not believe there are disadvantages to the current regulatory arrangements and would argue that the costs associated with the regulatory arrangements are an investment in Australia's future.

**12. Do you consider that any of the legislation generates unnecessary administrative burden? If so, what changes could be made to address this?**

CHF believes that the administrative burden would have been concentrated in the initial implementation of new laws and the ongoing costs of complying would be minimal e.g. maintaining a license to sell tobacco. The dangerous health risks associated with tobacco mean that it cannot be sold and advertised as a normal product and relaxing the administration of being a supplier should not be considered.

CHF assumes that regulation impact statements on relevant industries and sectors would have been conducted in order for current policies and laws to stand and the cost versus benefit case made then would still be relevant.

**13. Do you consider that any of the Department of Health's tobacco control legislation imposes significant unnecessary compliance costs on business, community organisations and individuals? If so, how could compliance costs be reduced?**

Please see answer to Question 12. Relaxing the compliance costs and making it easier or more appealing to sell tobacco should not be considered.

**14. Are there any other measures for tobacco control regulation that you think the Government should consider and prioritise?**

*Renewing and focusing campaigns to reduce smoking:*

There is a documented higher prevalence of smoking among population groups who are vulnerable to disadvantage, marginalisation and discrimination (ACOSH 2019). This includes Aboriginal and Torres Strait Island populations, people who identify as LGBTIQ+, people experiencing a mental illness, people in correctional facilities, people with a disability, people in regional and remote areas, people born overseas, the homeless, veterans, and single parents. Unfortunately, these groups also generally have worse health outcomes and every step up the socioeconomic ladder generally corresponds to better health.

The recent campaign for Aboriginal and Torres Strait Island populations 'Don't make smokes your story' is an example of ways that information and messaging can be targeted to vulnerable populations. Such efforts need to be expanded to other groups and complemented by accessible health system support and encouragement for those seeking to quit.

*Achieve consistency across the States and Territories:*

The aspects of smoking reduction that are being considered in this review are national, however there many areas that fall under States and Territory regulation could contribute to the national campaign. CHF would like to see support for states and territories to take complementary action in areas where their regulations do not currently align. One example is smoke-free areas: while there is consistency in regulation of smoking in enclosed public place, States and Territories have different approaches for managing smoking in outdoor areas.

*Regulating products that appeal to young people and new smokers:*

*a) Menthol and Flavoured Cigarettes*

In November 2018, the U.S. Food and Drug Administration (USFDA) announced their intention to ban menthol flavoured cigarettes as the menthol “serves to mask some of the unattractive features of smoking that might otherwise discourage a child from smoking”. Their 2018 National Youth Tobacco Survey (NYTS) showed that young smokers are more likely to use menthol cigarettes than any other age group (54 percent, compared to less than one-third of smokers ages 35 and older).

Although fruit and confectionary flavoured cigarettes are no longer sold in Australia, the use of menthol flavourings, masking agents and filter design features such as the menthol crushball are all seen as youth-oriented products that facilitate initiation to smoking by making cigarettes more palatable and appealing. While these do not breach the current Tobacco Control Legislation, CHF supports the Cancer Council's recommendation to prohibit these products in line with Australia's other work to reduce the smoking of tobacco.

*b) E-cigarettes and Personal Vaporisers*

The growing popularity of E-cigarettes and personal vaporisers in Australia was reviewed in a Standing Committee on Health, Aged Care and Sport inquiry started in May 2017. The inquiry examined the health impacts, use, and marketing of these products and the Australian and international legislation and regulation of E-cigarettes.

The evidence submitted was strongly divided by those who have found these products as an effective strategy for quitting smoking and others who feel the evidence about the short and long-term effects of these products is still inconclusive around the safety of these products and as such they should be treated with caution. The Committee did not reach consensus and two opposing sets of recommendations were published.

While much of this might fall outside the scope of this Review, CHF believes the role of E-cigarettes and personal vaporisers as a replacement for tobacco products means that they cannot be regulated separately. Further research on the impact of vaping on smoking uptake is required.

Like the Cancer Council and the Health Foundation, CHF's main concern is that promoting these products as a healthier alternative to tobacco smokers may have unintended consequences with current non-smokers. Along with menthol and flavoured cigarettes, the USFDA are intending to ban E-cigarettes and personal vaporizers because they were found to be appealing to young people and growing in popularity with non-smokers. Australia has worked for many years to reduce the appeal of cigarettes and so we support calls for urgent regulation to address gaps around the sale and advertising of non-nicotine E-cigarettes and use of products in smoke-free environments.

#### *Illegal tobacco in Australia*

The strict taxes and regulations around tobacco create a market for illegal or counterfeit tobacco products in Australia. KPMG estimates that these products accounted for 14.0% of tobacco consumed during the 12 months prior to June 2015, which was a marginal decrease from 14.5% from the previous 12 months. The majority of these have been imported in sea cargo, stories of illegal tobacco operations discovered in Australia have been published as recently as January 2019<sup>45</sup>.

CHF supports the monitoring of illegal tobacco farming and sales to ensure the Tobacco Control Regulations remain effective in Australia.

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<sup>4</sup> The Australian, *\$600m tobacco trade flourishes despite convictions*, 29 January 2019, <https://www.theaustralian.com.au/national-affairs/600m-tobacco-trade-flourishes-despite-convictions/news-story/d7ea7b3c60fec901268caf7c47a92525>.

<sup>5</sup> ABC News, *Illegal tobacco crop in NT growing back, as details emerge of bizarre outback police bust*, 23 January 2019, <https://www.abc.net.au/news/rural/2019-01-23/illegal-nt-tobacco-crop-grows-back-after-bulldozed-by-ato/10733212>.

## Resources:

Australian Council on Smoking and Health, [www.acosh.org](http://www.acosh.org)

Australian Institute of Health and Wellbeing reports, [www.aihw.gov.au](http://www.aihw.gov.au)

- Risk Factors to Health
- Australia's Health 2018 (Chapter 4)
- Australian Burden of Disease Study 2011

Cancer Council, <https://www.cancer.org.au/>

- Tobacco in Australia review compiled by the Cancer Council Victoria, [www.tobaccoinaustralia.org.au](http://www.tobaccoinaustralia.org.au)

Cancer Council and the Australian Heart Foundation:

- Position Statement – Electronic Cigarettes, [https://wiki.cancer.org.au/policy/Position\\_statement\\_-\\_Electronic\\_cigarettes](https://wiki.cancer.org.au/policy/Position_statement_-_Electronic_cigarettes)

KPMG's *Illicit tobacco in Australia* 2015 Full Year Report, <https://home.kpmg/content/dam/kpmg/pdf/2016/04/australia-illicit-tobacco-2015.pdf>

State and federal government tobacco resources:

- Department of Health's *Easy Guide to Tobacco Advertising Prohibition Act 1992*, <http://www.health.gov.au/internet/main/publishing.nsf/content/egtap>
- Queensland Department of Health's *Tobacco Retailing Information Booklet*, <https://www.health.qld.gov.au/public-health/topics/atod/tobacco-laws/retail>
- New South Wales Department of Health fact sheets, <https://www.health.nsw.gov.au/tobacco/Pages/tobacco-retailing-laws.aspx>
- Western Australia Department of Health *Guidelines on the display and sale of tobacco products and smoking implements*, [https://ww2.health.wa.gov.au/Articles/F\\_I/Guidelines-on-display-sale-tobacco-products-smoking-implements](https://ww2.health.wa.gov.au/Articles/F_I/Guidelines-on-display-sale-tobacco-products-smoking-implements)
- Post-Implementation Review Tobacco Plain Packaging 2016, <http://www.health.gov.au/internet/main/publishing.nsf/Content/tobacco-plain-packaging-evaluation>

U.S. Food & Drug Administration

- Menthol and Other Flavors in Tobacco Products, <https://www.fda.gov/TobaccoProducts/Labeling/ProductsIngredientsComponents/ucm2019416.htm>
- 2017 Youth Tobacco Use: Results from the National Youth Tobacco Survey, <https://www.fda.gov/TobaccoProducts/PublicHealthEducation/ProtectingKidsfromTobacco/ucm405173.htm#2017youthuse>

Standing Committee on Health, Aged Care and Sport:

- Inquiry into the use and marketing of electronic cigarettes (E-cigarettes) and personal vaporisers in Australia, [https://www.aph.gov.au/Parliamentary\\_Business/Committees/House/Health\\_Aged\\_Care\\_and\\_Sport/ElectronicCigarettes](https://www.aph.gov.au/Parliamentary_Business/Committees/House/Health_Aged_Care_and_Sport/ElectronicCigarettes)