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Tobacco Amendment (Protection of Children) Bill 2009

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NB: Readers should note that this Research Brief was current at the time of its preparation prior to the conclusion of debate on the Bill by the Victorian Parliament. For further information please visit the Victorian Legislation and Parliamentary Documents website @ <http://www.legislation.vic.gov.au>.

Introduction

On 23 June 2009 the Victorian Government introduced legislation to amend the *Tobacco Act 1987*. The Tobacco Amendment (Protection of Children) Bill 2009 ('the Bill') is primarily aimed at combating tobacco consumption and uptake amongst younger Victorians.

The Bill is part of the Victorian Government's new *Victorian Tobacco Control Strategy 2008–2013*. The strategy is concerned with reducing smoking rates as a means of tackling cancer and preventable chronic diseases. It places particular emphasis on smoking rates amongst high prevalence groups in socio-economically disadvantaged areas, as smoking 'causes health inequalities and compounds disadvantage by reducing available income'.¹ Victoria is also a signatory to the *Australian National Tobacco Strategy 2004–2009*, which resolves that federal, state and territory governments will work to reduce the 'very real misery and wasted human potential caused by tobacco smoking in Australia'.²

1. The Bill

In his second reading speech of 25 June 2009, the Health Minister Daniel Andrews told the House that despite major legislative reforms and policy initiatives over the last two decades, 'smoking remains the leading avoidable cause of many cancers, respiratory, cardiovascular and other diseases'.³ While smoking rates have decreased across the general population, they remain 'disproportionately high' in particular communities.

As stated in Part 1, the Bill's purpose is to amend the *Tobacco Act 1987* ('the Act') through the following:

- Prohibiting the display of tobacco advertising in all retail outlets except for certified specialist tobacconists and on-airport duty free shops;
- Banning the sale of tobacco products in temporary outlets;
- Banning smoking in cars in which a person under 18 years of age is present;
- Providing the Minister with the power to ban the sale of youth-oriented tobacco products and certain other products;
- Creating new offences relating to smoking and the sale of tobacco products;
- Introducing new offences for bodies corporate, and amending penalty and enforcement provisions; and,
- Making minor miscellaneous amendments.

¹ Victoria. Department of Human Services (2008) *Victorian Tobacco Control Strategy 2008–2013*, Melbourne, DHS, p. 5.

² Australia. Ministerial Council on Drug Strategy (2004) *National Tobacco Strategy, 2004–2009: The Strategy*, Canberra, Australian Government Department of Health and Ageing, p. iii.

³ Victoria. Legislative Assembly (2009) *Debates*, Book 8, p. 2151.

If passed, the Bill would come into operation on 1 January 2010; however the commencement of Part 2 of the Bill is delayed by one year. This is designed to ensure that retail outlets affected by the restrictions have time to prepare 'by either changing their tobacco display arrangements or applying for certification as specialist tobacconists'.⁴

Tobacco Advertisements in Retail Outlets

Part 2 of the Bill prohibits the advertising of tobacco products in retail outlets, including point-of-sale displays, with the exception of specialist tobacconists and on-airport duty free shops. The Health Minister told the House that point-of-sale displays 'raise the profile of tobacco and create the impression that cigarettes are far more popular than is actually the case'.⁵ Banning tobacco point-of-sale displays will reduce the visibility of tobacco products and thereby 'reduce the number of young people who start smoking and make it easier for quitters to remain non-smokers'.⁶

Part 2, Section 4 inserts a provision into the Act to create penalties for advertising tobacco at a retail outlet other than those aforementioned; individuals guilty of an offence are liable to a maximum of 60 penalty units, while a body corporate is liable to a maximum of 300 penalty units.⁷

Part 2, Section 5 provides for the temporary display of tobacco products or immediate packages of tobacco products 'in response to a request by a customer' who wishes to purchase a specified product. This enables a retailer to temporarily open a storage area containing tobacco products, as a means of selling a specific tobacco product to a customer.

The Health Minister stated that the cost to business will be minimised by the fact that the law does not specify 'the manner in which tobacco products must be concealed'.⁸ Retailers may therefore 'cover their existing displays with an opaque material' or move cigarettes out of view.

Miscellaneous Amendments

Part 3 of the Bill makes minor amendments to a number of sections in the Act. Many of these relate to the level of penalty units for an individual and a body corporate for the infringement of provisions applying to the display of acceptable no smoking signs in venues such as restaurants, shopping centres, bingo areas and centres, and casinos. Others change penalties in relation to forms of advertising, promotion and trade, including the provision of free samples, sponsorships and the supply of tobacco to persons under 18 years of age at underage music and dance events.

Smoking in Motor Vehicles

Section 19 of Part 3 inserts a new Division 1A (Smoking in Motor Vehicles) into Part 2 of the Act. As the Health Minister stated in the second reading speech, 'there is no risk-free level of second-hand smoke in confined areas such as cars' and 'children are especially vulnerable'.⁹ The law is designed to help families 'to adopt non-smoking attitudes and behaviours'.¹⁰ The new Division 1A has three sections.

⁴ Tobacco Amendment (Protection of Children) Bill 2009 (Vic), Explanatory Memorandum, p. 2.

⁵ Victoria. Legislative Assembly (2009) op. cit., p. 2152.

⁶ Victoria. Department of Human Services (2008) op. cit., p. v.

⁷ For information on the value of a penalty unit see further: www.ocpc.vic.gov.au.

⁸ Victoria. Legislative Assembly (2009) op. cit., p. 2152.

⁹ *ibid.*, p. 2153.

¹⁰ Victoria. Department of Human Services (2008) op. cit., p. v.

Section 5S provides that a person must not smoke in a motor vehicle if a person under the age of 18 years is present in the motor vehicle. This applies whether or not the motor vehicle is in motion and regardless of anything to the contrary in the Act. The penalty is 5 penalty units.

Section 5T provides that a police member has the power to require a driver or person in charge of a motor vehicle to stop the vehicle if the police member believes on reasonable grounds that a person within the vehicle has committed, or is about to commit, an offence against Section 5S. A person must not fail to stop when required to do so, and the penalty for failing to stop is 10 penalty units. They are not, however, in contravention of this provision if the person requesting them to stop is not in uniform, and if the driver or person in charge of the vehicle believes that the person is not a police member.

Section 5U provides that in proceedings for an offence against Section 5S, evidence that a person in the motor vehicle appeared to be under 18 years of age is proof of their age, in the absence of any evidence to the contrary.

Temporary Outlets

Section 38 inserts a new Division 4 into Part 2 of the Act. This addresses the sale of tobacco products from temporary outlets. According to the Health Minister, tobacco companies use major events such as the Big Day Out, street festivals and fashion events to market their products in temporary outlets.¹¹

Under Section 15L of the new Division 4, a person must not sell tobacco products from a point of sale in a temporary display stand, tent or booth or any other mobile or temporary structure or enclosure. This applies whether or not part of the display stand, booth, tent, structure or enclosure is permanent. The penalty for a natural person is 60 penalty units, while a body corporate incurs 300 penalty units.

Similarly, a person must not sell tobacco products from a point of sale in a retail outlet that has been established in an area or premises for the duration of a specific sporting, music or arts-related event or function within that area or premises. The penalty for a natural person is 60 penalty units, while a body corporate incurs 300 penalty units.

Under Section 15M it is an offence for a tobacco company to sell tobacco products from a temporary outlet. This means that a tobacco company is guilty of an offence and liable to a penalty not exceeding 5000 penalty units if the company 'intentionally or recklessly' contravenes the aforementioned provisions under Section 15L. This is an indictable offence.

Ban Orders

Section 38 also inserts a new Division 5 into Part 2 of the Act. This covers prohibited products, particularly those designed to appeal to young people.

Section 15N of Division 5 enables the Minister, by order published in the Government Gazette, to ban a product or a class of products if –

- The Secretary recommends an order to the Minister under Section 15O of the new Division 5; or,

¹¹ Victoria. Legislative Assembly (2009) op. cit., p. 2154. See also: Victoria. Department of Human Services (2008) op. cit., p. 13.

- The product or the class of products has been restricted or prohibited by or under a law of Australian jurisdiction on the grounds that the product or the class of products meets one or more criteria that 'substantially correspond' to the criteria set out in Section 15O(2)(a) of Division 5.

Sub-section 2 of Section 15N provides the following:

- If the Secretary recommends a ban order, the ban order must specify that fact and the grounds for the recommendation; or,
- If a ban order is made in light of a prohibition or restriction in another Australian jurisdiction, then the ban order must specify that fact and the relevant law or subordinate instrument containing the prohibition or restriction.

Under Section 15O, the Secretary can recommend a ban order be made in relation to a specified product or class of products. The Secretary must not make a recommendation unless the Secretary has fully examined the matter and is satisfied of the following:

- The product is a tobacco product and it, or its smoke, possesses a 'distinctive fruity, sweet or confectionary-like character'; or,
- The product is a tobacco product that has packaging that appeals to children or young people; or,
- The product is not a tobacco product but resembles a tobacco product; or,
- The product is of a nature, or is advertised in such a way, that encourages children or young people to smoke; and,
- The supply of the product should be prohibited, with regard to the objects of the Act.

Sections 15P to 15S detail how a ban order can be implemented, amended or revoked, and the penalties for breaching a ban order.

Specialist Tobacconists

Section 39 of the Bill inserts a new Part 2A, 'Specialist Tobacconists', into the Act. Section 15T of this new Part 2A provides for the application for certification as a specialist tobacconist. A person who is carrying on, or proposing to carry on, a tobacco retailing business at premises can apply to the Secretary for certification that the premises constitute a specialist tobacconist.

Section 15U provides for the determination of the application. Under sub-section 2, the Secretary may certify the premises if the Secretary is satisfied that a tobacco retailing business is carried on, or proposing to be carried on, at the premises; and:

- Tobacco products constitute 80 per cent or more of gross turnover at the premises (if the tobacco retailing business is carried on at the premises); or,
- If the business is proposed to be carried on, tobacco products are expected to constitute 80 per cent or more of the gross turnover at the premises in the 12 months immediately following the commencement of trading by the applicant at the premises.

Sections 15U to 15ZB detail other aspects of the certification process.

2. Tobacco as a Global Public Health Issue

According to the World Health Organisation (WHO) tobacco has claimed 100 million lives over the course of the twentieth century. Today, it claims an estimated 5.4 million lives per year through heart disease, lung cancer and other related illnesses.¹² WHO has declared the use of tobacco to be a global health epidemic, which would not exist 'without the industry's marketing and promotion of its deadly products'.¹³

Described by former WHO Director-General Dr Gro Harlem Brundtland as 'one of the greatest emerging health disasters in human history', the geography of tobacco consumption has shifted away from heavily regulated jurisdictions in the developed world, as a combination of steady population growth, trade liberalisation and limited anti-smoking legislation has created new markets in developing countries.¹⁴ WHO has estimated that, if left unchecked, the number of deaths from tobacco use could rise to 8 million per year by 2030.¹⁵

In May 2003 the World Health Assembly adopted the Framework Convention on Tobacco Control (FCTC), the first treaty negotiated under the auspices of WHO. The FCTC entered into force on 27 February 2005. It asserts the right of all people to the highest standard of health, and aims to promote demand reduction strategies as well as issues of supply.¹⁶ Australia ratified the FCTC in 2004.¹⁷

The FCTC calls for all parties to the convention to curb the use of such terms as 'low-tar' or 'mild' on tobacco packaging (Article 11), to promote public awareness of tobacco health risks (Article 12) and implement comprehensive bans on advertising, promotion and sponsorship (Article 13). Most notably, the FCTC calls for all parties to adopt measures that protect against exposure to second-hand smoke (Article 8) and measures that would curb the sale of tobacco to children, including prohibition of the manufacture and sale of 'sweets, snacks, toys or any other objects in the form of tobacco products which appeal to minors' (Article 16).¹⁸

In 2008 WHO launched the 'MPower' package, containing six key policies for tobacco control.¹⁹ WHO's second policy, to protect people from second hand tobacco smoke, is

¹² World Health Organisation (2008) *WHO Report on the Global Tobacco Epidemic, 2008: The MPower Package*, Geneva, WHO, pp. 6–17. See also: World Health Organisation (2003) *WHO Framework Convention on Tobacco Control*, Geneva, WHO, p. 1.

¹³ World Health Organisation (2008) op. cit., p. 21.

¹⁴ *ibid.*, p. 13; O. Shafey (ed.) et. al. (2003) *Tobacco Control: Country Profiles*, second edition, The 12th World Conference on Tobacco or Health, Atlanta, World Health Organisation, American Cancer Society, International Union Against Cancer, p. 7; R. Cunningham (1996) *Smoke and Mirrors: The Canadian Tobacco War*, Ottawa, International Development Research Centre, Chapter 18. Some countries, such as Thailand and South Africa, have implemented comprehensive anti-smoking legislation – see further: Shafey (ed.) et. al. (2003) op. cit., pp. 27, 39, 43; J. Eberlee (2001) 'South Africa's Winning Tobacco Control Strategy', *Reports*, International Development Research Centre, 21 September, viewed 14 July 2009, <http://www.idrc.ca/ev.php?URL_ID=5463&URL_DO=DO_TOPIC>; S. Dale (2001) 'How Thailand Took on the Transnational Tobacco Titans', *Reports*, International Development Research Centre, 20 April, viewed 14 July 2009, <http://www.idrc.ca/ev.php?URL_ID=5434&URL_DO=DO_TOPIC>.

¹⁵ World Health Organisation (2008) op. cit., p. 7.

¹⁶ World Health Organisation (2003) op. cit., p. v.

¹⁷ Australia signed the FCTC in December 2003, and ratified the treaty in October 2004 – see further: World Health Organisation (2008) op. cit., p. 324. See also: Australia. Department of Health and Ageing (2009) *Tobacco: Framework Convention on Tobacco Control*, Department of Health and Ageing, viewed 14 July 2009, <<http://www.health.gov.au/internet/main/publishing.nsf/Content/phd-tobacco-fctc.htm>>.

¹⁸ World Health Organisation (2003) op. cit., p. 15.

¹⁹ World Health Organisation (2008) op. cit., p. 23. See also: Victoria. Department of Human Services (2008) op. cit., p. 9.

based on the principle that ‘all people have a fundamental right to breathe clean air’.²⁰ WHO’s fifth policy, to enforce bans on tobacco advertising, promotion and sponsorship, is based on the argument that partial bans on tobacco advertising, promotion and sponsorship do not work ‘because the industry merely redirects its resources to other non-regulated marketing channels’. A total ban is the only way to reduce consumption and protect people, particularly young people, ‘from industry marketing tactics’.²¹

Smoking and Young People

It is widely acknowledged in medical literature that the majority of smokers take up the habit before the age of 18.²² According to WHO and other researchers, young people represent potential ‘replacement smokers’ who can supplant those who quit or die; they are indispensable to the tobacco industry’s future profitability:

...the continued market entry of youth is essential to the successful domestic business model for tobacco companies... [and] without a robust youth market, industry revenue will continue to decline.²³

Tobacco companies claim that their advertisements are not directed at young people, but at existing adult smokers who are entitled to information about alternative brands. Research has shown however, that ‘brand-switching’ amongst existing smokers is uncommon, and therefore brand allegiance is to be forged amongst new smokers, i.e. young people.²⁴

According to WHO and Cummings et. al., companies compete for market share in this demographic by expending considerable sums on direct and indirect marketing programs.²⁵ This can involve placing adverts in publications that appeal to young people or in areas frequented by young people (such as convenience stores), selling cigarettes in smaller packs, using strategic pricing, selling fruit-flavoured cigarettes and promoting certain brands as ‘mild’, ‘cooler’ or ‘smoother’.²⁶ The tobacco industry also sponsors smoking prevention programs for young people, which have been widely criticised by public health bodies around the world for utilizing ‘strategies shown to be ineffective and, in some cases, counter-productive’.²⁷ Indeed, according to the UK based lobby group Action on Smoking and Health (ASH), a primary message of these programs is that smoking is only for adults, thereby making impressionable young people want the habit all the more.²⁸

²⁰ World Health Organisation (2008) op. cit., p. 10.

²¹ *ibid.*, p. 10.

²² See further: *ibid.*, p. 21; K. M. Cummings et. al. (2002) ‘Marketing to America’s Youth: Evidence From Corporate Documents’, *Tobacco Control*, vol. 11 (Supplement 1), p. i5.

²³ C. Heaton et. al. (2006) ‘Youth Smoking Prevention and Tobacco Industry Revenue’, *Tobacco Control*, April, vol. 15, no. 2, p. 105; World Health Organisation (2008) op. cit., p. 21.

²⁴ Cummings et. al. (2002) op. cit., p. i5.

²⁵ World Health Organisation (2008) op. cit., pp. 21, 36–38; Cummings et. al. (2002) op. cit., p. i5. See also: Heaton et. al. (2006) op. cit., p. 105.

²⁶ Cummings et. al. (2002) op. cit., pp. i5, i13; PBS News (2004) ‘Federal Government Sues Tobacco Industry’, *PBS NewsHour Extra*, September 20; C. King III & M. Siegel (2001) ‘The Master Settlement Agreement with the Tobacco Industry and Cigarette Advertising in Magazines’, *New England Journal of Medicine*, vol. 345, no. 7, 16 August, pp. 504–511.

²⁷ Shafey (ed.) et. al. (2003) op. cit., p. 42; Ontario Medical Association (2002) *More Smoke and Mirrors: Tobacco Industry-Sponsored Youth Prevention Programs in the Context of Comprehensive Tobacco Control Programs in Canada*, A Position Statement by the Ontario Medical Association, viewed 21 July 2009, <<https://www.oma.org/Health/tobacco/smokeandmirrors.asp>>; Action on Smoking and Health (2001) *Danger! PR in the Playground: Tobacco Industry Initiatives on Youth Smoking*, London, ASH; Cancer Council Victoria (2008) *Tobacco in Australia: Facts and Issues*, Carlton South, Cancer Council Victoria, s10.13.3.

²⁸ Action on Smoking and Health (2001) op. cit., pp. 25–32.

Smoking and High Prevalence Groups

International studies have found that tobacco use is more common amongst low socio-economic groups, whether they be in developed or developing nations. In turn, these groups are disproportionately affected by the economic consequences of smoking because 'money spent on tobacco means money not spent on basic necessities such as food, shelter, education and health care'.²⁹ WHO has reported that the poor are more likely than the rich to become ill and die prematurely from tobacco-related illnesses.³⁰

The Australian Institute of Health and Welfare's *National Drug Strategy Household Survey* of 2007 found that the highest proportion of smokers had the lowest socio-economic status. A higher proportion of smokers resided in regional, outer regional or remote areas, and indigenous Australians had higher rates of smoking than the national average.³¹

The *Australian National Tobacco Strategy 2004–2009* and the *Victorian Tobacco Control Strategy 2008–2013* make particular mention of smoking rates amongst disadvantaged communities, advocating the provision of 'tailored messages' to those groups in which smoking rates are high and who face difficulty in accessing relevant services.³² This includes smokers living in rural or remote areas, people with severe mental illness, people who are institutionalised or living in custodial settings, parents and carers in disadvantaged areas, and Aboriginal and Torres Strait Islander peoples.³³

A 2008 report by the Australian Institute of Health and Welfare noted that smoking rates amongst indigenous women during pregnancy were higher than those of non-indigenous women, and a higher percentage of indigenous children lived in a household with a regular smoker.³⁴ Both the Victorian and Commonwealth health departments have stated that reducing tobacco smoking amongst indigenous Australians is vital to closing the life expectancy gap between indigenous and non-indigenous Australians.³⁵

Exposure to Second Hand Smoke

Second-hand smoke consists of 'sidestream smoke' (from the burning end of a tobacco product) and 'mainstream smoke' (exhaled by the smoker).³⁶ According to a 2006

²⁹ World Health Organisation (2008) op. cit., p. 20.

³⁰ *ibid.*, pp. 7, 20.

³¹ Australian Institute of Health and Welfare (2008) *National Drug Strategy Household Survey: Detailed Findings*, op. cit., pp. 27–28.

³² Australia. Ministerial Council on Drug Strategy (2004) *National Tobacco Strategy 2004–2009: The Strategy*, op. cit., pp. iv–v.

³³ *ibid.*, pp. iv–v. See also: Australia. Ministerial Council on Drug Strategy (2004) *Australian National Tobacco Strategy 2004–2009: Meeting the Challenges of the Next Five Years – 5 & 6*, Australian Government Department of Health and Ageing.

³⁴ B. Pink & P. Allbon (2008) *The Health and Welfare of Australia's Aboriginal and Torres Strait Islander Peoples, 2008*, Canberra, Australian Bureau of Statistics, Australian Institute of Health and Welfare, pp. 81–88. See also: Victoria. Department of Human Services (2008) op. cit., p. 7.

³⁵ Victoria. Department of Human Services (2008) op. cit., pp. 5, 8, 21; Australia. Department of Health and Ageing (2009) *\$10.7M Available to Reduce Indigenous Smoking Rates*, media release, 13 July. See also findings on tobacco use amongst indigenous prisoners – National Indigenous Drug and Alcohol Committee (2009) *Bridges and Barriers: Addressing Indigenous Incarceration and Health*, Canberra, Australian National Council on Drugs, p. 5.

³⁶ The concept may also be termed 'passive smoke' or 'environmental tobacco smoke', and exposure to it can be termed 'involuntary smoking' – see further: United States. Department of Health and Human Services (2006) *The Health Consequences of Involuntary Exposure to Tobacco Smoke: A Report of the Surgeon General*, Atlanta, U.S Department of Health and Human Services, Centres for Disease Control and Prevention, Coordinating Centre for Health Promotion, National Centre for Chronic Disease

report by the US Surgeon General, second-hand smoke contains at least 50 carcinogens.³⁷ The report noted that children are particularly vulnerable to second-hand smoke, as it puts them at increased risk of severe asthma, sudden infant death syndrome (SIDS), acute respiratory infections and slower lung development.³⁸ Most importantly, the US Surgeon General found that ‘there is no risk-free level of exposure’ to second-hand smoke.³⁹

It is on these grounds that some Australian jurisdictions have introduced legislation to ban smoking in cars carrying children. This has elicited some criticism, for how can smoking in cars be effectively policed? As the former Queensland Health Minister acknowledged, the evidence ‘literally goes up in smoke’.⁴⁰ Others see the measure as excessive and impinging on personal freedom.⁴¹ Health authorities believe however, that banning smoking in cars is a means of encouraging adults to alter their habits, an imperative given that children are more likely to become smokers if their parents have set the example.⁴²

Prevention and Health Promotion, Office on Smoking and Health, p. 3; R. Gastaldon (2007) *Smoking in Cars Carrying Children*, Queensland Parliamentary Library, Research Brief No 2007/19, p. 5; D. J. Collins & H. M. Lapsley (2006) *Counting the Costs of Tobacco and the Benefits of Reducing Smoking Prevalence in Victoria*, A Report Prepared for the Victorian Department of Human Services, Melbourne, DHS, p. 8.

³⁷ United States. Department of Health and Human Services (2006) op. cit., p. 12. See also: Gastaldon (2007) op. cit., p. 5.

³⁸ See also: World Health Organisation (1999) *International Consultation on Environmental Tobacco Smoke (ETS) and Child Health: Consultation Report*, Geneva, 11–14 January, pp. 6–11; Collins & Lapsley (2006) op. cit., p. 11.

³⁹ United States. Department of Health and Human Services (2006) op. cit., p. 11. See also: Victoria. Legislative Assembly (2009) op. cit., p. 2153.

⁴⁰ Queensland. Minister for Health (2007) *Proposal to Ban Smoking in Cars Carrying Children*, ministerial media statement, 12 April.

⁴¹ See further: J. Gordon (2009) ‘Nanna Says No’, *Sunday Age*, 12 July, p. 17; B. Freeman et. al. (2008) ‘Banning Smoking in Cars Carrying Children: An Analytical History of a Public Health Advocacy Campaign’, *Australian and New Zealand Journal of Public Health*, vol. 32, no. 1, pp. 60–65

⁴² Victoria. Department of Human Services (2008) op. cit., p. 12; Australia. Ministerial Council on Drug Strategy (2004) *National Tobacco Strategy 2004–2009: The Strategy*, op. cit., p. 10, 34–35, 14f. For surveys of public opinion on smoking bans, including a ban on smoking in cars carrying children, see further: J. Dunn et. al. (2008) ‘Community Knowledge, Attitudes and Behaviours About Environmental Tobacco Smoke in Homes and Cars’, *Health Promotion Journal of Australia*, vol. 19, no. 2, p. 115.

3. Tobacco Control in Victoria

In 1936 the Anti-Cancer Council of Victoria (ACCV) was established by the Victorian Parliament under the *Anti-Cancer Council Act* (later consolidated under the *Cancer Act 1958*), to promote and facilitate research into the disease.⁴³ In the early 1970s the ACCV helped lobby the Victorian and Australian Governments to phase out cigarette advertising on television and radio and to introduce health warnings on cigarette packets.

The ACCV's campaign against smoking eventually culminated in the *Tobacco Act 1987* (Vic). The Act was guided by the principle that tobacco use is injurious to the health of smokers and non-smokers, and that people (including children and young people) should be discouraged from adopting or continuing the habit.⁴⁴

The Act banned tobacco advertising in cinemas, on billboards, external shop front displays and unsolicited leaflets. The Act also instituted a levy on the wholesale sale of tobacco products, and established the Victorian Health Promotion Foundation (VicHealth) to distribute these funds.

VicHealth became an alternative sponsor for sporting associations across the state and helped to challenge the profitable symbiosis between tobacco companies and sport.⁴⁵ By then the QUIT campaign, established in 1985 by then Victorian Minister for Health Tom Roper and the ACCV, had begun to enlist the support of prominent sporting and cultural figures to promote a smoke free lifestyle.

In the two decades since the Act was passed, successive Victorian governments have legislated against other forms of cigarette promotion and smoking in public spaces. The *Tobacco (Amendment) Act 1993* brought the legal age for the sale of cigarettes up from 16 to 18 years. The *Tobacco (Amendment) Act 2000* instituted smoke-free dining in Victoria (effective July 2001). It also banned point of sale advertising and reduced the amount of space in which tobacco products could be displayed. The *Tobacco (Further Amendment) Act 2001* banned smoking in enclosed retail shopping centres and, among other things, required retailers to display signs stating that it is illegal to sell

⁴³ For historical information on tobacco use in Australia and overseas see further: R. Walker (1984) *Under Fire: A History of Tobacco Smoking in Australia*, Carlton, Melbourne University Press, pp. 57–58, 72, 118. For information on the first pieces of anti-smoking legislation passed in Australia by the various states and territories, and medical research which helped to raise awareness of the health hazards of smoking during the post-Second World War period - see further: Walker (1984) op. cit., pp. 38, 72–74, 85–88, 119, 122. In 1964 the American Surgeon General published a report that linked smoking to lung cancer – see further: United States. National Library of Medicine (2001) *The Reports of the Surgeon General*, viewed 9 July 2009, <<http://profiles.nlm.nih.gov/NN/Views/Exhibit/narrative/smoking.html>>; United States. Department of Health, Education and Welfare (1964) *Smoking and Health: Report of the Advisory Committee to the Surgeon General of the Public Health Service*, Public Health Service Publication No. 1103, U.S. Government Printing Office, The Surgeon General's Advisory Committee on Smoking and Health; Walker (1984) op. cit., p. 86. For a discussion of tobacco companies, medical evidence and health warnings in Australia during the 1980s, see further – S. M. Carter & S. Chapman (2003) 'Smoking, Disease, and Obdurate Denial: The Australian Tobacco Industry in the 1980s', *Tobacco Control*, vol. 12 (Supplement III), pp. iii23–iii30. For a discussion of tobacco control policies in Commonwealth countries, see further – D. T. Studlar (2007) 'Ideas, Institutions and Diffusion: What Explains Tobacco Control Policy in Australia, Canada and New Zealand?', *Commonwealth and Comparative Politics*, vol. 45, no. 2, April, pp. 164–184.

⁴⁴ See further: *Tobacco Act 1987* (Vic), Preamble; M. Winstanley (2007) *The Victorian Tobacco Act 1987 – The Untold Story*, second edition, ed. D. Reading, Carlton South, VicHealth, The Cancer Council of Victoria, p. 7.

⁴⁵ See further: Walker (1984) op. cit., pp. 100–132; Winstanley (2007) op. cit., pp. 10, 18, 21.

to minors.⁴⁶ The *Tobacco (Amendment) Act 2005* instituted bans on smoking in enclosed or covered spaces, including a ban on smoking in enclosed licensed premises that came into effect in July 2007.

In December 2007 National MLC Damien Drum introduced a private member's bill to amend the *Tobacco Act 1987* and the *Road Safety Act 1986*. The Tobacco (Control of Tobacco Effects on Minors) Bill 2007 sought to ban smoking in cars carrying children, and to make it unlawful for people under the age of 18 years to purchase tobacco products. The bill also contained provisions banning the sale of flavoured cigarettes which are designed to appeal to young people.⁴⁷ The bill passed the Legislative Council but was rejected by the Legislative Assembly on the grounds that it seeks to appropriate funds.

According to the Department of Human Services, tobacco claims around 4,000 Victorian lives every year.⁴⁸ The *National Drug Strategy Household Survey* of 2007 found that of those Victorians who are aged 14 years and over, 16.5 per cent smoke on a daily basis and 24.4 per cent are former smokers.⁴⁹ The Survey found that on average, smokers had their first full cigarette in their teens, at around 15 years of age, and had begun a daily habit by the age of 18.⁵⁰

4. Other Jurisdictions

In 2008 the Ministerial Council on Drug Strategy announced that all Australian states and territories would enact legislation to prohibit the sale of fruit and confectionary flavoured cigarettes by December 2009.⁵¹ Furthermore, reducing the exposure of children to second hand smoke is listed as an objective under the *Australian National Tobacco Strategy 2004–2009*.⁵²

South Australia

The sale of fruit flavoured cigarettes was banned in South Australia under the *Tobacco Products Regulation (Prohibited Tobacco Products) Amendment Act 2006*.⁵³ South Australia passed legislation banning smoking in cars carrying children under the age of 16 in 2007. The *Tobacco Products Regulation (Smoking in Cars) Amendment Act* provided for a \$75 on-the-spot fine and a penalty of up to \$200 for repeat offenders.

Tasmania

The *Public Health Amendment Act 2007* prohibited smoking in cars where children are present. It enables police to stop vehicles, request identification and issue infringement

⁴⁶ See also: QUIT Victoria (2005) *Tobacco Control Timeline: The Anti-Smoking Revolution, 1971-2005*, QUIT Victoria, viewed 14 July 2009, <<http://www.quit.org.au/browse.asp?ContainerID=1746>>.

⁴⁷ See further: Tobacco (Control of Tobacco Effects on Minors) Bill 2007 (Vic).

⁴⁸ Victoria. Department of Human Services (2008) op. cit., p. iv. See also: Collins & Lapsley (2006) op. cit., pp. 10–11.

⁴⁹ Australian Institute of Health and Welfare (2008) *National Drug Strategy Household Survey: State and Territory Supplement*, Drugs Statistics Series No. 21, Canberra, AIHW, p. 3. See also: Australian Institute of Health and Welfare (2008) *National Drug Strategy Household Survey: Detailed Findings*, op. cit., p. 23.

⁵⁰ *ibid.*

⁵¹ Victoria. Department of Human Services (2008) op. cit., p. 14; Cancer Council Victoria (2008) op. cit., s10.7.1

⁵² Australia. Ministerial Council on Drug Strategy (2004) *National Tobacco Strategy 2004–2009: The Strategy*, op. cit., pp. 10–11.

⁵³ See further: South Australia. House of Assembly (2006) *Debates*, 22 June; *Tobacco Products Regulation (Prohibited Tobacco Products) Amendment Act 2006* (SA).

notices. The legislation also prohibits the sale of toys or confectionary that resemble tobacco products, and the sale of fruit flavoured tobacco and other tobacco products that appeal to young people.⁵⁴

New South Wales

The *Public Health (Tobacco) Act 2008* prohibits the display of tobacco products, non-tobacco products and smoking accessories in a retail setting, and makes provisions for the use of tobacco vending machines. The legislation also makes it an offence to smoke in a car where a child under 16 years of age is present. The person smoking is guilty of an offence, as is the driver of the vehicle (if a different person). The legislation provides for an on-the-spot fine of \$250, and a maximum penalty of \$1,100.

Queensland

In 2008 the Government introduced legislation to ban smoking in cars where children are present. The Health and Other Legislation Amendment Bill 2008 provided for a fine of \$150. The bill lapsed with the prorogation of the Queensland Parliament, and a new version was introduced in April 2009 which provides for a \$200 on-the-spot fine.⁵⁵

Western Australia

The *Tobacco Products Control Act 2006* made provisions relating to the display of tobacco products and tobacco vending machines. The legislation also prohibits the selling of food, toys or other products that are designed to resemble a tobacco product. In November 2008 independent MLA Dr Janet Woollard introduced the Tobacco Products Control Amendment Bill 2008 as a private member's bill. The bill seeks to prohibit the display of tobacco products and smoking implements at the point of sale. It also seeks to prohibit smoking in cars where children are present, smoking in al fresco areas, outdoor playing areas and safe swimming areas. The bill has passed the Legislative Assembly (with amendments), and is now before the Legislative Council.

United States

In June 2009 United States President Barack Obama signed the *Family Smoking Prevention and Tobacco Control Act*, which provides the U.S. Food and Drug Administration (USFDA) with the power to regulate the marketing, production and distribution of tobacco products. In particular, this includes restrictions on tobacco advertising and marketing to children, and the banning of 'candy-flavoured' cigarettes. The legislation also enables the USFDA to prohibit the use of terms such as 'low-tar', 'light' and 'mild' on tobacco products. President Obama described the legislation as 'a law that will reduce the number of American children who pick up a cigarette and become adult smokers'.⁵⁶

Canada

In May 2009 Bill C-32 was introduced into the Canadian Parliament. The legislation, otherwise known as the *Cracking Down on Tobacco Marketing Aimed at Youth Act*, aims to ban tobacco advertising in print media, and ban youth-friendly additives and

⁵⁴ See further: *Public Health Amendment Act 2007* (Tas); *Public Health Act 1997* (Tas), Section 67H, Section 68A.

⁵⁵ Queensland. Legislative Assembly (2009) *Debates*, 23 April, p. 185.

⁵⁶ J. Lee (2009) 'Protecting Our Children From the Dangers of Smoking', *The White House Briefing Room: The Blog*, 22 June, viewed 6 July 2009, <<http://www.whitehouse.gov/blog/Protecting-Our-Children-from-the-Dangers-of-Smoking/>>.

flavourings in cigarettes and cigarillos. Having passed the House of Commons, Bill C-32 is now before the Senate and will be debated when sitting resumes in September.⁵⁷

⁵⁷ M. Tiedemann (2009) *Bill C-32: An Act to Amend the Tobacco Act*, Parliamentary Information and Research Service, Ottawa, Library of Parliament.

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