

Submission

No 23

**INQUIRY INTO TOBACCO SMOKING IN
NEW SOUTH WALES**

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Theme:

Summary

PHILIP MORRIS LIMITED'S SUBMISSION TO THE "JOINT SELECT COMMITTEE ON TOBACCO SMOKING - INQUIRY INTO TOBACCO SMOKING IN NEW SOUTH WALES"

The Parliament of New South Wales recently established a Joint Select Committee on Tobacco Smoking to "inquire into and report on tobacco smoking in New South Wales, and in particular:

- a) the costs and other impacts of smoking;
- b) the effectiveness of strategies to reduce tobacco use;
- c) the effects of smoke-free indoor venues on the initiation and maintenance of the smoking habit;
- d) factors affecting initiatives for smoke-free indoor areas;
- e) the effectiveness of media, educative, community and medically-based Quit initiatives;
- f) the adequacy of the budget for smoking control initiatives; and
- g) the Smoke-free Environment Amendment (Motor Vehicles Prohibition) Bill 2005 introduced by Revd Mr Nile in the Legislative Council."¹

Philip Morris Limited ("PML") appreciates the opportunity to provide our views to the Inquiry. PML's submission will focus on strategies to reduce tobacco use with particular reference to retail display of tobacco products, youth smoking prevention and licensing of tobacco wholesalers and retailers.

Retail display of tobacco products

PML recognises the public health objective of reducing the harm caused by tobacco use. Cigarette smoking causes serious and fatal diseases in smokers and is addictive, and tobacco products should therefore be subject to strong and effective regulations.

Marketing restrictions are appropriate tools for regulators and legislators to use to further public health goals. Some communications, however, are both appropriate and necessary in a competitive market. PML believes that public health goals can be met while still allowing industry to conduct business in a responsible and regulated manner.

Public health officials, both in Australia and internationally, have acknowledged that a sizable number of adults, despite being informed of the health risks associated with smoking, will continue to use tobacco products. The Commonwealth Department of Health and Ageing acknowledges that tobacco consumption is "a culturally accepted practice" in Australia.² Thus, while discouraging smoking, reducing consumption, and encouraging smokers to quit are all appropriate, laws should also recognize the fact that many Australian adults will use tobacco products for the foreseeable future.

Consumers of tobacco products or any other consumer goods products have the right in free and competitive markets to choose products they prefer. The Competition Principles Agreement between Commonwealth and each of the State and Territory Governments requires that regulations should not restrict competition unless:

- (a) the benefits of the restriction to the community as a whole outweigh the costs; and
- (b) the objectives of the legislation can only be achieved by restricting competition.³

People need information about the products on offer in order to make that selection – and seeing the product is one of the most basic forms of information: consumers need to see the product to know that it is available, and they need to see the product to compare it with the other products on offer. That is as true for tobacco

¹ Resolution passed by Legislative Council on 28 February 2006, Minutes 135, Item 42, page 1846 and Legislative Assembly 16 November 2005, Votes and Proceedings No. 168, Item 3, page 1890.

² Tobacco Advertising Prohibition Act 1992, Issues Paper, August 2003 at 13

³ Clause 5

products as for any other consumer product. Therefore, those adults who have made the choice to smoke should be able to easily see, find and select the brands they prefer at point of sale.

In Australia, point of sale display is one of the few remaining ways that tobacco manufacturers can communicate with adult smokers about their brands and therefore is a very important competitive tool in influencing adult smokers' brand choice.

PML has a strong working relationship with tobacco product retailers. Many have communicated to us that, in their experience, the purchase of tobacco products is overwhelmingly a planned purchase by adults who have made the decision to smoke. These retailers feel that the retail display of tobacco products enables adult smokers who have already decided to purchase a packet of cigarettes to choose the brand they want.

For these reasons PML does not support regulatory measures that would ban the display of tobacco products at point of sale. A ban on display of a product at retail would unreasonably interfere with the right of adult consumers to make informed brand selection choices, as well as limit a manufacturer's ability to communicate its trademarks with adult consumers. Prohibiting product display at retail is unlikely to further the public health objective of reducing consumption. PML believes that retail display of tobacco products facilitates brand selection and does not encourage non-smokers to start smoking or existing smokers to smoke more.

PML notes that currently there are no limits placed on the total display space for tobacco products in New South Wales, although retailers are restricted to displaying two packs of each different product line. We also recognise that jurisdictions throughout Australia have regulated to restrict product display at point of sale in different ways. By considering the approach taken in other jurisdictions, we believe that New South Wales can balance public health concerns while allowing adult smokers to select and find the brands they prefer.

Preventing youth smoking – cigarette sales to minors

Underage people should not smoke, and we support comprehensive efforts to prevent underage smoking. Regulations, and strict enforcement of such regulations, can play an important part in addressing the complex social problem of youth smoking prevention.

We support the provisions contained in the current Act to prevent youth smoking in New South Wales. Measures such as the minimum age law of 18, financial penalties for retailers who contravene the law, warning signage at point of sale and requirements for retail staff training are all appropriate provisions to address the issue of youth smoking. These provisions form an excellent basis for addressing the issue of youth smoking. We suggest, however, that the New South Wales government consider additional measures to ensure retailer compliance with existing legislative requirements. PML believes that the licensing of tobacco wholesalers and retailers could be a useful enforcement tool to ensure compliance with youth smoking prevention legislative provisions.

Licensing

PML believes that the manufacture and sale of tobacco products should be subject to a comprehensive licensing system as a means of making certain that tobacco wholesalers and retailers conduct their business in compliance with standards set by regulation. Such a licensing system could also provide a mechanism to revoke the ability to manufacture and sell tobacco products in the event of non-compliance.

Licensing of tobacco wholesalers and retailers could be a means of certifying that only legitimate and qualified businesses are engaged in the manufacture and sale of tobacco products. Under a licensing system, each participant, from manufacturer to the retail outlet, would be required to register with the government, satisfy basic requirements to participate in the tobacco business and comply with legislation and regulations applicable to their category of business. Failure to comply could result in fines and/or revocation of the licence to operate.

Licensing facilitates the dissemination of information to regulators about tobacco wholesalers and retailers. Licensing could assist the government in enforcing compliance with legislation and regulations, including prevention of sales to minors and the sale of illicit products such as "chop chop". A database of licence

holders could also enable regulators to communicate directly with the licensees on their obligations under the law.

The Framework Convention on Tobacco Control (FCTC) notes the potential of a licensing system to address illicit trade:

“Each Party shall endeavour to adopt and implement further measures including licensing, where appropriate, to control or regulate the production and distribution of tobacco products in order to prevent illicit trade.” (Article 15, Paragraph 7.)

The benefits of a licensing scheme are also discussed by the Framework Convention Alliance:

“Licensing tobacco businesses allows the government to track companies that manufacture, import, export, or sell tobacco products. This, in turn, allows the government to gauge the magnitude of the tobacco business and its affiliations in the country. Licensure is, therefore, important for administering the Act, especially with respect to anti-smuggling controls. Licensure sanction also can provide a powerful mechanism to compel compliance with legal requirements...”⁴

Legislation can only be effective, however, if appropriate enforcement measures are in place. For example, a system of routine compliance monitoring of tobacco retailers could be linked to a retailer’s licence where non-compliance of the legislation subjects the licensee to the penalty provisions of the law. Controlled purchase operations for enforcement and prosecution purposes are being used in most states and territories, but only in Tasmania and Western Australia (effective from February 2007) are such operations approved activities under the relevant legislation. It should be noted that there was some dispute in the New South Wales District Court in 2005 in relation to the use of controlled purchases as a tool to enforce legislation prohibiting the sale of tobacco products to minors⁵. Clearly defined legislation that includes prescriptive enforcement measures (e.g: controlled purchases) will provide clarity and uniformity in efforts to prevent youth smoking.

PML also believes that evidence of retail staff training should be a condition of a retailer’s licence. Such training should be a legislated requirement as is the case in Queensland and Victoria.

Conclusions

PML welcomes the opportunity to provide this submission to the Joint Select Committee. We agree that it is entirely appropriate for governments and public health organisations to discourage smoking amongst adults; however we believe that it should also be recognised that some adults will continue to choose to smoke. Those adults should continue to be able to find and select the brands they prefer by having access to regulated display of product at point of sale.

We also agree that measures to reduce the prevalence of youth smoking are an important public policy objective. In this context, we believe that a licensing system for tobacco wholesalers and retailers that includes strong enforcement provisions and penalties for non-compliance would be a useful tool to address the issue of youth smoking.

PHILIP MORRIS LIMITED

12 April 2006

⁴ Rose Nathan, JD,MPH, Model Legislation for Tobacco Control: A Policy Development and Legislative Drafting Manual, at: <http://fctc.org/modelguide/images/IUHPE-Text.pdf>

⁵ See *Robinson v Zhang* [2005] NSWCA 439