

**GOVERNMENT RESPONSE**  
TO THE REPORT OF  
**THE SENATE COMMUNITY AFFAIRS REFERENCE COMMITTEE**

**THE TOBACCO INDUSTRY AND  
THE COSTS OF TOBACCO-RELATED ILLNESS**

September 1997

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**Responses to Recommendations - Executive Summary**

No.	Recommendation	Response
1	that smoking not be permitted in enclosed places, including office, factory, shop or other work sites, shopping centres, restaurants, theatres, hotels and sporting venues (opposed by dissenting report)	Primarily a State/Territory issue. Commonwealth has already moved in areas where it has authority, such as airports and Commonwealth buildings. It is noted that the NHMRC is currently undertaking a search of recent scientific literature in order to review and update its 1995 draft passive smoking report
2	that in respect of offices, shops, restaurants, etc., outdoor or separately ventilated indoor spaces be made available for smokers, but that staff not be compelled to work in, or service, these areas (opposed by dissenting report)	Primarily a State/Territory issue. Has been encouraged through MCDS, and implemented in some jurisdictions, such as the ACT. It is noted that the NHMRC is currently undertaking a search of recent scientific literature in order to review and update its 1995 draft passive smoking report
3	that nicotine transdermal patches (nicotine patches) be listed in the Schedule of Pharmaceutical Benefits; but that they only be prescribed as part of a structured smoking cessation program	Awaiting outcomes of review of cessation models, including nicotine patches
4	that the provisions of the Tobacco Advertising Prohibition Act 1992 relating to incidental or accidental broadcast or publication of tobacco advertisements be strictly monitored and enforced by the Department of Health and Family Services	Commonwealth will seek to monitor the provisions of the Act and formulate appropriate enforcement policies

5	<p>that the Tobacco Advertising Prohibition Act 1992 be amended to remove the provision for the exemption of publication of tobacco advertisements in association with specified sporting and cultural events of international significance and that this be phased in by the year 2000 (opposed by dissenting report)</p>	<p>Conditions for the granting of Section 18 exemptions have been tightened and future applications will be rigorously assessed</p>
6	<p>that the Commonwealth Government establish a national health promotion foundation or other appropriate national body to provide an alternative source of sponsorship funding to that provided by tobacco companies for major sporting and cultural events (opposed by dissenting report)</p>	<p>Commonwealth does not currently endorse a policy of hypothecating excise revenue; similar foundations already exist at State/Territory level</p>
7	<p>that the current testing procedures for cigarette yields be reviewed by an appropriate independent body to determine whether these procedures accurately reflect the actual levels of tar, nicotine and carbon monoxide inhaled by smokers; and that the printed material contained on cigarette packs on tar, nicotine and carbon monoxide yield levels reflects this information</p>	<p>Current testing is in accordance with international standards; information on cigarette packages already reflects levels of tar, nicotine and carbon monoxide. Commonwealth will seek expert advice on how best to ensure that smokers are informed that measured levels may significantly understate inhaled levels</p>
8	<p>that, while the Committee favours the listing of nicotine as a Schedule 7 poison by the National Drugs and Poisons Scheduling Committee, it believes that further investigation of the implications of this proposal should be undertaken by the Council of Australian Governments and the Australian Health Minister's Advisory Council (opposed by dissenting report)</p>	<p>Commonwealth agrees to undertake further work to investigate the implications of poison scheduling of nicotine in tobacco</p>

9	that the National Health and Medical Research Council assess the health effects of tobacco product additives, including determining whether additives potentiate the effects of nicotine	Commonwealth agrees to ask National Health and Medical Research Council to assess available evidence on the effects of additives on the bio-availability of nicotine
10	that a list of tobacco product ingredients be provided annually to the Commonwealth Government, on a confidential basis, by those tobacco companies whose products are available for sale in Australia	Industry has already indicated willingness to supply such information to Commonwealth
11	that a list of the ingredients in tobacco products, and their effects, be distributed (in an appropriate form) with all tobacco products sold in Australia (opposed by dissenting report)	Commonwealth to investigate legal and commercial implications of implementing recommendation
12	that the National Health and Medical Research Council appoint a sub-committee to review the current weight-based excise system	Issue to be referred to the National Health and Medical Research Council for investigation and report
13	that the Commonwealth Government investigate the implications of withdrawing tobacco products from the list of duty-free goods	Issue already addressed in previous investigation. No clear health benefit for Australians; negative implications for international treaty obligations and tourism industry

14	<p>that national education programs be developed for primary and secondary school students and that these programs be regularly revised; and that these programs be based on the most recent research and evidence of the socio-economic, environmental, behavioural and personal factors identified as encouraging the take-up of tobacco use by young people. and the continuing use of tobacco by young people. The Committee further recommends that these programs include information on the danger of passive smoking, particularly for young people</p>	<p>The Commonwealth has already acted to develop educational initiatives through its NIDE (National Initiatives in Drug Education) program. MTAG will seek to coordinate tobacco education programs with relevant education authorities</p>
15	<p>that primary and secondary teachers, who will teach or are teaching health courses that include anti-smoking units, be funded by the Commonwealth Government as part of the National Drug Strategy to attend teacher education and in-service training sessions</p>	<p>The Commonwealth will consider new funding arrangements in the context of public health partnerships with States and Territories</p>
16	<p>that school-based smoking prevention programs be encouraged and expanded; and that they be taught each year from at least Year 4 (about 9 years of age) to the end of secondary schooling</p>	<p>Primarily a matter for individual schools and State/Territory Education Departments; educational materials have, however, been produced under the NIDE program for inclusion in school curriculums</p>
17	<p>that no smoking be permitted (including smoking by students, staff, parents and visitors) on any school premises; and that students who are found in breach of this be counselled, and supported through drug education and 'Quit' smoking programs (opposed by dissenting report)</p>	<p>State/Territory Government responsibility</p>

18	that additional research be undertaken into the efficacy of generic packaging of tobacco products as a means of addressing the problem of juvenile smoking	Further investigation to be made into full ramifications of generic packaging by an independent research body
19	that comprehensive restrictions on the size, placement and format of point-of-sale advertising of tobacco products, similar to those applying in New South Wales, be applied in all States and Territories	Primarily a State/Territory issue; Commonwealth is prepared to pursue the issue through appropriate forums, including MCDS
20	that the distribution of non tobacco-related products associated with the sale of tobacco products be prohibited	Commonwealth agrees to consider means of addressing this issue, including voluntary agreements or legislation
21	that the Commonwealth, State and Territory Governments ensure that there are regular real increases in levels of excise duties and business franchise fees levied on tobacco products; and that the revenue from these taxation increases be directed to tobacco control and health promotion activities (opposed by dissenting report)	Commonwealth does not currently endorse a policy of hypothecating excise revenue
22	that tobacco products be removed from the basket of goods used in calculating the Consumer Price Index (opposed by dissenting report)	Data and economic indicators, including CPI, should not be distorted
23	that the minimum age for the purchase of tobacco products be 18 years in all States and Territories; and that the States and Territories investigate the feasibility of making it an offence for persons under the age of 18 years to purchase tobacco products	Primarily a State/Territory issue; Commonwealth prepared to pursue the issue through appropriate forums, including MCDS
24	that an appropriate form of proof-of-age identification be automatically required for young people purchasing cigarettes	A State/Territory Government issue; Commonwealth prepared to pursue the issue through appropriate forums, including MCDS

25	that there be a reduction in the number of retail outlets permitted to sell tobacco products (opposed by dissenting report)	Restrictive trade practice; contradicts wider policy of Government
26	that the licensing systems in all States and Territories provide for the suspension or revocation of a licence where retail outlets sell tobacco products to minors (opposed by dissenting report)	State/Territory licensing authority issue; such provisions already present in some jurisdictions
27	that State and Territory Governments, in co-operation with the appropriate retail trade associations, expand their education programs directed at retailers	Primarily a State/Territory Government issue; substantial work already being done at State/Territory level. Commonwealth prepared to establish best-practice models for use by State/Territory jurisdictions. Commonwealth also seeking to educate retailers on provisions of its own tobacco control legislation
28	that, as it is virtually impossible to prevent access by children to cigarette vending machines, these types of vending machines be prohibited in all States and Territories (opposed by dissenting report)	A State/Territory Government issue; Commonwealth prepared to pursue the issue through appropriate forums, including MCDS
29	that State, Territory and Local Governments increase the level of funding and personnel devoted to the enforcement of laws restricting the supply of tobacco products to minors; and that increased resources be devoted to the prosecution of retailers that contravene such laws	Primarily State/Territory law enforcement agency issue
30	that State and Territory Governments institute routine systems of random compliance checks to monitor the sale of tobacco products to minors	Primarily State/Territory Government issue



31	that the Commonwealth Government encourage the States and Territories to improve the effectiveness of their enforcement and monitoring programs	Proposal to receive consideration in context of new public health partnerships with State and Territory Governments
32	That a system of substantial fines be introduced in all States and Territories to discourage the sale of tobacco products to minors	Primarily State/Territory Government issue
33	that strategies continue to be developed to address the special needs of 'at risk' groups in the community, such as lower socio-economic groups, to reduce the incidence of smoking in those groups	Appropriate programs to be explored by the Ministerial Tobacco Advisory Group in the context of the National Tobacco Strategy
34	that funding continue to be allocated by the Commonwealth Government for the development of appropriate programs and strategies to address the problem of tobacco use for 'at risk' groups in the community	Endorsed. Already addressed with the Commonwealth's recent campaign aimed at people under 40 years of age. Appropriate funding mechanisms to be explored by the Ministerial Tobacco Advisory Group in the context of the National Tobacco Strategy
35	that strategies, sensitive to Aboriginal and Torres Strait Islander cultural values, be implemented to address the problem of tobacco use in Aboriginal and Islander communities	Endorsed
36	that further research be conducted to examine the problem of tobacco use by Aboriginal people in urban areas	Appropriate research organisation for undertaking recommendation to be determined by the Department of Health and Family Services and the Ministerial Tobacco Advisory Group

37	that funding be provided by the Commonwealth Government for culturally appropriate programs and strategies to address the problem of tobacco use in Aboriginal and Torres Strait Islander communities, as part of a broader health strategy	Appropriate funding mechanisms and programs to be explored by the Department of Health and Family Services and the Ministerial Tobacco Advisory Group further to the findings of the Office for Aboriginal and Torres Strait Islander Health Services Substance Misuse Program Review
38	that strategies, sensitive to the cultural backgrounds and values of people from non-English speaking backgrounds, be implemented to address the problem of tobacco use in these communities	Appropriate programs to be explored by the Department of Health and Family Services and the Ministerial Tobacco Advisory Group
39	that funding be provided by the Commonwealth Government for programs to address the problem of tobacco use amongst people from non-English speaking backgrounds, including older people	Appropriate funding mechanisms to be explored by the Department of Health and Family Services and the Ministerial Tobacco Advisory Group

## 2. GOVERNMENT RESPONSE

The most important duty of any government is to protect and improve the general health and well-being of its citizens. One way a government can promote the health of the population is to minimise the use of substances known to be detrimental to health.

Tobacco is such a substance. Over 50,000 studies have been undertaken over the past several decades, in many countries, which confirm that tobacco use has a demonstrably deleterious effect on human health, and that nicotine is an addictive substance. More recent studies indicate a relationship between exposure to environmental tobacco smoke and the incidence of a number of diseases.

To date, the tobacco harm minimisation strategies of the Commonwealth have incorporated legislation and regulation affecting advertising, voluntary agreements with the industry regarding substance levels in tobacco products, educational programs and campaigns, the levying of excise on tobacco products and the banning of smoking in all Commonwealth-owned buildings. With a view to reviewing the level of industry regulation and exploring potential cost-recovery mechanisms for the community, the Senate Community Affairs Reference Committee was directed to inquire into the Tobacco Industry and the Costs of Tobacco-Related Illness.

The Senate Committee presented its report to Parliament in December 1995. The report explored a number of issues which affect the health of Australians generally, and a number of groups in our society specifically. The Committee made 39 recommendations with a view to minimising the deleterious effects of tobacco through a range of Commonwealth, state and territorial government initiatives.

The Senate Committee fulfilled its obligation to provide a complete list of possible options for future action on tobacco control. The report furnishes the Government with a valuable exploration of potential mechanisms for recouping and reducing the significant costs of tobacco use to the community. The report also raises for discussion many possible avenues for further regulation of the tobacco industry, with the goal of reducing community use of this substance.

With the Committee's task completed, it is now incumbent on the Government to assess the feasibility of these initiatives as part of national strategies to reduce the uptake and prevalence of tobacco use in Australia.

Many of the Report's recommendations address issues most appropriately dealt with at a state or territory level, particularly those relating to education and intervention programs. While it is not the responsibility of the Commonwealth to develop or fund community-level initiatives, the Federal Government will continue to play its part in facilitating interstate co-operation and collaboration on these issues through appropriate forums, such as the Ministerial Council on Drug Strategy.

The Report also includes many recommendations for further regulation by the Commonwealth. The strategies proposed are largely untested and, therefore, the benefits must be regarded as potential rather than guaranteed. Problems do not necessarily vanish with the passage of a law. Additional regulation needs to yield a clear and demonstrable benefit, be enforceable and have minimal incidental disruption or side-effects.

In assessing the viability of each recommendation, the Government has sought to give due consideration to its commitment to deregulating business with a view to ensuring greater competition and efficiencies. Bodies such as the Office of Regulatory Review and the Small Business Deregulation Task Force are now prompting Government to justify the necessity, appropriateness and basis for regulation, and to ensure that there is a rational connection between the regulation and end to be sought. The fact that the validity of the *Tobacco Advertising Prohibition Act 1992* is being challenged in the High Court by a major tobacco manufacturer illustrates the need for all legislation to be defensible in terms of its net benefits to the public. For this reason, the Government will seek further expert advice on the potential for a number of the proposed regulatory reforms to contribute to reductions in smoking uptake and tobacco consumption.

Wherever possible the Government, in conjunction with advisory bodies such as the Ministerial Tobacco Advisory Group, will use the findings of the Report to guide future research and the development of policies to further the aims of the National Tobacco Strategy.

### **3. RECOMMENDATIONS ADDRESSED**

#### **3.1 PASSIVE SMOKING**

##### **COMMITTEE RECOMMENDATION:**

The Senate Community Affairs Reference Committee's December 1995 Report on the Tobacco Industry and the Costs of Tobacco-Related Illness made the following recommendations on the passive smoking issue:

##### **Recommendation 1:**

**"That smoking not be permitted in enclosed places, including office, factory, shop or other work sites, shopping centres, restaurants, theatres, hotels and sporting venues."**

##### **Recommendation 2:**

**"That in respect of offices, shops, restaurants etc., outdoor or separately ventilated indoor spaces be made available for smokers, but that staff not be compelled to work in, or service, these areas."**

##### **RESPONSE:**

**A number of States and Territories have moved towards legislation governing smoking in public places. In particular, NSW, WA and SA have made progress in this area. The Commonwealth is prepared to work with other jurisdictions to develop guidelines addressing passive smoking and promote best practice in legislation in this area.**

##### **BACKGROUND:**

The Commonwealth Government has undertaken substantial legislative measures to combat the impact of passive smoking on the public.

All Commonwealth offices have been made smoke-free over the past decade. In 1987 the Air Navigation Act 1920 was amended to ban smoking on domestic airline flights. In 1996 this ban was made effective on all Australian carriers flying anywhere in the world, and on overseas carriers flying within Australia. In 1988, a ban on smoking in buses and coaches registered under the Federal Interstate Registration Scheme was introduced. 1992 saw the banning of smoking in all airport buildings operated by the Federal Airports Corporation. Smoking on all interstate trains was banned in 1993.

## 3.2 NICOTINE PATCHES

### COMMITTEE RECOMMENDATION:

#### **Recommendation 3:**

**“That nicotine transdermal patches (nicotine patches) be listed in the Schedule of Pharmaceutical Benefits; but that they only be prescribed as part of a structured smoking cessation program”.**

### RESPONSE:

**The Commonwealth does not endorse the recommendation at this time. Action on this recommendation should be delayed pending the outcomes of the review of cessation models and techniques. Funding for smoking cessation therapies, including nicotine replacement, should also be considered in the context of the Commonwealth's overall funding priorities for reducing tobacco related harm.**

### BACKGROUND:

In September 1993, Marion Merrell Dow, a manufacturer of nicotine patches, applied to list its brand of patches on the Pharmaceutical Benefits Scheme (PBS). As the nicotine patches satisfied the effectiveness and cost criteria of PBAC's statutory charter, the PBAC formally recommended PBS listing. PBAC advised that nicotine patches were most effective through a structured program and recommended that only four weeks supply be made available, instead of the usual 10 weeks, as patients would not be incurring the cost of buying cigarettes and could therefore fund the remainder of the course themselves.

In October 1994, the Federal Government considered PBAC's recommendation. The Federal Government was concerned that subsidising nicotine patches on the PBS could cost as much as \$100 million a year and that there was potential for reduced effectiveness and waste if patches were made available on the PBS rather than through a structured program. Because of these concerns, the Federal Government decided not to list nicotine patches on the PBS.

On 14 June 1995, the former Federal Minister for Human Services and Health announced the decision to fund a review of best practice smoking cessation Models. The review will evaluate the current smoking cessation programs and the appropriate role of nicotine replacement therapies within these cessation programs. This review was endorsed by all jurisdictions at the Ministerial Council on Drug Strategy meeting in June 1995. Further, a literature review has recently been produced which examines cessation models and techniques, and the role of nicotine replacement therapies within such activities. The literature review will be disseminated and will inform the wider review of cessation models.

### **3.3 MONITORING THE PROVISIONS OF THE TOBACCO ADVERTISING PROHIBITION ACT 1992**

#### **COMMITTEE RECOMMENDATION:**

In regard to incidental and accidental advertising, the Senate Committee recommended the following:

#### **Recommendation 4:**

**"That the provisions of the Tobacco Advertising Prohibition Act 1992 relating to incidental or accidental broadcast or publication of tobacco advertisements be strictly monitored and enforced by the Department of Human Services and Health."**

#### **RESPONSE:**

**The Government is currently considering a scheme for the routine enforcement of the incidental and accidental provisions of the *Tobacco Advertising Prohibition Act 1992*. In addition, the Government will seek to acquire the data and information necessary to inform any possible future changes to the legislation pertaining to incidental and accidental advertising.**

#### **BACKGROUND:**

In 1973, the Commonwealth amended the *Broadcasting and Television Act* to phase out tobacco advertising on television. Print media advertising has been banned since 1990. The most recent legislation, the *Tobacco Advertising Prohibition Act 1992* (the Act), came into effect in July 1993. The purpose of the Act is "to limit the exposure of the public to messages and images that may persuade them to start smoking, to continue to smoke or to use, or to continue to use, tobacco products". The Act does not intend to override existing State and Territory legislation, but rather to operate in concert with it. Effectively, the Act applies in its entirety only to those jurisdictions which do not have their own tobacco advertising control legislation - namely, Queensland, Tasmania and the Northern Territory.

#### **'Incidental' and 'Accidental' Advertising**

The Act contains the following advertising exemptions:

- Section 14: The accidental or incidental broadcast of tobacco advertisements; and
- Section 19: The accidental or incidental publication of tobacco advertisements.

The overall intention of the exemptions is to safeguard legitimate commercial and political freedom of speech, whilst continuing to allow the operation of the prohibition on tobacco advertising.

A number of health groups have indicated their belief that these exemptions weaken the Act by undermining its prohibitions, and as such should be removed altogether.

### **Research into the impact of the exemptions**

The Department proposes to commission an independent study into the level and degree of both incidental and accidental advertising (Sections 14 and 19 of the *Tobacco Advertising Prohibition Act*). The study may also examine paid advertisements which appear in imported periodicals. Such advertisements are currently exempted from the ban by Section 17 of the Act.

The results of the study will enable the Department to establish a baseline or measurement of current levels of advertising in films, television and overseas periodicals.



### **3.4 SPONSORSHIP OF SPORTING AND CULTURAL EVENTS**

In seeking to replace Tobacco Industry sponsorship of major sporting and cultural events, the Committee sought to both eliminate current legislative provisions allowing for such sponsorship, and to create a Commonwealth-generated fund to replace this sponsorship funding.

#### **COMMITTEE RECOMMENDATIONS:**

##### **Recommendation 5:**

**"That the Tobacco Advertising Prohibition Act 1992 be amended to remove the provision for the exemption of publication of tobacco advertisements in association with specified sporting and cultural events of international significance and that this be phased in by the year 2000."**

##### **Recommendation 6:**

**"That the Commonwealth Government establish a national health promotion foundation or other appropriate national body to provide an alternative source of sponsorship funding to that provided by tobacco companies for major sporting and cultural events."**

The Senate Committee recommended that funding for the proposed body come from an increase in the tobacco excise.

#### **RESPONSE:**

**Because States and Territories may rely heavily on the financial benefits of hosting high profile sporting and cultural events, the Commonwealth Minister for Health and Family Services will retain the power to exempt such events from the ban on tobacco advertising. The Federal Government will, however, more rigorously assess future proposals from sporting organisations which apply for exemptions from Australia's tobacco advertising laws.**

**A health promotion foundation could be established through increases in tobacco excise to replace a certain proportion of tobacco company sponsorship. The Commonwealth Government does not, however, currently adopt a policy of revenue hypothecation in the manner of some states. All revenue from tobacco excise is channelled into consolidated revenue.**

**Further, given that similar ventures to that proposed by the Senate Committee have been implemented in a number of states, it must be determined whether a similar Commonwealth Government body would unnecessarily duplicate functions.**

## **BACKGROUND:**

Australia is the venue for a number of sporting and cultural events that are of international significance, with competitors drawn from many countries and a worldwide audience. Many of these events or competitions have sponsorship arrangements both internationally and locally which involve tobacco advertising.

The *Tobacco Advertising Prohibition Act 1992* (the Act) contains a number of exemptions. Section 18 of the Act gives the Minister for Health and Family Services the power to exempt certain international sporting or cultural events from the general ban on tobacco advertising provided certain conditions are met.

An exemption may only be granted if the Minister determines that:

- a) the event is of international significance and;
- b) Australia would be likely to lose the event if the Minister does not specify it as one that is exempt from the general ban on tobacco advertising under the Act.

The legislation requires the Minister to make decisions on a case by case basis, having considered all the information presented, and with regard to the objectives of the Act.

In deciding to exempt an event, the Minister may limit the impact of the exempted tobacco advertising by setting conditions on the type, level and nature of tobacco advertisements permitted in association with the event.

As of August 1997, 28 exemptions have been granted under Section 18 to events of international significance.

### **Section 18 Review**

In September 1995 the former Minister for Human Services and Health, Dr C. M. Lawrence, announced the commencement of an independent review of the Section 18 exemption. This review recommended the gradual phasing out of the exemption.

Given the Minister's discretionary powers in granting an exemption under Section 18, however, it was decided that an actual amendment to the legislation would be less desirable than a simple tightening of the provisions for exemption. Further to this policy, applications for exemptions will face greater scrutiny than they have previously. Since announcing this policy, the Minister for Health and Family Services has denied three separate applications for exemptions. Previously, all but one application had been granted an exemption.

### **3.5 CIGARETTE YIELDS TESTING**

#### **COMMITTEE RECOMMENDATION:**

##### **Recommendation 7**

**“That the current testing procedures for cigarette yields be reviewed by an appropriate independent body to determine whether these procedures accurately reflect the actual levels of tar, nicotine and carbon monoxide inhaled by smokers; and that the printed material contained on cigarette packs on tar, nicotine and carbon monoxide yield levels reflects this information”.**

#### **RESPONSE:**

**The current procedure for testing tar, nicotine and carbon monoxide levels is of international standard. It may not, however, accurately reflect levels delivered to smokers. Testing to determine the actual levels of tar, nicotine, and carbon monoxide inhaled by smokers is probably not feasible. The Commonwealth will seek expert advice on the appropriate means for ensuring that smokers are informed about the limitations of cigarette testing.**

#### **BACKGROUND:**

The levels of tar, nicotine and carbon monoxide levels in cigarettes are not currently subjected to government regulation. However, four tobacco companies and one tobacco supplier are signatories to a Voluntary Code in Respect of CPM (Tar) Nicotine and CO Labelling on Cigarette Packaging. This Code specifies maximum levels of tar, nicotine and carbon monoxide for cigarettes and has been adhered to by all local cigarette companies.

The Australian Government Analytical Laboratories (AGAL) are commissioned by the Commonwealth to conduct the Cigarette Testing Program which determines the average yield of tar, nicotine and carbon monoxide in cigarettes. In 1993, AGAL upgraded the cigarette testing methodology to the current (1991) ISO 3308 international standard. This is the most up-to-date internationally approved methodology for cigarette testing. AGAL conducted tests of the thirty most popularly smoked brands of cigarette in Australia in 1996. The results of these tests have been published and are currently being widely disseminated.

In addition, tobacco manufacturers are required to declare the average yields of tar, nicotine and carbon monoxide on the side of cigarette packets for consumer information purposes. Strengthened health warnings and accompanying explanations are also required on cigarette packets to help educate smokers about some of the health effects of tobacco.

Research indicates that for each individual smoker the depth of inhalation, the duration of holding the smoke, how much of the tobacco stick is smoked etc. will vary. It would therefore be extremely difficult, if not impossible, to design a methodology that would determine the actual levels of tar, nicotine and carbon monoxide inhaled by smokers since it would most likely be different every time. Also, the amount of tar, nicotine and carbon monoxide that is absorbed by a smoker could vary from cigarette to cigarette.

## **3.6 SCHEDULING OF NICOTINE AS A POISON**

### **COMMITTEE RECOMMENDATION**

#### **Recommendation 8**

**“That, while the Committee favours the listing of nicotine in tobacco prepared and packed for smoking as a Schedule 7 poison by the National Drugs and Poisons Schedule Committee, it believes that further investigation of the implications of this proposal should be undertaken by the Council of Australian Governments and the Australian Health Ministers’ Advisory Council”.**

### **RESPONSE:**

**The Commonwealth does not endorse the listing of nicotine prepared and packed for smoking as a Schedule 7 poison at this stage. The Commonwealth strongly agrees that further investigation of the implications of the proposal should be undertaken through an appropriate forum.**

### **BACKGROUND:**

Nicotine is currently scheduled (Schedule 7) in the Standard for the Uniform Scheduling of Drugs and Poisons (SUSDP) which is used by the States and Territories to schedule poisons under their Poisons legislation (the Poisons Schedule itself has no legal force). Schedule 7 poisons are poisons which require special precautions in manufacturing, handling, storage or use, or require special individual regulations regarding labelling or availability. The nicotine prepared and packed for smoking is exempted from scheduling in the SUSDP.

There have recently been a number of calls from major tobacco and health organisations (such as the Australian Medical Association(AMA) and the Australian Council on Smoking and Health (ACOSH)) for the removal of the exemption for the nicotine in smoking tobacco. The removal of the exemption is argued for on the grounds that it would assist in the achievement of, strengthened health warnings, generic packaging, display of ingredients/additives, restriction of sales and distribution and alternative tobacco advertising controls.

In October 1995, the WA Branch of the AMA and ACOSH prepared a submission to the Western Australian Poisons Advisory Council (WA PAC) proposing that the Committee remove the exemption for tobacco in Schedule 7 and develop regulations to permit its placement in an alternative Schedule. This matter was considered by WA PAC at their February 1996 meeting, and will receive further consideration later this year, when additional information and the opinion of

learned colleagues is obtained. Advice from WA PAC indicates that any decision on the issue would be referred to the National Drugs and Poisons Committee (NDPSC) of the Australian Health Ministers Advisory Council

Legal advice obtained from the Attorney General's Department indicates that agreement by the NDPSC to remove the exemption for nicotine in smoking tobacco would subsequently require legislative enforcement by individual States and Territories. The further achievement of conditions for the sale of the nicotine in smoking tobacco, such as generic packaging would require specific incorporation of labelling/packaging and availability requirements.

From a policy perspective, further consideration would need to be given to the impact of the conditions which could be applied to smoking tobacco nicotine as a Schedule 7 poison. In addition to the impact on tobacco availability and consumption, consideration would need to be given to the impact of the restriction of sales to pharmacists on other small businesses and on the perception of pharmacies as a provider of health products.

### 3.7 TOBACCO ADDITIVES

#### COMMITTEE RECOMMENDATION:

##### **Recommendation 9**

**“That the National Health and Medical Research Council assess the health effects of tobacco product additives, including determining whether additives potentiate the effects of nicotine”.**

##### **Recommendation 10**

**“That a list of the ingredients added to tobacco products be provided annually to the Commonwealth Government, on a confidential basis, by those tobacco companies whose products are available for sale in Australia”.**

##### **Recommendation 11**

**“That a list of the ingredients in tobacco products, and their effects, be distributed (in an appropriate form) with all tobacco products sold in Australia”.**

#### RESPONSE:

**A previous MCDS task force on this matter concluded that the health effects of tobacco additives are insignificant compared to the natural constituent substances of tobacco itself. The Commonwealth would also argue that there is greater public health benefit by requiring that the major harmful constituents of tobacco smoke and their health effects are provided on all tobacco packaging. The Commonwealth will, however, ask the NHMRC to assess international and locally available evidence as to the effect of additives on nicotine levels.**

**The Government supports recommendations 10 and 11, subject to investigation of the legal and commercial implications of such additional regulation, and a determination of the best method of disseminating such information to the public.**

#### BACKGROUND:

**In 1991, the Ministerial Council on Drug Strategy (MCDS) commissioned a Task Force on Tobacco to investigate a number of issues including pesticides and additives in tobacco. The Task Force examined research by the Health Department of Victoria which concluded that the health consequences of potentially dangerous substances added to tobacco are likely to be insignificant when compared to the harm caused by the naturally occurring toxic contents of tobacco itself. The National Health and Medical Research Council advised the Task Force that it would not be prepared to set maximum levels for pesticides**

and additives as it was concerned that smokers could mistakenly believe that tobacco products which conformed to such standards were safe.

In April 1992 the MCDS endorsed the recommendations from the March 1992 Report of the Task Force on Tobacco. MCDS specifically agreed that no further action be taken concerning the labelling of pesticides and additives in tobacco and that should further evidence come to light that tobacco products contain significant quantities of pesticides and additives the issue would be reopened.

Concerns regarding additives were renewed following the release of a New Zealand study in March 1994. At the MCDS meeting of 30 September 1994, Ministers were advised that the Commonwealth had commissioned the Australian Government Analytical Laboratories (AGAL) to conduct investigations into the toxicology of cigarette additives (based on a literature review) and the feasibility of obtaining information of the toxicity of specific additives.

AGAL's review concluded that a substantial number of additives are either natural products, inorganic salts or other substances that find extensive use in the food industry. AGAL noted however, that there were some organic additives that may be toxic or produce toxic or noxious products, particularly on combustion. At the June 1995 meeting of MCDS Ministers were informed of AGAL's report and reaffirmed the 1992 MCDS decision that the health risks from additives are considered to be insignificant compared to the toxicity of tobacco smoke itself and that no further action need be taken unless further evidence comes to light.

*The Trade Practices (Consumer Product Information Standards) (Tobacco) Regulations* currently mandate that information on the major natural constituents of tobacco smoke - tar, nicotine and carbon monoxide - appear on retail packages of tobacco products. The Commonwealth does not, however, require tobacco companies to provide information on the ingredients added to tobacco products (although lists have been provided in the past by Philip Morris Limited).

Industry representatives have indicated that, while they are willing to provide information on additives to the Government on request, they are concerned that the provision of specific brand formulae to the public would compromise proprietary commercial information. These legal and commercial sensitivities will need to be considered in any regulation mandating disclosure of tobacco product additives to the general public.

Further, an appropriate means of disseminating such information to the public should be determined before the Commonwealth embarks on further regulations. In New Zealand, information on the ingredients of tobacco products is required to be provided on an annual basis by tobacco manufacturers and importers, and is available to the public on request.



### **3.8 THE TOBACCO EXCISE**

#### **COMMITTEE RECOMMENDATION:**

Citing evidence that increases in cigarette prices had a demonstrated impact on juvenile smoking, the Committee made the following recommendations:

##### **Recommendation 12:**

**"That the National Health and Medical Research Council appoint a sub-committee to review the current weight-based excise system."**

##### **Recommendation 21**

**"That the Commonwealth, State and Territory Governments ensure that there are regular real increases in the levels of excise duties and business franchise fees levied on tobacco products; and that the revenue from these taxation increases be directed to tobacco control and health promotion activities".**

#### **RESPONSE:**

**The Commonwealth will refer the proposal to review the current weight-based excise system to the National Health and Medical Research Council for investigation and report. The Council's review will incorporate appropriate consultation with other stakeholders, particularly Commonwealth agencies involved in the administration and collection of the current excise system. A decision on the future direction of the tobacco excise will take into account the Council's recommendations.**

**As a result of the recent High Court decision on tobacco franchise fees the Commonwealth has, at the request and on behalf of the State and Territory Governments, increased its tax on tobacco to replace charges now of doubtful constitutional validity. All of the revenue collected by the Commonwealth under these arrangements will be returned to the States and Territories (after allowing for Commonwealth administrative costs).**

**As noted in response to Recommendation 6, the Commonwealth Government does not follow a policy of revenue hypothecation. All revenue from tobacco excise is channelled into consolidated revenue.**

#### **BACKGROUND:**

##### **Stick-Based Excise**

Health groups have expressed a belief that the current method of levying tobacco excise, which is based on the weight of cigarettes, has contributed to the emergence of "budget-priced" cigarettes.

To date, investigations by the Australian Government Analytical Laboratories (AGAL) have shown that there was no significant difference between the weight of cigarettes used in budget packets compared to standard packets of the same cigarette brand.

Subsequent representations from health advocacy groups, however, suggest that further research into the merits of a stick-based system may warrant consideration.

### **Excise Increases**

In the 1995 Federal Budget it was announced that tobacco excise levied by the Federal Government would be increased by 10 per cent from mid-night 9 May 1995. In addition to this tax increase in May 1995 both the New South Wales and Victorian State Governments also announced increases in tobacco licence fees. This followed the significant tax increases implemented by the Federal Government. The first of these was a 3% increase in the 1993 Federal Budget; this was followed by four 5% increases levied at six months intervals. The cumulative effects of the tax increases has increased the price of a packet of cigarettes considerably.

### **Tobacco taxation: regressive or progressive?**

There has been some concern that the price increases are having the greatest impact upon those people on low incomes. It has been claimed that many pensioners and other low-income earners who are unable or unwilling to stop smoking are suffering significant financial hardship, and are going short on food and other necessities. Thus there have been calls for the Government to assess the social implications of increased tobacco taxes.

Against this argument, it is clear that smoking itself places unequal burdens of disease and other costs on disadvantaged groups. There is no evidence that low income earners are going without food or clothing as a result of their tobacco habit. People on low income are more price sensitive than those on high incomes; therefore tax increases could be seen as having a progressive impact overall.

**COMMITTEE RECOMMENDATIONS:****Recommendation 14:**

**"That national education programs be developed for primary and secondary school students and that these programs be regularly revised; and that these programs be based on the most recent research and evidence of the socio-economic, environmental, behavioural and personal factors identified as encouraging the take-up of tobacco use by young people, and the continuing use of tobacco by young people. The Committee further recommends that these programs include information on the dangers of passive smoking, particularly for young people."**

**Recommendation 15:**

**"That primary and secondary teachers, who will teach or are teaching health courses that include anti-smoking units, be funded by the Commonwealth Government as part of the National Drug Strategy to attend teacher education and in-service training sessions."**

**Recommendation 16:**

**"That school-based smoking prevention programs be encouraged and expanded; and that they be taught each year from at least Year 4 (about 9 years of age) to the end of secondary schooling."**

**Recommendation 17:**

**"That no smoking be permitted (including smoking by students, staff, parents and visitors) on any school premises; and that students who are found in breach of this be counselled, and supported through drug education and 'Quit' smoking programs."**

**Recommendation 23:**

**"That the minimum age for the purchase of tobacco products be 18 years in all States and Territories; and that the States and Territories investigate the feasibility of making it an offence for persons under the age of 18 years to purchase tobacco products."**

**Recommendation 24:**

**"That an appropriate form of proof-of-age identification be automatically required for young people purchasing cigarettes."**

## RESPONSE:

**The Commonwealth is already undertaking substantial work in relation to national tobacco and drug education and support programs for teachers and students through the National Initiatives in Drug Education program.**

**School regulations and minimum ages for purchasing are within the jurisdiction of State and Territory Governments.**

## BACKGROUND:

The National Initiatives in Drug Education (NIDE) project is a two year, \$3.2 million Commonwealth endeavour funded through the Confiscated Assets Trust Fund. The project promotes collaboration between the Commonwealth, States and Territories, and involves health, education and police officials, as well as parents, students and drug education agencies.

NIDE has produced a range of initiatives, including the following:

- **Healthy Lifestyles CD ROM:** An interactive multi-media education initiative, due to be distributed to primary schools in March 1997. This CD ROM will include tobacco-related information;
- **Professional Development: Commonwealth Funding to States and Territories.** These funds have been used to train teachers in drug education, and to develop educational resources. Tobacco-related health risks are addressed by this initiative; and
- **Pre-service Training:** proposed Commonwealth Funding to Universities to train future health professionals in drug-related issues.

NIDE also provides the policy framework and benchmarks for additional education initiatives involving either *direct Commonwealth action, or Commonwealth funding for State and Territory activities.*

In addition, the Commonwealth is in the process of establishing a new funding arrangement with States and Territories in the form of Public Health Partnerships. It is anticipated that these partnerships, together with more subject-specific public health agreements, will provide a framework for addressing the provision of Federal funding for State and Territory-based public health initiatives.

### 3.10 GENERIC PACKAGING

#### COMMITTEE RECOMMENDATION:

##### Recommendation 18:

“That additional research be undertaken into the efficacy of generic packaging of tobacco products as a means of addressing the problem of juvenile smoking”.

#### RESPONSE:

The Commonwealth is addressing the issues of youth smoking through a sustained multi-faceted approach, which includes health warnings on packaging to improve consumer, including youth, knowledge of the health effects of tobacco consumption. The Commonwealth will commission further investigation of the efficacy of generic packaging as a means of enhancing the impact of package warnings.

#### BACKGROUND:

Between 1991 and 1994, while consideration was being given by the Ministerial Council on Drug Strategy (MCDS) to the issue of health warnings and tobacco labelling, the issue of generic packaging was raised. In its final report in 1992, the MCDS taskforce on tobacco stated that the recommendations of the Centre for Behavioural Research in Cancer on packaging and labelling of tobacco products be adopted, including:

- the introduction of strengthened health warnings, explanation of these health warnings, and contents information; and
- the introduction of standard packaging for all tobacco products with specified package composition, colour, finish, print font and point size.

A decision was made in 1993 by MCDS that, rather than pursuing the issue of generic packaging, Governments would use a wide range of strategies to focus public attention on the health effects of smoking, including strengthened health warnings on tobacco products. A national system of strengthened health warnings was subsequently introduced in 1994 by the Commonwealth under the *Trade Practices (Consumer Product Information Standards) Tobacco Regulations*.

A number of health groups have recently called for the introduction of generic packaging for tobacco products in both submissions to the Commonwealth and to the Senate Inquiry on the Tobacco Industry and the Costs of Tobacco-Related Illness.

In response to the mounting interest in generic packaging, the Commonwealth obtained advice from the Attorney General's Department on the legal and constitutional barriers to generic packaging. This advice indicates that the Commonwealth does possess powers under the Constitution to introduce such packaging but that any attempt to use these powers to introduce further tobacco control legislation needs to be considered in the context of the increasingly critical attention being focussed on the necessity, appropriateness, justification and basis for regulation by such bodies as the Office of Regulatory Review, the High Court, and Senate Standing Committees. In addition, further regulation needs to be considered in the context of Australia's international obligations regarding free trade under the General Agreement on Tariff and Trade (GATT), and our obligations under international covenants such as the Paris Convention for the Protection of Industrial Property, and the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS).

To date, generic packaging of tobacco products has not been implemented anywhere in the world. As such, there is no international experience of the effect of generic packaging on consumer behaviour. In addition, there is limited primary research on the potential effect of generic packaging on the factors underlying or relevant to the uptake and cessation of tobacco consumption.

### 3.11 POINT-OF-SALE ADVERTISING

#### COMMITTEE RECOMMENDATION:

The Senate Committee received a number of submissions from health groups which suggested that point of sale advertising may be one of the contributors to high youth smoking rates. With a view to combatting youth smoking, the Committee recommended the following:

#### **Recommendation 19:**

**"That comprehensive restrictions on the size, placement and format of point-of-sale advertising of tobacco products, similar to those applying in New South Wales, be applied in all States and Territories."**

#### RESPONSE:

**The Commonwealth is currently examining the possible tightening of point of sale advertising in those jurisdictions where Commonwealth point of sale provisions apply - namely, Queensland, Tasmania and the Northern Territory. The Commonwealth is also prepared to undertake a leadership role in coordinating State and Territory activities involving point-of-sale restrictions.**

#### BACKGROUND:

The *Tobacco Advertising Prohibition Act 1992* (the Act) bans most forms of advertising. However the legislation currently permits, among other things, point-of-sale advertising (Section 16).

#### **Regulations**

In summary, the regulations under Section 16 provide that a tobacco advertisement must:

- be within the boundaries of a shop; and
- not be affixed to the outside wall, window or door of the shop; and
- if placed on a window, face the inside of the shop.

## **State and Territory Legislation**

Currently Commonwealth legislation permits point of sale advertising where there is a State or Territory law dealing with such advertising and that law permits the advertising. In Queensland and the Northern Territory, where no State or Territory legislation exists, Section 16 (2) allows for point of sale advertising, subject to regulations made under the Act.

The New South Wales and Western Australian Governments have both enacted point of sale advertising legislation which is more stringent than the Commonwealth's regulations, with regulations limiting the size of the advertisements and requiring the display of a health warning. Legislation in Victoria and South Australia, however, is much less restrictive and as in Queensland, Tasmania and the Northern Territory, point-of-sale advertising in these jurisdictions appears to have become much more prominent since other forms of advertising have been banned.



### **3.12 TOBACCO RETAIL ISSUES**

#### **COMMITTEE RECOMMENDATION:**

As part of its report on the Tobacco Industry and the Costs of Tobacco-Related Illness, the Senate Committee made the following recommendations:

##### **Recommendation 25:**

**“That there be a reduction in the number of retail outlets permitted to sell tobacco products and that:**

- as an interim measure, tobacco products be isolated from other products for sale in all outlets currently selling tobacco products; and**
- in the longer term, those retail outlets permitted to sell tobacco products be restricted to licensed premises and tobacconists; and that this be phased in to minimise any disruption to small business.”**

##### **Recommendation 26:**

**“That the licensing systems in all States and Territories provide for the suspension or revocation of a license where retail outlets sell tobacco products to minors.”**

##### **Recommendation 27:**

**“That State and Territory Governments, in co-operation with the appropriate retail trade associations, expand their education programs directed at retailers.”**

##### **Recommendation 29:**

**“That State, Territory and Local Government increase the level of funding and personnel devoted to the enforcement of laws restricting the supply of tobacco products to minors; and that increased resources be devoted to the prosecution of retailers that contravene such laws.”**

##### **Recommendation 30:**

**“That State and Territory Governments institute routine systems of random compliance checks to monitor the sale of tobacco products to minors.”**

##### **Recommendation 31:**

**“That the Commonwealth Government encourage the States and Territories to improve the effectiveness of their enforcement and monitoring programs; and that:**

- as part of their monitoring system the States and Territories provide statistics annually to the Commonwealth on the number of complaints and prosecutions against retailers selling cigarettes to minors; and
- the States and Territories run a publicity campaign that informs the public of the appropriate bodies to which they can direct complaints regarding the sale of tobacco products to minors.”

**Recommendation 32:**

“That a system of substantial fines be introduced in all States and Territories to discourage the sale of tobacco products to minors.”

**RESPONSE:**

The Government does not endorse recommendation 25. The imposition of a further regulatory burden on small businesses at this time runs counter to the Government's establishment of a Small Business Deregulation Task Force - a body constituted for the specific purpose of reducing the high level of compliance costs imposed by government.

Recommendations 26, 27, 29, 30 and 32 are not relevant to the Commonwealth's responsibilities. The Government does, however, support these recommendations in principle.

The Government fully endorses recommendation 31. The Commonwealth is prepared to assume a leadership role in this regard by coordinating State and Territory activities, establishing best-practice models and acting as a clearing house for research relevant to State and Territory health officials. Monitoring of progress on enforcement of sales to minors regulation in each state and territory could be an important component of the new Public Health Partnerships.

**BACKGROUND:**

The Senate Committee indicated that licensing in the States and Territories had thus far been poorly administered, and was primarily a revenue-raising function rather than a component of an integrated health strategy.

**Recommendation 25 - Retailer concerns**

The Philip Morris tobacco company responded to recommendation 25 by circulating a letter to retailers, informing them of the substance of this recommendation and urging them to lobby their elected officials. This resulted in expressions of considerable concern from small-business owners.

## **Recommendations 26, 27, 29, 30 and 32 - State and Territory Responsibility**

The Commonwealth does not regulate the licensing of businesses. All States and Territories require licences for either tobacco retailers or wholesalers. In New South Wales, Victoria and South Australia, there are provisions for the suspension of licenses to retailers.

Business licensing is a State and Territory Government responsibility.

## **Recommendation 31 - Commonwealth's Role**

At a National Tobacco Sales to Minors Conference held in Sydney in August 1996, New South Wales health officials outlined their comprehensive sales to *minors strategy*. *The response to this model from health officials from other states and territories was enthusiastic, and assent was given to the idea that the Commonwealth should establish best practice models for addressing tobacco retail issues. The Commonwealth will seek to develop this leadership role through the National Tobacco Strategy, which is currently being developed through the Ministerial Tobacco Advisory Group.*

### 3.13 CONSUMER PRICE INDEX

#### COMMITTEE RECOMMENDATION:

The Senate Committee made the following recommendation:

#### **Recommendation 22**

**"That tobacco products be removed from the basket of goods used in the calculation of the Consumer Price Index."**

#### RESPONSE:

**The Australian Bureau of Statistics has consistently adopted the policy that moral or social decisions should not skew or distort data. As tobacco is still a significant item of expenditure in at least one in five Australian households, removing it from the basket of goods would be contrary to the principles governing the composition of the CPI.**

#### BACKGROUND:

Several health groups, including the Australian Cancer Society and the National Heart Foundation have argued that tobacco should be removed from the basket of goods used in the calculation of the Consumer Price Index (CPI).

The argument is that removing tobacco from the CPI would provide an incentive for governments to raise excise, unlike the current arrangements where an increase in the retail price of cigarettes is reflected in the CPI and, consequently, in the inflation rate.

The Australian Bureau of Statistics has, for some years, published a consumer price index which excludes changes in the price of alcoholic beverages and tobacco. The Anti-Cancer Council of Victoria has recently proposed that this index be used for the determination of wage, pension and benefit increases. It is argued that this would have the same effect as excluding tobacco from the CPI, without distorting the integrity of the basic index as an economic indicator.

### 3.14 VALUE-ADDED PROMOTIONS

#### COMMITTEE RECOMMENDATION:

The Senate Committee made the following recommendations:

**Recommendation 20:**

**"That the distribution of non tobacco-related products associated with the sale of tobacco products be prohibited."**

#### RESPONSE:

**The Commonwealth is currently considering the possibility of regulating the distribution of such products in the states and territories that do not have existing legislation.**

#### BACKGROUND:

Health groups have expressed concern about certain promotional activities being conducted by tobacco companies, in particular the use of giveaways with the sale of tobacco products.

Legislation prohibiting the distribution of non-tobacco products with the sale of tobacco products already exists in New South Wales, Victoria, South Australia and Western Australia. Therefore this issue is restricted to those states and territories without applicable legislation, namely, Queensland, Tasmania, Northern Territory and Australian Capital Territory.

Examples of giveaways that were cited to the Senate Committee included cricket calendars, t-shirts, lighters, key rings and caps. It has been argued that many of these items have appeal to young people and would contribute to their decision to take up or continue to smoke.

In addition to concerns relating to children and adolescents the Senate Committee were also presented evidence of promotional activities being undertaken amongst Aboriginal communities in Northern Territory.

Tobacco companies have dismissed claims that promotions are aimed at adolescents. Philip Morris have argued that giveaways are a marketing tool targeted at existing tobacco consumers and designed to "reinforce our consumers' brand loyalty, and to attract smokers of opposition products".

Further, it should be noted that the former Minister for Human Services and Health, the Hon Dr C. M. Lawrence MP, committed the Commonwealth to pursuing the issue of value-added promotions following the June 1995 Ministerial Council on Drug Strategy meeting. Further to this commitment, the Federal Government has been seeking to obtain relevant research to inform future policy on this issue.

### 3.15 VENDING MACHINES

#### COMMITTEE RECOMMENDATION:

The Senate Committee received a number of submissions from health groups which suggested that vending machines are a contributor to high youth smoking rates. With a view to combatting youth smoking, the Committee recommended the following:

#### **Recommendation 28:**

**"That, as it is virtually impossible to prevent access by children to cigarette vending machines, these types of vending machines be prohibited in all States and Territories."**

#### RESPONSE:

**The Commonwealth is currently considering this recommendation in the context of the range of strategies designed to reduce youth smoking rates.**

#### BACKGROUND:

In Section 16 of the *Tobacco Advertising Prohibition Act 1992* (the Act), vending machines dispensing tobacco products are considered to be a place where tobacco products are offered for sale to the public. As such, regulations made under the Act regarding point of sale advertising apply to vending machines. Under Regulation 8 of the Tobacco Advertising Prohibition Regulations, a tobacco advertisement may be attached to a vending machine that contains tobacco products only if the advertisement does not extend beyond any of the extremities of the machine itself.

Commonwealth regulations governing vending machines have been made under the Act, and as such affect only advertisements which may appear on or near vending machines. The Commonwealth does not in any way restrict the placement of tobacco vending machines.

#### **State and Territory Legislation**

Most States have enacted some form of regulation over tobacco vending machines. In the ACT and South Australia, vending machines are restricted to licensed premises. In New South Wales, Victoria and Western Australia, vending machines are limited to both licensed premises and staff amenities areas. In Tasmania they are restricted to areas supervised by an adult. In Queensland, only vending machines operated directly by tobacco companies are regulated; these machines are limited to licensed premises, staff amenities

areas and areas supervised by an adult. The Northern Territory has no restrictions on the location of vending machines.

As the ACT and South Australian regulations regarding vending machines are the most restrictive, the Commonwealth is prepared to suggest that these serve as best-practice models, and to promote their adoption by other states and territories in the context of the MCDS.

### 3.16 TOBACCO USE AMONGST 'HIGH RISK' GROUPS

#### COMMITTEE RECOMMENDATIONS:

Aware of the high use of tobacco amongst certain social groups, and particularly Indigenous Australians, the Committee recommended the following:

**Recommendation 33:**

**"That strategies continue to be developed to address the special needs of 'at risk' groups in the community, such as lower socio-economic groups, to reduce the incidence of smoking in those groups".**

**Recommendation 34:**

**"That funding continue to be allocated by the Commonwealth Government for the development of appropriate programs and strategies to address the problem of tobacco use for 'at risk' groups in the community."**

**Recommendation 35:**

**"That strategies, sensitive to Aboriginal and Torres Strait Islander cultural values, be implemented to address the problem of tobacco use in Aboriginal and Islander communities, and that these strategies include:**

**close liaison with Aboriginal and Torres-Strait Islander community-based health organisations, especially the Aboriginal Health Services; and**

**the dissemination of culturally appropriate information on tobacco use throughout Aboriginal and Torres Strait Islander communities."**

**Recommendation 36:**

**"That further research be conducted to examine the problem of tobacco use by Aboriginal people in urban areas."**

**Recommendation 37:**

**"That funding be provided by the Commonwealth Government for culturally appropriate programs and strategies to address the problem of tobacco use in Aboriginal and Torres Strait Islander communities, as part of a broader health strategy."**

**Recommendation 38:**

**"That strategies, sensitive to the cultural backgrounds and values of people from non-English speaking backgrounds, be implemented to address the problem of tobacco use in these communities."**



**Recommendation 39:**

**"That funding be provided by the Commonwealth Government for programs to address the problem of tobacco use amongst people from non-English speaking backgrounds, including older people."**

**RESPONSE:**

**The Government remains committed to furthering the health of at-risk groups within our society, in particular Indigenous peoples. Policy initiatives dealing with social target groups need to be informed by detailed research and close consultation with communities. As such, the Commonwealth will develop appropriate strategies for addressing the tobacco-related health risks of Low Income, Non-English Speaking and Indigenous communities.**

**BACKGROUND:**

Both the National Health Policy on Tobacco and the Tobacco Harm Minimisation component of "Health Australia" were initiated to improve the health of all Australians by eliminating or reducing their exposure to tobacco in all its forms. Further to these goals, the Commonwealth is aiming to ensure that all groups receive accurate and culturally appropriate information, education and services about the health effects of tobacco use.

**Indigenous Australians and Tobacco Use: Research**

Smoking amongst Aboriginal and Torres Strait Islander people is a major health problem, and further action is clearly needed to address this issue. Available research indicates that over half of all Indigenous Australians smoke - a figure twice that of the national average. This research also indicates that awareness of this problem is generally poor, with less than two-thirds rating it as a serious problem among Aboriginal and Torres Strait Islander peoples.

Further to the goal of promoting the Commonwealth as a coordinating body for health-related research and best-practice models, the Department of Health and Family Services will seek to assemble and disseminate appropriate research to those agencies best positioned to utilise such information to maximum effect. In addition, the Minister for Health and Family Services recently endorsed the establishment of a Substance Misuse Committee which will report to the new Aboriginal and Torres Strait Islander Health Council. This Committee is comprised of key stakeholders in the area of substance abuse amongst Indigenous Australian communities.

The Ministerial Tobacco Advisory Group is also preparing to undertake a major education campaign targeting Indigenous Australians further to its larger National Tobacco Campaign. This campaign will be undertaken in the context of a national indigenous smoking strategy, which is to be developed under the auspices of the Ministerial Tobacco Advisory Group in conjunction with Office of Aboriginal and Torres Strait Islander Health Services.

### 3.17 DUTY-FREE TOBACCO

#### COMMITTEE RECOMMENDATION:

**Recommendation 13:**

**“That the Commonwealth Government investigate the implications of withdrawing tobacco from the list of duty-free goods”.**

#### RESPONSE:

**The Commonwealth has already investigated this proposal in responding to the 1993 review of the Australian Customs Service. There is currently little evidence that the elimination of the duty-free status on tobacco products would have a direct health benefit. Moreover, given the likelihood of a negative impact on the tourism industry and other non-health related areas, the Government does not support any withdrawal of the duty-free status for tobacco products at this point.**

#### BACKGROUND:

Health groups have expressed a belief that the current practice of granting duty-free status to tobacco products for international travellers is inconsistent with the Commonwealth's overall tobacco harm minimisation strategy.

##### **Tourism and Duty-Free Concessions**

The purpose of duty-free concessions is to facilitate the arrival of international travellers. Australia is a signatory to both the 1954 New York Convention and the 1968 OECD Convention. These deal with tourism and travelling, and include provision for minimum levels of concessions, including a tobacco products allowance.

The concessions enable the efficient processing of incoming travellers with duty free purchases within the specified limits, without the need to assess duty or sales tax.

The Australian Tourism Commission has advised that creating a welcoming environment at international airports is an important element in an overall tourism strategy. Implementing an assessment process for all passengers carrying tobacco products is therefore inconsistent with Government objectives of facilitating and encouraging tourism traffic.

Further, international travellers are increasingly aware of the duty free concessions in various destinations. While it is unlikely that the inability to purchase tobacco products duty free would directly affect potential visitors' perceptions of Australia as a destination, their level of satisfaction with

shopping opportunities may be affected. This would particularly be so in the case of visitors from our important source markets in North Asia, where smoking is culturally acceptable.

The 1993 Report into the Review of the Australian Customs Service recommended that "in light of its general policy of discouraging the sale of tobacco products, the Commonwealth consider withdrawing tobacco products from the list of duty free goods". In its May 1994 response to this report, the Commonwealth concluded that no change to the tobacco duty free concession was warranted.