



*A National
Approach for
Reducing Access
to Tobacco in
Australia by Young
People under
18 Years of Age*

Appendix B: Case Studies

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Case Study 1:

NSW Department of Health Sales to Minors Program

A comprehensive sales to minors program was developed in NSW in 1996 in response to surveys which reported increasing rates in adolescent smoking and high proportions of young people purchasing cigarettes. Additionally, there was increasing evidence that suggested that access to cigarettes in NSW by young people was easy and relatively unrestricted. The NSW Sales to Minors Program was initiated by the NSW Health Department and involved collaboration with a range of other agencies in a comprehensive program of activities. The state wide program built on the significant local pilot programs undertaken in some Area Health Services in NSW.

The components of the NSW Sales to Minors program included strengthening of the legislation; education and training programs for enforcement and prosecution personnel, retailers and the general public; community action programs; monitoring and enforcement of the legislation; prosecutions for retailers' ongoing non-compliance and evaluation.

Legislation

The *Public Health Act 1991* was strengthened in 1996 to include:

- an offence to sell to a person under 18 years;
- the introduction of Proof of Age requirements, requiring retailers to view a young customer's drivers license, passport or proof of age card before selling tobacco products to them;
- no defence to retailers who sell to children younger than 14 years;
- substantial fines for breaches of Act;
- shared enforcement authority between Health, Police and Local Government.

Education and training

A range of activities detailed below was undertaken to educate and train the key stakeholders about the changes to the sales to minors law.

(i) Enforcement Agencies and Prosecution Personnel

- A Policies and Procedures manual for enforcement of the legislation was produced and disseminated to Area Health Services in NSW.
- Training programs were conducted with supportive resources developed for Environmental Health Officers, Police, Health Services personnel and judiciary personnel.

(ii) General Public/Community Groups

- Education resources were produced which included a community education and action kit. The kit included promotion of procedures for reporting breaches and a range of ideas for community action and school activities to address the issue of tobacco sales to minors.

- Comprehensive media and advertising campaigns were mounted following the introduction of the program in 1996. These programs were designed to increase awareness of the general public and young people of the specific requirements of the sales to minors legislation including the new proof of age amendments.
- Local Area Health Services were encouraged to initiate publicity about prosecutions and local related issues.

(iii) Retailers

- Resources produced included a Retailer Information Kit (information, signs and stickers).
- Media and advertising campaigns were undertaken targeting retailers and were designed to raise awareness of their obligations under the Public Health Act.

Community Action

- Local community programs were encouraged and supported by NSW Health Department by the provision of advice and resources.
- Suggested strategies were described in the Policies and Procedures Manual which was disseminated throughout the state.
- Local programs included the provision of resources for retailers, publicity about compliance monitoring activities and local prosecutions, community action strategies involving local schools and relevant community groups and retailers.

Monitoring and Enforcement

- As a component of performance agreements between Area Health Services and NSW Health, Area Health Services are required to annually inspect a minimum of 10 per cent of the estimated total of their local tobacco retail outlets.
- Area Health Services conduct enforcement activities according to compliance monitoring policies and procedures issued by the Department which involve young people attempting to purchase cigarettes from retail outlets.
- Grants are provided to Area Health Services to contribute to the costs associated with compliance monitoring.

Prosecution

- Public Health Units were provided with guidelines and procedures for managing complaints, investigations, issuing warning letters and pursuing prosecutions.
- Substantial training was and continues to be provided for enforcement agencies.

- Prosecutions have been undertaken when breaches of the Act were reported by officers of the NSW Health Department, Local Councils or by Police Officers. These may have arisen from compliance monitoring activities and when initial warnings and follow up investigations revealed ongoing non-compliance by a retailer.

Evaluation

Evaluation programs have included:

- Ongoing monitoring of illegal sales rates in Area Health Services of NSW through compliance surveys.
- Surveys which target retailers, young people and the community and measure young people's access to tobacco products, the attitudes of young people and others in the community, perceptions of retailers of likelihood of being caught.
- The impact of the media and advertising campaigns.
- The evaluation of the NSW Department of Health's Policies and Procedures Manual.
- Regularly undertaken surveys regarding smoking prevalence and young people's access to tobacco products.

Achievements

An increase in retailer compliance since 1996 has been observed in most Area Health Services of NSW following retailer education, compliance monitoring activities and the publicising of successful prosecutions. In 1998/1999 the NSW state average compliance rate was 84 per cent and sales rate was 16 per cent. This compares favourably to earlier studies that indicated low compliance rates of retailers in NSW. For example, compliance rates in two areas of Sydney in 1994 and 1995 were around 48 per cent and 26 per cent.

To date, there have been 122 successful prosecutions for illegal cigarette sales in NSW and fines of \$1000 plus court costs have been recorded.

Case Study 2:

Western Australian Tobacco and Youth Access Program

Western Australia's efforts to reduce young people's access to tobacco products in the early 1990's represented one of the first comprehensive approaches in Australia to dealing with this issue. This approach involves the voluntary support and cooperation of health and regulatory authorities and community organisations in order to achieve broad compliance with the requirements of the *Tobacco Control Act 1990*. The Health Department of Western Australia (HDWA), through the Smoking and Health Program, adopts a comprehensive, state-wide approach which includes retailer and public education strategies, combined with highlighting prosecutions to deter retailers from selling tobacco products to young people.

Legislation

It has been an offence to sell tobacco to young people in Western Australia since 1917. However, until the passage of the *Tobacco Control Act 1990*, the practise of selling tobacco to persons under 18 years of age was widespread, the penalty for such offences was very small, and there were no recorded prosecutions.

The *Tobacco Control Act 1990* bans the sale or supply of tobacco to a person under 18 years of age. The Act also makes it an offence to permit minors to obtain cigarettes from tobacco vending machines. Penalties for the sale or supply of tobacco to minors range from a maximum of \$5,000 for an individual to \$20,000 for a corporate body. The maximum penalty doubles for subsequent offences.

Education and training

Retailer education helps raise awareness of the *Tobacco Control Act (TCA) 1990* and retailers' responsibilities under the Act and encourages compliance with the Act. The HDWA considers retailer education an important component of its legislative program. Education and training on the Act is done in conjunction with the inspection of retail outlets for compliance with the Act.

The Department also produces and distributes a range of information materials, signs and stickers on the Act to retailers; advertorials and advertisements are placed in trade journals from time to time; and the department liaises with the tobacco and retail industries on a regular basis to ensure up-to-date knowledge and understanding of the Act and to resolve issues concerning the application of the Act.

Community action

Community involvement is essential to the effectiveness of strategies for reducing the availability of tobacco to young people. Community support for such measures has been consistently high. Ninety-five per cent of respondents in the 1993 and 1995 National Drug Strategy Household Surveys supported measures to restrict the availability of tobacco to young people.

As a means of maintaining community awareness and support for measures to restrict the availability of tobacco to young people, the Department has also produced a community action

guide, entitled *Choke the Supply* for the use of parents, schools and community groups. Tobacco and youth smoking issues are covered in community drug education programs conducted by the Department; and the Department publishes articles on tobacco and youth smoking issues in school health journals and community newspapers from time to time.

Monitoring and enforcement

The HDWA's approach to enforcement is both proactive and reactive. As a proactive measure, routine inspections of retail outlets are conducted by the Department's investigative staff to check compliance with the Act. Inspections also provide an opportunity for retailers to discuss issues relating to the application of the Act with departmental representatives. Information collected during inspections is entered on to the Tobacco Act Monitoring System (TAMS) database. The database contains the details of retail outlets, including information relating to breaches of the *Tobacco Control Act 1990* detected during inspections of retail outlets as well as complaint, surveillance and prosecution outcomes.

More cordial and cooperative relationships with tobacco retailers have developed over time as a result of regular contact with retailers. Retailers are more aware and understanding of the department's role in monitoring and enforcing the *Tobacco Control Act 1990*, are more likely to contact the department if they have inquiries concerning the application of the Act, and in some instances, will report potential breaches of the Act to the department. The department also responds to complaints from parents, schools and community members concerned about the selling practices of retailers in their local area.

Fostering of key alliances

In Western Australia there are over 4,000 tobacco retail outlets dispersed throughout a vast state. Consequently, the support of other regulatory authorities and regional health authorities is vital to ensure effective enforcement of the Act throughout the state as the HDWA's resources are limited. All regional health authorities throughout the state have established programs to reduce the availability of tobacco to young people in their communities. The Department has also fostered alliances with Police Services and local government authorities.

Prosecution

Monitoring and enforcement of the *Tobacco Control Act 1990* includes prosecution for breaches of the Act. The HDWA also issues media releases publicising successful prosecutions. The media releases achieve a number of purposes: they raise awareness of the *Tobacco Control Act 1990* and the Health Department's role in its enforcement; they remind retailers that the risk of prosecution for the sale or supply of tobacco to minors is high and that the penalties are substantial; they reinforce community feeling concerning the seriousness of sales to minors offences and they encourage media coverage of the issue.

Research and evaluation

Research and evaluation conducted by the HDWA include biennial retailer compliance surveys and triennial surveys of tobacco consumption by school students aged 12 to 17 years. Retailer compliance surveys have been conducted since 1992.

The surveys show that there has been a 78 per cent reduction in the willingness of retailers to sell tobacco to young people since 1992 (down from 89 per cent in 1992 to 20 per cent in 1996).

Secondary school student tobacco consumption surveys have been conducted since 1984. The surveys provide data on prevalence, consumption and knowledge, attitudes and beliefs about smoking. The surveys also provide information on availability and ease of access to tobacco for young people.

Achievements

Metropolitan compliance monitoring surveys have found that the compliance rates of retailers have risen from 19 per cent in 1992 to 72 per cent in 1998. Surveys have also been conducted in regional areas and have reported a range from 100 per cent compliance of retailers in some areas to 15 per cent in other areas, with an average compliance rate of around 75 per cent for all regional areas.

The Western Australian Smoking and Health Program has achieved:

- 50 prosecutions of retailers for selling to young people;
- 7 prosecutions of members of the public for supplying to young people; and
- fines for the sale or supply of tobacco to minors have increased from \$50 to \$2,500.

Of these 57 prosecutions, about 20 per cent have been initiated by Police Officers with the remaining being initiated by investigating officers from the Health Department of Western Australia.

Case Study 3:

Victoria Western Region Tobacco Project Report

The *Victorian Tobacco Act 1987* (hereafter ‘the Act’) was the first broad tobacco control legislation in Australia. The Act aims to reduce smoking prevalence, through smoking cessation and discouraging the uptake of smoking, particularly among young people. Environmental Health Officers (EHOs) employed by Local Government Authorities administer the provisions of the Act.

Section 12(1) of the Act is specifically designed to discourage smoking among young people. It states, ‘A person must not sell a tobacco product to a person under the age of 18 years’. The maximum penalty for breaching this provision is currently \$1,000 for a first offence and \$2,000 for subsequent offences.

Anecdotal reports suggest that Local Government Authorities are sometimes reluctant to enforce section 12 of the Act. Prior to the commencement of the Western Region Tobacco Project, only two Local Government Authorities in Victoria had instigated legal proceedings for selling cigarettes to minors.

In response to high levels of teenage smoking in Victoria and evidence in relation to high levels of cigarette sales to minors in the Western region of Melbourne, a research project was initiated in January 1998 to test whether the incidence of cigarette sales to minors could be reduced through a range of interventions. Funded by the Department of Human Services and managed by the Environmental Health Coordinator of Hobson’s Bay City Council, the project involved a collaborative effort between State Government, Local Government and the non Government sector. The study concluded in June 1999.

In order to analyse the impact of intervention strategies on tobacco retailer compliance with the cigarette sales to minors provisions of the Act, six participating Local Government Areas in the Western region of Melbourne were randomly assigned as ‘experimental’ or ‘control’ case study conditions; Hobsons Bay, Brimbank, Maribyrnong, Melton, Moonee Valley and Wyndham. Two types of intervention were applied to the experimental areas:

- Community and retailer education about cigarette sales to minors.
- Law enforcement, whereby Local Government Authorities instituted legal proceedings for breaches of section 12 of the Act, combined with media coverage of any prosecutions.

The project also established a designated 24 hour cigarette sales to minors report line in April 1998. The report line was promoted as a way for people to report alleged incidents of cigarette sales to minors.

To measure the impact of the education and enforcement interventions, two types of surveys were conducted across the six case study areas of the Western region:

- Community attitude (telephone) surveys of randomly selected adults. The surveys were designed to measure the community’s knowledge about, and attitude to,

cigarette sales to minors, and any changes over the course of the project.

- Compliance checks on randomly selected tobacco retailers. The purpose of the checks was to measure any changes in retailer's behaviour over the course of the project in relation to compliance with section 12 of the Act. Minors aged 14–17 years were recruited to undertake test purchases (where they attempt to buy cigarettes) to check compliance with the Act.

The project supported seven prosecutions, with six out of seven prosecutions instituted by the City of Brimbank. On each occasion, the accused was found guilty of breaching section 12 of the Act.

Key outcomes of the project included:

- Significant reductions in cigarette sales to minors in the experimental case study areas of Moonee Valley and Brimbank. (Brimbank received significant media coverage of prosecution outcomes, particularly for the first prosecution).
- A significant increase in the number of cigarette sales to minors complaints during the project compared with the number of calls in the two years preceding the project. Brimbank received the highest level of cigarette sales to minors complaints over the course of the project relative to the other experimental groups and the control group.
- Evidence that, although most retailers were aware of the minimum legal age for purchasing cigarettes, many were unsure of what proof of age is acceptable in determining a young person's age.

Findings from the community attitude surveys included:

- A high level of community concern about cigarette sales to minors. On average 86 per cent of those surveyed in the first and second survey reported at least 'quite a bit' of concern about the impact of smoking on young people's health.
- A high level of support for retailers selling tobacco to minors being fined. On average 92 per cent of those surveyed considered retailers should be fined for selling cigarettes to minors.

The three retailer compliance checks found:

- A disproportionate number of cigarette sales to minors occurred at milkbars and service station convenience stores (compared to supermarkets, newsagents, takeaways and tobacconists).
- A significant positive association between retailers requesting identification and refusal to sell cigarettes to a minor.
- A strong positive association between retailers asking for proof of age and presence of cigarette sales to minors warning signs.

- Retailers perceived by test purchasers to be over 18 were consistently reported to be more likely to refuse to sell cigarettes to minors than retailers perceived to be under 18.

Key conclusions from the study include:

- The increased compliance levels in Brimbank and Moonee Valley corresponded with the timing of the prosecution cases against tobacco retailers sponsored by these two Local Government Authorities. A combination of education (community and retailer) and enforcement appears to impact on tobacco retailer compliance levels. However, enforcement combined with media publicity appears to be a more powerful influence on retailer behaviour than education alone.
- A designated telephone line for reporting cigarette sales to minors does not appear justified. Supported by a community education campaign and some media coverage during the project, the report line received only 14 calls over 14 months.
- In regard to the education strategy, the response from community groups, schools and retailers in relation to information resources forwarded to them was generally poor. However, targeting community groups with education and information resources can have an important consciousness raising function which may, by harnessing community pressure on retailers, contribute to more effective enforcement of the Act in the longer term.

The report also makes a number of recommendations in light of the project findings to address the issue of cigarette sales to minors in the short term, as well as recommendations to address the problem of teenage smoking in a more strategic and sustainable manner—for example, through the introduction of a tobacco retailer registration system.