



***PUBLIC HEALTH (TOBACCO)  
ACT 2008***

**STATUTORY REVIEW**

**DISCUSSION PAPER**

## TABLE OF CONTENTS

1. INTRODUCTION .....	3
1.1 OUTLINE OF THE ACT.....	3
1.2 THE REVIEW .....	4
1.3 SUBMISSIONS.....	4
2. CONTEXT.....	6
2.1 EFFECTS OF TOBACCO-RELATED HARM.....	6
2.2 APPROACH TO TOBACCO CONTROL IN NSW .....	6
3. KEY ACHIEVEMENTS OF TOBACCO CONTROL IN NSW .....	8
3.1 ACHIEVEMENTS RELATED TO THE <i>PUBLIC HEALTH (TOBACCO) ACT 2008</i> ..	9
3.1.1 Regulating the packaging, advertising and display of tobacco products and non-tobacco products .....	9
3.1.2....Prohibiting the supply of tobacco products and non-tobacco smoking products to children.....	10
3.1.3 Reducing the exposure of children to second-hand tobacco smoke.....	11
4. AREAS FOR REVIEW .....	12
4.1 OBJECT OF THE ACT .....	12
4.2 PROVISIONS IN THE ACT .....	12
4.2.1 Single point of sale for tobacco products .....	13
4.2.2 Licensing of tobacco retailers.....	14
4.2.3 Tobacco Vending Machines .....	15
4.2.4 Tobacco Advertising and Signage.....	15
4.2.5 Combining the <i>Public Health (Tobacco) Act 2008</i> with the <i>Smoke-Free Environment Act 2000</i> .....	16
4.2.6 Other issues in the scope of this Statutory Review .....	17
APPENDIX A .....	18
PUBLIC HEALTH TOBACCO ACT 2008 .....	18
SMOKE-FREE ENVIRONMENT ACT 2000.....	22
APPENDIX B .....	23
PENALTIES UNDER THE <i>PUBLIC HEALTH (TOBACCO) ACT 2008</i> .....	23
APPENDIX C .....	24
Submission to the 2013 Discussion Paper.....	24
REFERENCES .....	31

# 1. INTRODUCTION

In 2008 NSW led the rest of Australia by passing the *Public Health (Tobacco) Act* (the Act), providing a comprehensive package of legislative reforms to restrict the availability and supply of tobacco, especially to children and young people.

The Act forms part of a suite of measures introduced and implemented by the NSW Government to reduce smoking rates and tobacco-related harm.

The NSW Government is committed to ensuring that tobacco control measures remain relevant and appropriate to meeting these aims, including through periodically reviewing relevant legislation. Reviewing the Act is part of meeting this commitment.

This Discussion Paper canvases key issues that are relevant to the operation of the Act. The NSW Government welcomes feedback from the public and health, industry and community stakeholders on these issues.

## 1.1 OUTLINE OF THE ACT

The Act was passed by the NSW Parliament in November 2008 and commenced on 1 July 2009, with a range of phase-in periods for some of the provisions. All the provisions of the Act have now commenced.

The object of the Act is to:

*Reduce the incidence of smoking and other consumption of tobacco products and non-tobacco smoking products, particularly by young people, in recognition of the fact that the consumption of those products adversely impacts on the health of the people of New South Wales and places a substantial burden on the State's health resources<sup>1</sup>.*

The Act aims to achieve that object by:

- Regulating the packaging, advertising and display of tobacco products and non-tobacco smoking products;
- Prohibiting the supply of those products to children; and
- Reducing the exposure of children to environmental tobacco smoke.

The key provisions in this legislation include:

- A ban on the display of tobacco products, non-tobacco smoking products and smoking accessories in shops;
- A single point of sale for tobacco products and non-tobacco smoking products in retail outlets;
- A ban on smoking in cars when children under the age of 16 years are present;
- A notification and negative licensing scheme for tobacco retailers;
- Allowing cigarette vending machines only in licensed venues restricted to over 18's, a requirement that vending machines must be activated by a staff member or by a token which is only available from a staff member and are subject to the same product display bans as all other retail environments; and
- A ban on tobacco products in shopper-loyalty programs.

---

<sup>1</sup> Section 3 of the Public Health (Tobacco) Act

The Act increased up to ten-fold the penalties applying to tobacco-related offences such as selling cigarettes to children.

The legislation was informed by a detailed community consultation process based on the Discussion Paper *Protecting Children from Tobacco: A NSW Government Discussion Paper on the Next Steps to Reduce Tobacco-Related Harm, 2008*. Almost 12,000 submissions to this Discussion Paper were received from the community and key health and industry stakeholders.

## 1.2 THE REVIEW

Section 61 of the Act requires the NSW Minister for Health and Minister for Medical Research to undertake a review of the Act as soon as possible after a period of 5 years from the date of assent to the Act (November 2008). A report on the outcome of the Statutory Review is to be tabled in each House of Parliament within 12 months after the end of the period of 5 years.

The purpose of the Statutory Review is to determine whether the policy objects of the Act remain valid and whether the terms of the Act remain appropriate for securing those objects.

As part of the Statutory Review, the NSW Ministry of Health has prepared this Discussion Paper to canvass key issues that have arisen during the operation of the Act including:

- Single point of sale for tobacco products;
- Tobacco retailer licensing;
- Tobacco vending machines;
- Tobacco advertising and signage; and
- Combining the *Public Health (Tobacco) Act 2008* and the *Smoke-free Environment Act 2000* into one piece of key legislation.

A template has been prepared to assist stakeholders to respond to the issues raised in this Discussion Paper. The template is available at **Appendix C**.

## 1.3 SUBMISSIONS

Submissions using the template provided should be made by **20 December 2013** to:

Strategic and Regulatory Policy Branch  
Centre for Population Health  
NSW Ministry of Health  
Locked Bag No. 961  
North Sydney NSW 2059  
Fax: 9391 9877  
Email: [tobacco@doh.health.nsw.gov.au](mailto:tobacco@doh.health.nsw.gov.au)

Submissions can also be made electronically via the following link:  
<http://www.surveygizmo.com/s3/1407382/Statutory-Review-of-the-Public-Health-Tobacco-Act-2008>.

This Paper can be found at

<http://www.health.nsw.gov.au/aboutus/legal/actsreview.asp>. Inquiries can be made to Strategic and Regulatory Policy Branch on (02) 9391 9540.

Individuals and organisations should be aware that generally submissions made to a Statutory Review can be made available under the *Government Information (Public Access) Act 2009*. The Ministry of Health, in formulating its Report may also wish to circulate submissions for further comment to other interested parties or to publish parts of submissions. If you wish your submission (or any part of it) to remain confidential, this should be stated clearly and marked on the submission form.

## **2. CONTEXT**

### **2.1 EFFECTS OF TOBACCO-RELATED HARM**

Tobacco-related harm and illness is a significant burden on individuals, the community and the NSW health system. Smoking greatly increases the risk of many cancers and is a major cause of chronic obstructive pulmonary disease and ischaemic heart disease (1). It is responsible for around 46,000 hospital admissions and causes the deaths of over 5,300 people in NSW each year (2).

The uptake of smoking by young people is of concern as the earlier the initiation of smoking, the earlier the risk of smoking-related disease. Furthermore, the age a person starts smoking is also an important predictor of success in quitting. The younger a person is when they start to smoke, the less likely it is that they will ever cease.

Exposure to second-hand smoke also causes adverse health effects including an increased risk of cardiovascular disease, lung cancer and other lung diseases. Children are even more likely to suffer negative health consequences of second-hand tobacco smoke such as increased risk of bronchitis, pneumonia, asthma and sudden infant death syndrome (3).

The social costs of smoking in NSW are over \$8 billion annually (4), including costs to Government, individuals, and business.

### **2.2 APPROACH TO TOBACCO CONTROL IN NSW**

Reducing smoking in NSW is a key priority for the NSW Government, particularly among young people. The *NSW 2021 Plan* sets robust targets on reducing smoking in order to decrease chronic disease and combat rising health costs. The *NSW 2021 Plan* states that the NSW Government will:

- Reduce smoking rates by 3% by 2015 for non-Aboriginal people and by 4% for Aboriginal people by 2015; and
- Reduce the rate of smoking by non-Aboriginal pregnant women by 0.5% per year and by 2% per year for pregnant Aboriginal women.

The NSW Government has in place a comprehensive, evidence-based approach to tobacco control which is outlined in the *NSW Tobacco Strategy 2012 – 2017* (the Strategy).

The Strategy sets out the actions the NSW Government will take to reduce the harm which tobacco imposes on the community and to achieve the *NSW 2021 Plan* targets.

The Strategy includes:

- A focus on addressing tobacco smoking in populations with high smoking rates, including: Aboriginal communities, mental health consumers, people with drug and alcohol dependency, people from some culturally and linguistically diverse backgrounds, people from low socio-economic backgrounds and people in custodial settings;
- Enhanced cessation services and public education programs to help smokers to quit;

- A focus on strengthening efforts to prevent the uptake of smoking by young people; and
- Measures to protect people from harmful second-hand smoke in outdoor areas, including the implementation of smoke-free outdoor legislation.

NSW currently has two key pieces of tobacco control legislation, the *Public Health Tobacco Act 2008*, which is the key focus of this review, and the *Smoke-free Environment Act 2000*. Further information about both pieces of legislation is available at **Appendix A**.

### 3. KEY ACHIEVEMENTS OF TOBACCO CONTROL IN NSW

The *Public Health (Tobacco) Act 2008* (the Act) is just one of a suite of measures implemented by the NSW Government to reduce smoking rates and smoking-related harm and is also part of a larger picture of state and Commonwealth-level tobacco control.

Since the Act came into effect in late 2008 it has had a positive effect on smoking behaviours, especially among young people. Community attitudes also indicate acknowledgement of the harmful effects of smoking and support for measures to reduce smoking-associated harm.

The daily smoking rate for persons aged 16 years and over has declined steadily since 2002 and is significantly lower than in 2008.

In 2012 NSW had a daily smoking rate of 17.1 per cent. Whilst this is higher than the 14.7 per cent rate in 2011 (5), the difference is not statistically significant and most likely reflects the change in survey methodology to include mobile phones for the first time in 2012<sup>2</sup>. Using the same method as in 2011, the rate of smoking was estimated to be 14.6 per cent in 2012.

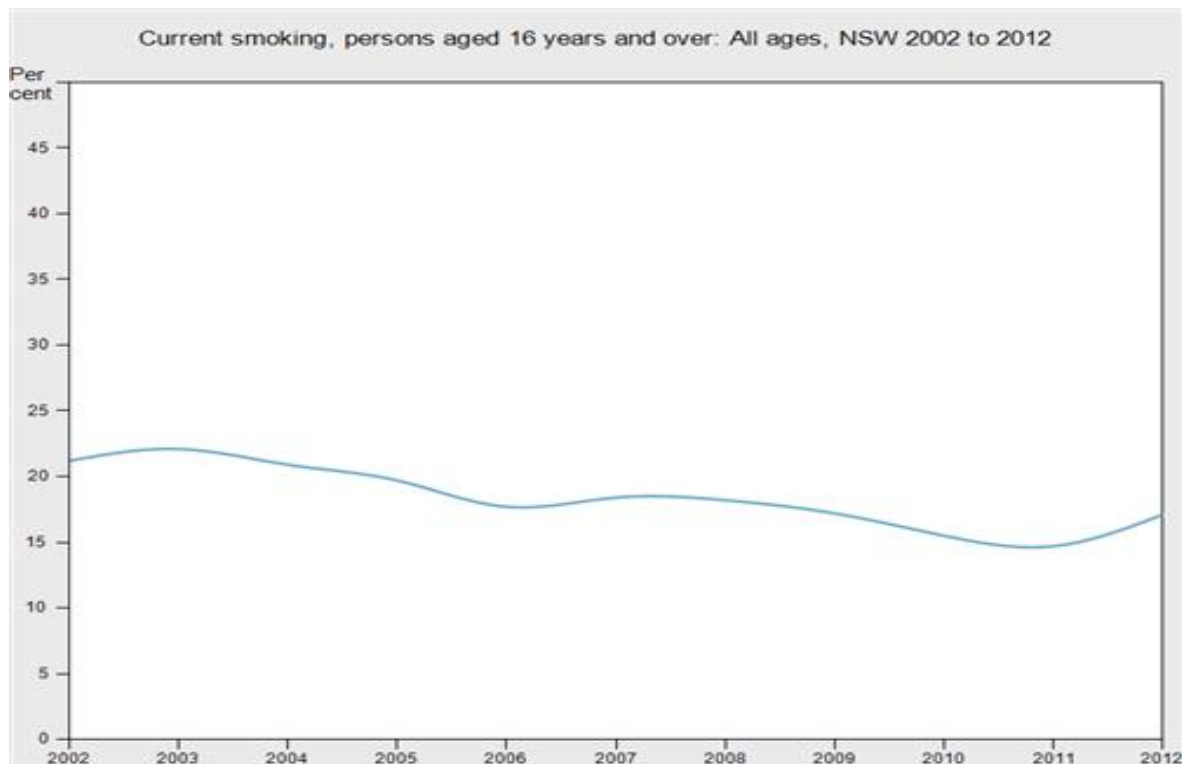
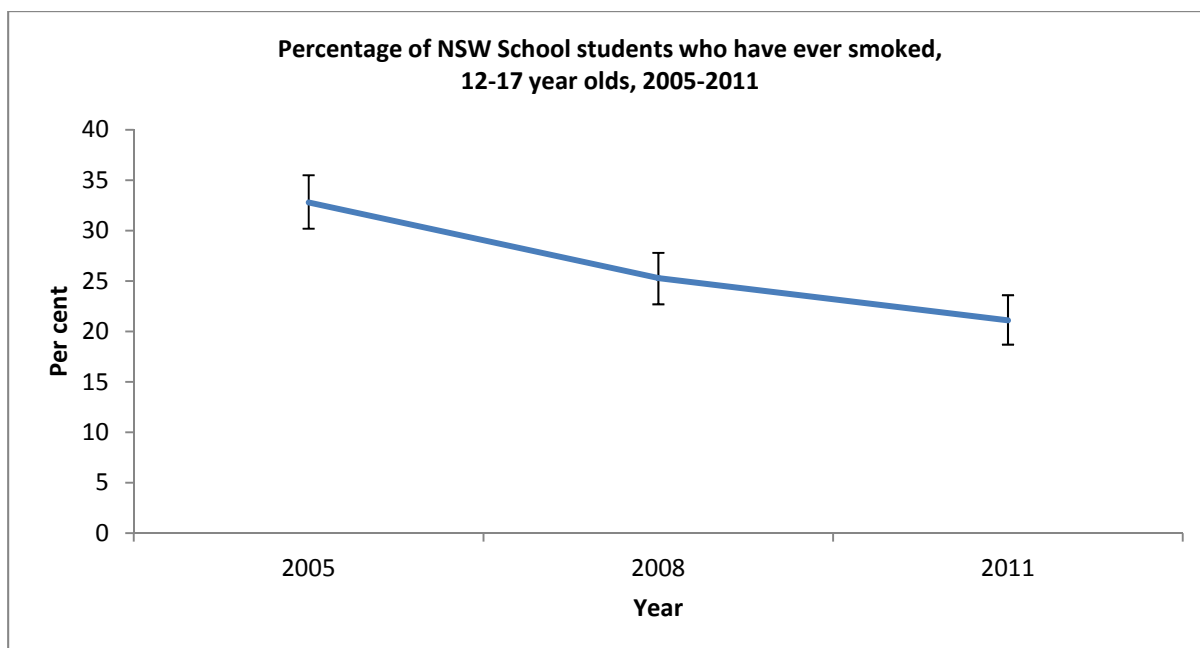


Figure 1 - NSW Adult Population Health Survey (SAPHaRI). Centre for Epidemiology and Evidence, NSW Ministry of Health.

Between 2005 and 2011 there was a significant decrease in the proportion of NSW school students aged 12-17 who had smoked tobacco at some point in their life, from 32.8 per cent to 21.1 per cent (6)

<sup>2</sup> In 2012, NSW Health implemented a new survey design that included mobile phones for the first time. This innovative method has improved the accuracy of the survey as it now better represents the population who are moving to using mobile only numbers. NSW is the only jurisdiction to have implemented this approach.





**Figure 2 - NSW School Students Health Behaviours Survey. Centre for Epidemiology and Evidence, NSW Ministry of Health.**

Smoking attributable hospitalisations have also decreased, from 579.7 per 100,000 population in 2008-09 to 564.8 per 100,000 population in 2011-12 (7).

### **3.1 ACHIEVEMENTS RELATED TO THE *PUBLIC HEALTH (TOBACCO) ACT 2008***

#### **3.1.1 Regulating the packaging, advertising and display of tobacco products and non-tobacco products**

The Act put in place strict regulations banning the display of tobacco and smoking products in retail outlets, banning advertising and promotion of tobacco products that is not already covered by Commonwealth legislation, prohibiting packaging and sale of tobacco products without health warnings and regulating where tobacco and non-tobacco smoking products can be sold. Further information on these provisions in the Act is at **Appendix A**

NSW Health Authorised Inspectors monitor retailer compliance with these bans. Since 2008 there have been almost 15,000 inspections of retailer outlets by Authorised Inspectors. Between July 2011 and December 2012, retailer compliance during these inspections was 87 per cent. Authorised Inspectors provide education to support non-compliant retailers to comply with the law, provide warning letters and seek to prosecute non-compliance where indicated.

### 3.1.2 Prohibiting the supply of tobacco products and non-tobacco smoking products to children

Several sections of the Act are devoted to the protection of children and young people from the harms associated with smoking. The Act prohibits the sale of tobacco and non-tobacco products to minors under the age of 18 years, prohibits the purchase of these products on behalf of minors, including from vending machines and allows a police officer to seize these products from a person in a public place if the officer reasonably suspects that the person is under the age of 18 years. The Act also prohibits both tobacco products that have a distinctive fruity, sweet or confectionary-like character and any confectionary, food, toy, amusement or other product that resembles a tobacco product or is packaged to resemble a tobacco product.

NSW Health Authorised Inspectors monitor retailer compliance with these provisions. Since 2008 there have been almost 5,000 sales to minors inspections of retailer outlets by Authorised Inspectors. Between July 2011 and December 2012, retailer compliance during these inspections was 92 per cent. While a small proportion of retailer non-compliance is expected, the visibility of compliance monitoring activity by Authorised Inspectors acts as a deterrent for retailers to sell to minors.

Since 2008 there have been 164 successful prosecutions of non-compliant retailers under the sales to minors legislation.

According to the 2011 *New South Wales School Students Health Behaviours Survey*, between 2005 and 2011 there was a significant decrease in the proportion of students aged 12-17 years who had ever tried to buy cigarettes from a shop, from 9.5 per cent to 6.1 per cent (6).

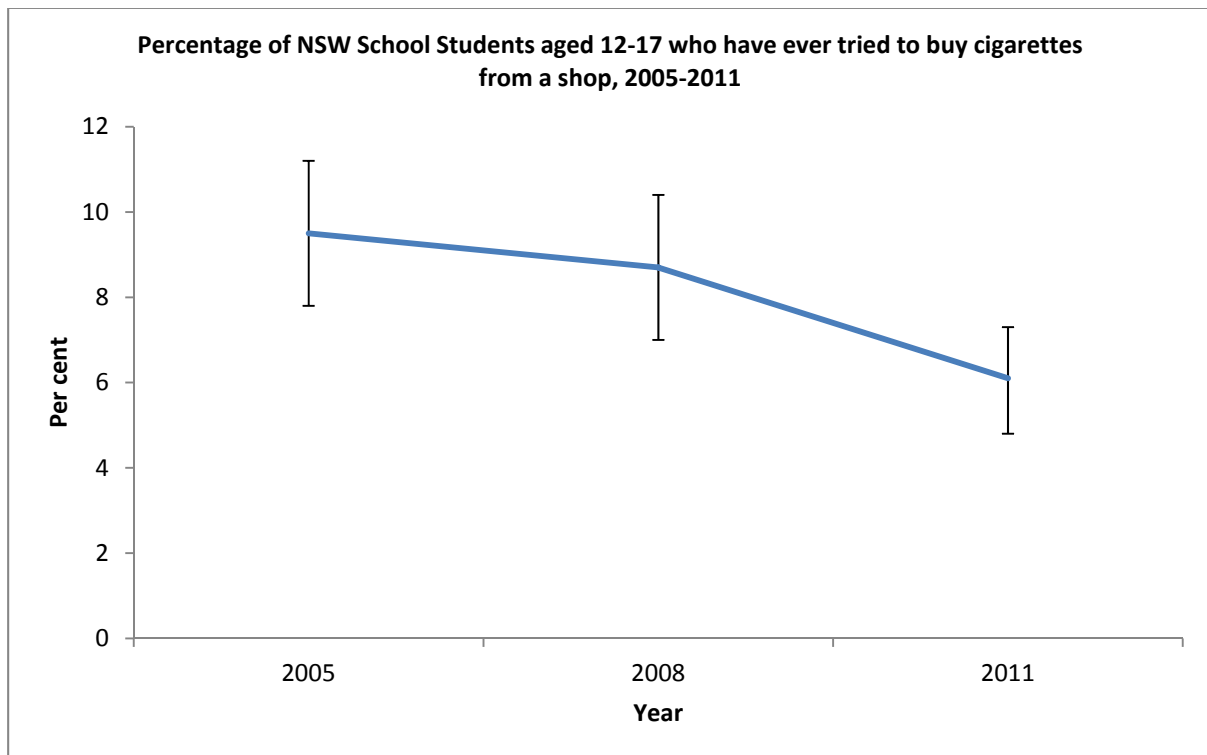


Figure 3 - NSW School Students Health Behaviours Survey. Centre for Epidemiology and Evidence, NSW Ministry of Health.

There is also strong community support for penalties for sales made by retailers to minors.

### **3.1.3 Reducing the exposure of children to second-hand tobacco smoke**

In 2012 amendments were made to the *Smoke-free Environment Act 2000* that focussed on reducing community exposure to second-hand tobacco smoke in workplaces, public places and other settings. While the *Smoke-free Environment Act 2000* is now the NSW Government's key piece of smoke-free environment legislation, there are also sections of the *Public Health (Tobacco) Act 2008* that focus on reducing the exposure of children to environmental tobacco smoke. For example, the Act bans smoking in a motor vehicle if there is a person under the age of 16 years present.

Community compliance with this provision of the Act is monitored by NSW Police.

The Ministry of Police and Emergency Services reports that between 1 July 2009 and 31 July 2013 there have been a total of 1330 fines issued for people smoking in cars when children under the age of 16 years are present.

## 4. AREAS FOR REVIEW

### 4.1 OBJECT OF THE ACT

The object of the *Public Health Tobacco Act 2008* (the Act) is to reduce the incidence of smoking and other consumption of tobacco products and non-tobacco smoking products, particularly by young people, in recognition of the fact that the consumption of those products adversely impacts on the health of the people of New South Wales and places a substantial burden on the State's health and financial resources.

The Act aims to achieve that object by:

- Regulating the packaging, advertising and display of tobacco products and non-tobacco smoking products;
- Prohibiting the supply of those products to children; and
- Reducing the exposure of children to environmental tobacco smoke.

The NSW Ministry of Health's view is that the object of the Act is comprehensive and remains relevant. However, the Ministry is seeking submissions on whether the current objects remain valid or whether any additional objects should be included in the Act. The Ministry notes that should the *Public Health (Tobacco) Act 2008* be combined with the *Smoke-free Environment Act 2000*, a proposal outlined at 4.2.5, there may need to be a slight amendment to the objects of the *Public Health (Tobacco) Act 2008* to fully recognise the objects of such a combined piece of tobacco control legislation.

- 1. Is the object of the *Public Health (Tobacco) Act 2008* still valid?**
- 2. Should any further objects be included in the *Public Health (Tobacco) Act 2008*?**

### 4.2 PROVISIONS IN THE ACT

The Act contains several provisions to regulate the sale and supply of tobacco and non-tobacco smoking products.

The key provisions in this legislation include:

- A ban on the display of tobacco products, non-tobacco smoking products and smoking accessories in shops;
- A single point of sale for tobacco products and non-tobacco smoking products in retail outlets;
- A ban on smoking in cars when children under the age of 16 years are present;
- A notification and negative licensing scheme for tobacco retailers;
- Allowing cigarette vending machines only in licensed venues restricted to over 18s, a requirement that vending machines must be activated by a staff member or by a token which is only available from a staff member and subject to the same product display bans as all other retail environments; and
- A ban on tobacco products in shopper-loyalty programs.

The provisions of the Act and associated penalties are detailed in **Appendixes A and B**.

The NSW Ministry of Health's preliminary view is that the current provisions are appropriate to support and meet the objects of the Act. However, this Statutory Review is seeking views as to whether the current provisions are still relevant to achieving the object of the Act, noting that the Act forms part of a comprehensive suite of NSW Government measures designed to reduce smoking rates.

**3. Are the provisions in the *Public Health (Tobacco) Act 2008* still appropriate to secure the object of the Act?**

**4. Should any other provisions be included in the *Public Health (Tobacco) Act 2008*?**

Health, industry and community stakeholders have raised a number of issues with the Ministry in relation to certain provisions of the Act, including through the consultation process for *Protecting Children from Tobacco: A NSW Government Discussion Paper on the Next Steps to Reduce Tobacco-Related Harm, 2008*.

The following sub-sections discuss these issues that have been raised with the Ministry, limiting discussion to issues that are directly related to the current Act.

#### **4.2.1 Single point of sale for tobacco products**

Section 10 of the Act restricts the sale of tobacco products, non-tobacco smoking products and smoking accessories in NSW to a single point of sale within a retail outlet. The "single point of sale" refers to a single cash register. This restriction is in place to reduce visibility of and access to tobacco products. It also makes it easier to ensure that all vendors of tobacco are appropriately trained in their responsibilities regarding tobacco sale and simplifies monitoring of compliance with tobacco legislation.

Some stakeholders have identified concerns with the interpretation of a single point of sale as a single cash register. They have expressed the view that because many retail outlets have a single service desk with several cash registers that customers access from a single queue, there is congestion and confusion when the customer at the head of the queue is required to stand aside while waiting for the dedicated tobacco cash register to become available. Some stakeholders have suggested that a single point of sale should be interpreted as a single service point, regardless of the number of cash registers.

While the NSW Ministry of Health recognises that this may assist certain retailers, there seems to have been general acceptance by community and retailers of the single point of sale provision. Retailers with more than one register can use signs to assist in directing customers to the register at which tobacco is sold.

The Ministry is seeking views in regard to this issue.

**5. Should the interpretation of a single point of sale be changed to a single service point, regardless of the number of cash registers at that service point?**

#### **4.2.2 Licensing of tobacco retailers**

Since 2009, NSW tobacco retailers have been required to notify the NSW Ministry of Health of their intention to sell tobacco products<sup>3</sup> on the Government Licensing Service before they start retailing them. This information is used to ensure that the Ministry is aware of where tobacco retailers are located so that NSW Health Authorised Inspectors can monitor compliance with tobacco retailing legislation.

Under the legislation, retailers who are convicted of selling cigarettes to children or breaching other regulations on at least two occasions in any three year period will automatically be prohibited from selling tobacco for specified periods. On a second conviction the ban will be three months, for a third conviction the ban will be for 12 months<sup>4</sup>.

Some stakeholders have expressed the view that the existing retailer notification scheme should be replaced by a positive retailer licensing scheme. A positive licensing scheme would require retailers to pay an application fee and/or an annual fee and comply with certain associated conditions before being given a licence to sell tobacco and non-tobacco smoking products, for example, the premises being located beyond a certain distance from schools.

The preliminary view of the Ministry is that a positive licensing scheme is unnecessary. As noted, the main purpose of the existing licensing scheme is to ensure that the Ministry is aware of which premises are selling tobacco products. Such notification helps to ensure that Authorised Inspectors can appropriately monitor tobacco retailing activity and compliance with NSW tobacco legislation. The current tobacco retailer notification scheme allows Authorised Inspectors to carry out regular tobacco compliance monitoring activities under the Act including checking signage, product display and ensuring tobacco retailers have notified the Ministry of their retailing activities. Authorised Inspectors provide education to support retailers to comply with the law, provide warning letters and in some cases seek to prosecute non-compliance. If there is routine non-compliance, as noted above, there are powers under the Act to prohibit a retailer from selling tobacco for specified periods.

The Ministry is seeking views on the licensing of tobacco retailers, including whether or not the current notification scheme for tobacco retailers is appropriate to enable the Ministry to monitor compliance with the Act.

**6. Is the current Retailer Notification Scheme appropriate to enable the NSW Ministry of Health to monitor retailer compliance with the *Public Health (Tobacco) Act 2008*?**

---

<sup>3</sup> Section 39 of the Public Health (Tobacco) Act

<sup>4</sup> Section 33 of the Public Health (Tobacco) Act

### 4.2.3 Tobacco vending machines

Division 3 of Part 2 of the Act relates to tobacco vending machines. The Act puts a number of measures in place to regulate the sale of tobacco from vending machines. This includes:

- Tobacco vending machines can only be placed in a bar or gaming machine area of a hotel, club or casino restricted to over 18s;
- Only one tobacco vending machine per licensed premises is allowed;
- Operation of tobacco vending machines must be controlled by members of staff;
- Tobacco vending machine owners and lessees must ensure that tobacco products in a vending machine cannot be seen by members of the public and there is no information about or representations of tobacco products or packages displayed on the vending machine (except permissible information); and
- Tobacco vending machine operators are required to display a health warning sign and a sales to minors sign (illustrated in the *Public Health (Tobacco) Regulation 2009*) on the front of tobacco vending machines.

Some stakeholders support banning the sale of tobacco from vending machines. They argue it is not possible to adequately monitor access to vending machines for under-age purchasing and vending machines are strongly associated with impulse buys.

However, the preliminary view of the NSW Ministry of Health is that current provisions relating to vending machines already contain a number of measures aimed at preventing underage purchasing and impulse buying. Vending machines can only be placed in premises that are restricted to over 18s, allowing protection from young people purchasing tobacco products in this way. Staff members also have an opportunity to check a person's identification when approached to operate the vending machine. In relation to impulse purchasing, buying tobacco products from a vending machine now involves several steps to access the product, making purchases more inconvenient.

The Ministry is seeking views on tobacco vending machines.

**7. Are any changes needed to the provisions in the *Public Health (Tobacco) Act 2008* relating to tobacco vending machines to help prevent impulse buys of tobacco and/or the sale of tobacco to minors?**

### 4.2.4 Tobacco advertising and signage

Part 3 of the Act relates to advertising of tobacco products. The Act places strict prohibitions on the advertising of tobacco products and generally prevents a person from displaying a tobacco advertisement in, or so that it can be seen or heard from, a public place.

However, under clause 19 of the *Public Health (Tobacco) Regulation 2009* tobacco retailers who have more than one cash register are able to put up a statement no larger than 21cm by 30cm (A4) which includes the following wording:

“Tobacco sold at this register only”

Some stakeholders have expressed the view that this sign acts as an advertisement for tobacco products in retail settings and should not be permitted to be displayed.

While there is a possibility that the sign could be perceived as an advertisement, it assists retailers in directing customers to the appropriate register where there is more than one register and tobacco products can no longer be displayed.

If a “Tobacco sold at this register only” sign is placed in premises, the retailer must also display health warning signage (“Smoking Kills Call the Quitline”) alongside the sign. The requirement to display the health warning signage ensures that anyone who reads the “Tobacco sold at this register only” statement is reminded of the health risks of smoking at the same time.

The requirement for “Tobacco sold at this register only” signage to be displayed with a health warning sign attempts to find a balance between enabling retailers to direct customers to the appropriate register and protecting public health by ensuring that customers and the public are aware of the health risks of smoking.

However, in view of the concerns raised, the Discussion Paper seeks views on whether an appropriate balance has been struck in relation to this issue.

**8. Does the requirement for the statement “Tobacco sold at this register only” to be displayed next to the health warning signage achieve an appropriate balance between assisting retailers to direct customers and ensuring that customers and the public are aware of the health risks of smoking?**

#### **4.2.5 Combining the *Public Health (Tobacco) Act 2008* with the *Smoke-Free Environment Act 2000***

NSW currently has two key pieces of tobacco control legislation, the *Public Health (Tobacco) Act 2008* and the *Smoke-free Environment Act 2000*.

The *Smoke-free Environment Act 2000* regulates the areas in which smoking is prohibited, including enclosed public places and certain outdoor public places. The *Public Health (Tobacco) Act 2008* primarily regulates the sale and supply of tobacco and non-tobacco smoking products. However, the *Public Health (Tobacco) Act 2008* also has prohibitions on smoking in certain areas, including in cars where a minor is present.

As both pieces of legislation are concerned with tobacco control, there seems to be little utility in maintaining separate Acts. The NSW Ministry of Health is proposing to combine the *Public Health (Tobacco) Act 2008* and the *Smoke-free Environment Act 2000* into one piece of tobacco control legislation. A combined Act would bring NSW into line with a number of other jurisdictions, including Queensland, South Australia and Victoria that have only one piece of tobacco control legislation. One piece of legislation may also make it easier for the public and industry affected by the legislation to access it and be aware of tobacco control regulation in NSW.



Views are sought as to whether there is support for combining the two Acts into one key piece of tobacco control legislation.

**9. Should the *Public Health (Tobacco) Act 2008* and the *Smoke-free Environment Act 2000* be combined into one piece of tobacco legislation?**

#### **4.2.6 Other issues in the scope of this Statutory Review**

The NSW Ministry of Health is seeking views as to whether there are any other 'in scope' issues that should be addressed as part of this review. Any issues raised should relate to the operation of the *Public Health (Tobacco) Act 2008* only.

**10. Are there any other issues that should be considered in this Statutory Review which relate directly to the *Public Health (Tobacco) Act 2008*?**

## APPENDIX A

### PUBLIC HEALTH TOBACCO ACT 2008

The *Public Health (Tobacco) Act 2008* aims to reduce the incidence of smoking and other consumption of tobacco products and non-tobacco smoking products, particularly by young people, by regulating the advertising and sale of tobacco products.

It recreates a number of offences that previously existed within Part 6 of the *Public Health Act 1991*. These offences include:

- Selling tobacco to minors;
- Advertising tobacco products;
- Sale of novelty items and confectionary that resembles a tobacco product; and
- Sale of fruit or confectionary flavoured cigarettes.

The *Public Health (Tobacco) Act 2008* also created a number of new offence provisions including:

- Selling tobacco products from more than one point of sale on retail premises; and
- Failing to display new signage required by the *Public Health (Tobacco) Regulation 2009*.

Information on each of these provisions is available in the [Guidelines for Tobacco Retailers in NSW](#).

#### Sales to minors

Under the *Public Health (Tobacco) Act 2008* it is illegal to sell tobacco products to people under the age of 18. It is also illegal to sell non-tobacco smoking products such as herbal cigarettes to people under the age of 18. The maximum penalty for selling tobacco to minors is \$110,000.

#### Ban on display of tobacco and smoking products in retail outlets

Section 9 of the *Public Health (Tobacco) Act 2008* prohibits the display of tobacco products, non-tobacco smoking products and smoking accessories. Tobacco retailers must ensure that tobacco products, non-tobacco smoking products and smoking accessories cannot be seen by the public from inside or outside the premises.

The exceptions are where:

- A member of the public displays their own tobacco or smoking products; or
- A tobacco or smoking product or products is displayed to a customer at his or her direct request, including during the actual transaction/sale.

The types of smoking accessories covered by the display ban are defined in the Act and include cigarette papers, pipes, cigarette holders, hookahs, water pipes or any other smoking implements. Matches and lighters are not covered by the display ban and therefore may continue to be displayed.

Tobacco retailers may choose only one method to display basic information about tobacco products, such as prices and names, through the use of:

- Price tickets; or
- A single price board.

Retailers may use either one of the above methods but NOT both. Therefore the same method of displaying prices and product names must be used for all product lines carried by a particular business.

The use of tobacco and smoking product catalogues is not allowed. Information about how prices of tobacco products may be displayed is contained in the *Public Health (Tobacco) Regulation 2009*.

### **Single point of sale**

Section 10 of the *Public Health (Tobacco) Act 2008* restricts the sale of tobacco products, non-tobacco smoking products and smoking accessories to a single point of sale in each retail outlet.

This means that these products can only be sold from one cash register in each premise (although it does not mean that the same cash register must be used all the time). The Act does not prevent other purchases being made at the designated cash register.

Retailers can put up signs to inform customers of the cash register that is being used for tobacco sales as long as:

- They sell products other than tobacco products, non-tobacco smoking products or smoking accessories; and
- The shop or retail outlet has more than one cash register.

### **Signage**

Under the *Public Health (Tobacco) Act 2008*, there are two signs that must be displayed at point of sale:

- A health warning sign (Smoking kills – Call the Quitline); and
- A notice which states that it is illegal to sell tobacco products to persons under the age of 18 years.

These signs must be conspicuously displayed at the point of sale of tobacco products and must be clearly visible to customers, so no part of the signs should be obstructed.

### **Smoke-free cars**

Smoking in a car with a child under the age of 16 is against the law. The *Public Health (Tobacco) Act 2008* created a new offence from 1 July 2009 of smoking in a car with a child under 16 years of age in the vehicle. A \$250 on the spot fine applies to the driver and any passenger who breaks the law and this is enforced by NSW Police.

If a person elects not to pay the fine and have the matter dealt with by a court, the maximum fine that may be imposed by a magistrate is \$1,100.

Further information on smoke-free cars is available from this [factsheet](#).

## **Tobacco vending machines**

The *Public Health (Tobacco) Act 2008* (the Act) defines a tobacco vending machine as “a machine, device or contrivance from which tobacco products or non-tobacco smoking products can be obtained by an operation that involves inserting money, or a token or object, into the machine, device or contrivance, whether or not some other action is required to activate the machine”.

The Act introduced new requirements in relation to tobacco vending machines. From 1 January 2010:

- Tobacco vending machine operators must notify the NSW Ministry of Health of tobacco retailing activities through the Retailer Notification Scheme;
- Tobacco vending machines can only be placed in a bar or gaming machine area of a hotel, club or casino restricted to over 18s. No exemptions for staff amenity areas will be allowed;
- Only one tobacco vending machine per licensed premises is allowed;
- Operation of tobacco vending machines must be controlled by members of staff;
- Tobacco vending machine owners and lessees must ensure that tobacco products in a vending machine cannot be seen by members of the public and there is no information about or representations of tobacco products or packages displayed on the vending machine (except permissible information);
- The only permissible information which may be displayed on a tobacco vending machine is any information, statement or symbol required by law to be displayed on the vending machine e.g. mandatory health warning signs and the name, description and price of the tobacco products for sale in the vending machine in letters or figures of not more than one centimetre in width and one centimetre in height; and
- Tobacco vending machine operators are required to display a health warning sign and a sales to minors sign (illustrated in the *Public Health (Tobacco) Regulation 2009*) on the front of tobacco vending machines.

## **Shopper loyalty programs**

Section 18 of the *Public Health (Tobacco) Act 2008* (the Act) prohibits the inclusion of tobacco products or non-tobacco smoking products in shopper loyalty programs.

Tobacco retailers are required to ensure tobacco products and non-tobacco smoking products are not included in shopper loyalty programs.

This means that under the Act, the following programs are not permitted:

- Any program under which a gift or other benefit could be obtained by the purchaser of tobacco or non-tobacco smoking products (regardless of whether the program extends to the purchase of other products); or
- Any program under which a purchaser of goods or products may be entitled to a gift of tobacco products or non-tobacco smoking products (regardless of whether the purchaser may choose to accept another type of gift instead).

## **Retailer Notification Scheme**

Section 39 of the *Public Health (Tobacco) Act 2008* requires tobacco retailers to notify the NSW Ministry of Health of tobacco retailing activities through the Government Licensing Service. Retailers can register their business details on the free on-line Government Licensing Service at <http://www.licence.nsw.gov.au>.

The maximum penalty for not registering is 100 penalty units, or \$11,000.

The legislation also includes a negative licensing scheme, such that retailers who are convicted of selling cigarettes to children or breaching other regulations on two or more occasions in any three year period will automatically be prohibited from selling tobacco for specified periods. On a second conviction the ban will be three months, for a third conviction the ban will be for 12 months.

## **Phase in periods**

Some of the reforms introduced under the *Public Health (Tobacco) Act 2008* applied to all retailers from 1 July 2009 with no phase-in period. Other reforms were subject to phase-in periods to provide retailers with sufficient time to prepare for the required changes.

For example, tobacco retailers that employed 50 or less employees as at 25 September 2008 (the date of the introduction of the *Public Health (Tobacco) Bill 2008*) had until 1 July 2010 to comply with the display ban. Retailers that employed greater than 50 employees as at 25 September 2008 had until 1 January 2010 to be compliant. Tobacco vending machines were subject to the display ban from 1 January 2010. Retailers classified as “Specialist Tobacconists” through the [Government Licensing Service](#) (supporting evidence required) had a longer phase-in period in view of the increased impact of the display ban on these retailers. Approved specialist tobacconists were required to comply with the display ban by 1 July 2013.

## **Enforcement**

NSW Health Authorised Inspectors monitor compliance with and enforce provisions of the *Public Health (Tobacco) Act 2008* and the *Public Health (Tobacco) Regulation 2009*.

NSW Police enforce the ban on smoking in cars with children.

## **SMOKE-FREE ENVIRONMENT ACT 2000**

The *Smoke-free Environment Act 2000* (the Act) bans smoking in enclosed public places in NSW and, from 7 January 2013, in a number of outdoor public areas. These include:

- Within 10 metres of children's play equipment in outdoor public spaces;
- Swimming pool complexes;
- Spectator areas at sports grounds or other recreational areas during organised sporting events;
- Railway platforms, light rail stops, light rail stations, bus stops, taxi ranks and ferry wharves;
- Within 4 metres of a pedestrian access point to a public building; and
- From 6 July 2015, in commercial outdoor dining areas.

Examples of places that are smoke-free if they are enclosed public places include:

- Shopping centres, malls and plazas;
- Restaurants, cafes, cafeterias, dining areas and other eating places;
- Schools, colleges and universities;
- Professional, trade, commercial and other business premises;
- Community centres or halls and places of public worship;
- Theatres, cinemas, libraries and galleries;
- Trains, buses, trams, aeroplanes, taxis and hire cars, and ferries and other vessels;
- Hostels (other than residential accommodation);
- Motels (other than residential accommodation);
- Fitness centres, bowling alleys and other sporting and recreational facilities;
- Childcare facilities;
- Hospitals;
- Casinos (other than a casino private gaming area or residential accommodation);
- Hotels (other than residential accommodation);
- Clubs (other than residential accommodation); and
- Nightclubs.

NSW Health Authorised Inspectors monitor compliance with and enforce provisions under the Act.

## APPENDIX B

### PENALTIES UNDER THE *PUBLIC HEALTH (TOBACCO) ACT 2008*

Penalties apply under the *Public Health (Tobacco) Act 2008* (the Act).

On-the-spot fines can be administered by NSW Police officers for a range of offences, including:

- Smoking in a car with a person under the age of 16 present - \$250 on-the-spot fine;
- Failure to comply with a requirement of direction of a police officer - \$250 on-the-spot fine; and
- Provision of false or misleading information to a police officer - \$250 on-the-spot fine.

An on-the-spot fine of \$250 may be administered by NSW Health Authorised Inspectors for the offence of failing to notify the NSW Ministry of Health about tobacco retailing activities (s.39 of the Act).

The following table sets out some key penalties for individual retailers and corporations for non-compliance with certain sections of the Act.

**Table 1 - Penalties under the Public Health (Tobacco) Act 2008**

Section of the Act	Offence Description	Who can be fined	Maximum penalty
Section 7	Selling a tobacco product without a health warning	Individual Corporation	\$11,000 \$55,000
Section 9	Failure to remove tobacco products out of sight	Individual Corporation	\$11,000 \$55,000
Section 10	Selling tobacco products from more than one point of sale	Individual Corporation	\$11,000 \$55,000
Section 12, 13 and 14	<ul style="list-style-type: none"> <li>• Placement of tobacco vending machines in premises not within s.12 of the Act</li> <li>• Placement of more than one tobacco vending machine in premises not within s.12 of the Act</li> <li>• Selling tobacco through a vending machine without staff controls</li> <li>• Non-compliance with display and signage requirements</li> </ul>	Individual Corporation	\$11,000 \$55,000
Section 16	Advertising and promotion of tobacco products	Individual Corporation	\$55,000 - 1st offence \$110,000 - 2nd or subsequent offence \$660,000 - 1st offence \$1.1M - 2nd or subsequent offence
Section 18	Conducting a Shopper Loyalty Program including tobacco products	Individual Corporation	\$11,000 \$55,000
Section 22	Selling tobacco products to Minors	Individual Corporation	\$11,000 - 1st offence \$55,000 - 2nd or subsequent offence \$55,000 - 1st offence \$110,000 - 2nd or subsequent offence
Section 23	Purchasing tobacco products on behalf of those under 18 years of age	Individual	\$2,200

## APPENDIX C

# Submission to the 2013 Discussion Paper *Public Health (Tobacco) Act 2008 - Statutory Review*

### Details of the person / organisation putting forward the submission

Name:

Mailing address:

Postcode:

Email address:

**Note:** All submission forms must include the name, electronic or postal address and home postcode of the person or organisation putting forward the submission. Anonymous submissions will not be considered.

Is your submission to remain confidential?  Yes

No

Is your submission on behalf of an organisation or professional association?  Yes

No

If yes, which organisation or professional association?

---

If no, then please indicate if you are:

*(tick as many as apply)*

a person under the age of 18 years

an owner of a retail business that sells tobacco products

an employee of a retail business that sells tobacco products

a health or medical professional

a teacher or youth worker

other (please specify) \_\_\_\_\_



## Question 1

Is the object of the *Public Health (Tobacco) Act 2008* still valid?

Yes

No

*Please provide reasons for this:*

---

---

---

---

---

---

---

---

---

---

---

---

## Question 2

Should any further objects be included in the *Public Health (Tobacco) Act 2008*?

Yes

No

*If yes, please provide detail of further objects:*

---

---

---

---

---

---

---

---

---

---

---

---

### Question 3

Are the provisions of the *Public Health (Tobacco) Act 2008* still appropriate to secure the object of the Act?

- Yes
- No

*Please provide reasons for this:*

---

---

---

---

---

---

---

---

---

---

### Question 4

Should any other provisions be included in the *Public Health (Tobacco) Act 2008*?

- Yes
- No

*If yes, please provide details below:*

---

---

---

---

---

---

---

---

---

---

### Question 5

Should the interpretation of a single point of sale be changed to a single service point, regardless of the number of cash registers at that service point?

- Yes
- No

*Please provide reasons for this:*

---

---

---

---

---

---

---

---

---

---

### Question 6

Is the current tobacco retailer notification scheme appropriate to enable the NSW Ministry of Health to monitor retailer compliance with the *Public Health (Tobacco) Act 2008*?

- Yes
- No

*Please provide reasons for this:*

---

---

---

---

---

---

---

---

---

---

### Question 7

Are any changes needed to the provisions in the *Public Health (Tobacco) Act 2008* relating to tobacco vending machines to help prevent impulse buys of tobacco and/or the sale of tobacco to minors?

- Yes
- No

*Please provide reasons for this:*

---

---

---

---

---

---

---

---

---

---

### Question 8

Does the requirement for the statement “Tobacco sold at this register only” to be displayed next to the health warning signage achieve an appropriate balance between assisting retailers to direct customers and ensuring that customers and the public are aware of the health risks of smoking?

- Yes
- No

*Please provide reasons for this:*

---

---

---

---

---

---

---

---

### Question 9

Should the *Public Health (Tobacco) Act 2008* and the *Smoke-free Environment Act 2000* be combined into one piece of tobacco legislation?

- Yes
- No

*Please provide reasons for this:*

---

---

---

---

---

---

---

---

---

---

### Question 10

Are there any other issues that should be considered in this Statutory Review which relate directly to the *Public Health (Tobacco) Act 2008*?

- Yes
- No

*If yes, please provide details below:*

---

---

---

---

---

---

---

---

---

---

**To participate in this public consultation, submissions must be received by 5.00pm on 20 December 2013.**

*Electronic submissions*

Electronic submissions can be submitted to:

<http://www.surveygizmo.com/s3/1407382/Statutory-Review-of-the-Public-Health-Tobacco-Act-2008>

Or by email to: [tobacco@doh.health.nsw.gov.au](mailto:tobacco@doh.health.nsw.gov.au). Please mark your submission 'Public Health (Tobacco) Act 2008 Statutory Review – Discussion Paper' in the subject line of the email.

*Hardcopy submissions*

Written submissions can be submitted to:

'Public Health (Tobacco) Act 2008 Statutory Review – Discussion Paper'  
Strategic and Regulatory Policy Branch  
Centre for Population Health  
NSW Ministry of Health  
Locked Bag No. 961  
North Sydney NSW 2059  
Fax: 9391 9877

Or by hand to: The Reception Desk, Ground Floor, 73 Miller Street, North Sydney. Please mark your submission 'Public Health (Tobacco) Act 2008 Statutory Review – Discussion Paper', attention to 'Strategic and Regulatory Policy Branch, Centre for Population Health'.

## REFERENCES

1. *Mortality in relation to smoking: 40 years' observations on male British doctors.* **Peto, R.** 309, 1994, British Medical Journal, pp. 901-911.
2. **Centre for Epidemiology and Evidence.** Health Statistics New South Wales. [Online] [Cited: 2 October 2013.] [www.healthstats.nsw.gov.au](http://www.healthstats.nsw.gov.au).
3. **NSW Department of Health.** *Protecting Children from Tobacco: A NSW Government Discussion Paper on the Next Steps to Reduce Tobacco-Related Harm.* 2008.
4. **Collins, DJ and H, Lapsey.** *The social costs of smoking in NSW in 2006/07 and the social benefits of public policy measures to reduce smoking prevalence.* Sydney : NSW Department of Health, 2010.
5. **NSW Population Health Survey, 2012.**
6. **Centre for Epidemiology and Evidence.** *New South Wales School Students Health Behaviours Survey: 2011 Report.* Sydney : NSW Ministry of Health, 2013.
7. *NSW Admitted Patient Data Collection and ABS population estimates (SAPHaRI).* s.l. : Centre for Epidemiology and Evidence, NSW Ministry of Health.